**SENATE RULES COMMITTEE** SB 54
Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 54
Author: De León (D), et al.
Amended: 3/6/17
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 1/31/17
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Anderson, Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 3/13/17
AYES: Lara, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

**SUBJECT:** Law enforcement: sharing data

**SOURCE:** Author

**DIGEST:** This bill limits state and local law enforcement agencies involvement in immigration enforcement and ensures that eligible individuals are able to seek services from and engage with state agencies without regard to their immigration status.

**ANALYSIS:**

Existing federal law:

1) 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 Section 287.7(a).)

2) 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 Section 287.7(d).)

3) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between Immigration and Customs Enforcement (ICE) and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. Section 1357(g).)

4) States 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 US Code §1373(a))

5) States that notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8US Code § 1644)

6) Provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. 14th Amend.)

Existing state law:

1) 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).)

2) Provides that a law enforcement official 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 in if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy and only under specified circumstances. (Government Code § 7282.5)

3) Provides that before any interview between ICE and an individual in local law enforcement custody regarding civil violations law enforcement must provide the individual with specified information and requires specified notification to the individual if law enforcement intends to comply with an ICE hold or notify ICE that the individual is being released. (Government Code § 7283.1)

4) Provides that where there is reason to believe that a person arrested for specified controlled substance related offenses may not be a citizen of the United Stated, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters. (Health and Safety Code § 11369)

This bill:

1) Repeals Health and Safety Code § 11369.

2) Prohibits state and local law enforcement agencies and school police and security departments from using agency or department money, facility, property, equipment or personnel to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes, including but not limited to any of the following:

    a) Inquiring into or collecting information about an individual's immigration status.
    b) Detaining an individual on the basis of a hold request.
    c) Responding to notification or transfer requests.
    d) Providing, or responding to requests for, nonpublicly available personal information about an individual, including, but not limited to, information about the person's release date, home address, or work address for immigration enforcement purposes.
    e) Making arrests based on civil immigration warrants.
    f) Giving federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes.
    g) Assisting federal immigration in conducting a search of a vehicle without a warrant.

h) Performing the functions of an immigration officer, whether formal or informal.

3) Prohibits any state local law enforcement agencies and school police and security departments from making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein other than information regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement. It further provides that any agreements in place on the effective date of this bill that are in conflict with the bill shall be terminated on the effective date of the bill. Any person or entity provided access to agency or department databases must certify in writing that the database will not be used for the prohibited purposes.

4) Prohibits state and local law enforcement agencies and school police and security department from placing peace officers under the supervision of a federal agencies or employing peace officers deputized as special federal officers or special federal deputies except to the extent those peace officers remain subject to California law governing conduct of peace officers and the polices of the employing agency.

5) Prohibits using federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

6) Provides that nothing in this section shall prevent any California law enforcement agency from doing any of the following:

   a) Responding to a request from immigration authorities about a specific person's criminal history.
   b) Participating in a joint law enforcement task force that is not immigration law enforcement.

7) Provides that if California law enforcement agency chooses to participate in a joint law enforcement task force, it shall submit a report every six months to the Department of Justice, as specified by the Attorney General. Sensitive information, as determined by the Attorney General, is not a public record for purposes of the California Public Records Act pursuant to subdivision (f) of Section 6254 of the Government Code.

8) Provides that the Attorney General, within 14 months after the effective date of the act that added this section, and twice a year thereafter, shall report on the types and frequency of joint law enforcement task forces. The report shall

include, for the reporting period, assessments on compliance with paragraph (2) of subdivision (b), a list of all California law enforcement agencies that participate in joint law enforcement task forces, a list of joint law enforcement task forces operating in the state and their purposes, the number of arrests made associated with joint law enforcement task forces for the violation of federal or state crimes, and the number of arrests made associated with joint law enforcement task forces for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

9) Provides that notwithstanding any other law, in no event shall a California law enforcement agency transfer an individual to federal immigration authorities for the purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for the purposes of immigration enforcement absent a judicial warrant.

10) Provides that this section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

11) Provides the Attorney General, within three months after the effective date of the act that added this section, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, and shelters and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement the model policy, or an equivalent policy. All other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy.

12) Provides that the Board of Parole Hearings, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections and Rehabilitation, with respect to inmates sentenced pursuant to Section 1170, shall notify the Federal Bureau of Investigation of the scheduled release on

parole or postrelease community supervision, or rerelease following a period of confinement pursuant to a parole revocation without a new commitment, of all persons confined to state prison serving a term for the conviction of a violent felony listed in subdivision (c) of Section 667.5.

13) Provides that the notification by the Board of Parole Hearings shall be made at least 60 days prior to the scheduled release date or as soon as practicable if notification cannot be provided at least 60 days prior to release. The only nonpublicly available personal information that the notification may include is the name of the person who is scheduled to be released and the scheduled date of release.

14) Provides that whenever any person confined to county jail is serving a term for the conviction of a misdemeanor offense and has a prior conviction for a violent felony listed in subdivision (c) of Section 667.5 or has a prior felony conviction in another jurisdiction for an offense that has all the elements of a violent felony described in subdivision (c) of Section 667.5, the sheriff may notify the Federal Bureau of Investigation of the scheduled release of that person, provided that no local law or policy prohibits the sharing of that information with either the Federal Bureau of Investigation or federal immigration authorities.

15) Provides that the notification may be made up to 60 days prior to the scheduled release date. The only nonpublicly available personal information that the notification may include is the name of the person who is scheduled to be released and the scheduled date of release.

16) Makes Legislative findings and declarations.

17) Defines terms for the purpose of the Chapter created by this bill.

18) Provides that the Chapter it creates shall be known as the California Values Act.

19) Is an Urgency measure.

**Comments**

According to the author:

> The purpose of this bill is to protect the safety and well-being of all Californians by ensuring that state and local resources are not used to

fuel mass deportations, separate families, and ultimately hurt California's economy.

The President has stated publicly that he will order the increased deportation of a broad category of immigrants and that doing so will be a top priority. Any expansion of federal deportation efforts will have a significant effect on California's economy and society.

A relationship of trust between California's immigrant residents and our state and local agencies, including police, schools, and hospitals, is essential to carrying out basic state and local functions. That trust is threatened when state and local agencies are involved in immigration enforcement.

According to the President Obama's Taskforce on 21st Century Policing, "immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement. At all levels of government, it is important that laws, policies, and practices not hinder the ability of local law enforcement to build the strong relationships necessary to public safety and community well-being. It is the view of this task force that whenever possible, state and local law enforcement should not be involved in immigration enforcement."[1] A study conducted by the University of Illinois similarly found that 44 percent of Latinos 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 about their immigration status or that of people they know.[2]

California is already familiar with the harmful effects of entangling local law enforcement agencies with immigration enforcement. Prior to its termination, the discredited "Secure Communities" program (S-Comm) operated in California as an indiscriminate mass deportation program at great cost to California both financially and otherwise. According to a report prepared by Justice Strategies in 2012, when the Secure Communities program was still active,

[1] Final Report of the President's Taskforce on 21st Century Policing (May 2016).
[2] Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, Nik Theodore, Dep't of Urban Planning and Policy, University of Illinois at Chicago (May 2013)

California taxpayers spent an estimated $65 million annually to detain people for ICE.[3]

For that reason, it is necessary to evaluate the appropriate use of state and local resources for immigration enforcement purposes and recognize the devastating impact deportations have on a state with thousands of mixed status families, and a heavily immigrant workforce.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- One-time costs of $2.7 million and ongoing costs of $2.3 million per year for the Department of Justice to develop model compliance policies, provide training and outreach to law enforcement and other agencies, review information from local law enforcement agencies, and compile required reports (General Fund).

- Unknown costs to local law enforcement agencies to change their existing processes and procedures for interacting with federal immigration enforcement authorities and for reporting on their participation in law enforcement task forces (local funds).

  In order to comply with the prohibitions on certain interactions with federal immigration authorities, local law enforcement agencies may incur costs to modify existing systems or processes. Because the bill does not mandate that those local law enforcement agencies provide new or expanded services, any such costs incurred by local governments are not likely to be interpreted as a reimbursable state mandate; therefore it is unlikely that the state would be responsible for reimbursing local law enforcement agencies for those costs.

  Additionally, the bill requires a local law enforcement agency to report to the Department of Justice with specified information if the agency participates in a law enforcement task force. To the extent that local law enforcement agencies do participate in such task forces, they may incur costs to comply with the reporting requirements. However, because local law enforcement agencies have discretion as to whether they participate in such task forces, the costs of reporting to the Department of Justice are not likely to be ruled a reimbursable mandate from the state.

[3] *See* Judith Greene, "The Cost of Responding to Immigration Detainers in California," Justice Strategies Report, August 22, 2012.

- Unknown fiscal risk to the state, to the extent that the prohibitions in the bill interfere with existing contracts between local law enforcement agencies and federal immigration authorities (General Fund). See below for more detail.

- Unknown potential costs to state agencies, courts, and local agencies such as school districts and county health facilities to comply with model policies developed by the Attorney General governing assistance between those agencies and federal immigration authorities (General Fund and other funds). The bill requires the Attorney General to adopt model policies and requires certain entities – such as public schools, government health facilities, courts, and other entities – to comply with the model policy. Depending on the requirements of that model policy, there could be costs for those entities to comply with its requirements, such as information technology costs to ensure data systems meet requirements or staff training. The extent of those costs is unknown, but given the very large number of effected entities, those costs could be substantial. For local government entities, such as school districts and county health facilities, the state would likely be required to reimburse those mandated costs.

- Unknown potential loss of federal funding to the state and/or local law enforcement agencies, due to non-cooperation with federal immigration authorities by law enforcement agencies (Federal funds).

**SUPPORT:** (Verified 3/16/17)

Abriendo Puerta/Opening Doors
AFSCME, AFL-CIO
Alliance for Boys and Men of Color
Alliance San Diego
American Academy of Pediatrics, California
American Civil Liberties Union
Asian Americans Advancing Justice-California
Asian American Criminal Trial Lawyers Association
Asian Law Alliance
ASPIRE
Bill Wilson Center
California Adolescent Health Collaborative
California Association for Bilingual Education
California Central Valley Journey for Justice
California College and University Police Chiefs Association
California Faculty Association

California Federation of Teachers (CFT), AFL-CIO
California Health + Advocates
California Immigrant Policy Center
California Labor Federation
California La Raza Lawyers Association
California Partnership to End Domestic Violence
Californians for Justice Education Fund
Californians for Safety and Justice
Californians Together Coalition
Center for Gender and Refugee Studies
Central American Resource Center-Los Angeles
Centro Laboral de Graton
Children's Defense Fund-CA
Courage Campaign
CREDO
Drug Policy Alliance
Equality California
Eric Garcetti, Mayor of Los Angeles
Esperanza Immigrant Rights Project of Catholic Charities of Los Angeles
Evergreen Teachers Association
Faith in the Valley
Filipino Youth Coalition
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Coalition
Jewish Public Affairs Committee of California
Koreatown Immigrant Workers Alliance
La Raza Roundtable de California
Latino and Latina Roundtable
Latino Coalition for a Healthy California
Loyola Immigrant Justice Clinic
Mexican American Legal Defense and Educational Fund
Mi Familia Vota
Mixteco/Indigena Community Organizing Project
MomsRising
Monument Impact
Muslim Student Association West
National Association of Social Workers, California Chapter
National Lawyers Guild, Los Angeles

North County Immigration Task Force of San Diego
National Council of Jewish Women California
National Day Laborer Organizing Network
National Immigration Law Center
Nikkei for Civil Rights and Redress
Nikkei Progressives
Orange County Immigrant Youth United
Our Family Coalition
Pangea Legal Services
Peace and Freedom Party of California
PolicyLink
RISE San Luis Obispo
San Diego Dream Team
San Diego Immigrant Rights Consortium
San Diego La Raza Lawyers Association
San Joaquin Immigrant Youth Collective
Santa Cruz County Immigration Project
Services, Immigrant Rights, and Education Network
SEIU California
SEIU Local 1021
Somos Mayfair
South Asian Network
Students Matter
Tongan American Youth Foundation
The Children's Partnership
The Utility Reform Network
Training Occupational Development Educating Communities Legal Center
UDW/AFSCME Local 3930
UNITE HERE
UPLIFT
Village Connect, Inc.
Voices for Progress Education Fund
Warehouse Worker Resource Center
Western Center on Law and Poverty
YWCA Glendale
A number of individuals

**OPPOSITION:** (Verified 3/14/17)

California Peace Officers' Association
California State Sheriffs' Association

A number of individuals

**ARGUMENTS IN SUPPORT:** Alliance for Boys and Men of Color supports this bill stating:

> California is already familiar with the harmful effects of entangling local law enforcement agencies with immigration enforcement. Prior to its termination, the discredited "Secure Communities" program (S-Comm) operated in California as an indiscriminate mass deportation program at great cost to California both financially and otherwise. According to a report prepared by Justice Strategies in 2012, under S-Comm, California taxpayers spent an estimated $65 million annually to detain people for ICE.1 Continuing to tangle state and local public safety resources with the dirty business of deportations threatens the civil rights and safety of all who reside in California. Such actions foster racial profiling, police mistreatment, and wrongful arrests, which further undermine trust between local communities and law enforcement.

The American Academy of Pediatrics supports this bill stating:

> It is our strongly held belief that all children should be afforded the right to attend school, visit a doctor's office, or approach a police officer for help without fearing for their safety. Parents should be able to attend school events and parent-teacher conferences, seek medical care, and request police assistance for themselves and their children without concern that their families will be torn apart as a result. Subjecting California families to programs and policies that threaten these central functions of parenting could pose innumerable, grave consequences to the social, psychological, and physical well-being of children.
>
> SB 54 (De León) would dramatically advance the health of California children by assuring that no child or parent need fear detention, separation, or deportation as a result of seeking an education or medical care. It would help to reduce the toxic burden of fear that many children across our state live with every day, in a time when that fear has grown substantially more severe. And it would affirm our commitment to doing right by each and every child in our diverse communities, no matter who they are or the circumstances that brought them here.

**ARGUMENTS IN OPPOSITION:** The California State Sheriffs' Association opposes stating:

> Sheriffs do not wish to act as immigration police, nor are they, and we protect EVERYONE in our communities regardless of immigration status. That said, we need to continue to cooperate with our law enforcement partners to ensure that those who victimize our communities are not given unnecessary opportunities to do more harm.
>
> While amendments attempt to clarify a local agency's ability to participate in a law enforcement task force with federal partners, the bill still lacks clarity as to lawful task force participation and it now imposes reporting requirements as to the nature of the law enforcement participation in a task force. And while the latest version of the bill attempts to allow some communication between local and federal authorities, SB 54 continues to preclude communication about potentially dangerous people. Specifically, the language only allows communication with the FBI (not ICE) in cases in which a person serving a term for a misdemeanor conviction, who also has a prior conviction for a violent felony, is about to be released. This language does not permit law enforcement to communicate about persons convicted of felonies and who are in jail custody or persons alleged to have committed a criminal offense. Precluding communication with ICE about, and prohibiting ICE access to, jail inmates of interest to ICE is likely to push ICE apprehension efforts out to communities, where collateral impacts on the family members of those wanted persons are likely.
>
> SB 54 stands to further separate people from their families and their communities by precluding the detention of persons for immigration purposes as currently happens in some California counties pursuant to a federal contract. The bill may keep these persons from being held in California jails, but they will still be detained somewhere, and it is likely that their detention will take place much further from their communities, networks, and families, and possibly even out of state. In seeking to solve a perceived problem, SB 54 creates significant new family issues.

Prepared by: Mary Kennedy / PUB. S. /
3/17/17 14:58:40

****** END ******