
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1073 **Hearing Date:** June 18, 2019
Author: Blanca Rubio
Version: April 12, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Immigration Enforcement Activities*

HISTORY

Source: Author

Prior Legislation: SB 54 (De Leon) Chapter 494, Stats. 2017

Support: Unknown

Opposition: None known

Assembly Floor Vote: 64 - 0

PURPOSE

The purpose of this bill is to authorize the Attorney General to enter into a memorandum of understanding with the United States Immigration and Customs Enforcement to treat shelters in this state that provide services to individuals who are victims of domestic violence or sexual assault as sensitive locations for purposes of federal immigration enforcement activities.

Existing law prohibits the federal government from “conscripting” the states to enforce federal regulatory programs. (U.S. Const. 10th Amend.)

Existing law provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. (8 CFR § 287.7(a).)

Existing law states that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS. (8 CFR § 287.7(d).)

Existing law authorizes the Secretary of DHS to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. § 1357(g).)

Existing law provides that, notwithstanding any other provision of federal, state, or local law, a federal, state, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual. (8 U.S.C. 1373 (a).)

Existing law requires the Attorney General to publish model policies that certain locations, including public schools, public libraries, state-operated health facilities, courthouses, and shelters, can adopt to limit immigration enforcement at their facilities. (Government Code, § 7284.8 (a).)

Existing law prohibits law enforcement agencies (LEAs), including school police and security departments, from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes, as specified. These provisions are commonly known as the Values Act. (Government Code § 7284.6 (a).)

Existing law describes the circumstances under which a LEA has discretion to respond to transfer and notification requests from immigration authorities, as specified. These provisions are commonly known as the TRUST Act. (Government Code § 7282.5.)

Existing law provides that LEAs are able to participate in joint taskforces with the federal government only if the primary purpose of the joint task force is not immigration enforcement. Participating agencies must annually report to the California Department of Justice (DOJ) if there were immigration arrests as a result of task force operations. (Government Code § 7284.6, (b) & (c).)

Existing law provides individuals who are in the custody of local LEAs with information about their procedural and legal rights in the event that immigration authorities want to contact them. These provisions are commonly referred to as the TRUTH Act. (Government Code §§ 7283, 7283.1 and 7283.2.)

This bill authorizes the Attorney General to enter into a memorandum of understanding with the United States Immigration and Customs Enforcement to treat shelters in this state that provide services to individuals who are victims of domestic violence or sexual assault as sensitive locations for purposes of federal immigration enforcement activities.

COMMENTS

1. Need for This Bill

According to the author:

Existing state and federal law recognizes the heightened need for confidentiality and special protections for immigrant survivors of domestic violence and sexual assault. 8 U.S.C. § 1367 and 8 U.S.C. § 1229 (d)(e) require heightened scrutiny for immigration enforcement actions occurring at domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers, victim services provider locations, and community-based organizations. The Violence Against Women Act (VAWA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provide protections for and penalties for violating the confidentiality of immigrant victims of domestic violence and human trafficking.

Existing law (See SB 54 (De León) 2017) recommends, but does not require, that shelters, courthouses, and hospitals adopt the California Attorney General's model or equivalent policies to assist these locations in responding to immigration enforcement.

However, currently neither ICE nor CBP recognize Domestic Violence Shelters and Rape Crisis Centers as "sensitive locations," and ICE has affirmatively stated that they do not regard courthouses as sensitive locations for enforcement. It is left up to individual victims and service providers to insist these protections be upheld.

Despite existing protections, frequent and ongoing ICE activity at courthouses, a low rate of adoption and awareness of the model policies among shelters, rape crisis centers, and other provider locations, and a pattern of decline in immigrant survivors accessing services indicates that survivors and the organizations that support them are broadly unaware of and therefore unable to enforce the protections that exist, rendering them moot.

This bill seeks to shore up those protections and remove the burden and risk from survivors and their advocates by placing responsibility for observing victims' rights with the relevant agencies.

2. ICE Sensitive Locations Memo

In October of 2011, the U.S. Department of Homeland Security implemented a policy "designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations," including hospitals, churches, and schools. (See U.S. Immigration and Customs Enforcement, *Enforcement Actions at or Focused on Sensitive Locations*, Oct. 24, 2011. Available at: <<https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>>.) Immigration enforcement activity at places like schools, churches, or where people conduct civic business, or go for critical services has a chilling effect on access to those locations.

Enforcement actions covered by the memo are arrests, interviews, searches, and surveillance for the purpose of immigration enforcement only. (*Ibid.*) Narrow exceptions apply, such as when there are exigent circumstances, where other law enforcement actions have led ICE to a sensitive location, as specified; or when prior approval is obtained. (*Ibid.*)

The Sensitive Locations memo only creates a presumption against ICE enforcement action. While it directs ICE officers and agents "to make substantial efforts to avoid unnecessarily alarming local communities" when operating around sensitive locations, it does not categorically prohibit enforcement operations and, in fact, allows them when the circumstances described above are present. (*Ibid.*)

Although as of March 2019, ICE's website confirms that the sensitive location policy remains in effect (<https://www.ice.gov/ero/enforcement/sensitive-loc>), many advocates fear that, under the current presidential administration, ICE could abandon the memo entirely or establish a different policy in its place that would be less respectful to sensitive locations. Even without officially abandoning the policy, proponents contend, there are troubling examples suggesting that ICE may be starting to disregard the policy.

For example, a Los Angeles-area father was detained by ICE in March 2017, within sight of his daughter just after dropping her off at school. (Andrea Castillo, "*Immigrant Arrested by ICE*")

after Dropping daughter off at School, Sending Shockwaves through Neighborhood." Los Angeles Times, March 3, 2017. Available at <http://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html>.)

More recently, in July 2018, a victim of domestic violence and her son were arrested at a courthouse when they attended a hearing on the domestic abuse case. The woman had been living at a domestic violence shelter and had a restraining order against her abuser. (M. Jeltsen, *Domestic Abusers Have a Ally in the Trump Era. It's ICE*, Huffington Post, July 24, 2018. Available at < https://www.huffingtonpost.com/entry/ice-domestic-violence-abuse_us_5b561740e4b0b15aba914404 >.)

These incidents suggest that, as a practical matter, ICE's sensitive locations policy is not a guarantee that ICE will stay away from sensitive locations. For these reasons, proponents believe this bill is needed to protect and to support immigrant victims of domestic violence because of the increasing fear and uncertainty surrounding ICE enforcement policies generally.

With regard to domestic violence shelters, the Sensitive Locations memo does not specifically list them as sensitive locations, but it notes that, "particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities." (*Ibid.*) This bill would authorize the Attorney General to enter into MOUs with the ICE to treat shelters in this state that provide services to individuals who are victims of domestic violence or sexual assault as sensitive locations for purposes of federal immigration enforcement activities.

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