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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, 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 Section 3058.10 to the Penal Code, relating to law 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 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, by April 1, 2018, 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 public schools, public libraries, health facilities operated by the state or a political subdivision of the state, and courthouses, among others. The bill would require 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. 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, every 6 months, that a law enforcement agency that chooses to participate in a joint law enforcement task force, as defined, submit a report pertaining to task force operations to the Department of Justice, as specified. The bill would require the Attorney General, by March 1, 2019, 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 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 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.

Vote: 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.

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

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

12 7284.4. For purposes of this chapter, the following terms have
13 the following meanings:

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

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

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

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

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

38 (f) "Immigration enforcement" includes any and all efforts to
39 investigate, enforce, or assist in the investigation or enforcement
40 of any federal civil immigration law, and also includes any and all

1 efforts to investigate, enforce, or assist in the investigation or
2 enforcement of any federal criminal immigration law that penalizes
3 a person's presence in, entry, or reentry to, or employment in, the
4 United States. "Immigration enforcement" does not include either
5 of the following:

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

11 (2) Transferring an individual to federal immigration authorities
12 for a violation of Section 1326(a) of Title 8 of the United States
13 Code that is subject to the enhancement specified in Section
14 1326(b)(2) of that title if the individual has been previously
15 convicted of a violent felony listed in subdivision (c) of Section
16 667.5 of the Penal Code.

17 (g) "Joint law enforcement task force" means ~~a~~ *at least one*
18 California law enforcement agency collaborating, engaging, or
19 partnering with ~~a~~ *at least one* federal law enforcement agency in
20 ~~investigating, interrogating, detaining, detecting, or arresting~~
21 ~~persons for violations of~~ *investigating* federal or state crimes.

22 (h) "Judicial probable cause determination" means a
23 determination made by a federal judge or federal magistrate judge
24 that probable cause exists that an individual has violated federal
25 criminal immigration law and that authorizes a law enforcement
26 officer to arrest and take into custody the individual.

27 (i) "Judicial warrant" means a warrant based on probable cause
28 for a violation of federal criminal immigration law and issued by
29 a federal judge or a federal magistrate judge that authorizes a law
30 enforcement officer to arrest and take into custody the person who
31 is the subject of the warrant.

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

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

- 1 7284.6. (a) California law enforcement agencies shall not do
2 any of the following:
- 3 (1) Use agency or department moneys, facilities, property,
4 equipment, or personnel to investigate, interrogate, detain, detect,
5 or arrest persons for immigration enforcement purposes, including,
6 but not limited to, any of the following:
- 7 (A) Inquiring into an individual's immigration status.
8 (B) Detaining an individual on the basis of a hold request.
9 (C) Responding to requests for notification by providing release
10 dates or other information unless that information is available to
11 the public.
12 (D) Providing information regarding a person's release date
13 unless that information is available to the public.
14 (E) Providing personal information about an individual,
15 including, but not limited to, the individual's home address or
16 work address unless that information is available to the public.
17 (F) ~~Making~~ *Making, assisting, or participating in* arrests based
18 on civil immigration warrants.
19 (G) Giving federal immigration authorities access to interview
20 an individual in agency or department custody, except pursuant to
21 a judicial warrant, and in accordance with Section 7283.1.
22 (H) Assisting federal immigration authorities in the activities
23 described in Section 1357(a)(3) of Title 8 of the United States
24 Code.
25 (I) Performing the functions of an immigration officer, whether
26 pursuant to Section 1357(g) of Title 8 of the United States Code
27 or any other law, regulation, or policy, whether formal or informal.
- 28 (2) Make agency or department databases, including databases
29 maintained for the agency or department by private vendors, or
30 the information therein other than information *within those*
31 *databases* regarding an individual's citizenship or immigration
32 status, available to anyone or any entity for the purpose of
33 immigration enforcement. Any agreements in effect on January
34 1, 2018, that conflict with the terms of this paragraph are
35 terminated on that date. ~~A person or entity~~ *All persons and entities*
36 provided access to agency or department databases shall certify
37 in writing that the database will *be kept confidential and will not*
38 *be used for the purposes prohibited by this section.*
- 39 (3) Place peace officers under the supervision of federal agencies
40 or employ peace officers deputized as special federal officers or

1 special federal deputies except to the extent those peace officers
2 remain subject to California law governing conduct of peace
3 officers and the policies of the employing agency.

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

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

14 (b) Notwithstanding the limitations in subdivision (a), this
15 section does not prevent any California law enforcement agency
16 from doing any of the following: *following that does not violate*
17 *any policy of the law enforcement agency or any local law or policy*
18 *of the jurisdiction in which the agency is operating:*

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

25 (2) Participating in a joint law enforcement task force, so long
26 as the primary purpose of the joint law enforcement task force is
27 not immigration enforcement, as defined in subdivision (f) of
28 Section ~~7284.4~~, and participation in the task force by the California
29 law enforcement agency does not violate any local law or policy
30 of the jurisdiction in which the agency is operating. ~~7284.4~~.

31 (3) Making inquiries into information necessary to certify an
32 individual who has been identified as a potential crime or
33 trafficking victim for a T or U Visa pursuant to Section
34 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States
35 Code or to comply with Section 922(d)(5) of Title 18 of the United
36 States Code.

37 (4) Responding to a notification request from federal
38 immigration authorities for a person who is serving a term for the
39 conviction of a misdemeanor or felony offense and has a current
40 or prior conviction for a violent felony listed in subdivision (c) of

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

4 (c) If a California law enforcement agency chooses to participate
5 in a joint law enforcement task force, it shall submit a report every
6 six months to the Department of Justice, as specified by the
7 Attorney General. The report shall detail for each task force
8 operation, the purpose of the task force, the federal, state, and local
9 law enforcement agencies involved, the number of California law
10 enforcement agency personnel involved, a description of arrests
11 made for any federal and state crimes, and a description of the
12 number of people arrested for immigration enforcement purposes.
13 ~~The reporting agency or the Attorney General may determine a~~
14 ~~report, in whole or in part, shall not be subject to disclosure~~
15 ~~pursuant to subdivision (f) of Section 6254, the California Public~~
16 ~~Records Act, to the extent that disclosure of a particular item of~~
17 ~~information would endanger the safety of a person involved in an~~
18 ~~investigation or would endanger the successful completion of the~~
19 ~~investigation or a related investigation. All records described in~~
20 ~~this subdivision shall be public records for purposes of the~~
21 ~~California Public Records Act (Chapter 3.5 (commencing with~~
22 ~~Section 6250)), including the exemptions provided by that act and,~~
23 ~~as permitted under that act, personal identifying information may~~
24 ~~be redacted prior to public disclosure.~~

25 (d) The Attorney General, by March 1, 2019, and twice a year
26 thereafter, shall report on the types and frequency of joint law
27 enforcement task forces. The report shall include, for the reporting
28 period, assessments on compliance with paragraph (2) of
29 subdivision (b), a list of all California law enforcement agencies
30 that participate in joint law enforcement task forces, a list of joint
31 law enforcement task forces operating in the state and their
32 purposes, the number of arrests made associated with joint law
33 enforcement task forces for the violation of federal or state crimes,
34 and the number of arrests made associated with joint law
35 enforcement task forces for the purpose of immigration
36 enforcement by all task force participants, including federal law
37 enforcement agencies. *To the extent that disclosure of a particular*
38 *item of information would endanger the safety of a person involved*
39 *in an investigation, or would endanger the successful completion*
40 *of the investigation or a related investigation, that information*

1 *shall not be included in the Attorney General's report.* The
2 Attorney General shall post the reports required by this subdivision
3 on the Attorney General's Internet Web site.

4 (e) Notwithstanding any other law, a California law enforcement
5 agency shall not transfer an individual to federal immigration
6 authorities for purposes of immigration enforcement or detain an
7 individual at the request of federal immigration authorities for
8 purposes of immigration enforcement absent a judicial warrant or
9 judicial probable cause determination, except as provided in
10 paragraph (5) of subdivision (a). This subdivision does not limit
11 the scope of subdivision (a).

12 (f) This section does not prohibit or restrict any government
13 entity or official from sending to, or receiving from, federal
14 immigration authorities, information regarding the citizenship or
15 immigration status, lawful or unlawful, of an individual pursuant
16 to Sections 1373 and 1644 of Title 8 of the United States Code.

17 7284.8. The Attorney General, by April 1, 2018, in consultation
18 with the appropriate stakeholders, shall publish model policies
19 limiting assistance with immigration enforcement to the fullest
20 extent possible consistent with federal and state law at public
21 schools, public libraries, health facilities operated by the state or
22 a political subdivision of the state, courthouses, Division of Labor
23 Standards Enforcement facilities, and shelters, and ensuring that
24 they remain safe and accessible to all California residents,
25 regardless of immigration status. All public schools, health facilities
26 operated by the state or a political subdivision of the state, and
27 courthouses shall implement the model policy, or an equivalent
28 policy. All other organizations and entities that provide services
29 related to physical or mental health and wellness, education, or
30 access to justice, including the University of California, are
31 encouraged to adopt the model policy.

32 7284.10. The provisions of this act are severable. If any
33 provision of this act or its application is held invalid, that invalidity
34 shall not affect other provisions or applications that can be given
35 effect without the invalid provision or application.

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

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

39 3058.10. (a) The Board of Parole Hearings, with respect to
40 inmates sentenced pursuant to subdivision (b) of Section 1168, or

1 the Department of Corrections and Rehabilitation, with respect to
2 inmates sentenced pursuant to Section 1170, shall notify United
3 States Immigration and Customs Enforcement of the scheduled
4 release on parole or postrelease community supervision, or
5 rerelease following a period of confinement pursuant to a parole
6 revocation without a new commitment, of all persons confined to
7 state prison serving a current term for the conviction of, or who
8 have a prior conviction for, a violent felony listed in subdivision
9 (c) of Section 667.5 or a serious felony listed in subdivision (c) of
10 Section 1192.7.

11 (b) The notification shall be made at least 60 days prior to the
12 scheduled release date or as soon as practicable if notification
13 cannot be provided at least 60 days prior to release. The only
14 nonpublicly available personal information that the notification
15 may include is the name of the person who is scheduled to be
16 released and the scheduled date of release.

17 SEC. 4. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.