AGENDA OF A SPECIAL MEETING

CITY COUNCIL OF THE CITY OF NATIONAL CITY

Main Conference Room
Civic Center
1243 National City Boulevard
National City, California

Special Meeting - Monday, June 19, 2017
Closed Session – 5:30 p.m.
Open Session – 6:00 p.m.

CITY COUNCIL

CLOSED SESSION (5:30 p.m.)

1. Conference with Legal Counsel – Pending Litigation
   Existing Litigation under Paragraph (1) of Subdivision (d) of Government Code Section 54956.9
   Terrance Leisure v. City of National City, et al.
   USDC Case No. 16 CV 1838-L-AGS

OPEN SESSION (6:00 p.m.)

ROLL CALL

NON-CONSENT

2. Rescission of Resolution No. 2017-16, adopted February 7, 2017; Resolution of the City Council of the City of National City in support of continuing to be a Community that supports all residents and visitors.

3. A) Reconsideration of the Substitute Resolution that was adopted at the February 7, 2017 City Council meeting: Resolution of the City Council of the City of National City in support of continuing to be a Community that supports all residents and visitors. (City Manager)

   B) Reconsideration of the Original Resolution that was on the February 7, 2017 Agenda: Resolution of the City Council of the City of National City in support of creating a Welcoming Community for all residents. (City Manager)

C) Consideration of support for California Senate Bill 54 (de Leon) (Sanctuary State Bill) (City Manager and City Attorney)

REPORTS

4. A) Staff

B) Mayor and City Council

ADJOURNMENT

Adjourned Regular Meeting – Downtown Initiatives Workshop: Tuesday, June 20, 2017, 5:00 p.m., City Council Chambers, Civic Center

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: June 19, 2017

AGENDA ITEM NO. 3

ITEM TITLE:

Staff Report to Agenda Item #3: (A) Reconsideration of the Substitute Resolution that was adopted on February 7, 2017 City Council meeting: Resolution of the City Council of the City of National City in support of continuing to be a Community that supports all residents and visitors; (B) Reconsideration of the Original Resolution that was on the February 7, 2017 Agenda: Resolution of the City Council of the City of National City in support of creating a Welcoming Community for all residents; (c) Consideration for support of California Senate Bill 54 (de León) (Sanctuary State Bill)

PREPARED BY: Leslie Deese

DEPARTMENT: City Manager

APPROVED BY:

EXPLANATION:

Please see attached.

FINANCIAL STATEMENT: N/A

APPROVED: _____ **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Council Direction Requested

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

1. Adopted Resolution
2. Original Resolution
3. SB 52 (de León)
4. SB 52 (de León) – PDF
5. Analyses - Senate Rules Committee
6. Analyses - Assembly Committee on Public Safety

Special Council Meeting
Staff Report – Agenda Item #3

The purpose of this meeting is to afford the City Council and the Community the opportunity to formally discuss and take action on the following items: (a) Reconsideration of the substitute Resolution that was adopted at the February 7, 2017 City Council meeting: Resolution of the City Council of the City of National City in support of continuing to be a Community that supports all residents and visitors; (b) Reconsideration of the original Resolution that was on the February 7, 2017 Agenda: Resolution of the City Council of the City of National City in support of creating a Welcoming Community for all residents; and, (c) Consideration of support for California Senate Bill No. 54 (de León) (Sanctuary State Bill).

Based on the attached brief *Overview of Actions that Result in a Defunding* from the City Attorney (Exhibit A), the original Resolution and the substitute Resolution are not in conflict with Executive Order 13768 or Title 8 U.S.C Section 1373. Therefore, adoption of either of the aforementioned Resolutions will not result in defunding from the Federal Government.

I. Background:

The subject of National City becoming a Welcoming Community has been before the City Council on a number of occasions, most recently during the June 6, 2017 City Council meeting. The chronology below provides a brief synopsis of key dates that includes Council discussions and actions, as well as other relevant information.

II. Chronology:

- December 6, 2016 - Councilmember Sotelo-Solis requested staff return with an agenda item on the Welcoming Communities Initiative. There was a request from Alliance San Diego to consider a resolution that declared National City to be a Welcoming Community that serves and protects its residents regardless of their immigration status.

- January 17, 2017 – The City Council considered the request by Alliance San Diego to adopt a resolution in support of creating a Welcoming Community for all residents, and voted to bring back a resolution.

- February 7, 2017 – After public testimony and City Council discussion, a motion to adopt the Welcoming Resolution was superseded by a substitute motion. Mayor Morrison introduced and read into the record a substitute resolution "in support of continuing to be a community that supports all residents and visitors" (Resolution No. 2017-16). The substitute motion was approved.

- February 21, 2017 – The City Council heard additional public testimony and had discussion regarding the adopted resolution and the adoption process that occurred on February 7, 2017. A motion to direct staff to initiate an outside investigation of possible Brown Act violations failed.

- March 8, 2017 – The Coast Law Group served the City with a letter which demanded that the City Council rehear the adopted and original resolutions.

- May 8, 2017 – Briggs Law Corporation filed a lawsuit against the City on behalf of Plaintiffs and Petitioners, Chris Shilling and San Diegans for Open Government.

- June 6, 2017 – City Attorney Angil Morris-Jones reported out of Closed Session that the City Council unanimously voted to hold a Special Meeting on Monday, June 19, 2017 at 6:00 pm for the purpose of rehearing both the original and adopted resolutions of February 7, 2017. Later in the meeting, the Council voted to discuss the following items: (a) Resolution No. 2017-16, adopted February 7, 2017: **A Resolution of the City Council of the City of National City in support of continuing to be a Community that supports all residents and visitors**; (b) Reconsideration of the original resolution, from the February 7, 2017 City Council meeting: **A Resolution of the City Council of the City of National City in support of creating a Welcoming Community for all residents.**

- June 6, 2017 – Following public testimony, a request was made that the City Council consider language in support of both a sanctuary city designation and Senate Bill 54 (de León). A motion was approved to include consideration of SB 54 as part of the June 19th Special Meeting. Should the Council not approve one of the two resolutions at the June 19 Special Meeting, the discussion of a sanctuary city designation will be scheduled on the August 1, 2017 City Council meeting.

III. Consideration of support for California Senate Bill 54 (de León) (Sanctuary State Bill):

SB 54 was introduced by Senator de León on December 5, 2016. As of May 18, 2017, the legislation has cleared the Senate and has been referred to the Assembly Committees on Public Safety and Judiciary. The most recent amendments are dated March 29, 2017.

In addition to the proposed legislation, also attached for Council's information and review are copies of the analyses from the Senate Rules Committee, dated March 30, 2017 and the Assembly Committee on Public Safety, undated, which provide:

- Summary/Analysis
- Comments/Statements

- Fiscal Effect
- Registered Support
- Registered Opposition
- Arguments in Support
- Arguments in Opposition

Discussion: Although entitled the 'California Values Act', SB 54 is actually a sanctuary state legislation and is a direct violation of the Executive Order or Title 8 U.S.C Section 1373. Adopted policies that limit their own jurisdiction's involvement in Federal immigration enforcement efforts can be lumped together as "**sanctuary policies**." Jurisdictions that adopt such policies frequently become known as "**sanctuary jurisdictions**" despite the fact that they do not formally adopt the "**sanctuary**" designation. The attached *Overview of Actions that Result in a Defunding* (Exhibit A), prepared by the City Attorney, provides additional information on this subject. In addition, the City Attorney will provide a more detailed legal analysis at the time of the June 19 Special Meeting.

While Senate Bill 54 is well intentioned, its proposed restrictions on law enforcement raise concerns since it seeks to remove some of the discretion law enforcement often needs to ensure a safe community.

The following sections of California Senate Bill 54 (SB 54) are of concern to law enforcement:

Section 1, 7284.4 (f) Giving federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes is prohibited except pursuant to a judicial warrant.

- *COMMENT: There are times officers are unable to identify individuals who may be involved in criminal activity, the system of identification relies on individuals who are already in a government data base. If an individual involved in criminal activity, and has not been arrested by a State or Local agency, and is in the country illegally, the only data base might be from the immigration and customs service. The process of obtaining a judicial warrant is neither quick nor easy. The necessity of requiring a warrant may significantly delay or hamper local law enforcement.*

Assisting federal immigration in conducting a search of a vehicle, or any other form of conveyance, is prohibited without a warrant.

- *COMMENT: Officers, specifically K-9 units, are often called upon to provide assistance with searches if narcotics are suspected or there a large number of passengers in the vehicle.*

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.

- *COMMENT: Task Forces comprised of local and state officers are often lead by Federal agents. Most of our partnerships involve a federal agent as the supervisor.*

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.

- *COMMENT: There are individuals who have committed heinous crimes (murder, child molest, rape) in other countries and have fled to the U.S. to avoid prosecution. Removing discretion from law enforcement to turn individuals with these types of criminal records places our communities at risk and can only increase crime in our communities.*

Exhibit A: *Overview of Actions that Result in a Defunding*

Attachments:

1. Adopted Resolution
2. Original Resolution
3. SB 52 (de León)
4. SB 52 (de León) – PDF Version
5. Analyses - Senate Rules Committee
6. Analyses - Assembly Committee on Public Safety

Exhibit A

OVERVIEW OF ACTIONS THAT RESULT IN A DEFUNDING

(1) National City Resolutions

The original City Resolution No. 2017 and substituted Resolution No. 2017-16 are not in conflict with the Executive Order or Title 8 U.S.C Section 1373. Therefore, the adoption of either of the City resolutions will not result in defunding from the federal government.

(2) SB 54 – "California Values Act"

SB 54 although entitled the California Values Act is actually a sanctuary state legislation and is a direct violation of the Executive Order and Title 8 U.S.C Section 1373. Adopted policies that limit their own jurisdiction's involvement in federal immigration enforcement efforts can be lumped together as "**sanctuary policies**." Jurisdictions that adopt such policies frequently become known as "**sanctuary jurisdictions**" despite the fact that they do not formally adopt the "**sanctuary**" designation.

Legal definitions for "sanctuary" jurisdictions are still not clear or consistent. However, **Executive Order 13768** of January 25, 2017, defines "**sanctuary jurisdictions**" as those that "**willfully refuse to comply with Title 8 U.S.C Section 1373.**" Title 8, Section 1373 of the United Stated Code is part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. It prohibits state and local governments from having a policy or practice that forbids maintaining or giving information to federal authorities on the immigration status of individuals.

A reading of the Executive Order clearly reflects that becoming a sanctuary city will threaten federal funding. To that end the Executive Order in its entirety reads as follows:

On January 25, 2017, President Trump issued Executive Order 13768. Section 2(c), states: "It is the policy of the executive branch to … [e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except where mandated by law." Section 9, Sanctuary Jurisdictions, continues: "It is the policy of the executive branch to ensure, to the fullest extent of the law that a State or a political subdivision of a State, shall comply with 8 U.S.C. 1373. Subsection (a) continues: "In furtherance of this policy, the Attorney General and the Secretary (of Homeland Security) in their discretion and to extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy or practice that prevents or hinders the enforcement of federal law."

Conclusion

In conclusion, if the City Council adopts either of the resolutions, such action will not be in conflict with Executive Order 13768 or 8 U.S.C. 1373. However, if the Council supports SB 54 there is the risk of defunding, as has been the case with many states and cities which have adopted such sanctuary resolutions and are now facing a loss of federal defunding. An example of such jurisdiction under the threat of federal defunding include but are not limited to the city and County of San Francisco, California , Santa Clara, California and Austin, Texas just to name a few.

RESOLUTION NO. 2017 – 16

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY IN SUPPORT OF CONTINUING TO BE A COMMUNITY THAT SUPPORTS ALL RESIDENTS AND VISITORS

WHEREAS, National City has a rich and proud history of diversity that has been shaped by the cultural and economic contributions of immigrants from around the world, and immigrants and refugees continue to be vital to our shared prosperity as a City; and

WHEREAS, National City is home to nearly 25,000 immigrants and refugees, which represents nearly two out of every five of the City's residents, and approximately 72% of all households speak a language other than English at home; and

WHEREAS, the City of National City is uniquely situated in the heart of a booming binational region, just miles from the world's busiest land border crossing, which has fostered economic, social, and cultural ties across the border; and

WHEREAS, the City of National City recognizes that all people are deserving of assurance of the basic principles of equity and human rights, guaranteed to all people by the United States Constitution and the Bill of Rights.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby declares National City to continue to be a City that serves and protects its residents and visitors with constitutional rights and due process.

BE IT FURTHER RESOLVED that the City Council directs City departments and encourages local businesses, and charitable organizations to work with refugee and immigrant organizations to help provide services to families relocating to the City of National City and integrating into our communities.

BE IT FURTHER RESOLVED that the City of National City calls upon the President and Congress to do the following:

1. LIMIT POWERS WITHOUT WARRANT by enacting legislation that amends 8 USC 1357 (a) to reflect the same limitations on warrantless law enforcement activities that apply across the country and adhere to constitutional protections.

2. LIMIT JURISDICTION within which officers can exercise the limited power without warrant by amending federal regulation 8 CFR 287.1 to refer to a distance which is strictly necessary, is supported by clear, articulable facts related to national security, and is determined in consultation with local government and local communities through public hearings.

3. LIMIT PROFILING by issuing new agency guidance or enacting legislation that prohibits profiling in all routine immigration enforcement, without exception for the border region, and clarifies the limits on profiling in a non-routine enforcement.

[Signature Page to Follow]

PASSED and ADOPTED this 7th day of February, 2017.

Ron Morrison, Mayor

ATTEST:

Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

George H. Eiser, III
Interim City Attorney

Passed and adopted by the Council of the City of National City, California, on February 7, 2017 by the following vote, to-wit:

Ayes: Councilmembers Cano, Mendivil, Morrison.

Nays: Councilmember Rios, Sotelo-Solis.

Absent: None.

Abstain: None.

AUTHENTICATED BY: RON MORRISON
Mayor of the City of National City, California

MICHAEL R. DALLA
City Clerk of the City of National City, California

By: _____
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2017-16 of the City of National City, California, passed and adopted by the Council of said City on February 7, 2017.

CITY OF NATIONAL CITY STATE OF CALIFORNIA

City Clerk of the City of National City, California

By: _____
Deputy

ATTACHMENT 2

RESOLUTION NO. 2017 –

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY IN SUPPORT OF CREATING A WELCOMING COMMUNITY FOR ALL RESIDENTS

WHEREAS, National City has a rich and proud history of diversity that has been shaped by the cultural and economic contributions of immigrants from around the world, and immigrants and refugees continue to be vital to our shared prosperity as a City; and

WHEREAS, National City is home to nearly 25,000 immigrants and refugees, which represents nearly two out of every five of the City's residents, and approximately 71% of all households speak a language other than English at home; and

WHEREAS, the City of National City is uniquely situated in the heart of a booming binational region, just miles from the world's busiest land border crossing, which has fostered economic, social, and cultural ties across the border; and

WHEREAS, in the border region, national policies that direct federal agencies, including Customs and Border Protection and Immigration and Customs Enforcement, can lead to racial profiling and the infringement of civil rights, diminishing the quality of life of residents in National City; and

WHEREAS, the City of National City recognizes that all people are deserving of assurance of the basic principles of equity and human rights, guaranteed to all people by the United States Constitution and the Bill of Rights.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby declares National City to be a Welcoming City that serves and protects its residents.

BE IT FURTHER RESOLVED that City employees will serve all residents, and City services will be accessible to all residents, regardless of immigration status.

BE IT FURTHER RESOLVED that the City Council directs City departments and urges local businesses, and charitable organizations to work with refugee and immigrant organizations to help provide services to families relocating to the City of National City and integrating into our communities.

BE IT FURTHER RESOLVED that the City of National City calls upon the President and Congress to do the following:

1. LIMIT POWERS WITHOUT WARRANT by enacting legislation that amends 8USC 1357 (a) to reflect the same limitations on warrantless law enforcement activities that apply across the country and adhere to constitutional protections.

2. LIMIT JURISDICTION within which officers can exercise the limited power without warrant by amending federal regulation 8 CFR 287.1 to a distance by what is strictly necessary, is supported by clear, articulable facts related to national security, and is determined in consultation with local government and local communities through public hearings.

3. LIMIT PROFILING by issuing new agency guidance or enacting legislation that prohibits profiling in all routine immigration enforcement, without exception for the border region, and clarifies the limits on profiling in a non-routine enforcement.

PASSED and ADOPTED this 7th day of February, 2017.

Ron Morrison, Mayor

ATTEST:

Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

George H. Eiser, III
Interim City Attorney

ATTACHMENT 3

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

SHARE THIS:

Date Published: 03/30/2017 04:00 AM

AMENDED IN SENATE MARCH 29, 2017

AMENDED IN SENATE MARCH 06, 2017

AMENDED IN SENATE MARCH 01, 2017

AMENDED IN SENATE JANUARY 24, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL No. 54

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

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.~~ *enforcement.*

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,~~ *things and subject to exceptions,* prohibit state and local law enforcement agencies, including school police and security 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, *public libraries,* health facilities operated by the state or a political subdivision of the state, 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, 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~~ *United States Immigration and Customs Enforcement* 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 *current* 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.~~ *or serious felony, or who has a prior conviction for a violent or serious felony.*

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: ~~two-thirds~~*majority* 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.~~ *States. "Immigration enforcement" does not include either of the following:*

(1) Efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity.

(2) Transferring an individual to federal immigration authorities for a violation of Section 1326(a) of Title 8 of the United States Code that is subject to the enhancement specified in Section 1326(b)(2) of that title if the individual has been previously convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal 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.~~ *status.*

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

(C) Responding to requests for notification ~~or transfer requests.~~ *by providing release dates or other information unless that information is available to the public.*

(D) Providing information regarding a person's release date unless that information is available to the public.

~~(D)~~

(E) 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,~~ *the individual's home address* or work address ~~for immigration enforcement purposes.~~ *unless that information is available to the public.*

~~(E)~~

(F) Making arrests based on civil immigration warrants.

~~(F)~~

(G) Giving federal immigration authorities access to interview ~~individuals~~ *an individual* in agency or department ~~custody for immigration enforcement purposes.~~ *custody, except pursuant to a judicial warrant, and in accordance with Section 7283.1.*

~~(G)~~

(H) Assisting federal immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

~~(H)~~

(I) 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.

(5) Transfer an individual to federal immigration authorities unless authorized by a judicial warrant or for a violation of Section 1326(a) of Title 8 of the United States Code that is subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and the individual has been previously convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code.

(b) ~~Nothing~~ *Notwithstanding the limitations in subdivision (a), 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 *primary* purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section ~~7284.4.~~ *7284.4, and participation in the task force by the California law enforcement does not violate any local law or policy of the jurisdiction in which the agency is operating.*

(3) Making 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 pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(4) Responding to a notification request from federal immigration authorities for a person who is serving a term for the conviction of a misdemeanor or felony offense and has a current or prior conviction for a violent felony

listed in subdivision (c) of Section 667.5 of the Penal Code or a serious felony listed in subdivision (c) of Section 1192.7 of the Penal Code, provided that response would not violate any local law or policy.

(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. ~~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 to prevent the disclosure of sensitive information, including, but not limited to, an ongoing operation or a confidential informant.~~ *The report shall detail for each task force operation, the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of California law enforcement agency personnel involved, a description of arrests made for any federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes. The reporting agency or the Attorney General may determine a report, in whole or in part, shall not be subject to disclosure pursuant to subdivision (f) of Section 6254, the California Public Records Act, to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.*

(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.~~ *warrant, except as provided in paragraph (4) of subdivision (b).* 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, *public libraries,* 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~~ *United States Immigration and Customs Enforcement* 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 *current* term for the conviction ~~of~~ *of, or who have a prior conviction for,* a violent felony listed in subdivision (c) of Section ~~667.5.~~ *667.5 or a serious felony listed in subdivision (c) of Section 1192.7.*

(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.**~~***SEC. 4.*** 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.~~

AMENDED IN SENATE MARCH 29, 2017

AMENDED IN SENATE MARCH 6, 2017

AMENDED IN SENATE MARCH 1, 2017

AMENDED IN SENATE JANUARY 24, 2017

SENATE BILL No. 54

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

December 5, 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.~~ *enforcement.*

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,~~ *things and subject to exceptions,* prohibit state and local law enforcement agencies, including school police and security 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, *public libraries,* health facilities operated by the state or a political subdivision of the state, 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, 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~~ *United States Immigration and Customs Enforcement* 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 *current* 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.~~ *or serious felony, or who has a prior conviction for a violent or serious felony.*

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: ⅔-*majority*. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 17.25 (commencing with Section 7284)
2 is added to Division 7 of Title 1 of the Government Code, to read:
3
4 CHAPTER 17.25. COOPERATION WITH FEDERAL IMMIGRATION
5 AUTHORITIES
6
7 7284. This chapter shall be known, and may be cited, as the
8 California Values Act.
9 7284.2. The Legislature finds and declares the following:
10 (a) Immigrants are valuable and essential members of the
11 California community. Almost one in three Californians is foreign
12 born and one in two children in California has at least one
13 immigrant parent.
14 (b) A relationship of trust between California's immigrant
15 community and state and local agencies is central to the public
16 safety of the people of California.
17 (c) This trust is threatened when state and local agencies are
18 entangled with federal immigration enforcement, with the result
19 that immigrant community members fear approaching police when
20 they are victims of, and witnesses to, crimes, seeking basic health
21 services, or attending school, to the detriment of public safety and
22 the well-being of all Californians.
23 (d) Entangling state and local agencies with federal immigration
24 enforcement programs diverts already limited resources and blurs
25 the lines of accountability between local, state, and federal
26 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.~~ *States. "Immigration enforcement" does not include either of the following:*

(1) Efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity.

(2) Transferring an individual to federal immigration authorities for a violation of Section 1326(a) of Title 8 of the United States Code that is subject to the enhancement specified in Section 1326(b)(2) of that title if the individual has been previously convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal 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.~~ *status.*

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

(C) Responding to requests for notification ~~or transfer requests.~~ *by providing release dates or other information unless that information is available to the public.*

(D) Providing information regarding a person's release date unless that information is available to the public.

~~(D)~~

(E) 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,~~ *the individual's home address* or work address ~~for immigration enforcement purposes.~~ *unless that information is available to the public.*

~~(E)~~

(F) Making arrests based on civil immigration warrants.

~~(F)~~

(G) Giving federal immigration authorities access to interview ~~individuals~~ *an individual* in agency or department ~~custody for immigration enforcement purposes.~~ *custody, except pursuant to a judicial warrant, and in accordance with Section 7283.1.*

~~(G)~~

(H) Assisting federal immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

~~(H)~~

(I) 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.

(5) Transfer an individual to federal immigration authorities unless authorized by a judicial warrant or for a violation of Section 1326(a) of Title 8 of the United States Code that is subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and the individual has been previously convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code.

(b) ~~Nothing~~ *Notwithstanding the limitations in subdivision (a), 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 *primary* purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section ~~7284.4.~~ *7284.4, and participation in the task force by the California law enforcement does not violate any local law or policy of the jurisdiction in which the agency is operating.*

(3) Making 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 pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(4) Responding to a notification request from federal immigration authorities for a person who is serving a term for the conviction of a misdemeanor or felony offense and has a current or prior conviction for a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code or a serious felony listed in subdivision (c) of Section 1192.7 of the Penal Code, provided that response would not violate any local law or policy.

(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. ~~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 to prevent the disclosure of sensitive information, including, but not limited to, an ongoing operation or a confidential informant.~~ *The report shall detail for each task force operation, the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of California law enforcement agency personnel involved, a description of arrests made for any federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes. The reporting agency or the Attorney General may determine a report, in whole or in part, shall not be subject to disclosure pursuant to subdivision (f) of Section 6254, the California Public Records Act, to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.*

(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.~~ *warrant, except as provided in paragraph (4) of subdivision (b).* 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, *public libraries,* 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~~ *United States Immigration and Customs Enforcement* 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 *current* term for the conviction ~~of~~ *of, or who have a prior conviction for,* a violent felony listed in subdivision (c) of Section ~~667.5.~~ *667.5 or a serious felony listed in subdivision (c) of Section 1192.7.*

(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.~~

SEC. 4. 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.~~

O

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

SB 54

THIRD READING

Bill No: SB 54
Author: De León (D), et al.
Amended: 3/29/17
Vote: 21

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.

Senate Floor Amendments of 3/29/17 make numerous changes to address issues raised by law enforcement, including 1) allowing local law enforcement to contact Immigration and Customs Enforcement (ICE) and transfer people of ICE, without a warrant, if the person was previously deported for a violent felony; 2) allowing response to notification request from ICE and releasing date information if that information is available to the public; 3) allowing ICE to interview people in custody or transfer to federal immigration authorities if there is a judicial warrant; 4) clarifying that local law enforcement can participate in a joint task force so long as immigration enforcements not the "primary" purpose; and 5) adding public libraries to the list of places that are safe zones.

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 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) Allows local law enforcement to contact ICE and transfer people to ICE without a warrant if the person was previously deported for a violent felony.

4) 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.

5) Allows response notification requests from ICE if that information is public.

6) 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.

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

8) 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 primarily an immigration law enforcement.

9) 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.

10) 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.

11) 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.

12) 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 ICE 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 or serious felony as defined in the penal code.

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.

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.

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

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[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)

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, 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

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

reporting to the Department of Justice are not likely to be ruled a reimbursable mandate from the state.

- 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 3/30/17)

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 3/30/17)

California Peace Officers' Association
California State Sheriffs' Association
San Bernardino County Sheriff
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. /
3/30/17 15:34:00

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

Date of Hearing: June 13, 2017
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 54 (De León) – As Amended March 29, 2017

SUMMARY: Limits the involvement of state and local law enforcement agencies in federal immigration enforcement. Specifically, **this bill:**

1) States that law enforcement agencies shall not do any of the following:

   a) 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:

      i) Inquiring into an individual's immigration status;

      ii) Detaining an individual on the basis of a hold request;

      iii) Responding to requests for notification by providing release dates or other information unless that information is available to the public;

      iv) Providing information regarding a person's release date unless that information is available to the public;

      v) Providing personal information about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public;

      vi) Making arrests based on civil immigration warrants;

      vii) Giving federal immigration authorities access to interview an individual in agency or department custody, except pursuant to a judicial warrant, and in accordance with this bill;

      viii) Assisting federal immigration authorities in the specified activities allowed under federal immigration law; and

      ix) Performing the functions of an immigration officer, as specified, whether formal or informal.

   b) 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.

c) Require a person or entity provided access to agency or department databases to certify in writing that the database will not be used for the immigration purposes prohibited by this bill.

d) 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.

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

f) Transfer an individual to federal immigration authorities unless authorized by a judicial warrant, or for a violation of the federal crime of illegal reentry after removal subsequent to conviction of an aggravated felony if the individual has been previously convicted of a specified violent felony.

2) Specifies that this bill does not prevent any California law enforcement agency from doing any of the following:

a) 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;

b) Participating in a joint law enforcement task force, so long as the primary purpose of the joint law enforcement task force is not immigration enforcement, as defined, and participation in the task force by the California law enforcement does not violate any local law or policy of the jurisdiction in which the agency is operating;

c) Making 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, as specified, or to comply with specified federal laws regarding sale of firearms to non-citizens; or

d) Responding to a notification request from federal immigration authorities for a person who is serving a term for the conviction of a misdemeanor or felony offense and has a current or prior conviction for a violent felony, as specified, or a serious felony, as specified, provided that response would not violate any local law or policy.

3) States that 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.

4) Specifies that the report shall detail for each task force operation, the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of California law enforcement agency personnel involved, a description of arrests made for any

federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes.

5) Allows the reporting agency or the Attorney General to determine that a report, in whole or in part, shall not be subject to disclosure, as specified.

6) Requires the Attorney General to report on the types and frequency of joint law enforcement task forces. The report shall include 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.

7) States that 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 except as specified.

8) States that this bill 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 specified federal law.

9) States that the Attorney General shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, 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.

10) Requires all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses to implement the model policy, or an equivalent policy.

11) Encourages 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, to adopt the model policy.

12) Repeals existing law which required law enforcement to notify federal authorities when a person has been arrested for specified drug related offenses, and there is reason to believe the arrestee may not be a U.S. Citizen.

13) Requires the Board of Parole Hearings and the Department of Corrections and Rehabilitation, to notify United States Immigration and Customs Enforcement 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 current term for the conviction of, or who have a prior conviction for, a

violent felony, as specified, or a serious felony, as specified.

14) Specifies that the notification of scheduled release 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.

15) Defines "California law enforcement agency" as "a state or local law enforcement agency, including school police or security departments."

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

17) Defines "Federal immigration authority" as 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.

18) States that "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in elsewhere in this bill.

19) Specifies that 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.

20) Specifies that "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.

21) States that "Immigration enforcement" does not include either of the following:

    a) Efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of the federal crime of illegal reentry to the U.S. and that is detected during an unrelated law enforcement activity; or

    b) Transferring an individual to federal immigration authorities for a violation of the federal crime of illegal reentry after removal subsequent to conviction of an aggravated felony if the individual has been previously convicted of a specified violent felony.

22) Defines "Joint law enforcement task force" as "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."

23) Defines "Judicial warrant" as "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."

24) Specifies that "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."

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, subd. (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 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." (Gov. Code, § 7282, subd. (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. (Gov. Code, § 7283, subd. (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. (Gov. Code, § 7283, subd. (f).)

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

   a) The individual has been convicted of a serious or violent felony;

   b) The individual has been convicted of a felony punishable by imprisonment in the state prison;

   c) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony, or has been convicted at any time of a specified felony;

   d) The individual is a current registrant on the California Sex and Arson Registry;

   e) The individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, a felony punishable by imprisonment in state prison, or other specified felonies, and the magistrate makes a finding of probable cause as to that charge after a preliminary hearing; and

   f) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified, or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. (Gov. Code, § 7282.5, subd. (a).)

5) States that if none of the conditions listed above is satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody. (Gov. Code, § 7282.5, subd. (b).)

6) Specifies that in advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. (Gov. Code, § 7283.1, subd. (a).)

7) States that upon receiving any ICE hold, notification, or transfer request, the law enforcement agency shall provide a copy of the request to the individual and inform him or her whether

the law enforcement agency intends to comply with the request. (Gov. Code, § 7283.1, subd. (b).)

8) States that if a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate. (Gov. Code, § 7283.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The President's Executive Orders and the accompanying Department of Homeland Security memorandums outline a mass deportation strategy that will encompass a broad category of immigrants. These documents describe the federal government's plan to use local law enforcement as 'force multipliers' of immigration agents, relying heavily on police to help them deport the greatest number of people possible. Aggressive federal immigration enforcement strategies are already underway. ICE arrests in courthouses and outside of schools are alarming new trends that have had chilling effects in the immigrant community. Under the Trump administration, deportations have increased 40 percent, including 10,800 non-criminals whose only violation was to enter the country.

   "When local police enforce immigration laws, they rapidly lose the trust of the undocumented community. Crimes go unreported for fear of deportation. The perpetrators roam free to strike again. Our communities become less – not more – safe.

   "A report by the University of Illinois published in 2013 found that '70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime.' Furthermore, according to the Los Angeles Times, Los Angeles Chief of Police Charlie Beck has stated that 'sexual assault reports have dropped 25% among the city's Latino population since the beginning of 2017 compared with the same period last year, adding that reports of domestic violence have fallen by 10%. Similar decreases were not seen in reports of those crimes by other ethnic groups.'

   "California is 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, California taxpayers spent an estimated $65 million annually to detain people for Ice.

   "Senate Bill 54, the California Values Act, will prevent state and local law enforcement agencies from acting as agents of Immigration and Customs Enforcement. Instead, it will keep them focused on community policing, rather than rounding up hardworking, honest immigrants who in many instances assist police in solving crimes rather than committing them."

2) **Past Federal Immigration Programs:** Secure Communities (a.k.a. S-Comm), launched in October 2008, was a Department of Homeland Security (DHS) program for detecting non-citizens who come into custody of law enforcement. Ordinarily, when someone is arrested and taken to a police station or jail, their fingerprints are scanned and sent to the FBI to check against federal criminal databases. Under the Secure Communities program, those prints were also checked against DHS immigration databases, and information about matching prints was sent to the local DHS Immigration and Customs Enforcement (ICE) field office and the originating jail or police station. ICE could initiate deportation proceedings as a result of one's identification through Secure Communities. Secure Communities made use of immigration detainers (a.k.a. immigration holds). Immigration detainers are requests from federal immigration authorities to local law enforcement that they continue to hold an individual after they would otherwise be released from custody.

   California's TRUST Act was enacted in 2013. (AB 4 (Ammiano), Chapter 570, Statutes of 2013.) The TRUST Act limits immigration "hold" or detainer requests, triggered by deportation programs like Secure Communities. The requests caused immigrants to be detained for extra time for deportation purposes.

   On November 20, 2014, the Obama administration stopped S-Comm and put in place the Priority Enforcement Program (PEP). PEP was similar to S-Comm, in that it continued to check the immigration status of all individuals by reviewing fingerprints obtained by local police at the point of booking. When an individual was arrested and booked by a law enforcement officer for a criminal violation, his or her fingerprints were submitted to the FBI for criminal history and warrant checks. This same biometric data was also sent to U.S. Immigration and Customs Enforcement (ICE). Under PEP, ICE could determine whether the individual was a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE would seek the transfer of a removable individual when that individual had been convicted of an offense listed under the DHS civil immigration enforcement priorities, had intentionally participated in an organized criminal gang to further the illegal activity of the gang, or posed a danger to national security. (https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2015/pep_brochure.pdf)

   Under PEP, ICE only sought the transfer of individuals in state and local custody under specific, limited circumstances. ICE would only issue a detainer where an individual fit within DHS's narrower enforcement priorities and ICE had probable cause that the individual was removable. In many cases, rather than issue a detainer, ICE would instead request notification (at least 48 hours, if possible) of when an individual is to be released. ICE would use that time to determine whether there was probable cause to conclude that the individual was removable. (Id.)

   Although PEP relied more on requests to local law enforcement to notify ICE when an individual was released than hold requests, concerns were raised that the requests for notifications of release resulted in delays in release to allow ICE time to detain the individual.

3) **Immigration Policies of the Trump Administration:** The Trump administration is in the process of formulating the immigration policy of the executive branch. Based on executive orders and other statements from the president, it appears that immigration enforcement is likely to be aggressive.

On January 25, 2016, President Trump signed a pair of executive orders on immigration. The orders crack down on people in the country without documentation and the cities that don't readily hand them over for deportation. www.washingtonpost.com/news/post-nation/wp/2017/01/26/trump-wants-to-empower-local-police-to-enforce-immigration-law-raising-fears-of-racial-profiling/?utm_term=.f84cf1e505c6

The executive orders issued on January 25, 2016 included the following action items, among others:

a) Direct action for the hiring of an additional 5,000 border patrol agents.

b) Direct action for the hiring of an additional 10,000 immigration officers.

c) Instruct homeland security to broker agreements with governors and local officials so that state and local law enforcement authorities can enforce immigration law.

d) Declare that "sanctuary jurisdictions" be prohibited from receiving federal grants.

e) Direct appropriate action to terminate the Priority Enforcement Program and to reinstitute the immigration program known as "Secure Communities."

f) Direct construction of a southern border wall.

4) **HR 2431 is Currently Pending in the House of Representatives:** HR 2431 (Rep. Labrador, Raul), is an immigration enforcement bill which was introduced in the U.S. House of Representatives on May 5, 2017. HR 2431 seeks to increase immigration enforcement in a number of ways. HR 2431 would affirmatively grant state and local law enforcement the authority to enforce federal immigration laws. HR 2431 specifies that states and municipalities cannot create policies that decline to cooperate fully in the enforcement of federal immigration law. HR 2431 would also ban policies that restrict state and local law enforcement from reporting unauthorized immigrants to federal authorities.
One provision of the bill conditions any federal grant "that is substantially related to law enforcement, terrorism, national security, or immigration or naturalization" on compliance with these new requirements. Another section of the bill conditions these same grants on cooperation with federal requests to detain immigrants on its behalf. (*Statement on H.R. 2431*, Cato Institute, May 18, 2017.

6) **Limits on Use of Law Enforcement Resources for Investigations of Federal Immigration Violations and the Tenth Amendment of the U.S. Constitution:**
This bill seeks to place limits on the use of law enforcement resources to investigate or detain persons for federal immigration enforcement purposes. The limitations in this bill regarding the use of law enforcement resources include a prohibition on allowing access to agency databases for the purposes of immigration enforcement, a prohibition on officers performing the functions of immigration agents, and a prohibition on responding to requests for notification of custody release dates, except as specified.

This bill would limit law enforcement communication and cooperation with federal authorities for the purpose of immigration enforcement raises the possibility of conflict

between federal and state sovereignty. Two federal cases provide some guidance in terms of how the courts interpreted the scope and interaction of federal and state sovereignty. A U.S. Supreme Court case, *Printz v. U.S.* (1997) 521 U.S. 898, discussed the limits on the federal government to compel state and local authorities to enforce federal regulatory law. In that case, the court based its holding on the 10th Amendment of the U.S. Constitution. A Federal Appeals Court, in *City of New York v. U.S.* (2nd Cir. 1999), 179 F.3d 29, 35 (cert den. (2000) 528 US 1115) held that the 10th Amendment did not invalidate federal laws which prohibited state and local entities from restricting, any government entity or official from sending information to federal immigration authorities regarding the citizenship or immigration status of any individual

***Printz v. U.S.* (1997) 521 U.S. 898:** In *Printz*, the U.S. Supreme Court held that the federal government could not compel state and local authorities to enforce a federal regulatory scheme.

In 1993, Congress amended the Gun Control Act of 1968 by enacting the Brady Handgun Violence Prevention Act (Brady Act). The Brady Act required the Attorney General to establish a national system for instantly checking prospective handgun purchasers' backgrounds, and commanded the Chief Law Enforcement Officer (CLEO) of each local jurisdiction to conduct such checks and perform related tasks on an interim basis until the national system became operative. These requirements directed state law enforcement officers to participate in the administration of a federally enacted regulatory scheme. The requirements mandating the participation of state officials was challenged and issue was ultimately heard by the U.S. Supreme Court. The U.S. Supreme Court held that the Federal Government may not compel the States to enact or administer a federal regulatory program and found the mandatory obligation imposed on CLEOs to perform background checks on prospective handgun purchasers was invalid. (*Id.* at 933.)

In reaching its holding, the Supreme Court pointed out that the Constitution established a system of "dual sovereignty" and referenced the 10th Amendment of the U.S. Constitution which states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (*Id.* at 919.) The Supreme Court stated that "the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. The great innovation of this design was that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other--a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." (*Id.* at 920 (citations omitted).)

The Supreme Court noted that compelling state governments to enforce a federal regulatory program would cause the states to absorb the financial burden of implementing such a program. The Supreme Court went on to say that even when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects. (*Id.* at 930.) The holding of *Printz* is illustrative of the limits on the federal government to compel state entities to use their resources to enforce federal law.

***City of New York v. U.S.* (2nd Cir. 1999), 179 F.3d 29, 35 (cert den. (2000) 528 US 1115.):**

City of New York v. U.S. (2nd Cir. 1999), 179 F.3d 29,35 (cert den. (2000) 528 US 1115.), is a case which examined the limits of state sovereignty when there is a conflict between federal and local law.

The City of New York had a policy which prohibited its employees from voluntarily providing federal immigration authorities with information concerning the immigration status of any alien. In August 1989, New York City's mayor issued Executive Order No. 124. The Order prohibited any City officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities unless: (i) such employee's agency is required by law to disclose such information, (ii) an alien explicitly authorizes a City agency to verify his or her immigration status, or (iii) an alien is suspected by a City agency of engaging in criminal behavior. (*Id.* at 31.)

In 1996, Congress passed Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act"), Pub. L. No. 104-193, 110 Stat. 2105 (1996), and Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act"), Pub. L. No. 104-208, 110 Stat. 3009 (1996). These Sections were codified as 8 U.S.C. 1644 and 8 U.S.C. 1373, respectively. These Sections prohibited state and local governments from preventing their employees from voluntarily providing information about the immigration status of aliens to the Immigration and Naturalization Service (INS).

New York City made a facial challenge to the constitutionality of the federal laws prohibiting state and local governments from limiting their employees in the voluntary provision of information about the immigration status of aliens to INS. New York City relied upon the 10th Amendment of the U.S. Constitution as the basis for their challenge. The Court of Appeals upheld the constitutionality of the federal laws. In its opinion, the Court of Appeals said that "states do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs." (*Id.* at 35.)

The City's Tenth Amendment claim relied on two basic arguments. The first was that the scope of state sovereignty under the Amendment includes the power to choose not to participate in federal regulatory programs and that such power in turn includes the authority to forbid state or local agencies, officials, and employees from aiding such a program even on a voluntary basis. The second argument was that the federal government may not use its powers to legislate in certain areas to disrupt the actual operation of state and local government by, for example, regulating the use of state and local resources acquired information and/or the duties or responsibilities of state and local employees. (*Id.* at 34.)

The Court of Appeals distinguished the circumstances in *City of New York* from those in *Printz* and stated, "In the case of Sections 434 and 642, Congress has not compelled state and local governments to enact or administer any federal regulatory program. Nor has it affirmatively conscripted states, localities, or their employees into the federal government's service. These Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the INS." (*Id.* at 35.)

It is important to note that the Court of Appeals in *City of New York*, did not seek to establish

a bright line rule to determine the tipping point as to when a federal law improperly impinges on state sovereignty. In denying New York Cities facial challenge to the constitutionality of federal statutes 8 U.S.C. 1644 and 1373, the Court of Appeals said " . . . , we need not locate with precision the line between invalid federal measures that seek to impress state and local governments into the administration of federal programs and valid federal measures that prohibit states from compelling passive resistance to particular federal programs." (*Id.* at 35.)

The Court of Appeals also noted that, in bringing it challenge to the federal statutes, that the city of New York did not provide the court with information demonstrating that confidentiality of the information covered by the federal statutes was integral to the operation of city government. As part of its challenge to the constitutionality of the federal statutes New York City asserted that the statutes violated the 10th Amendment because the interference with operations of state and local government by regulating the use of confidential information that the state and local government acquire in the course of official business. The Court of Appeals invited New York City to inform them whether the information covered by the Executive Order might in fact be subject to other confidentiality provisions that would prevent its dissemination generally, but New York City failed to do so. (*Id.* at 37.)

The Court of Appeals stated that, "the obtaining of pertinent information, which is essential to the performance of a wide variety of state and local governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved. Preserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees. Finally, it is undeniable that Sections 434 and 642 do interfere with the City's control over confidential information obtained in the course of municipal business and over it employees use of such information." (*Id.* at 36.)

"Whether these Sections would survive a constitutional challenge in the context of generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status is not before us and we offer no opinion on that question." It is uncertain how the holding in *City of New York* might have been different had the city demonstrated an infringement of the federal statutes in question on legitimate city interests in preserving confidentiality of information in possession of the city.

Unlike the situation in *City of New York*, this bill does not seek to limit state entities from providing information to federal authorities in a manner which is in direct conflict with existing federal law. While this bill generally limits use of law enforcement resources for activities related to immigration enforcement, it also specifies that it does not prohibit or restrict any government entity or official com sending to, or receiving from, federal immigration authorizes, information regarding the citizenship or immigration status, lawful or unlawful, of and individual pursuant to to comply with 8 U.S.C. 1373 and 1644. Unlike *City of New York*, the limitations in this bill on the use of law enforcement resources for the investigation for federal immigration authority are not specifically prohibited by any federal statute.

It is not clear how, or if, the reasoning of *City of New York* would apply when a state law directing passive non-compliance of a federal regulatory program is not in direct conflict

with any federal law.

5) **Potential Constitutional Violations and Civil Liability for Maintaining Custody of an Individual Solely on the Basis of an Immigration Hold:** This bill would prevent law enforcement from detaining individuals at the request of federal immigration authorities on the basis of an immigration detainer request. Existing law (Trust Act) allows law enforcement to respond to detainer requests when the individual subject to a detainer request has specified prior convictions.

Law enforcement agencies risk civil liability if they continue to hold an individual in custody on an immigration hold when there is no other basis to detention. A detention based solely on an immigration hold may violate the State and Federal Constitutions prohibition against unreasonable seizure. A violation of an individual's constitutional rights can expose a law enforcement agency to civil liability.

The intersection of civil liability for law enforcement and immigration detainer requests was addressed by the United States District Court for the District of Oregon. In the case of *Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340, federal authorities issued an immigration detainer request when Ms. Miranda-Olivares was taken into to custody by a local law enforcement agency on a state criminal charge. On the basis of that detainer request, the law enforcement agency did not allow Ms. Miranda-Olivares to post bail to be released from custody on her pending state charge. Ms. Miranda-Olivares brought a civil action alleging that the law enforcement agency had unlawfully detained her on the basis of the immigration detainer request.

The District Court in *Miranda-Olivares* noted that unlike criminal detainers, which are supported by a warrant and require probable cause, there is no requirement for a warrant and no established standard of proof, such as reasonable suspicion or probable cause, for issuing an ICE detainer request. Because of that distinction, the court concluded that federal law does not require law enforcement agencies to detain suspected aliens upon receipt of an immigration detainer request and that the jail was at liberty to refuse ICE's request to detain Miranda-Olivares if that detention violated her constitutional rights. (*Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340, p. 24.)

The District Court observed that the judge had ordered the pre-trial release of Miranda-Olivares at the arraignment upon posting of bail. "It is undisputed that she could and would have posted bail but for the County's custom and practice of continued detention upon receipt of the ICE detainer. Both at the arraignment (had bail been posted) and upon resolution of her state charges, the County no longer had probable cause to justify her detention." (*Id.* at 30.)

The District Court found that ". . . the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention. That custom and practice violated Miranda-Olivares's Fourth Amendment rights by detaining her without probable cause both after she was eligible for pre-trial release upon posting bail and after her release from state charges." (*Id.* at 32-33.) Based on its findings, the court determined that Ms. Miranda-Olivares was entitled to money damages on the basis of the violation of her Fourth Amendment rights.

California law enforcement risks similar civil liability if they hold individuals solely on the basis of a federal immigration detainer request.

6) **ICE Involvement Can Impede Cooperation Between Local Law Enforcement and the Community:** A study by the University of Illinois – Chicago surveyed Latino immigrants in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties on their perception of local law enforcement when there's involvement in immigration enforcement found the following:

   a) 44 percent of Latinos surveyed reported they 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 into their immigration status or that of people they know;

   b) 45 percent of Latinos stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status;

   c) 70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime;

   d) Fear of police contact is not confined to immigrants. For example, 28 percent of US-born Latinos said they 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 into their immigration status or that of people they know; and

   e) 38 percent of Latinos reported they feel like they are under more suspicion now that local law enforcement authorities have become involved in immigration enforcement. This figure includes 26 percent of US-born respondents, 40 percent of foreign-born respondents, and 58 percent of undocumented immigrant respondents. (Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, University of Illinois at Chicago, Nik, Theodore et al., (May 2013), *available at* http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF

7) **Argument in Support**: The *Marin County Board of Supervisors* states, "California has a rich and diverse population. According to the Migration Policy Institute, California is home to more than 10.3 million immigrants. A Public Policy Institute of California report states that more than two million immigrants in the state are undocumented. Marin County alone is estimated to have about 16,000 undocumented immigrants, and an immigrant population of 50,000 overall. Immigrants, whether here legally or not, live in our neighborhoods, raise their children among us, and contribute to the economy.

   "A relationship of trust between California's immigrant residents and our state and local governments is essential to carrying out basic state and local functions . That relationship is threatened when state and local agencies meddle in federal immigration enforcement. We agree it is necessary to evaluate the appropriate use of state and local resources for immigration enforcement purposes and to recognize the devastating impact deportations will

have on a state with thousands of mixed status families, and a heavily immigrant workforce.

"The California Values Act will safeguard the well-being of all Californians by prohibiting state and local law enforcement agencies from engaging in immigration enforcement, ensuring that eligible individuals are not deterred from seeking services from state or local agencies, and making certain that California's schools, health facilities and courthouses will remain safe and accessible to all California residents regardless of immigration status. Recent amendments strike an appropriate balance and respect for the concerns of law enforcement, which protects everyone in our communities regardless of immigration status, but which also wants to ensure that our communities are not exposed to those convicted of serious or violent felonies."

8) **Argument in Opposition:** According to the *California Police Chiefs Association*, "Currently, local law enforcement agencies have the discretion to partner with U.S. Immigration and Customs Enforcement (ICE) or Homeland Security Investigations (HIS), and do so through targeted operations to apprehend identified criminals. For example, ICE may request tactical support from a local police department during an operation to arrest members of a gang or drug cartel for civil or criminal immigration violations.

"Additionally, local law enforcement also engages in federal joint task forces with various federal law enforcement agencies, including ICE and HIS. These task forces all focus on crime and nation security; however, immigration enforcement often plays a role in carrying out those missions. For instance, if during a joint investigation into a drug trafficking operation, HIS or ICE identifies one of the suspects as an individual with an immigration violation, the task force may use that violation to apprehend that suspect.

"**Concerns relating to ICE not having access to jails:**
Under SB 54, ICE will have limited access to our jails for immigration enforcement purposes. As amend on March 29th, ICE would be required to obtain a judicial warrant (not an easy or quick task to complete) simply in order to interview an individual being held in custody by a local or state agency. Additionally, the recent amendments prohibit local law enforcement from transferring an individual in custody ***unless*** authorized by a judicial warrant, ***or*** if an individual is subject to removal for an aggravated felony ***AND*** that individual has a prior conviction for a violent felony. As concerning, SB 54 would also prevent local agencies from responding to a notification request from federal immigration authorities unless the individual in custody has a prior violent or serious felony – this would not include, for example, individuals convicted for a first count of misdemeanor spousal abuse or child neglect. Because of these changes, ICE will be forced to carry out more field operation in our communities, and there will be an increase in collateral arrests (where undocumented individuals at the scene of an arrest are detained by ICE). This leads to more dangerous situations (pursuits, resistance, etc.) and will only create additional mistrust in law enforcement and problems in our communities. These unintended consequences should be extremely concerning for all Californians.

"**Concerns relating to task force:**
The recent aments to SB 54 provide that local and state agencies can participate in joint task forces as long as the ***PRIMARY*** purpose of the partnership is not immigration enforcement. However, when you have two agencies partnering (federal and state) and the federal's primary purpose in the operation is immigration enforcement, and the latter's primary

purpose is related to a criminal investigation, which purpose would be considered the primary purpose of the task force? This needs to be clarified to avoid a local agency being held liable for a federal agency's directive."

9) **Related Legislation**:

a) SB 6 (Hueso), would require the Department of Social Services to contract with specified organizations to provide legal services to individuals facing deportation proceedings who are not otherwise entitled to legal representation. SB 6 is awaiting hearing in the Assembly Human Services Committee.

b) SB 31 (Lara), would prohibit a state or local agency or a public employee from providing or disclosing to the federal government personally identifiable information regarding a person's religious beliefs, practices, or affiliation, as specified, when the information is sought for compiling a database of individuals based on religious belief, practice or affiliation, national origin, or ethnicity for law enforcement or immigration purposes. SB 31 is awaiting hearing in the Assembly Judiciary Committee.

c) AB 699 (O'Donnell), would prohibit school officials and employees of a school district, except as required by state law, from collecting information about the immigration status of pupils or their family members. AB 699 is pending referral from the Senate Rules Committee.

10) **Prior Legislation**:

a) AB 4 (Ammiano), Chapter 570, Statutes of 2013, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

b) AB 2792 (Bonta), Chapter 768, Statutes of 2016, requires local law enforcement agencies to provide copies of specified documentation received from ICE to the individual in custody and to notify the individual regarding the intent of the agency to comply with ICE requests.

c) SB 713 (Nielsen), of 2015-2016 Legislative Session, would have expanded the list of prior felony convictions under the TRUST Act to include the conviction of a felony which formed the basis upon which the individual was previously deported, thereby allowing a law enforcement official, to detain an individual with that felony conviction on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody. SB 713 was held in the Senate Public Safety Committee.

d) SB 417 (Stone), of 2015-2016 Legislative Session, would have required a law enforcement official to detain an individual on the basis of a United States Immigration and Customs Enforcement hold for up to 48 hours after that individual becomes eligible for release from custody if that individual has been convicted of, or arrested for, specified

crimes. The bill would have required a local agency that violates these provisions to pay a fine of $100,000. SB 417 was returned to the Senate desk without further action.

REGISTERED SUPPORT / OPPOSITION:

Support

Abriendo Puertas/Opening Doors
ACCESS Women's Health Justice
Advancement Project California
Alliance for Boys and Men of Color
Alliance San Diego
American Academy of Pediatrics
American Federation of State, County, and Municipal Employees, ACSFME
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Asian American Criminal Trial Lawyers Association
Asian Law Alliance
Aspire
Bill Wilson Center
Board of Directors of BART
California Academy of Family Physicians
California Asian Pacific Islander Chamber of Commerce
California Association for Bilingual Education
California Catholic Conference
California Central Valley Journey for Justice
California College and University Police Chiefs Association
California Employment Lawyers Association
California Federation of Teachers, AFL-CIO
California Health Advocates
California Immigrant Policy Center
California Labor Federation
California La Raza Lawyers Association
California Nurses Association/National Nurses United
California Pan-Ethnic Health Network
California Partnership to End Domestic Violence
California State Student Association
Californians for Justice
Californians Together
CANAL ALLIANCE
Center for Gender and Refugee Studies
Central American Resource Center-LA
Central Coast Alliance United for a Sustainable Economy
Centro Laboral De Graton
Children's Defense Fund – California
Coalition for Humane Immigrant Rights
Common Sense Kids Action
Community Clinic Association

Courage Campaign
CREDO
Dream Team Los Angeles
East Bay Alliance for a Sustainable Economy
Electronic Frontier Foundation
Equality California
Esperanza Community Housing Corporation
Esperanza Immigrant Rights Project of Catholic Charities of Los Angeles
Evergreen Teachers Association
Faith in the Valley
Filipino Advocates for Justice
Filipino Youth Coalition
Friends Committee on Legislation of California
Governing Board Member, Southwestern Community College District, Nora Vargas
Immigrant Legal Resource Center sponsor
Indivisible Conejo
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Coalition
Jewish Public Affairs Committee of California
Koreatown Immigrant Workers Alliance
La Raza Centro Legal
La Raza Roundtable de California
Latino Coalition for a Healthy California
Loyola Immigrant Justice Clinic
Marin County Board of Supervisors
Mexican American Legal Defense and Educational Fund
Mi Familia Vota
Mixteco/Indigena Community Organizing Project
MomsRising.org
Monument Impact
MSA West
National Association of Social Workers, California – California Chapter
National Center for Lesbian Rights
National Council of Jewish Women California
National Day Laborer Organizing Network
National Immigration Law Center
National Lawyers Guild, Los Angeles
Nikkei for Civil Rights and Redress
North County Immigration Task Force of San Diego
Orange County Immigrant Youth United
Our Family Coaltion
Pangea Legal Services
Parent Voices California
People Organizing to Demand Environmental and Economic Rights
PolicyLink
RISE San Luis Obispo County
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
Santa Clara County Board of Supervisors
Service Employees International Union California
Services, Immigrant Rights and Education Network
Sheriff-Coroner, County of Santa Cruz, Jim Hart
Somos Mayfair
The Children's Partnership
The Latino and Latina Roundtable of the San Gabriel and Pomona Valley
The South Asian Bar Association of Northern California
The Utility Reform Network
Tongan American Youth Foundation
Training Occupational Development Education Communities
UDW/AFSCME, Local 3930
UNITE HERE
UPLIFT
VIDAS
Village-Connect, Inc.
Voices for Progress Education Fund
Warehouse Worker Resource Center
Western Center on Law and Poverty
West Marin Standing Together
YWCA Glendale
YWCA San Francisco & Marin

102 Law School Professors
32 Private Individuals

Opposition

Association of Deputy District Attorney
Association for Los Angeles Deputy Sheriffs
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
City of Camarillo
City of Glendora
City of Mission Viejo
City of Torrance
Eldorado County District Attorney, Vern Pierson
Los Angeles County Sheriff's Department
Los Angeles Police Protective League
Orange County Sheriff, Sandra Hutchens
Peace Officers Research Association of California
Riverside Sheriffs' Association
San Bernardino County Sheriff, John McMahon
West Covina City Council

15 private individuals

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