

Undocumented Immigration and State Law

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Issues

Over the last 10 years, has the Connecticut legislature passed any laws that extend benefits, privileges, or protections to undocumented immigrants? To what extent is the state required to cooperate with federal immigration laws?

Summary

Since 2012, the Connecticut General Assembly has passed various pieces of legislation that, among other things, provide benefits to undocumented immigrants. Specifically, legislation passed in areas related to civil immigration law, criminal defense and crime victims, public medical assistance, motor vehicle operation, postsecondary education, public health awareness, and student and family records.

The state's responsibility to cooperate with federal immigration laws falls under the "anti-commandeering doctrine." Under this doctrine, which is based on U.S. Supreme Court rulings involving the [Tenth Amendment](#) to the U.S. Constitution and dating back to 1992, the federal government cannot require states and municipalities to adopt or enforce federal policies. The doctrine has implications for states' enforcement of the federal Immigration and Nationality Act (INA), which establishes the rules of legal immigration, naturalization, deportation, and related enforcement.

Connecticut Legislation Benefiting Undocumented Immigrants

Civil Immigration Laws

Civil Immigration Detainers. A civil immigration detainer is a request from a federal immigration authority to a local or state law enforcement agency for the agency to take certain actions, such as facilitating the arrest of an individual suspected of violating a federal immigration law.

In 2013, the legislature passed a law establishing the procedures state and local law enforcement officers must follow when they receive a civil immigration detainer for a person in their custody. Specifically, the law (1) prohibits detaining the person unless the officer determines that specified public safety risk factors exist (e.g., the person has a felony conviction or an outstanding arrest warrant) and (2) requires law enforcement officers, upon determining whether to detain or release the person, to immediately notify U.S. Immigration and Customs Enforcement (ICE). If the person is to be detained, the officer must inform ICE that he or she will be held for up to 48 hours (excluding Saturdays, Sundays, and federal holidays). If ICE fails to take custody of the person within 48 hours, then the officer must release the individual. The act prohibits holding a person for longer than 48 hours solely on the basis of a civil immigration detainer under any circumstances ([PA 13-155](#)).

In 2019, the legislature made several changes to this law, including the following:

1. expanding the definition of a civil immigration detainer and generally prohibiting law enforcement officers (including local law enforcement officers), school police or security department employees, and certain other individuals from arresting or detaining someone pursuant to such a detainer unless it is accompanied by a judicial warrant;
2. establishing new procedures for responding to these types of detainers (e.g., a local law enforcement officer must give a copy of the detainer to the affected individual); and
3. limiting the disclosure of certain confidential information to a federal immigration authority.

The new law also requires (1) municipalities to report specified information every six months to the Office of Policy Management (OPM) if their law enforcement agency provided ICE access (e.g., authorized a federal immigration authority to interview an individual in their custody) and (2) OPM to ensure that law enforcement agencies and school police or security departments receive appropriate training ([PA 19-20](#), as amended by [PA 19-23](#)).

Special Juvenile Immigration Status. The legislature passed a law in 2014 that established a framework allowing a party in certain probate court cases to petition the court to make specified findings that a person may use to apply for federal Special Juvenile Immigration Status (SJIS). SJIS allows abused, neglected, or abandoned immigrant children to stay in the United States legally ([PA 14-104](#)).

Additionally, in 2018, the legislature passed a law allowing the probate court to issue such findings for certain SJIS applicants under age 21, instead of under age 18 as under prior law. This change enabled 18-, 19-, and 20-year-olds who are eligible to apply for SJIS under federal law, in certain circumstances, to petition the probate court for the findings they need to make that application (i.e., that they are dependent on the court) ([PA 18-92](#)).

Criminal Defense and Crime Victims

Misdemeanor Sentencing. Federal law lists certain categories of crimes that render a non-citizen removable from the United States or otherwise affect their immigration status. In some situations, under federal law, immigration consequences are triggered if the crime is punishable by at least one year in prison.

Last year, as part of the “Clean Slate Act” the Connecticut legislature reduced the maximum sentence for misdemeanors from one year to 364 days, thus making convictions for a class A misdemeanor or certain unclassified misdemeanors no longer a trigger for deportation ([PA 21-32](#), § 35).

Petition for Return of Records for Immigration Matters. Also as part of the 2021 “Clean Slate Act,” the legislature passed a provision that allows an attorney to petition the Superior Court for the return of his or her client’s erased records if (1) the client is the subject of an immigration matter and (2) federal law may require disclosure of criminal history information. This applies to Connecticut convictions erased under existing law or the act’s new procedures ([PA 21-32](#), § 3).

Prison Rape in Juvenile Facilities. In 2015, the legislature passed a law requiring, within available appropriations, state and municipal agencies that incarcerate or detain juvenile offenders, including juvenile immigration detainees, to adopt and comply with the applicable standards recommended by the National Prison Rape Elimination Commission for preventing, detecting, monitoring, and responding to sexual abuse ([PA 15-218](#)). (In 2012, the U.S. Department of Justice adopted national standards in rules, such as a zero tolerance of sexual abuse and sexual harassment ([28 CFR Part 115](#)).)

Public Medical Assistance

Assistance for Unborn Children. Generally, certain immigrants, including undocumented immigrants, are not eligible for Medicaid or the Child Health Insurance Plan (CHIP, known as “HUSKY B” in Connecticut). However, under federal law, states may use the “unborn child option” to extend CHIP coverage by considering an unborn child as a low-income child who is eligible for prenatal care. In states that use this option, the unborn child receives CHIP coverage for prenatal care regardless of the mother’s immigration status. In 2021 the legislature passed a law requiring the Department of Social Services (DSS) to provide CHIP coverage through this option beginning April 1, 2022 ([PA 21-176](#), § 4).

Postpartum Care. Beginning April 1, 2023, DSS must provide state-funded medical assistance, within available appropriations, for postpartum care for 12 months after birth to women who (1) do not qualify for Medicaid due to immigration status and (2) have household incomes up to 263% of the federal poverty level ([PA 21-176](#), § 2).

Motor Vehicle Operation

Drive-Only Licenses. The Department of Motor Vehicles (DMV) commissioner must issue driver’s licenses “for driving purposes only” to individuals who cannot provide DMV with proof of legal U. S. residence or a social security number. The license only allows the holder to drive; it cannot be used for federal identification purposes (e.g., boarding a plane) or as proof of identity to vote. The act specifies the types of proof needed to obtain this license and the restrictions on its use. It prohibits the commissioner from issuing such a license to a person convicted of a felony in Connecticut ([PA 13-89](#)).

Postsecondary Education

In-State Tuition Eligibility. In 2011, the legislature made undocumented immigrants eligible for in-state tuition rates if they meet the following criteria: (1) reside in Connecticut; (2) attended any educational institution in the state and completed at least four years of high school here; (3) graduated from a high school or the equivalent in Connecticut; (4) registered as an entering student, or is currently a student, at UConn, a Connecticut State University, a community-technical college, or Charter Oak State College; and (5) filed an affidavit with the college stating that they have applied to legalize their immigration status or will do so as soon as they are eligible to apply ([PA 11-43](#)). In 2015, the legislature reduced the Connecticut high school enrollment requirement from four to two years ([PA 15-82](#)).

Institutional Aid Eligibility. In 2018, the legislature extended eligibility for institutional financial aid to attend a state public institution of higher education (i.e., UConn and the Connecticut State Colleges and Universities) to certain students who lack legal immigration status to the extent allowed by federal law. Institutional financial aid consists of funds a higher education institution sets aside from anticipated tuition revenue to fund tuition waivers and remissions, grants for educational expenses, and student employment. The institution must provide this aid to full- or part-time students enrolled in a degree-granting program or a precollege remedial program and demonstrating substantial financial need.

Specifically, undocumented students are eligible for institutional aid if they meet the following criteria: (1) the requirements for in-state student classification described above; (2) are age 30 or younger as of June 15, 2012; (3) was age 16 or younger upon arrival in the United States and have continuously lived in the country since that time; (4) have no felony convictions in any state; and (5) filed an affidavit about their intent to legalize their immigration status with the institution they are attending ([PA 18-2](#)).

Public Health Awareness

Medical Orders for Life-Sustaining Treatment. The Department of Public Health (DPH) oversees a “medical orders for life-sustaining treatment” (MOLST) pilot program. In 2017, the legislature passed a law addressing various matters related to the program. Among various other things, it requires regulations to ensure that each physician, advanced practice registered nurse, or physician assistant who intends to write a MOLST receives training on certain matters, including awareness of factors that may affect the use of a MOLST, such as immigrant status, race, ethnicity, age, and gender, among other things ([PA 17-70](#)).

Office of Health Equity. In 2014, the legislature passed a law renaming the Office of Multicultural Health within DPH as the Office of Health Equity. The law specified that the office’s work must focus on population groups with adverse health status or outcomes, and that these groups may be based on immigrant status, as well as race, ethnicity, age, gender, socioeconomic position, sexual minority status, language, disability, homelessness, mental illness, or geographic area of residence ([PA 14-231](#), § 5).

Student and Family Records

In 2021, the legislature passed a law that generally prohibits certain education authorities from disclosing to any federal immigration authority any confidential information about an individual, including information about his or her admission or financial application or immigration status.

These education authorities are officers, employees, or agents of a local or regional board of education or Connecticut higher education institution.

Under the act, this information may be disclosed only if it is (1) authorized in writing by the individual or by his or her parent or guardian if the individual is a minor or not legally competent to consent to the disclosure, (2) necessary for a criminal terrorism investigation, or (3) otherwise required by state or federal law or to comply with a judicial warrant or court order issued by a state or federal judge or magistrate ([PA 21-2](#), June Special Session, § 263).

State Enforcement of Federal Immigration Law

Anti-Commandeering Doctrine

Relevant Case Law. The U.S. Supreme Court bases the anti-commandeering doctrine on the [Tenth Amendment](#) of the U.S. Constitution and Congress's enumerated Constitutional powers. It views the doctrine as a constraint on federal law's power over the states, issuing at least three different rulings since 1992 invoking and expanding upon the doctrine. This doctrine has implications for states' enforcement of federal immigration law.

The Court's body of case law on this doctrine has produced the following principles, among others:

1. the federal government cannot commandeer a state into enacting a certain law (*New York v. United States*, [505 U.S. 144](#) (1992));
2. Congress cannot compel the states to enforce federal law and to do so in a particular way (*Printz v. United States*, [521 U.S. 898](#) (1997)); and
3. just as Congress cannot issue direct orders to state legislatures, it cannot prohibit them from acting, as both constitute coercion (*Murphy v. National Collegiate Athletic Association*, [138 S.Ct. 1461](#) (2018)).

Applicability to Federal Immigration Law. The federal Immigration and Nationality Act (INA, [8 USC § 1101, et seq.](#)) establishes the rules for legal immigration, naturalization, deportation, and enforcement. Since INA is federal law, the anti-commandeering doctrine, particularly the *Printz* ruling, applies to states' enforcement of it. Several INA provisions expressly allow states to assist federal authorities in their enforcement, but under *Printz* and the Tenth Amendment, states are not required to do so.

For an in-depth discussion of state and local efforts to limit immigration enforcement activity (e.g., limiting arrests for federal immigration violations, police inquiries into immigration status, or

information sharing with federal immigration authorities), please see the Congressional Research Service's [2019 report](#).

Additional Resources

The following Congressional Research Service publications provide additional information on this topic:

- [“Immigration Enforcement & the Anti-Commandeering Doctrine: Recent Litigation on State Information-Sharing Restrictions.”](#) March 10, 2020.
- [“‘Sanctuary’ Jurisdictions: Federal, State, and Local Policies and Related Litigation.”](#) May 3, 2019.
- [“Enforcing Immigration Law: The Role of State and Local Law Enforcement.”](#) March 11, 2009.

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