



SB-54 Law enforcement: sharing data. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 54

Introduced by Senator De León
(Principal coauthors: Senators Atkins, Pan, and Wiener)
(Principal coauthors: Assembly Members Bonta, Chiu, Cooper, Gomez, Levine, and Reyes)

December 05, 2016

An act to add Chapter 17.25 (commencing with Section 7284) to Division 7 of Title 1 of the Government Code, to repeal Section 11369 of the Health and Safety Code, and to add Sections 3058.10 and 3058.11 to the Penal Code, relating to law enforcement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 54, as amended, De León. Law enforcement: sharing data.

Existing law provides that when there is reason to believe that a person arrested for a violation of specified controlled substance provisions may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

This bill would repeal those provisions.

Existing law provides that whenever an individual who is a victim of or witness to a hate crime, or who otherwise can give evidence in a hate crime investigation, is not charged with or convicted of committing any crime under state law, a peace officer may not detain the individual exclusively for any actual or suspected immigration violation or report or turn the individual over to federal immigration authorities.

This bill would, among other things, prohibit state and local law enforcement ~~agencies and~~ *agencies, including* school police and security ~~departments~~ *departments*, from using resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified. The bill would require, within 3 months after the effective date of the bill, the Attorney General, in consultation with *the* appropriate

stakeholders, to publish model policies limiting assistance with immigration enforcement to the fullest extent possible for use by those entities for those purposes. The bill would require all public schools, health facilities operated by the state or a political subdivision of the state, ~~courthouses, and shelters~~ and courthouses to implement the model policy, or an equivalent policy. The bill would state that 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. The bill would require a law enforcement agency that chooses to participate in a joint law enforcement task force, as defined, to submit a report every 6 months to the Department of ~~Justice~~. Justice, as specified. The bill would require the Attorney General, within 14 months after the effective date of the bill, and twice a year thereafter, to report on the types and frequency of joint law enforcement task forces, and other information, as specified, and to post those reports on the Attorney General's Internet Web site. The bill would require the Board of Parole Hearings or the Department of Corrections and Rehabilitation, as applicable, to 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, and would authorize the sheriff to notify the Federal Bureau of Investigation of the scheduled release of a person confined to county jail for a misdemeanor offense who has a prior conviction for a violent felony, as specified.

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This bill would state findings and declarations of the Legislature relating to these provisions.

By imposing additional duties on public schools, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 17.25 (commencing with Section 7284) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.25. Cooperation with Federal Immigration Authorities

7284. This chapter shall be known, and may be cited, as the California Values Act.

7284.2. The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

(d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.

(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status.

(f) This act seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments.

7284.4. For purposes of this chapter, the following terms have the following meanings:

(a) "California law enforcement agency" means a state or local law enforcement agency, including school police or security departments.

(b) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

(c) "Federal immigration authority" means any officer, employee, or person otherwise paid by or acting as an agent of United States Immigration and Customs Enforcement or United States Customs and Border Protection, or any division thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security who is charged with immigration enforcement.

(d) "Health facility" includes health facilities as defined in Section 1250 of the Health and Safety Code, clinics as defined in Sections 1200 and 1200.1 of the Health and Safety Code, and substance abuse treatment facilities.

(e) "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in Section 7283. Hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other federal immigration authorities.

(f) "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States, including, but not limited to, violations of Section 1253, 1324c, 1325, or 1326 of Title 8 of the United States Code.

(g) "Joint law enforcement task force" means a California law enforcement agency collaborating, engaging, or partnering with a federal law enforcement agency in investigating, interrogating, detaining, detecting, or arresting persons for violations of federal or state crimes.

(h) "Judicial warrant" means a warrant based on probable cause and issued by a federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant.

(i) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the California State University, and the California Community Colleges.

(j) "School police and security departments" includes police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts.

7284.6. (a) California law enforcement agencies shall not do any of the following:

(1) Use agency or department moneys, facilities, 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, except as required to comply with Section 922(d)(5) of Title 18 of the United States Code.

(B) Detaining an individual on the basis of a hold request.

(C) Responding to requests for 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 authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

(H) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

(2) Make 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. Any agreements in existence on the date that this chapter becomes operative that conflict with the terms of this paragraph are terminated on that date. A person or entity provided access to agency or department databases shall certify in writing that the database will not be used for the purposes prohibited by this section.

(3) Place peace officers under the supervision of federal agencies or employ 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 policies of the employing agency.

(4) Use federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

(b) Nothing in this section shall prevent any California law enforcement agency from doing any of the following:

(1) Responding to a request from federal immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, and similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

(2) Participating in a joint law enforcement task force, so long as the purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.

(c) If a 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;~~ *The reporting agency or the Attorney General may determine a report, in whole or in part,* is not a public record for purposes of the California Public Records Act pursuant to subdivision (f) of Section 6254 ~~of the Government Code.~~ *to prevent the disclosure of sensitive information, including, but not limited to, an ongoing operation or a confidential informant.*

(d) 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.

(e) Notwithstanding any other law, in no event shall a California law enforcement agency transfer an individual to federal immigration authorities for purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for purposes of immigration enforcement absent a judicial warrant. This subdivision does not limit the scope of subdivision (a).

(f) 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.

7284.8. 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.

7284.10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Section 11369 of the Health and Safety Code is repealed.

SEC. 3. Section 3058.10 is added to the Penal Code, to read:

3058.10. (a) 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.

(b) The notification 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.

SEC. 4. Section 3058.11 is added to the Penal Code, to read:

3058.11. (a) 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.

(b) 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.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because changes in federal immigration enforcement policies require a statewide standard that clarifies the appropriate level of cooperation between federal immigration enforcement agents and state and local governments as soon as possible, it is necessary for this measure to take effect immediately.