



PA 19-20—sSB 992
Judiciary Committee

AN ACT CONCERNING THE TRUST ACT

SUMMARY: This act makes several changes to the state’s civil immigration detainer law. Among other things, the act:

1. expands the definition of a civil immigration detainer and prohibits law enforcement officers from arresting or 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 or federal magistrate judge, but not an immigration judge) (PA 19-23 allows an individual to be arrested and detained pursuant to a detainer without a judicial warrant under certain circumstances);
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 prior law’s requirement that they consider certain public safety and risk factors (PA 19-23 makes certain changes to these new procedures, including allowing the consideration of public safety factors under certain circumstances);
3. limits the circumstances under which law enforcement officers may disclose an individual’s confidential information to a federal immigration authority (PA 19-23 specifies that the civil immigration detainer law should not be construed to require disclosure of records that are exempt under the Freedom of Information Act (FOIA));
4. deems law enforcement agency records relating to U.S. Immigration and Customs Enforcement (ICE) access as public under FOIA; and
5. applies certain of its provisions to school police or security department employees at public higher education institutions or K-12 schools, bail commissioners, and adult probation officers (PA 19-23 also applies such provisions to certain judicial branch employees).

The act 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. (PA 19-23 requires municipalities to report to OPM every six months instead of monthly.)

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

Prior law defined a civil immigration detainer as a notice that the Department of Homeland Security (DHS) or an immigration officer issued 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 in order to arrest and remove him or her 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 C.F.R. § 287.7).

Under the act, 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 the use of certain government paperwork, of the federal immigration authority's intent to take custody of an individual.

Prohibited Actions under the Act

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

1. arresting or 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 or federal magistrate judge, but not an immigration judge);
2. 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 individual, in writing, of its intent to comply with the detainer and the reason for doing so;
3. arresting or detaining an individual based on an administrative warrant (i.e., a non-judicial warrant, removal order, or similar document issued by a federal immigration enforcement agent);
4. giving a federal immigration authority access to interview an individual who is in a law enforcement agency's custody; or
5. performing any formal or informal function of a federal immigration authority.

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(PA 19-23 allows an individual to be arrested and detained pursuant to a detainer without a judicial warrant if the individual (1) has been convicted of a class A or B felony or (2) is identified as a possible match in the federal Terrorist Screening Database or similar database. PA 19-23 continues to subject bail commissioners to the prohibitions, with the above exceptions, but no longer classifies them as law enforcement officers.)

The act does not prohibit law enforcement officers from (1) submitting an arrested individual's fingerprints to the Automated Fingerprints Identification System (AFIS) or (2) accessing an arrested individual's information from the National Crime Information Center (NCIC).

New Required Procedures

Under the act, 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 act 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. (PA 19-23 requires law enforcement to make a good faith attempt to contact the designated person if it does not contact the individual or his or her attorney.)

Under the act, 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. (PA 19-23 specifies that this requirement applies when the detained individual is suspected of violating a federal immigration law or has been issued a final order of removal.)

The act eliminates prior 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 weekends and federal holidays).

Elimination of Prior Law's Consideration of Certain Risk Factors

The act's new procedure replaces prior law's requirement that law enforcement officers, in carrying out a civil immigration detainer regarding a person in their custody, not release the person if 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 as a known gang member in the NCIC's database, or any similar database, or is designated as a

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- 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 act, 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 terrorism investigation; or
3. otherwise required by law.

Under the act, “confidential information” means any information a law enforcement agency obtains or maintains relating to:

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

(PA 19-23 specifies that the civil immigration detainer law must not be construed to require disclosure of any record that is exempt under FOIA.)

RECORDS RELATED TO ICE ACCESS DEEMED PUBLIC RECORDS

Under the act, 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 act, “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 act concerning such individual;
2. providing notification to a federal immigration authority that the

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- 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 the individual regarding release times or dates or home or work addresses;
 4. allowing a federal immigration authority to interview the individual under the law enforcement agency's control;
 5. allowing a federal immigration authority to use a facility or resources in the law enforcement agency's control 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.

Under the act, "ICE access" does not include a law enforcement officer's (1) submission of an arrested individual's fingerprints to AFIS or (2) accessing an arrested individual's information from NCIC.

(PA 19-23 allows law enforcement officers (including adult probation officers), school police or security department employees, and bail commissioners, along with judicial branch intake, assessment, and referral specialists, to give a federal immigration authority access to interview an individual in their custody if the individual:

1. has been convicted of a class A or B felony,
2. is identified as a possible match in the federal Terrorist Screening Database or similar database, or
3. is the subject of a U.S. district court order to comply with an immigration officer's subpoena.)

LAW ENFORCEMENT AGENCIES' MONTHLY REPORTING TO OPM

Under the act, 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.

(PA 19-23 requires the municipalities, instead, to do this reporting every six months using data for the previous six months.)

TRAINING FOR LAW ENFORCEMENT AGENCIES AND SCHOOL POLICE OR SECURITY DEPARTMENTS

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The act requires OPM to ensure that the act'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 act, the training may include how law enforcement officers and other officials performing similar duties (1) will adhere to the act's provisions and (2) will interact with crime victims, criminal suspects, and individuals cooperating with law enforcement officers.