



City of Chula Vista

Staff Report

File#: 17-0154, **Item#:** 11.

CONSIDERATION OF SUPPORTING SENATE BILL 54, THE CALIFORNIA VALUES ACT

RESOLUTION NO. 2017-171 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA
SUPPORTING SENATE BILL 54, THE CALIFORNIA VALUES ACT

RECOMMENDED ACTION

Council consider the resolution and take action as Council deems appropriate.

SUMMARY

The City Council discussed the City's immigration enforcement policies in a hearing on April 4, 2017. Members of the public advocated for Senate Bill 54, the California Values Act. The Council, by a 3-2 vote, directed staff to present a resolution supporting the bill. This item implements that direction.

The Council affirmed the City's immigration enforcement policies and directed staff to join the "Welcoming America" network in Resolution 2017-063 on April 25, 2017.

The California Senate passed SB 54, 27-12, on April 3, 2017. The bill is pending review in the California Assembly, which is in recess until August 21, 2017. This staff report summarizes the bill, as amended on July 10, 2017.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

BOARD/COMMISSION RECOMMENDATION

Not applicable

DISCUSSION

A. Background

SB 54, titled the "California Values Act, was introduced in December 2016 by Senate President pro Tempore Kevin de León, D-Los Angeles. The bill was amended four times in response to law enforcement concerns before it passed in the Senate on April 3, 2017, 27-12. The bill is now pending review in the California Assembly. A vote by the full Assembly is expected in by the end of the current legislative session. According to media reports this month, Governor Jerry Brown is discussing amendments to the bill with Senator de León's office. Governor Brown reportedly also is meeting with law enforcement leaders about their recommendations, such as allowing federal officials to continue working in jails and expanding the bill's scope to expand exceptions to include additional felony crimes..

If the bill passes in the Assembly and is subsequently signed into law by Governor Brown, the bill would add sections 7284 to 7284.10 to the California Government Code and sections 3058.10 and 3058.11 to the California Penal Code and would become effective on January 1, 2018. The bill would repeal California Health and Safety Code Section 11369, which requires a local law enforcement agency to notify federal immigration authorities if there is reason to believe a non-U.S. citizen has been arrested for certain drug crimes.

The bill would prohibit California law enforcement agencies from using "agency or department moneys, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes." The bill defines "immigration enforcement" as "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 re-entry to, or employment in, the United States," with listed exceptions.

1. Law enforcement activities prohibited by SB 54 would include:

- inquiring into an individual's immigration status
- detaining an individual on the basis of a hold request
- responding to requests for notification by providing release dates or other information, unless that information is available to the public (time of release from custody is public information, pursuant to Cal. Government Code section 6254 (f)(1))
- providing information regarding a person's release date unless that information is available to the public (time of release from custody is public information, pursuant to Cal. Government Code section 6254 (f)(1))
- providing personal information about an individual, such as home or work address, unless that information is available to the public (the home address of an arrested individual is public information if the requestor declares under penalty of perjury that the request is made for a government purpose, pursuant to Cal. Government Code section 6254(f)(3))
- making, assisting, or participating in arrests based on civil immigration warrants

- giving federal immigration authorities access to interview an individual in state or local custody for immigration purposes unless pursuant to a judicial warrant and in accordance with the consent form requirements of Cal. Government Code section 7283.1
- assisting federal immigration authorities in the activities described in Title 8 U.S.C. 1357 (a)(3): searching vessels or vehicles within 25 miles of a border to prevent illegal entry into the United States
- performing the functions of an immigration officer, whether formally or informally
- making an agency's own database, regarding a person's citizenship or immigration status, available to anyone or any entity for immigration enforcement; a person or entity allowed access to an agency's own database must certify in writing that the database will be kept confidential and will not be used for immigration enforcement purposes; any agreements in effect on January 1, 2018 that conflict with this paragraph are terminated on that date
- placing peace officers under the supervision of federal agencies, or employing peace officers deputized as special federal officers, except to the extent those peace officers remain subject to California law governing peace officer conduct and the policies of the employing agency
- using federal immigration officers as interpreters for law enforcement matters relating to individuals in agency or department custody
- transferring an individual to federal immigration authorities for immigration enforcement, or detaining an individual for immigration enforcement, unless authorized by a judicial warrant or judicial probable cause, or for a violation of Title 8.U.S.C. 1326(a) that is subject to enhancement specified by Section 1326(b) (criminal immigration laws prohibiting reentry into the United after removal for an aggravated felony conviction) and the individual has previously been convicted of a violent felony listed in Cal. Penal Code section 667.5(c),

2. Law enforcement activities allowed under SB 54 would include:

- responding to a request from federal immigration authorities for information about a specific person's criminal history, such as arrests and convictions, where otherwise permitted by state law,
- participating in joint law enforcement task forces as long as the primary purpose is not immigration enforcement
- asking for information necessary to certify an individual as a potential crime or trafficking victim to qualify for a T Visa or U Visa

- 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 Cal. Penal Code section 667.5 (c) or a serious felony listed in Cal. Penal Code 1192.7(c), which are listed in sections A.4 and A.5, respectively, below
- sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to Sections 1372 and 1644 of Title 8 of the United States Code

3. Mandates for prisons, schools, health facilities:

In addition to the above-listed prohibited and permitted activities, SB 54 would impose the following mandates:

- require the Board of Parole Hearings and the Department of Corrections and Rehabilitation to provide at least 60 days' notice to Immigration and Customs Enforcement (ICE), such as name and release date, for prison inmates serving a current term for, or having a prior conviction for, a violent felony or a serious felony as listed in Cal. Penal Code sections 667.5 (c) and 1192.7 (c), respectively
- require the Attorney General to consult with stakeholders and publish by April 1, 2018 model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, libraries, health facilities operated by a state or county, courthouses, Division of Labor Standards Enforcement facilities, and shelters to ensure they remain safe and accessible to all California residents regardless of immigration status
- require all public schools, health facilities operated by the state or a county, and courthouses to implement the model policy or an equivalent. All other organizations and entities that provide services related to physical health or mental health and wellness, education, or access to justice, including the University of California, would be encouraged to adopt the model policy
- require participants in joint task forces to submit a report every six months to the California Department of Justice, as specified by the Attorney General, to include the agencies involved in the task force, the arrests made, and the description and number of people arrested for immigration enforcement purposes
- require the Attorney General to issue biannual reports with specified information by March 1, 2019

4. Violent felonies

Penal Code section 667.5 (c) defines "violent felony" as:

- murder or voluntary manslaughter
- mayhem (maliciously disabling or disfiguring another)
- rape
- sodomy
- oral copulation
- lewd or lascivious act on a child
- any felony punishable by death or life imprisonment
- any felony in which great bodily harm or use of a firearm is proved
- robbery
- arson
- sexual penetration (by force, on child under 14)
- attempted murder
- bombing
- kidnapping
- assault with intent to commit a felony
- continuous sexual abuse of a child
- carjacking
- rape, sexual penetration with foreign object
- extortion
- threats to victims and witnesses with criminal street gang violation
- burglary of inhabited dwelling when resident is home
- felonies in which a firearm is used
- using weapons of mass destruction

5. Serious felonies

Penal Code section 1192.7(c) lists as “serious felonies” most of the same crimes listed as “violent felonies,” with the following additions:

- Assault with a deadly weapon or instrument on peace officer
- Assault by a life prisoner on a non-inmate
- Holding a hostage by a state prisoner
- Attempt to commit a felony punishable by death or life imprisonment
- Providing dangerous drugs to a minor
- Any felony offense that constitutes a criminal street gang violation
- Throwing acid or flammable substances
- Assault with a deadly weapon
- Assault with a deadly weapon against school, transit, prison employees
- Discharge of a firearm at an occupied vehicle, aircraft or dwelling
- Rape or sexual penetration in concert with another person
- Shooting from a vehicle
- Criminal threats

- Any attempt to commit or a conspiracy to commit a listed serious felony

B. SB 54's impacts on the Chula Vista Police Department

This bill is anticipated to have no impact on current operation of the City's jail, or on routine patrol and investigation functions. A summary of jail operations, excerpted from the April 4 staff report on City policies for immigration enforcement, is included below. Because the Department participates in joint task forces that focus on crime, not immigration, the Department would be required to submit bi-annual reports concerning task force operations to demonstrate compliance with SB 54 to the California Department of Justice, in a format that would be determined by the State Attorney General.

1. City jail

CVPD uses its jail to "book" and briefly detain individuals arrested by CVPD officers. "Booking" involves documenting identifying information, photographing and fingerprinting an arrested party. Fingerprints and photos of all arrestees are shared automatically with other local, state, and federal agencies through a shared data base. CVPD averages six adult bookings into the City jail per day.

After booking, male arrestees are taken to the San Diego County Central Jail in downtown San Diego. Female arrestees are taken to Las Colinas Detention and Reentry Facility in Santee.

CVPD jail staff does not itself inquire regarding an arrestee's immigration status, but may become aware of detainers, warrants, or other notifications by ICE that have been entered by ICE into law enforcement databases. Per the City's jails procedures manual, if this occurs, ICE would be notified. If ICE provides an ICE Detention order, that order is transported with the arrestee to the County Jail.

Jail staff:

- Does not specifically inquire about the immigration status of any arrestee.
- Does not proactively contact ICE to detain arrestees or for identification purposes.
- Does not release local arrestees to ICE or Customs and Border Protection, via detainer or any other method. They do, however, release U.S. Marshals' inmates to ICE when so directed by the Marshals Office via ICE Detainer.
- Does not give consideration to immigration status when determining arrestees to be transported to San Diego County Jail. Arrestees are transferred to County Jail according to CVPD policy and the Jail's acceptance criteria, regardless of immigration status.

Since 2009 the primary use of the City jail has been through a City contract with the U.S. Marshals Service to house individuals charged with federal felony crimes. Under this contract, the jail currently houses only female inmates, averaging 30 daily in 2016. These individuals have been arrested by federal law enforcement officers and are either in criminal pre-trial or trial proceedings in federal court, or they have been convicted and sentenced in federal court and are awaiting assignment to a federal prison. The jail is not used as a detention center for individuals suspected of alleged civil immigration offenses.

C. SB 54's impacts on county jails and state prisons

As noted in the April 4, 2017 staff report on city policies on immigration enforcement, this bill primarily affects county law enforcement agencies that operate jails and state agencies that operate prisons. These entities routinely handle detainer and notification requests from Federal immigration officials concerning access to and transfer of immigrant inmates. Specifically, jailers would be prohibited from honoring detainer requests or allowing Federal immigration officers access to inmates for immigration purposes, unless authorized by a judicial warrant or a judicial determination of probable cause. Jailers would be prohibited from transferring an inmate to Federal immigration authorities unless authorized by a judicial warrant or a determination of judicial probable cause, or unless the undocumented inmate was subject to a violation of specific Federal criminal immigration laws and had specific violent or serious felony convictions. Jailers also would be prohibited from responding to a notification request from a Federal immigration official unless the inmate was serving a term for a misdemeanor or felony conviction and had a prior conviction for a violent or serious felony defined by state law.

1. County jail

A summary of County of San Diego jail operations from the April 4, 2017 staff report is excerpted below:

Arrestees from every jurisdiction in San Diego County, including Chula Vista, are taken to one of the San Diego County Sheriff's Department's intake jails in downtown San Diego, Santee or Vista. The City has no legal control or authority over policies within the County jail system. Immigrant arrestees are subject to evaluation by ICE agents who work at these jails for possible immigration consequences following release from Sheriff's custody. Specifically, ICE agents review criminal history, which is tied to fingerprints and identifying information routinely obtained in the booking process. If subject to immigration consequences, including removal proceedings, these inmates are subject to transfer directly from Sheriff's custody to ICE custody before leaving a County jail. ICE custody could result in transfer to an immigration detention facility or immediate removal from the United States. Sheriff William D. Gore, in a media interview, has stated he believes it is safer for all concerned for ICE agents to take custody of eligible inmates in a secure jail setting rather than have agents seek out individuals after release from jail in public or at private work places and residences, where agents also may encounter additional undocumented individuals.

D. Arguments for SB 54

An 18-page analysis of the bill, prepared by Alison Merrilees for the July 5, 2017 Assembly Committee on the Judiciary, is attached. According to the analysis, 126 groups have registered support for SB 54, from Abriendo Puertas (Opening Doors) to the YWCA, along with "numerous individuals." The only city listed was Redwood City.

The "Arguments In Support" section of the analysis states on Page 15:

"The Mario G. Obledo National Coalition of Hispanic Organizations writes in support of the bill that 'using local police resources to support immigration law enforcement detracts from their primary goal of preserving the public order and ensuring that violent felons are apprehended and incarcerated in a

timely manner.’ SB 54, it continues, ‘properly ensure that state and local law enforcement agencies, including school police agencies, will not engage in immigration enforcement. Further, SB 54 requires that California courts health facilities and schools safe and accessible regardless of immigration status. It is a compassionate bill designed to afford human rights to all of California’s inhabitants.’ Similarly, Asian Americans Advancing Justice, write that “SB 54 would disentangle local law enforcement from the business of deportations’ and as a result will ‘create safer spaces as schools, libraries, courthouses, shelters, DLSE facilities, and health care facilities, by limiting immigration enforcement at these locations.’ The ACLU of Northern California observes that ‘SB 54 upholds California’s core values of equal treatment, community, family unity, and common humanity by ensuring that California’s police departments, schools, healthcare facilities and courts remain accessible to Californians from all walks of life.’”

E. Arguments Against SB 54

According to the analysis, 4 groups and “numerous individuals” have registered opposition to SB 54. Included are the California Police Chiefs Association, of which Chief Roxana Kennedy is a member, and the California State Sheriffs Association, along with the cities of Camarillo, Glendora, Torrance, and West Covina.

The “Arguments In Opposition” section of the analysis states on Page 15:

“Peace Officers Research Association of California writes that it opposes SB 54 for ‘three critical reasons’ which it identified as the requirement to report task force operations to the Attorney General; the unintended impact of detained immigrants likely being taken outside the state ‘thereby separating them from their families, communities and networks’ and ‘the breakdown of local, state, and federal partnerships [that] will prevent our officers from being able to do their jobs; consequently, violent criminals will remain on the streets and our families will be in danger.’ The California State Sheriffs Association writes that although ‘Sheriffs do not wish to act as immigration police...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.’ The association continues that ‘The bill, with limited exception, precludes law enforcement from sharing information that is not publicly available about persons in custody with federal authorities’ so that ‘sheriffs would still be precluded from relaying information about people convicted of crimes like domestic violence and drunk driving unless they also had current or prior convictions for serious or violent felonies.’ The California Police Chiefs Association also opposes the bill, for the same general reasons as expressed by other law enforcement groups, and concludes about the bill that ‘SB 54 will make it more difficult to work with our federal law enforcement partners in apprehending dangerous criminals, and threatens to create more fear in our communities by forcing federal immigrations operations out of our jails and into our communities.’”

Another objection to SB 54 is that it violates principles of “home rule”. Proponents of SB 54 have noted that it is inappropriate for federal law enforcement authorities to impose its rules on state and local law enforcement. The solution of SB 54 is to impose state level restrictions on local law enforcement.

Staff Recommendation:

Consider the resolution and take action as Council deems appropriate.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. This report discusses issues and policies linked to the City's Economic Vitality and Strong and Secure Neighborhoods.

CURRENT YEAR FISCAL IMPACT

This resolution by itself creates no current year fiscal impacts.

ONGOING FISCAL IMPACT

This resolution by itself creates no ongoing fiscal impacts. If SB 54 is adopted, the Chula Vista Police Department would have additional reporting requirements. The amount of additional staff time required is difficult to estimate at this time until Attorney General reporting guidelines are finalized.

ATTACHMENTS

Attachment A - current version of Senate Bill No. 54, as of July 10, 2017, the most recent amendment

Attachment B - Analysis of SB 54, Assembly Committee on Judiciary, Date of Hearing July 5, the most recent legislative analysis available

Staff Contact: Gary Halbert, City Manager, Roxana Kennedy, Chief of Police and/or Glen Googins, City Attorney