
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 713 **Hearing Date:** April 21, 2015
Author: Nielsen
Version: February 27, 2015
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *State Government: Federal Immigration Policy Enforcement*

HISTORY

Source: Author

Prior Legislation: SB 1664 (Poochigian) Failed Senate Public Safety, 2006

Support: California State Sheriffs' Association

Opposition: Orange County Immigrant Youth United; Asian American's Advancing Justice Sacramento; American Civil Liberties Union; SFOPPIA; Centro Legal de la Raza; Congregations Building Community; Orange County Immigrant Youth United; National Day Laborer Organizing Network Organizing Network; California immigrant Policy Center; Graton Day Labor Center; Napa Valley Dream Team

PURPOSE

The purpose of this bill is to allow for an immigration hold when a person has been convicted of a felony which formed the basis upon which the individual was previously deported.

Federal law provides that a person who was deported from the United States because of specified misdemeanors or felonies and enters, attempts to enter or is found in the United States shall be imprisoned not more than 10 years. If he or she had been deported for specified aggravated felonies then penalty shall be not more than 20 years. (8 USCS § 1326 (b).)

Existing law provides that a law enforcement official shall have the discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state or local policy and only under the following circumstances:

- The individual has committed a serious or violent felony;
- The individual has been convicted of a felony punishable by imprisonment in the state prison;

- The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as a wobbler or has been convicted at any time of a felony for any of the following offenses:
 - Assault;
 - Battery;
 - Use of threats;
 - Sexual abuse, sexual exploitation, or crimes endangering children, as specified;
 - Child abuse or endangerment;
 - Burglary, robbery, theft, fraud, forgery, and embezzlement;
 - Felony DUI;
 - Obstruction of justice;
 - Bribery;
 - Escape;
 - Unlawful possession or use of a weapon, firearm, explosive device; or weapon of mass destruction;
 - Possession of an unlawfully deadly weapon;
 - Felony possession, sale, distribution, manufacture or trafficking of controlled substances;
 - Vandalism with prior convictions;
 - Gang-related offenses;
 - An attempt or conspiracy to commit one of the listed offenses;
 - A crime resulting in death or involving great bodily injury;
 - Possession of a firearm in the commission of an offense;
 - A registerable sex offense;
 - False imprisonment, slavery, human trafficking;
 - Criminal profiteering and money laundering;
 - Torture and mayhem;
 - A crime threatening the public safety;
 - Elder and dependent adult abuse;
 - A hate crime;
 - Stalking;
 - Soliciting the commission of a crime;
 - A crime committed on bail or released on his or her own recognizance;
 - Rape, sodomy, oral copulation or sexual penetration;
 - Kidnapping; or,
 - Fleeing the scene of a vehicular manslaughter.
- The individual is a current registrant on the California Sex and Arson registry;
- The individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, a felony punishable by imprisonment in the state prison or any of the listed felonies and the magistrate makes a finding of probable cause;
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony or is identified as the subject of an outstanding federal felony arrest warrant; and,
- If none of the conditions are met an individual shall not be detained on an immigration hold after the individual becomes eligible for release from custody. (Government Code § 7282.5)

This bill provides that a person may also be detained on an immigration hold for a felony which formed the basis upon which the individual was previously deported.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Existing law prohibits law enforcement from detaining an individual on the basis of a United States Immigration and Customs Enforcement (ICE) hold unless he or she was previously convicted of certain enumerated felonies.

This bill would expand that list to include the conviction of a felony for which the individual was previously deported. If an individual has been deported following a felony conviction and illegally re-enters the country he or she is subject to federal prosecution and imprisonment of between 2 to 20 years depending upon the gravity of the underlying offense. This bill would authorize California law enforcement to detain such an individual on the basis of an ICE hold.

Luis Enrique Monroy-Bracamonte (A.K.A. Marcelo Marquez) was twice deported from the United States, re-entering the country in each instance. Immigration authorities say his fingerprints have been matched to biometric records showing that he was first deported after being convicted in Arizona for selling drugs in 1997.

Immigration officials say Monroy-Bracamonte was last deported in 2001 following arrest for drug and weapons violations. On April 21, 2003 Monroy-Bracamonte using the name "Marcelo Marquez" was arrested for misdemeanor hit-and-run and making a false police report. He pleaded guilty, received a year of probation and was fined about \$500. Utah court records indicate that Monroy-Bracamonte accumulated 10 misdemeanor vehicle violations between 2003 and 2009.

Under current California law, none of these prior offenses would be sufficient to permit local law enforcement to detain Monroy- Bracamonte subject to an ICE hold.

Last year, Monroy-Bracamonte engaged in a six hour crime spree during which Placer County Detective Michael Davis Jr. and Sacramento County Deputy Danny Oliver were both shot and killed. He has since been charged with 14 felony counts including the murders of Officers Davis and Oliver, four car-jackings and the attempted murder of three deputies and a civilian.

This case exposes impediments in the criminal justice process that shielded Monroy-Bracamonte from being returned to federal custody for prosecution prior to his violent rampage.

SB 713 would simply close a gap in current law so that local law enforcement would be authorized to honor an ICE hold if the subject is a previously deported felon.

2. Immigration Holds

Existing law permits law enforcement to detain an individual on an immigration hold upon release from custody only if certain conditions are met including whether the individual has been convicted of one of a number of specified offenses. This bill would add to the list of crimes which allow for an immigration hold “a felony which formed the basis upon which the individual was previously deported.”

It is not clear how the law enforcement official will be able to determine whether a felony formed the basis on which the individual was deported without a transcript of the deportation proceedings. Evidence of a past felony is not in and of itself proof that that was the reason for deportation. Will this only apply when the agency can show the connection between the felony and the deportation?

3. Support

In support the California State Sheriffs’ Association states:

California law prohibits law enforcement from detaining an individual on the basis of an ICE hold unless that person was previously convicted of specified felonies, but fails to include the conviction of a felony for which the individual was previously deported. Senate Bill 713 amends California law to conform to the Policies for Apprehension, Detention and Removal of Undocumented Immigrants memorandum as set forth by the Department of Homeland Security on November 20, 2014.

4. Opposition

A number of groups oppose this bill stating:

Just four months after the law's enactment, a ruling from a federal district judge in Oregon confirmed this warning and found that ICE holds violate the United States Constitution. In *Miranda-Olivares vs. Clackamas*, the court held that the detention of a woman in Clackamas County, Oregon, on an ICE hold violated the Fourth Amendment's protection against unreasonable search and seizure and ordered that damages be paid. Since then, hundreds of jurisdictions across the nation have stopped submitting to these unconstitutional requests altogether.

The TRUST Act and the city and county policies which have built on its protections are key public safety tools, helping communities across California gain the confidence to work with their local law enforcement to solve crimes. This is particular vital in light of *research* demonstrating that local law enforcement's entanglement with the deportation system has severely undercut confidence in police and Sheriffs in Latino and immigrant communities.

We believe it is imperative that the isolated actions of one individual not be held against entire communities of people who are part of the fabric of our state. We express in the strongest terms our condemnation of the murders of Sacramento County Sheriff's Deputy Danny Oliver and Placer County Sheriff's Detective Michael David Davis, Jr.

As the *Sacramento Bee* Editorial Board powerfully noted in its October 29, 2014 Editorial, this is "[a] story about murder, not immigration failure". The editorial board lamented the response of "anti-immigration zealots" to this tragic case, who "can hang most any calamity at the feet of the millions of undocumented immigrants."

The way forward must be anchored in our values of accountability, equality, and fairness - not fear-mongering.

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