
THIRD READING

Bill No: AB 937
Author: Carrillo (D), Kalra (D) and Santiago (D), et al.
Amended: 9/3/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 7/13/21
AYES: Bradford, Durazo, Kamlager, Skinner
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 42-21, 6/3/21 - See last page for vote

SUBJECT: Immigration enforcement

SOURCE: Asian Americans Advancing Justice – Asian Law Caucus

DIGEST: This bill eliminates the existing ability under the Values Act for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate transfers and to prohibit all state and local agencies from assisting, in any manner, the detention, deportation, interrogation, of an individual by immigration enforcement.

Senate Amendments of 9/3/21 delete the cross reference to the provision in existing law that allows a law enforcement entity to work with immigration authorities involved in a task force where the primary purpose is not immigration thus eliminating the prohibition in this bill and allowing work with these task forces to continue as under existing law.

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 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 U.S.C. 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. (8 U.S.C. 1644.)

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) Defines "Notification request" as an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N. (Government Code § 7283 (f).)
- 3) Defines "Transfer request" as an Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X. (Government Code § 7283 (f).)
- 4) Prohibits law enforcement agencies (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. These provisions are commonly known as the Values Act. Restrictions include:
 - a) Inquiring into an individual's immigration status;
 - b) Detaining a person based on a hold request from ICE;
 - 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;
 - d) Providing personal information, as specified, including, but not limited to, name, social security number, home or work addresses, unless that information is "available to the public;"
 - e) Arresting a person based on a civil immigration warrant;
 - f) Participating in border patrol activities, including warrantless searches;
 - g) Performing the functions of an immigration agent whether through agreements known as 287(g) agreements, or any program that deputizes police as immigration agents;
 - h) Using ICE agents as interpreters;

- i) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or except as otherwise specified;
 - j) Providing office space exclusively for immigration authorities in a city or county law enforcement facility; and,
 - k) Entering into a contract, after June 15, 2017, with the federal government to house or detain adult or minor non-citizens in a locked detention facility for purposes of immigration custody. (Government Code § 7284.6(a).)
- 5) Describes the circumstances under which a law enforcement agency has discretion to respond to transfer and notification requests from immigration authorities. These provisions are known as the TRUST Act. Law enforcement agencies cannot honor transfer and notification requests unless one of the following apply:
- a) The individual has been convicted of a serious or violent felony, as specified;
 - b) The individual has been convicted of any felony which is punishable by imprisonment in state prison;
 - c) The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable either as a felony or misdemeanor (a wobbler);
 - d) The individual has been convicted within the past 15 years for any one of a list of specified felonies;
 - e) The individual is a current registrant on the California Sex and Arson Registry;
 - f) 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,
 - g) The individual is identified by ICE as the subject of an outstanding federal felony arrest warrant for any federal crime; or,
 - h) The individual is arrested on a charge involving a serious or violent felony, as specified, or a felony that is punishable by imprisonment in state prison, and a magistrate makes a finding of probable cause as to that charge. (Government Code § 7282.5.)
- 6) Provides that law enforcement agencies are able to participate in joint taskforces with the federal government only if the primary purpose of the joint task force is not immigration enforcement. Participating agencies must annually report to the California Department of Justice (DOJ) if there were immigration

arrests as a result of task force operations. (Government Code, § 7284.6 (b) & (c).)

- 7) Allows law enforcement agencies to respond to a request from immigration authorities for information about a person's criminal history. (Government Code § 7284.6 (b)(2).)
- 8) Allows law enforcement agencies to make inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa. (Government Code § 7284.6 (b)(4).)
- 9) Allows law enforcement agencies to give immigration authorities access to interview an individual in agency custody if such access complies with the TRUTH Act. (Government Code, § 7284.6 (b)(5).)

This bill:

- 1) Specifies that a state or local agency shall not arrest or assist with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purpose in any manner including, but not limited to, by notifying another agency or subcontractor thereof regarding the release date and time of an individual, releasing or transferring an individual into the custody of another agency or subcontractor thereof, or disclosing personal information, as specified, about an individual, including, but not limited to, an individual's date of birth, work address, home address, or parole or probation check in date and time to another agency or subcontractor thereof.
- 2) States that the prohibition described above shall apply notwithstanding any contrary provisions in the California Values Act, as specified, which allowed law enforcement to cooperate with immigration authorities in limited circumstances.
- 3) Specifies that this bill does not prohibit compliance with a criminal judicial warrant.
- 4) Prohibits a state or local agency or court from using immigration status as a factor to deny or to recommend denial of probation or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

5) Defines the following terms for purposes of this bill:

- a) “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.”
- b) “State or local agency” includes, but is not limited to, “local and state law enforcement agencies, parole or probation agencies, the Department of Juvenile Justice, and the Department of Corrections and Rehabilitation.”
- c) “Transfer” includes “custodial transfers, informal transfers in which a person’s arrest is facilitated through the physical hand-off of that person in a nonpublic area of the state or local agency, or any coordination between the state or local agency and the receiving agency about an individual’s release to effectuate an arrest for immigration enforcement purposes upon or following their release from the state or local agency’s custody.”

6) States that in addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a state or local agency or state or local official that violates the provisions of this bill.

7) Specifies that a state or local agency or official that violates the provisions of this bill is also liable for actual and general damages and reasonable attorney’s fees.

8) Repeals statutory provisions directing California Department of Corrections and Rehabilitation to implement and maintain procedures to identify inmates serving terms in state prison who are undocumented aliens subject to deportation.

9) Repeals statutory provisions directing CDCR and California Youth Authority to implement and maintain procedures to identify, within 90 days of assuming custody, inmates who are undocumented felons subject to deportation and refer them to the United States Immigration and Naturalization Service.

10) Repeals statutory provisions directing CDCR to cooperate with the United States Immigration and Naturalization Service by providing the use of prison

facilities, transportation, and general support, as needed, for the purposes of conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented aliens who are incarcerated in state prison.

- 11) Repeals the statutory directive to include place of birth (state or country)-in state or local criminal offender record information systems.
- 12) Makes uncodified Legislative findings and declarations.

Background

According to the author:

Existing law does not prohibit the California Department of Corrections and Rehabilitation or local law enforcement in many cases to transfer individuals to the custody of Immigration and Customs Enforcement after they have completed their sentence or have otherwise been deemed eligible for release if they lack lawful status in the United States or if immigration authorities have deemed that their legal status can be revoked as a result of their criminal history. This effectively serves as an additional punishment on top of the one that was handed down in the criminal justice system, and the immigration enforcement system can result in indefinite detention where individuals have no right to habeas corpus or legal representation. When an individual is transferred to the custody of immigration authorities, their record of rehabilitation, their stable reentry plans, and their network of community support are disregarded. Federal immigration detention centers have been documented to have a record of abuse and neglect of detainees, and these detention centers are beyond the oversight and accountability of the state of California.

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

According to the Senate Appropriations Committee:

- *Department of Corrections and Rehabilitation (CDCR):* The department reports ongoing annual costs of \$22 million to supervise up to 2,553 individuals on parole who, under existing law, would have been transferred into federal custody upon release and deported. Additionally, CDCR anticipates one-time costs of \$150,000 to update information technology systems, regulations, policies and procedures, and training

related to the changes proposed by this measure. Costs to the department would be offset by an unknown amount from ongoing savings from reduced workload, as CDCR no longer would be required to contact immigration authorities about release date notices and changes, set up interviews with incarcerated persons, verify the status of immigration detainer holds, or arrange pick up for individuals upon release. (General Fund)

- *Counties:* Unknown, potentially-major costs in the millions of dollars annually for increased post-release community supervision (PRCS) caseloads to county probation departments to supervise individuals after a prison term for a non-serious, non-violent, or non-sexual offense who, under existing law, would have been transferred into federal custody upon release and deported. (General Fund*)
- *Courts:* Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund**)
- *Department of Justice:* Minor one-time costs to modify the Automated Criminal History System to make an individual's place of birth an optional field when creating new record. (General Fund)

*Proposition 30 (2012) exempts the state from mandate reimbursements to local jurisdictions for realigned responsibilities for "Public Safety Services," including the managing of local jails and the provision of services for and supervision of youth and adults who have committed crimes. The constitutional amendment, however, provides that legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for public safety services transferred by the 2011 Realignment Legislation apply to local agencies only to the extent that the state provides annual funding for the costs increase. If the local costs resulting from this measure are determined to be included within the realigned responsibilities specified in Proposition 30, the local agency would not be obligated to provide the level of service

required by this bill above the level for which funding is provided by the state. The provisions of this bill may lead to the additional appropriation of funds to obtain local compliance, resulting in cost pressure to the General Fund. **Trial Court Trust Fund

SUPPORT: (Verified 9/3/21)

Asian Americans Advancing Justice – Asian Law Caucus (source)
ACLU California Action
Alliance for Boys and Men of Color
Alliance of Californians for Community Empowerment Action
Alliance San Diego
American Friends Service Committee
Anti-defamation League
API Equality-LA
Arts for Healing and Justice Network
Asian Pacific Islander Reentry thru Inclusion, Support, & Empowerment
Asian Prisoner Support Committee
Asian Solidarity Collective
Berkeley Society of Friends
Buen Vecino
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Commission on Asian and Pacific Islander American Affairs
California Federation of Teachers AFL-CIO
California Health+ Advocates
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California League of United Latin American Citizens
California Nurses Association
California Pan - Ethnic Health Network
California Peninsula-south Bay Chapter, Center for Common Ground
California Public Defenders Association
California- Stop Terrorism and Oppression by Police Coalition
Catholic Charities of the Diocese of Stockton
Center for Common Ground
Center for Empowering Refugees and Immigrants
Central Valley Immigrant Integration Collaborative
Centro Legal De LA Raza
Clergy and Laity United for Economic Justice

Communities United for Restorative Youth Justice
Community Bridges
Contra Costa Immigrant Rights Alliance
County of San Diego
Critical Resistance
Defy Ventures
Democratic Club of the Conejo Valley
Democratic Party of Contra Costa County
Democratic Party of the San Fernando Valley
Democratic Woman's Club of San Diego County
Dolores Street Community Services
Drug Policy Alliance
Ella Baker Center for Human Rights
Eviction Defense Collaborative Union
Feel the Bern Democratic Club, Orange County
Freedom for Immigrants
Friends Committee on Legislation of California
Grip Training Institute/Insight-Out
Having Our Say Coalition
Human Rights Watch
Ice Out of Marin
Ice Out of Stockton
Immigrant Legal Resource Center
Inland Coalition for Immigrant Justice
Interfaith Movement for Human Integrity
John Burton Advocates for Youth
Kehilla Community Synagogue
Lakeshore Avenue Baptist Church
Law Enforcement Action Partnership
League of Women Voters of California
Legal Services for Prisoners with Children
Long Beach Immigrant Rights Coalition
Long Beach Southeast Asian Anti-deportation Collective
Los Angeles County District Attorney's Office
Mixteco Indigena Community Organizing Project
NARAL Pro-choice California
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
Nikkei Progressives
Oakland Privacy

Orange County Equality Coalition
Orange County Rapid Response Network
Pillars of the Community
Planned Parenthood Advocates Pasadena and San Gabriel Valley
Re:store Justice
Resilience Orange County
San Francisco District Attorney's Office
San Francisco Public Defender
Services, Immigrant Rights and Education Network
Silicon Valley De-Bug
Simi Valley Democratic Club
Stonewall Democratic Club
Success Stories Program
Surj Contra Costa County CA
The Multicultural Center of Marin
The Transformative In-prison Workgroup
Tsuru for Solidarity
UCSF White Coats for Black Lives
University of California Student Association
Ventura County Clergy and Laity United for Economic Justice
Vietrise
Voices for Progress Education Fund
We the People - San Diego
Women for American Values and Ethics
Youth Justice Coalition

OPPOSITION: (Verified 9/3/21)

California Police Chiefs Association
California State Sheriffs' Association
Peace Officers Research Association of California

ASSEMBLY FLOOR: 42-21, 6/3/21

AYES: Aguiar-Curry, Bennett, Berman, Bloom, Bryan, Burke, Calderon, Carrillo, Cervantes, Chiu, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Lee, Levine, McCarty, Medina, Mullin, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, Patterson, Petrie-Norris, Seyarto, Smith, Valladares, Voepel

NO VOTE RECORDED: Arambula, Bauer-Kahan, Boerner Horvath, Chau, Cooley, Cooper, Frazier, Irwin, Low, Maienschein, Mayes, Nazarian, Blanca Rubio, Salas, Villapudua, Waldron

Prepared by: Mary Kennedy / PUB. S. /
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**** **END** ****