
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1747 **Hearing Date:** June 25, 2019
Author: Gonzalez
Version: April 24, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Law Enforcement: Immigration*

HISTORY

Source: Author

Prior Legislation: SB 54 (De Leon), Chapter 495, Stats. 2017
AB 2792 (Bonta) Chapter 768, Stats. 2016
AB 4 (Ammiano) Chapter 570, Stats. 2013
AB 524 (Mullin) Chapter 572, Stats. 2013

Support: American Civil Liberties Union; California Public Defenders Association;
Monterey County; Oakland Privacy; Root and Rebound

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 56 - 14

PURPOSE

The purpose of this bill is to prohibit state law enforcement agencies from creating or maintaining databases including an individual's citizenship or immigration status for the purpose of immigration enforcement.

Existing law prohibits California law enforcement agencies from (Government Code § 7284.6 (a)):

- 1) Using agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:
 - a) Inquiring into an individual's immigration status.
 - b) Detaining an individual on the basis of a hold request.
 - c) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities.
 - d) Providing personal information, as defined, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

- e) Making or intentionally participating in arrests based on civil immigration warrants.
 - f) Assisting immigration authorities “for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;”
 - g) Performing the functions of an immigration officer.
- 2) Placing peace officers under the supervision of federal agencies or employing peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement;
 - 3) Using immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody;
 - 4) Transferring an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or as otherwise authorized by statute;
 - 5) Providing office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility; and,
 - 6) Contracting with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody, except as otherwise authorized by statute.

Existing law states that a law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act. Specifies that coordination shall only occur with respect to specified convictions and offenses. (Government Code § 7282.5 (a).)

This bill prohibits law enforcement agencies from making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein available to anyone or any entity for the purpose of immigration enforcement.

This bill terminates and makes void as against public policy any contract or agreement that is in effect on January 1, 2020 which conflicts with this bill.

This bill clarifies that its provisions do not apply to information within those databases regarding an individual for whom an arrest warrant has been issued, or regarding an individual’s citizenship or immigration status that, pursuant to existing state and federal law, may be shared with federal immigration authorities.

This bill requires all persons and entities provided with access to agency or department databases to certify in writing that material disclosed from the database which is not otherwise subject to disclosure will be treated as confidential and only be used for purposes that are consistent with existing law, and will not be used for the purposes prohibited by the bill.

COMMENTS

1. Need for This Bill

According to the author:

AB 60 created a driver's license program for undocumented residents to ensure these residents could drive legally, safely and obtain insurance. California residents were assured repeatedly that the driver's license would not be used as evidence of their immigration or citizenship status, and not be used as a basis for a criminal investigation, arrest, or detention.

Recent news investigations have uncovered that Immigration Customs and Enforcement (I.C.E.) has been accessing state-run databases containing information about individuals with licenses that were made available under Assembly Bill 60. Pursuant to Vehicle Code Section 1810.5, law enforcement agencies may access certain information from driver license or identification card records either directly from the California Department of Motor Vehicles (DMV) via a requester account, or via the Department of Justice's California Law Enforcement Telecommunications System (CLETS) and Cal-Photo programs. Available information includes name, date of birth, residence and/or mailing address, and photos, as well as conviction information, accidents, and any licensing actions taken by the DMV.

CLETS is available to all law enforcement agencies for criminal investigations purposes. According to the DMV, pursuant to Vehicle Code Section 12800.7, the Department does not release any document provided by an applicant for purposes of proving the applicant's identity, true full name, California residency, or legal presence, except in response to a criminal subpoena, a court order, or a certification from law enforcement attesting to an urgent health or safety need for the release of the documents.

The Department of Homeland Security (DHS) must first apply for access to CLETS and once approved, they can submit individualized inquiries to obtain driver's license or vehicle registration information collected by the DMV and maintained in standardized fields, such as name, address, physical characteristics and license plate information, which appear on the face of the driver's license. The systems may also be used to obtain driver history such as accidents or tickets.

Once DHS has access to CLETS, they are not required to explain the purpose for each inquiry they make. While the number of arrests that have resulted from information accessed through DMV databases and CLETS is unknown, the ACLU and the National Immigration Law Center report¹ that between Jan. 1, 2017 and April 10, 2018, DHS made 594 inquiries to the DMV driver's license database and 1,085 inquiries to the DMV vehicle registration database by telephone. Use of state databases by I.C.E. for immigration enforcement is concerning. Data that is collected by the DMV for the purpose of issuing drivers licenses, should not be used for immigration enforcement. Data already show that the number of

¹ <https://www.nilc.org/issues/immigration-enforcement/how-calif-dl-records-shared-with-dhs/>

applicants for AB 60 driver's licenses has sharply dropped², and news reports cite individuals discussing their fear of immigration enforcement in relation to the licenses³. This fear is undermining the purpose of the AB 60 program to enable residents to drive legally and to be insured. As a result, eligible residents may hesitate to apply for the license if I.C.E. is able to access to sensitive personal information.

AB 1747 protects the privacy of California residents and would ensure that I.C.E. does not have access to personal information in California law enforcement databases.

The bill prohibits California law enforcement agencies from making agency or department databases, including those maintained by private vendors, available for the purpose of immigration enforcement except for the individual's citizenship or immigration status. This information is required by federal law to be shared. This would not apply to information within those databases regarding an individual for whom an arrest warrant has been issued.

2. Prohibition on sharing databases

The California Values Act, enacted in 2018 as the result of SB 54 (De León), Chap. 495, Stats. 2017, generally prohibits, with exceptions, a California law enforcement agency from using its moneys or personnel to investigate, detain, or arrest persons for immigration enforcement purposes. This bill would extend that concept to law enforcement databases: prohibiting law enforcement agencies from making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein available for the purpose of immigration enforcement and voiding any contracts or agreements that violate that prohibition. A similar provision was included in SB 54, but that language was removed from SB 54 before it was sent to Governor Brown for his signature.

3. DMV database

This bill terminates any contracts or agreements between local or state law enforcement agencies and the federal government in which the California entity agrees to share is law enforcement data regarding immigration status, except it permits disclosure of immigration information regarding an individual for whom an arrest warrant has been issued.

On January 25, 2019, the author of this bill sent a letter to the acting director of the DMV requesting DMV's policy on permitting access to DMV's database. On February 4, 2019, DMV responded that it does share information in its DMV database in response to a criminal subpoena or a certification from law enforcement that the records are needed for an urgent health or safety reason. However, DMV stated that it does not identify in any records available to any person whether an applicant applied for a license under AB 60. DMV states that it also does not maintain a separate database for AB 60 licenses.

² <http://www.insurance.ca.gov/01-consumers/105-type/95-guides/01-auto/lca/upload/Assessing-the-Impacts-of-AB-60-California-s-Low-Cost-Auto-Insurance-Program-and-Uninsured-Motorists-Report.pdf>

³ <https://www.nbcsandiego.com/news/local/Undocumented-Immigrants-Fear-ICE-is-Obtaining-Their-Home-Address-from-AB-60-Licenses-486743421.html>

Despite DMV's statements that it does not share information about immigration status, news reports conflict with those assurances. (See Flores, Sergio and Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC San Diego, February 19, 2019, Available at <https://www.nbcsandiego.com/news/local/DMV-Confirms-ICE-Has-Limited-Access-to-AB-60-License-Information-506071521.html>.) NBC San Diego reports that ICE officials have copies of AB 60 licenses when they locate and detain individuals in at least two known cases.

The American Civil Liberties Union (ACLU) and the National Immigration Law Center (NILC) released a report in December 2018 with the purpose of providing "as much information as possible about how and what information is shared with the Department of Homeland Security and its agencies, so that California residents can effectively weigh the risks and benefits of obtaining a driver's license." (*How California Driver's License Records are Shared with the Department of Homeland Security*, ACLU and NILC, at 2, available at <https://www.nilc.org/wp-content/uploads/2019/01/DMV-PRA-report-2018-12.pdf>.) The report states, "Yet it is well-known that immigration agents frequently use DMV information, such as addresses, to locate individuals for civil immigration enforcement. The California DMV and CADOJ do not assess whether a DHS agency applying for a Government Requester Account or CLETS access will use DMV information for immigration enforcement purposes when DMV and CADOJ determine whether to approve that agency's application." (*Id.* at 3-4) In the first three months of 2018, the Department of Homeland Security apparently conducted 89,223 queries in CLETS. (*Id.* at fn. 14.)

In the report's recommendations on how to address potential abuse by DHS in accessing information about California licenses, the report suggests that California "Terminate any approvals or memoranda of agreement between the state and DHS agencies that allow the agencies to obtain information from DMV databases for enforcement of civil immigration law." (*Id.*) This bill would codify that recommendation.

4. Argument in Support

In support the American Civil Liberties Union of California states:

In 2017, California enacted the California Values Act (SB 54, de León) because entanglement of state and local public safety resources with the federal deportation system undercut immigrant communities' confidence in law enforcement and undermined the public safety and well-being of all Californians. From 2009-2015, ICE's controversial and failed Secured Communities program had California's local officers detain and transfer people to ICE. It operated as an indiscriminate mass deportation program and cost the state's taxpayers \$65M annually. California officers were responsible for 30% of all deportations under this program.

AB 1747 builds on the foundation laid by SB 54 by limiting access to local enforcement agencies' databases and continues to uphold California's core values of community, family unity, and common humanity. While the number of arrests that have resulted from information accessed through Department of Motor Vehicle databases and California Law Enforcement Telecommunications System is unknown, the ACLU of Northern California and the National Immigration Law Center report that between Jan. 1, 2017 and April 10, 2018, DHS agencies made

594 inquiries to the DMV driver's license database and 1,085 inquiries to the DMV vehicle registration database by telephone. In 2017, DHS agencies made 113 inquiries to the driver's license database and 1,149 inquiries to the vehicle registration database through online access, and in the first three months of 2018, those agencies made 80 inquiries to the driver's license database and 341 inquiries to the vehicle registration database. At a time when the current federal administration continues to target immigrant communities, AB 1747 will reaffirm California's commitment to promoting public safety and protecting and integrating its immigrant communities.

5. Argument in Opposition

The California State Sheriffs' Association opposes this bill stating:

This bill is an overly broad attempt to restrict information sharing among law enforcement agencies. Sheriffs do not engage in immigration enforcement, but law enforcement at local, state, and federal levels need to communicate about dangerous persons without regard to immigration status.

Additionally, language very similar to that contained in AB 1747 was amended out of 2017's SB 54 before being signed into law by the Governor.

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