

Date of Hearing: June 23, 2026

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

SB 873 (Reyes) – As Amended June 15, 2026

SENATE VOTE: 29-7

SUBJECT: COURTHOUSES: PRIVILEGE FROM CIVIL ARREST

SYNOPSIS

Ever since his campaign for president in 2016, Donald Trump has been explicit about his intent to implement austere immigration policy. During his second administration, President Trump has redoubled those efforts, focusing heavily on often-violent domestic immigration enforcement efforts throughout the country. During the first Trump administration, the Legislature codified the longstanding common law protection against civil arrest in courthouses via AB 668 (Gonzalez), Chap. 787, Stats. 2019. As enacted and currently in effect today, the statute prohibits a person from being subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse. Recognizing the continued threat to Californians, this measure seeks to further strengthen this statute by extending its protections to apply when an individual is traveling to and from a courthouse, and to require court security personnel to request specified information from law enforcement who appear at a courthouse in their law enforcement capacity. The bill also establishes two enforcement mechanisms – it authorizes the Attorney General to bring a claim for equitable and declaratory relief based upon reasonable belief that a violation has occurred or is imminently about to occur, and authorizes an individual who is subject to a civil arrest in violation of the protection to bring a claim to recover actual damages and statutory damages of \$10,000. Finally, in order to gain insight into the rate of civil arrests in and around courthouses, the bill requires the Judicial Council of California to prepare an annual report compiling statistics, aggregated by county, of the information related to civil arrests reported to the Judicial Council.

This bill is sponsored by the California Public Defenders Association, California Rural Legal Assistance Foundation, Western Center on Law and Poverty, and Inland Coalition for Immigrant Justice. It is supported by a coalition of civil rights organizations, legal services providers, and labor unions. It is opposed by the California State Sheriffs' Association, the Riverside County Sheriff's Office, and the San Bernardino County Sheriff's Department who raise concern regarding the proposed statute's constitutionality and potential that their officers will be forced into an untenable position between federal agents and the public.

SUMMARY: Expands existing protections against civil arrests at courthouses. Specifically, **this bill:**

- 1) Makes relevant findings and declarations regarding the role of California courts in California's government and Californian's right to access justice through the court system.
- 2) Prohibits someone from being subject to civil arrest while traveling to, while present at, or while traveling from a courthouse for any lawful activity. Establishes a presumption that persons are traveling to, engaging in, or traveling from, lawful activity while present at a courthouse.

- 3) Clarifies that the section does not narrow or in any way lessen any existing common law privilege, nor does it apply to arrests made pursuant to a valid judicial warrant.
- 4) Authorizes a court to issue appropriate judicial orders to protect the privilege from civil arrest under this section or common law, in addition to the powers available pursuant to Section 177 of the Code of Civil Procedure.
- 5) Authorizes the Attorney General to bring a civil action in the name of the people of the State of California to obtain appropriate equitable and declaratory relief if the Attorney General has reasonable cause to believe that a violation of this section has occurred or is imminent.
- 6) Authorizes a person who is subject to civil arrest in violation of the provisions of this bill or the common law privilege protecting persons from civil arrest while at, or coming to or from, a courthouse to bring a civil action for appropriate equitable and declaratory relief and entitles them to civil damages for violation of the privilege from civil arrest, including actual damages and statutory damages of \$10,000.
- 7) Entitles a party in a successful action to enforce liability for a violation to recover court costs and reasonable attorney's fees.
- 8) Defines the following for purposes of this bill:
 - a) "Arrest" means the taking of an individual into custody.
 - b) "Civil arrest" means the arrest of, or a communicated intent to arrest, an individual for an alleged violation of civil law, whether taken by a local, state, or federal law enforcement agency, officers, or any other governmental entity or representative acting in an official capacity.
 - c) "Court proceeding" means any matter, hearing, or other judicial business conducted by or under the supervision of a California superior court, court of appeal, or the Supreme Court, including but not limited to trials, hearings, arraignments, case management conferences, and clerk's office transactions.
 - d) "Courthouse" means any of the following:
 - i) Court facilities as described in Government Code Section 70301;
 - ii) Any sidewalk, parkway, or street surrounding the court facilities and its premises;
 - iii) Any public way within one thousand feet of the court facilities including a sidewalk, parkway, or street.
 - e) "Lawful activity" means any activity lawfully permitted at a courthouse, including, but not limited to, any of the following:
 - i) Observation of, attendance at, or involvement in court proceedings;
 - ii) Any activities related to one's employment at a courthouse;

- iii) Accompanying, supporting, or transporting a person to proceedings or business at a courthouse;
 - iv) The exercise of any constitutional rights at a courthouse;
 - v) Otherwise being lawfully present at a courthouse.
- 9) Requires court security personnel to do both of the following when court security personnel are aware that any representative of a local state, or federal law enforcement agency, while acting in an official capacity, enter a courthouse:
- a) Request the law enforcement representative or representatives to identify themselves and to state their specific law enforcement purpose and the intended enforcement action to be taken.
 - b) Request from the law enforcement representative or representatives a copy of a valid judicial warrant concerning the intended enforcement action to be taken.
- 10) If court security personnel is aware that there is an attorney representing a person named in the judicial warrant in any capacity, requires court security personnel to request the law enforcement representative afford that attorney the right to review the warrant.
- 11) Prohibits an action or proceeding from being commenced pursuant to this bill against a court, a judicial officer, or any court employee, as defined, acting lawfully pursuant to their duty to maintain safety and order in the courts.
- 12) Requires the Judicial Council to prepare an annual report compiling statistics, aggregated by county, of the information related to civil arrests reported to the Judicial Council pursuant to Rule 10.440 of the California Rules of Court. Requires the Judicial Council to publicly post the report on its public internet website.

EXISTING LAW:

- 1) Establishes a common law privilege against civil arrest, holding that “Courts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every man who necessarily approaches them. [Individuals] should be permitted to approach them, not only without subjecting himself to evil, but even free from the fear of molestation or hindrance.” (*Stewart v. Ramsay* (1916) 242 U.S. 128, 129.)
- 2) Provides that California Code of Civil Procedure Section 1209 is to be liberally construed to affect its objectives and promote justice. (*Burns v. Superior Court of San Francisco* (1903) 140 Cal. 1, 9.)
- 3) Holds that a court has inherent power to exercise reasonable control over all proceedings connected with the litigation before it in order to ensure the orderly administration of justice and maintain the dignity and authority of the court, and to summarily punish for acts committed in the immediate view and presence of the court when they impede, embarrass, or obstruct it in the discharge of its duties. (*Mowrer v. Superior Court of Los Angeles County* (1969) 3 Cal.App.3d 223, 230.)

- 4) Makes the following acts, in respect to a court of justice, or proceedings therein, contempt of the authority of the court:
 - a) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial; and
 - b) Any other unlawful interference with the process or proceedings of a court. (Code of Civil Procedure Section 1209.)
- 5) Gives judicial officers the power to preserve and enforce order in their immediate presence, and in proceedings before them, when they are engaged in the performance of their official duties, and compel obedience to their lawful orders as provided in the Code of Civil Procedure. (Code of Civil Procedure Section 177.)
- 6) Provides that a person shall not be subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse. Specifies that this provision does not narrow, or in any way lessen, any existing common law privilege, and that this provision does not apply to arrests made pursuant to a valid judicial warrant. (Civil Code Section 43.54.)
- 7) Defines “court facilities” to include all of the following: rooms for holding superior court; the chambers of the judges of the court; rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court; heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers; common and connecting space to permit proper and convenient use of the rooms; rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom; any other area within a building required or used for court functions; grounds appurtenant to the building containing the rooms; parking spaces historically made available to one or more users of court facilities. (Government Code Section 70301 (d).)
- 8) Requires, beginning June 2026, each superior court to report to the Judicial Council, in a form, manner, and frequency determined by, and on dates specified by, the administrative Director, the following information relating to any civil arrest in a court facility if known:
 - a) The date, time, and location of each civil arrest;
 - b) Whether the civil arrest resulted in an individual being taken into custody;
 - c) The name of the agency conducting the civil arrest;
 - d) Whether law enforcement officers conducting the civil arrest were in uniform or plain clothes;
 - e) Whether law enforcement officers conducting the civil arrest presented government-issued law enforcement identification;
 - f) Whether law enforcement officers conducting the civil arrest presented a warrant;
 - g) If a warrant was presented, the type of warrant; and

- h) Any other information, as determined by the Administrative Director, necessary to evaluate the impact of civil arrests in court facilities. (California Rule of Court 10.440.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The English common law "privilege from arrest" apparently dates back to at least the late 14th century, when references to it appear in the Year Books (English legal reports) from the reign of Henry IV. (*Sampson v. Graves* (1924) 203 NYS 729, 730.) When William Blackstone wrote his *Commentaries on the Laws of England* in the late 18th century (1765-1769), the privilege was already well established. Blackstone wrote:

Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting. [William Blackstone, *Commentaries on the Laws of England* (Chicago: Univ. of Chicago Reprint, 1979), Book III, Chapter 19, p. 289.]

According to 19th century American treatise writers, the privilege was widely accepted in the American colonies and, subsequently, tacitly adopted by all of the U.S. states (including California) that adopted the English common law. By 1896, an American federal judge wrote, "It is, perhaps, not too much to say that no rule of practice is more firmly rooted in the jurisprudence of United States courts than that of the exemption of persons from the writ of arrest and of summons while attending upon courts of justice, either as witnesses or suitors." (*Hale v. Wharton* (1896) 73 F. 739, 740.) In 1916 in a case addressing service of a civil summons on a man attending court for a separate matter, the Supreme Court held that individuals traveling from another jurisdiction are protected from civil arrest while attending to a pending matter either as a party or witness. (*Stewart v. Ramsay* (1916) 242 U.S. 128.) This holding speaks to the spirit of protection against civil arrest in a courthouse or while traveling to and from the courthouse, as clearly stated by the Court in *Ramsay*: "Courts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every man who necessarily approaches them." (*Id.* at 129.)

Over time, despite its storied history, the privilege from civil arrest fell out of use, largely because "civil arrest" had become less common. With the onset of the first Trump administration in 2017, however, came an increase in immigration enforcement activity, which largely includes civil arrests and detentions. In 2019, the common law protection against civil arrest in courthouses was codified via AB 668 (Gonzalez), Chap. 787, Stats. 2019. As enacted and currently in print today, the statute prohibits a person from being subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse. (Government Code Section 43.54.)

The civil nature of immigration enforcement. When an Immigrations and Customs Enforcement (ICE), Customs and Border Patrol (CBP), or other federal agent takes custody of a person suspected of being in the United States unlawfully, the agent makes a civil, not a criminal, arrest. A criminal arrest occurs only when there is probable cause that the arrestee has committed a crime, and the purpose of the arrest is to hold the person until there is a trial to establish guilt or the posting of sufficient bail. However, ICE arrests, as civil arrests, do not require probable cause of a crime. As the U.S. Supreme Court has held, "it is not a crime for a removable alien to remain present in the United States." As such, a deportation hearing is "a purely civil matter."

(*Arizona v. U.S.* (2012) 567 U.S. 387, 407.) The purpose of the hearing is not to determine if the person has committed a crime, but rather to determine if the person is eligible to remain in the country. The deportation proceeding itself is not a criminal proceeding, but is a civil proceeding that lacks many of the procedural protections of a criminal proceeding. A criminal conviction can lead to incarceration in a jail or prison. However, the "judge's sole power [in a civil deportation proceeding] is to order deportation; the judge cannot adjudicate guilt or punish the respondent for any crime related to unlawful entry into or presence in this country." (*INS v. Lopez-Mendoza* (1984) 468 U.S. 1032, 1038-1039.)

DHS policy regarding ICE in and around courthouses and the rise of immigration arrests since the onset of the second Trump administration. Since his first campaign for President, Donald Trump was explicit about his intent to engage in an austere immigration enforcement campaign. That dedication was redoubled during his second campaign and subsequent administration. According to the Deportation Data Project, in January 2025, 683 people were arrested by Immigration and Customs Enforcement (ICE). In January of this year, that number was up to 3,248. While this number does not necessarily reflect whether the individual arrested was ultimately detained for purposes of immigration enforcement, it undeniably reflects exponential growth in individuals who were stopped for at least some period of time by ICE. (Deportation Data Project, *Dataset: Administrative arrests*, available at: <https://ice-arrests.apps.deportationdata.org/>.)

In 2021 under the Biden administration, the Department of Homeland Security (DHS) issued a memorandum to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) providing guidelines on civil immigration enforcement in and around courthouses. The memo stated:

[t]he courthouse is a place where the law is interpreted, applied, and justice is to be done. As law enforcement officers and public servants, we have a special responsibility to ensure that access to the courthouse – and therefore access to justice, safety for crime victims, and equal protection under the law – is preserved.

Executing civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses and, as a result, impair the fair administration of justice. At the same time, there may be legitimate need to execute a civil immigration enforcement action in or near a courthouse. (U.S. Immigration and Customs Enforcement Acting Director Tae Johnson and U.S. Customs and Border Protection Acting Commissioner Troy Miller, mem. to ICE and CBP, April 27, 2021 available at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.)

The memo authorized civil immigration enforcement actions to “be taken in or near a courthouse if (1) it involves a national security threat, or (2) there is an imminent risk of death, violence, or physical harm to any person, or (3) it involves hot pursuit of an individual who poses a threat to public safety, or (4) there is an imminent risk of destruction of evidence material to a criminal case.” (*Ibid.*)

On January 31, 2025, DHS issued a new directive stating they were “not issuing rules regarding where immigration laws are permitted to be enforced. Instead [...] the ICE Director charges Assistant Field Office Directors and Assistant Special Agents in Charge with responsibility for making case-by-case determinations regarding whether, where and when to conduct an

immigration enforcement action in or near a protected area.” (U.S. Department of Homeland Security, *ICE Directive Common Sense Enforcement Actions in or Near Protected Areas*, January 31, 2025 available at: <https://www.ice.gov/about-ice/ero/protected-areas>.)

Over the last year and a half, reports have surfaced of ICE arrests in and around courthouses across the country resulting in a chilling effect on defendants, victims, and witnesses alike. Immigration attorneys, immigrant rights advocates, and law enforcement have voiced concern that efforts to target immigrants in and around courthouses have eroded the population’s trust. (Meg Anderson, *Some legal experts say ICE in criminal courts means a slower path to justice*, NPR (August 8, 2025) available at: <https://www.npr.org/2025/08/08/nx-s1-5496530/legal-experts-ice-criminal-courts-a-slower-path-to-justice>.)

According to the author:

SB 873 will protect the legal process for all in California by preventing indiscriminate arrests by ICE agents at scheduled court appearances. This bill will provide legal assurances that Californians are safe from immigration agents in and around the grounds of a courthouse.

The issue is clear cut, one of the core responsibilities of government is to protect people – not to inflict terror on them. California is not going to let the federal government make political targets out of people trying to be good stewards of the law. Discouraging people from coming to court makes our community less safe.

Several states, including New York, Illinois, and Washington have enacted legislation to protect the sanctity of courthouses from ICE deportations by preventing arrests at or near courthouses without a judicial warrant. California is joining those states by enacting legislation to protect individuals participating in court proceedings.

In light of an even more brutal immigration enforcement campaign at the hands of the second Trump Administration, *this bill* seeks to strengthen the codified prohibition in Government Code Section 43.54.

First, SB 873 expands the physical scope of the protection provided under Section 43.54. Currently, Section 43.54 provides protection against civil arrest to individuals “in a courthouse while attending a court proceeding or having legal business in a courthouse.” SB 873 expands the protection provided by Section 43.54 to apply to individuals “traveling to [...] or traveling from a courthouse for any lawful activity.” Further, the bill establishes a presumption that “persons are traveling to, engaging in, or traveling from, lawful activity while present at a courthouse.” Expanding the statute’s scope to capture movement coming to and from a courthouse reflects the original common law privilege, as described above.

While existing law does not provide any definitions, SB 873 defines a number of relevant terms. The bill defines “courthouse” to mean: court facilities as described in Government Code Section 70301; any sidewalk, parkway, or street surrounding the court facilities and its premises; and any public way within one thousand feet of the court facilities including a sidewalk, parkway, or street. It additionally defines “lawful activity” as any activity lawfully permitted at a courthouse, including but not limited to: observation of, attendance at, or involvement in court proceedings; any activities related to one’s employment at a courthouse; accompanying, supporting, or transporting a person to proceedings or business at a courthouse; the exercise of any constitutional rights at a courthouse; otherwise being lawfully present at a courthouse.

Additionally, recent amendments clarify obligations for court security personnel. SB 873 requires court personnel to request all of the following:

- Request law enforcement representatives identify themselves and state their purpose and the intended action;
- Request a copy of a valid judicial warrant regarding that intended action; and
- If the court personnel are aware that the subject of the intended action is represented by an attorney, request law enforcement afford that attorney the right to review the warrant.

Acknowledging that making these requests may inadvertently put court security in a sensitive position, the bill specifies that no action may be commenced against a court, judicial officer, or court employee acting lawfully pursuant to their duty to maintain safety and order in the courts.

Existing law does not currently provide any particular enforcement mechanism available to an individual who is subjected to a civil arrest at a courthouse. Recognizing that a statute is often only as good as its enforcement, this bill authorizes two separate causes of action. The first authorizes the Attorney General (AG) to bring a civil action for appropriate equitable and declaratory relief if the AG has reasonable cause to believe that a violation of the statute has occurred or is imminent. The second authorizes an individual who has been unlawfully subject to civil arrest while either in a courthouse or traveling to or from a courthouse to initiate a civil claim. In addition to noneconomic damages, the bill authorizes the claimant to also recover any actual damages they may have suffered, and \$10,000 of statutory damages, as well as reasonable attorney's fees and costs.

Finally, the bill requires the Judicial Council to prepare an annual report compiling statistics, aggregated by county, of the information related to civil arrests already required to be reported to it by Rule 10.440 of the California Rule of Court. The Judicial Council is then directed to publicly post the report on its website. In April of this year, the Judicial Council approved a new rule to require courts to make regular reports to the Judicial Council of civil arrests that occur at the court facilities, if known, including the location of the arrest at the facility, the law enforcement agency that conducted the arrest, whether any individuals were taken into custody, and if the arresting officer presented a judicial warrant. (Judicial Council of California, *Judicial Council Approves Mandatory Reporting of Civil Arrests in Court Facilities* (April 24, 2026) available at: <https://courts.ca.gov/news/judicial-council-approves-mandatory-reporting-civil-arrests-court-facilities>.)

This bill seems likely to withstand Constitutional scrutiny. The Constitution grants the federal government exclusive jurisdiction over immigration law and policy, a reality which imposes challenging restrictions on states' efforts to enact legislation intended to respond to federal immigration actions. For at least the past decade, the California Legislature has tested the boundaries of the constitutional limitation to protect Californians to the greatest extent possible. Last year the Legislature approved SB 805 (Perez) Chap. 126, Stats. 2025. In part, SB 805 requires all law enforcement officers to visibly display identification in the performance of their duties. The bill then makes officers who fail to comply potentially subject to liability for a misdemeanor. On appeal before the Ninth Circuit, the Trump Administration argued SB 805 violated the Supremacy Clause by attempting to directly regulate operations of the federal government. The court agreed, concluding that SB 805 impermissibly attempted to control the

manner in which the federal government could enforce federal law. (*United States v. California* (2026) 173 F.4th 1060, 1067.)

It is impossible for any committee analysis to predict the outcome should a statute be challenged as unconstitutional. However, SB 873 is distinguishable from SB 805 on a number of points. First, the bill arguably does not impose any new protections, in fact as discussed previously, the protection against civil arrest in and around a courthouse is centuries old. Second, the protection it codifies and strengthen is not a new *state* law, but rather based on *federal* common law. Third, the statute imposes a wholly neutral protection, simply stating that *anybody* that enters or travels to a courthouse is protected against civil arrest while doing so.

Moreover, California is not the only state in the union to attempt such protections. In 2020, New York Enacted the Protect Our Courts Act (POCA), which likewise protects individuals from civil arrest while at a courthouse, or while traveling to and from the courthouse, absent a warrant. (NY CLS Civ R Section 28.) In 2025, the federal government challenged the statute alleging that the law was preempted and violated intergovernmental immunity. (*United States v. New York* (2025) 810 F.Supp 3d 329, 333.) The district court ultimately ruled against the federal government to uphold the law, relying in large part on the extensive history establishing the common law privilege against civil arrest in and around courthouses and the lack of specific abrogation of the common law privilege by the Immigration and Nationality Act. (*Id.* at pp. 19 – 37.) The federal government has not appealed the decision.

Opposition. The California State Sheriffs’ Association opposes the bill. They argue the bill “places sheriffs’ officials in a position of unavoidable conflict between state and federal law” by requiring county sheriffs “to assess federal enforcement actions in the context of state law requirements, seek compliance with a state-imposed judicial warrant requirement, and likely delay or deny federal arrest activity occurring in or around courthouses.” This position was submitted on June 15, the same day the bill was amended to clarify that court security personnel who are aware of a local, state, or federal law enforcement representative is entering the courthouse, need only request that the representative identify themselves, their purpose, and provide a copy of a valid judicial warrant. There is no requirement that the security personnel *ensure* that the law enforcement representative *comply*. It is not clear whether this clarification assuages the opposition’s concerns, but in any case seems a reasonable approach to balance the interest of the court and its employees in adhering to the law against the potential risk of court personnel being put in the middle of a potentially volatile situation.

The State Sheriffs’ Association also raises concern that the expanded definition of “courthouse” creates an overly broad prohibition that makes a violator subject to litigation. However, as described above, it is already likely the case that individuals are protected from *civil arrest* coming to and from courthouses. It should also be emphasized that the current statute and this bill apply only to *civil* arrests, not criminal arrests. It is not clear to what extent any of the bill’s proposed changes implicate the typical actions of the state’s sheriffs.

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Public Defenders Association, California Rural Legal Assistance Foundation, Western Center on Law and Poverty, and the Inland Coalition for Immigrant Justice. It is supported by a coalition of civil rights organizations, legal services providers, and labor unions. In support of the bill, the California Public Defenders Association submits:

Since the Trump administration rescinded its longstanding sensitive-locations policy in January 2025, ICE agents have conducted arrests at and near California state superior courthouses with alarming and growing frequency. This is not a peripheral concern: it is happening at state courthouses across California and it is happening with impunity. In some instances, agents have entered courthouse buildings, in blatant violation of existing state law. In many more, they wait on courthouse steps, in parking lots, and at building exits, exploiting a gap in current law that does not protect the grounds surrounding a courthouse.

The consequences for the justice system are serious and immediate. Defendants, families, and witnesses are making decisions about whether to appear in court based on fear of what will happen when they get there. Cases are being delayed. Evidence is being lost. Defendants are accepting pleas they would otherwise contest simply to minimize their time in a courthouse. Witnesses are not appearing. A courthouse that a significant portion of the community fears to enter cannot administer justice.

Existing California law prohibits civil arrests inside courthouse buildings, but provides no protection for the grounds, parking lots, and approaches where the majority of these arrests are now occurring. ICE has adapted its tactics precisely to exploit this gap. SB 873 closes it by establishing a 1,000-foot enforcement-free zone around state courthouses and by requiring a valid judicial warrant, not an administrative ICE warrant, for any civil arrest within that zone.

The distinction between a judicial warrant and an administrative immigration warrant matters enormously. An administrative warrant is issued by an immigration officer, not a judge, and is *not* based on a judicial finding of probable cause. It is not the kind of legal process that should authorize the disruption of state judicial proceedings. SB 873 restores the appropriate standard: if federal agents wish to make a civil arrest in or around a California courthouse, they must obtain authorization from a court.

The bill also requires agents to identify themselves to court personnel. This is a modest but meaningful protection; it ensures that court administrators are aware of enforcement activity in their facilities, can implement their own policies, and can protect the integrity of proceedings already underway.

For CPDA's members, these arrests have a direct and corrosive effect on the ability to represent clients. Effective representation requires that clients and witnesses appear in court. When clients, their families, and witnesses are arrested on their way in or out of a hearing, public defenders lose the ability to consult with them, present their cases, and protect their rights. When clients are too afraid to appear, the consequences are equally grave. The right to counsel guaranteed by the Sixth Amendment cannot be exercised by someone who does not feel safe entering the building.

Courthouses must be places where all Californians can participate in the justice system without fear. SB 873 is a targeted and necessary step toward restoring access to our own state court system for all Californians

ARGUMENTS IN OPPOSITION: This bill is opposed by the California State Sheriffs' Association, the Riverside County Sheriff's Office, and the San Bernardino County Sheriff's Department. The San Bernardino County Sheriff's Department writes:

SB 873 Impermissibly Attempts to Regulate Federal Officers

As amended, SB 873 applies to “any representative of a local, state, or federal law enforcement agency” and imposes state-created requirements before an arrest may occur in or around a courthouse, including the presentation of a “valid judicial warrant” and compliance with statemandated procedures.

This is a direct attempt to regulate how federal officers perform their duties. Under the Supremacy Clause, such regulation is impermissible. The United States Supreme Court has long held that states may not “retard, impede, burden, or in any manner control” federal operations (*McCulloch v. Maryland* (1819) 17 U.S. 316). From *McCulloch v. Maryland* (1819), which prohibits states from impeding federal operations, to *In re Neagle* (1890) and *Arizona v. United States* (2012), the Supreme Court has consistently held that states may not impose conditions, restrictions, or liabilities that interfere with federal officers performing their lawful duties.

This is particularly problematic in the context of immigration enforcement, where federal authority is both exclusive and plenary, and where Congress has established a comprehensive enforcement framework that does not require compliance with state-imposed warrant standards. SB 873 does exactly that. It conditions federal enforcement activity on compliance with state law and subjects that activity to state civil liability. That is not permissible under any established Supremacy Clause doctrine.

[...]

SB 873 Is Constitutionally Defective Under Established Federal Law

SB 873 is not merely problematic; it is legally vulnerable.

The bill’s attempt to impose warrant requirements and procedural conditions on federal officers raises multiple constitutional defects:

- **Intergovernmental Immunity:** States cannot regulate or control the federal government or its officers acting within the scope of their duties
- **Obstacle Preemption:** States may not create barriers that interfere with Congress’s chosen framework for federal enforcement, particularly in areas such as immigration where federal authority is dominant
- **Direct Conflict:** Federal law authorizes enforcement actions, including civil immigration arrests, under standards that do not require a state-defined “judicial warrant” Federal agencies routinely operate under administrative warrants and statutory authority. SB 873’s requirement that a “valid judicial warrant” be presented before action may occur is incompatible with federal law and will function as a categorical barrier in many cases. Courts have repeatedly rejected similar attempts by states to impose conditions on federal operations. SB 873 will invite immediate legal challenge and is unlikely to withstand constitutional scrutiny.

The Bill Expands Liability While Removing Control

SB 873 compounds its constitutional defects by creating a private right of action with statutory damages of \$10,000 per violation and attorney's fees. This creates a powerful incentive for litigation and ensures that counties will be named in lawsuits, even when the underlying enforcement action is conducted by federal agencies over which counties have no authority or control.

At the same time, the bill expands the definition of "courthouse" to include areas within 1,000 feet and travel to and from court, dramatically increasing the geographic scope of potential liability.

Counties are thus exposed to financial risk without corresponding authority to control the underlying conduct.

SB 873 Undermines Public Safety by Disrupting Controlled Enforcement Environments

From an operational standpoint, SB 873 is fundamentally flawed.

Courthouses are among the most controlled environments in the public safety system. Individuals are identified, screened, and present under lawful process. These are settings where enforcement can occur with predictability, documentation, and reduced risk.

When enforcement is restricted in controlled environments, it does not disappear; it shifts into neighborhoods and into the public view. In doing so, it drives enforcement into less controlled settings and toward tactics that many Californians and many in the law enforcement profession, find inconsistent with best practices for public safety. These conditions increase risk to officers, bystanders, and the individuals involved.

SB 873 will accelerate that shift, producing the very outcomes it purports to prevent.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (co-sponsor)
California Rural Legal Assistance Foundation, INC. (co-sponsor)
Inland Coalition for Immigrant Justice (co-sponsor)
Western Center on Law & Poverty (co-sponsor)
Access Reproductive Justice
California Center for Movement Legal Services
California Faculty Association
California Partnership to End Domestic Violence
California Rural Legal Assistance, INC.
Center for Gender & Refugee Studies—California
CFT – a Union of Educators & Classified Professionals, Aft, AFL-CIO
Communities for a Better Environment
Consumer Attorneys of California
Courage California
Democrats of Rossmoor
Disability Rights California
Disability Rights Education & Defense Fund (DREDF)

Housing and Economic Rights Advocates (HERA)
Inner City Law Center
Judicial Council of California
Law Foundation of Silicon Valley
Legal Aid Association of California
Legal Aid Foundation of Los Angeles
Legal Aid of Sonoma County
Legal Aid Society of San Diego
Los Angeles County
Multi-Faith Action Coalition
National Housing Law Project
Oakland Privacy
PDA-CA
Public Interest Law Project
Public Advocates
Public Counsel
SEIU California
Tenants Together
1 individual

Opposition

California State Sheriffs' Association
Riverside County Sheriff's Office
San Bernardino County Sheriff's Department

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334