
OLR Bill Analysis

sSB 992

AN ACT CONCERNING THE TRUST ACT.

SUMMARY

This bill makes several changes to the state's civil immigration detainer law. Among other things, the bill:

1. expands the definition of a civil immigration detainer and prohibits law enforcement officers from detaining someone pursuant to such a detainer unless it is accompanied by a judicial warrant (i.e., one signed by any state or federal judge other than an immigration judge);
2. establishes new procedures that law enforcement officers must follow when responding to these detainees, placing additional restrictions on the actions they may take and eliminating current law's requirement that they consider specific public safety and risk factors (see below);
3. limits the circumstances under which law enforcement officers may disclose an individual's confidential information to a federal immigration authority;
4. deems law enforcement agency records relating to U.S. Immigration and Customs Enforcement (ICE) access (see below) as public under the Freedom of Information Act (FOIA); and
5. applies certain of its provisions to school police or security department employees at public higher education or K-12 schools, bail commissioners, and adult probation officers.

The bill also requires (1) municipalities to report specified information monthly to the Office of Policy and Management (OPM), if their law enforcement agency provided ICE access and (2) OPM to

ensure that the law enforcement agencies and school police or security departments receive appropriate training.

It specifies that its provisions must not be construed to provide, expand, or ratify the legal authority of any law enforcement agency to detain an individual based on a civil immigration detainer request.

It also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2019

CIVIL IMMIGRATION DETAINER

Definition

Under current law, an immigration detainer is a notice that the Department of Homeland Security (DHS) or an immigration officer issues to a law enforcement agency (1) informing the agency of DHS's intent to assume custody of a non-citizen in the agency's custody and (2) requesting that the agency advise DHS, before releasing the individual, in order for DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. Federal civil immigration detainer regulations limit detentions to 48 hours (8 CFR § 287. 7).

Under the bill, a "civil immigration detainer" is a request from a federal immigration authority to a local or state law enforcement agency for purposes such as:

1. detaining an individual suspected of violating a federal immigration law or who has been issued a final order of removal;
2. facilitating the arrest of an individual by a federal immigration authority or transfer of an individual to the custody of a federal immigration authority;
3. providing notification of the release date and time of an individual in custody; and
4. notifying a law enforcement officer, through DHS Form I-247A,

or any other form used by the DHS or DHS's successor agency, of the federal immigration authority's intent to take custody of an individual.

Prohibited Actions Under the Bill

The bill prohibits law enforcement officers (including bail commissioners and adult probation officers) and school police or security department employees from:

1. detaining an individual pursuant to a civil immigration detainer unless the detainer is accompanied by a warrant issued or signed by a judicial officer (i.e., any state or federal judge other than an immigration judge);
2. expending or using time or resources to communicate with a federal immigration authority, including regarding the custody status or release of an individual targeted by a civil immigration detainer, except if the law enforcement agency notifies the affected individuals, in writing, of its intent to comply with the detainer and the reason for doing so;
3. arresting an individual based on a civil immigration detainer or an administrative warrant (i.e., a non-judicial warrant, removal order, or similar document issued by a federal immigration enforcement agent).
4. detaining an individual based on an administrative warrant or a civil immigration detainer (presumably unless the detainer is accompanied by a judicial warrant, consistent with item one above)(see COMMENT);
5. giving a federal immigration authority access to interview an individual who is in a law enforcement agency's custody;
6. performing any formal or informal function of a federal immigration authority; or
7. using time or resources to investigate, enforce, or assist in the

investigation or enforcement of any federal program requiring registration of an individual on the basis of race, gender, age, sexual orientation, religion, country from which the individual immigrated, or national or ethnic origin.

New Required Procedures

Under the bill, upon receiving a civil immigration detainer, a law enforcement agency must provide a copy of the detainer to the affected individual who is the subject of the detainer and inform the individual whether the agency intends to comply with the detainer.

The bill requires a law enforcement agency that provides ICE with notification that an individual is being, or will be, released on a certain date, to promptly provide to the individual and to the individual's attorney or one other person the individual designates, a copy of the notification and the reason, in writing, that the agency is complying with the detainer.

Under the bill, before responding to a request for notification of an individual's release from the agency's custody, a law enforcement officer must first forward any such request to the head of the law enforcement agency.

The bill eliminates current law's requirement that law enforcement officers, upon determining whether to detain or release someone, immediately notify ICE that the person will be held for up to 48 hours (excluding Saturdays, Sundays, and federal holidays).

Elimination of Current Law's Risk Factors

The bill's new procedure replaces current law's requirement that law enforcement officers, in carrying out a civil immigration detainer regarding a person in their custody, not release the person unless they determine that he or she:

1. has been convicted of a felony;
2. is subject to pending criminal charges in Connecticut where bond has not been posted;

3. has an outstanding arrest warrant in Connecticut;
4. is identified by the Department of Correction (DOC) as a known gang member in the National Crime Information Center's database, or any similar database, or is designated as a Security Risk Group member or a Security Risk Group Safety Threat member;
5. is identified as a possible match in the federal Terrorist Screening Database or similar database;
6. is subject to a final deportation or removal order; or
7. presents an unacceptable risk to public safety.

DISCLOSURE OF CONFIDENTIAL INFORMATION

Under the bill, confidential information of an individual who comes into contact with a law enforcement official may be disclosed to a federal immigration authority only if the disclosure is:

1. authorized in writing by the individual, or by the parent or guardian if the individual is a minor or not legally competent to consent to such disclosure;
2. needed for a criminal investigation of potential terrorism; or
3. otherwise required by law.

Under the bill, "confidential information" means any information a law enforcement agency obtains or maintains relating to:

1. an individual's sexual orientation, status as a victim of domestic violence or sexual assault, or immigration status;
2. whether such individual is a crime witness or recipient of public assistance; or
3. an individual's income tax or other financial records, including Social Security numbers.

RECORDS RELATED TO ICE ACCESS DEEMED PUBLIC RECORDS

Under the bill, all records relating to ICE access maintained by law enforcement agencies are deemed public records under FOIA. Records relating to ICE access include:

1. law enforcement agency data on the number and demographic data of individuals to whom the agency has provided ICE access,
2. the date ICE access was provided and the type of access,
3. the amount of resources expended on providing ICE access, and
4. any communication between the agency and any federal immigration authority.

Under the bill, "ICE access" refers to any of the following actions by a law enforcement officer with respect to an individual who is stopped with or without the individual's consent, arrested, detained, or otherwise under the control of a law enforcement official or agency:

1. responding to a civil immigration detainer or notification request under the bill concerning such individual;
2. providing notification to a federal immigration authority that such individual is being or will be released at a certain date and time through data sharing or otherwise;
3. providing a federal immigration authority nonpublicly available information about such individual regarding release times or home or work addresses;
4. allowing a federal immigration authority to interview the individual in a law enforcement agency;
5. allowing a federal immigration authority to use a facility or resources in the control of a law enforcement agency to conduct interviews, administrative proceedings, or other immigration enforcement activities concerning the individual; or

6. providing a federal immigration authority information regarding dates and times of probation or parole supervision or any other information related to the individual's compliance with the terms of probation or parole.

LAW ENFORCEMENT AGENCIES' MONTHLY REPORTING TO OPM

Under the bill, the legislative body of any municipality with a law enforcement agency that provided ICE access to an individual during the prior month must, starting January 1, 2020, and monthly thereafter, provide to OPM:

1. data on the number and demographic characteristics of individuals to whom the agency provided ICE access,
2. the date ICE access was provided, and
3. whether the ICE access was provided as part of compliance with a civil immigration detainer or through other means.

The data may be provided in statistical form or, if statistics are not maintained, as individual records with personally identifiable information redacted.

OPM TRAINING FOR LAW ENFORCEMENT AGENCIES AND SCHOOL POLICE OR SECURITY DEPARTMENTS

The bill requires OPM to ensure that the bill's requirements are disseminated to, and appropriate training is provided for, all affected law enforcement agencies and school police or security departments and their employees and agents.

Under the bill, the training may include how law enforcement officers and other officials performing similar duties (1) will adhere to the bill's provisions and (2) will interact with crime victims, potential criminal suspects, and individuals cooperating with law enforcement officers.

COMMENT

The bill appears to have conflicting provisions. In §1(b)(1) it

prohibits law enforcement officers from detaining someone pursuant to a civil immigration detainer unless it is accompanied by a judicial warrant. However, §1(b)(3) prohibits the officers from detaining someone based on a civil immigration detainer, without referencing a judicial warrant. Presumably if a detainer is accompanied by a judicial warrant a law enforcement officer may detain the individual, consistent with §1(b)(1).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 23 Nay 15 (03/20/2019)