
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 493 **Hearing Date:** June 6, 2017
Author: Jones-Sawyer
Version: February 13, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Crime: Victims and Witnesses: Immigration Violations*

HISTORY

Source: Author

Prior Legislation: AB 4 (Ammiano) Chapter 570, Statutes of 2013
AB 1081 (Ammiano) Vetoed 2012
SB 1234 (Kuehl) Chapter 700, Statutes 2004

Support: American Civil Liberties Union; California Attorneys for Criminal Justice;
California Catholic Conference; California Public Defenders Association; City of
Santa Monica; National Association of Social Workers

Opposition: None known

Assembly Floor Vote: 69 - 1

PURPOSE

The purpose of this bill is to prohibit law enforcement from detaining a crime victim or witness solely for an actual or suspected immigration violation.

Existing federal 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 federal 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 federal 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 prohibits a law enforcement official from detaining an individual on the basis of a United States Immigration and Customs Enforcement (ICE) hold after that individual becomes eligible for release, unless any of the following apply:

- The individual has been convicted of a serious or violent felony, as specified;
- The individual has been convicted of any felony which is punishable by imprisonment in state prison;
- The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable as a felony or misdemeanor;
- The individual has been convicted at any time for any one of a list of specified felonies;
- The individual is a current registrant on the California Sex and Arson Registry;
- The individual has been arrested for any specified felony, and a magistrate has made a finding that there is probable cause to hold the person to answer for that charge; or,
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified in the federal Immigration and Nationality Act or is identified by ICE as the subject of an outstanding federal felony arrest warrant. (Government Code § 7282.5.)

Existing law defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual." (Government Code § 7282 (c).)

Existing law defines "law enforcement official" as "any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of individuals in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities." (Government Code § 7282 (d).)

Existing law prohibits a peace officer from detaining a person who is a witness or victim to a hate crime exclusively for any actual or suspected immigration violation when that person is not charged with committing any crime under state law. (Penal Code § 422.93 (b).)

This bill declares that it is the public policy of the state to protect the public from crime and violence by encouraging all victims and witness to crimes, or who could otherwise give evidence in a criminal investigation, to cooperate with the criminal justice system and not to penalize those persons for such cooperation or for being crime victims.

This bill prohibits a peace officer from detaining a person who is a witness or victim to a crime exclusively for any actual or suspected immigration violation when that person is not charged with, or convicted of, committing any crime under state law.

COMMENTS

1. Need for This Bill

Recently, Pedro Figueroa Zarceno filed a civil rights lawsuit against the City and County of San Francisco, the San Francisco Police Department and the San Francisco Sheriff's Department alleging that he was unlawfully arrested, detained and turned over to ICE when he went to retrieve his stolen car from the San Francisco Police Department. (<http://www.sfgate.com/crime/article/Car-theft-victim-handed-over-to-immigrations-10864148.php>.)

Mr. Figueroa Zarceno reported his car stolen in November 2015. After being notified his car had been found, he went to get a police report so he could retrieve the vehicle from the impound lot. San Francisco police ran a routine background check on Mr. Figueroa Zarceno when he went to get a copy of the police report on his stolen car. They discovered Mr. Figueroa Zarceno had a 10-year-old outstanding warrant for his deportation. Instead of getting his car back, Figueroa was arrested and held in a detention facility for two months, during which time authorities auctioned his car without notifying him or his family. (*Ibid.*)

According to the attorney representing Mr. Figueroa Zarceno, this is not the first time the San Francisco Police Department has arrested or detained a crime victim “based solely on a civil immigration matter.” (*Ibid.*)

Under current law, had Mr. Figueroa Zarceno been a victim of a hate crime, law enforcement would have been prohibited from detaining him based on solely on the immigration violation. This bill expands the protection afforded to victims and witnesses of hate crimes to victims and witnesses of all crimes.

2. ICE Involvement Can Impede Cooperation Between Law Enforcement and the Community

A study by the University of Illinois – Chicago sought to assess police involvement in immigration enforcement impacted public safety and police-community relations. Latinos in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties were surveyed on their perception of local law enforcement when there is police involvement in immigration enforcement. The results showed that “a substantial number of Latinos are less likely to voluntarily contact the police if they are a victim of a crime, or to provide information about a crime, because they are afraid the police will ask them or persons they know about their immigration status.” (*Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Nik Theodore et al., (May 2013), p. 1

http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)

Specifically, the study found that 44 percent of Latinos surveyed reported they are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know. (*Id.* at p. 6.) Likewise, 45 percent of Latinos surveyed stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status. And while undocumented immigrants are particularly fearful to contact law enforcement authorities if they were victims of a crime or to offer information relating to a crime; fear of police contact is not confined to immigrants; but rather, it is shared by US-born Latinos. (*Ibid.*)

3. Argument in Support

In support the American Civil Liberties Union states:

AB 493 expands on current law, which protects crime victims and witnesses of hate crimes from being detained for immigration violations or being turned over to federal immigration enforcement. By ensuring that all crime victims and witnesses are not turned over to federal immigration authorities, AB 493 promotes community trust in law enforcement and encourages cooperation with criminal investigations, which increases public safety for all Californians.

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