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PERSPECTIVE

For now, locals on their own to implement sanctuary state bill

By Michele Goldsmith and Jason Barbato

The federal government enjoys broad powers over the admission of foreigners into the United States. However, after the Trump administration sought to restrict the admission of refugees, aliens, visitors and immigrants, several states began resisting the imposition of federal immigration laws on local officials and law enforcement agencies.

To that end, this month Gov. Jerry Brown signed Senate Bill 54, the "sanctuary state" legislation that places limits on state and local law enforcement agencies' ability to cooperate with federal immigration authorities. The law, written by Senate President Pro Tem Kevin de León (D-Los Angeles), takes effect January 2018. It amends Sections 7282 and 7282.5 of the Government Code, adds Sections 7284 through 7284.12 of the Government Code, and repeals Section 11369 of the Health and Safety Code. How SB54 will be applied by local agencies is unknown.

Federal officials, including U.S. Attorney General Jeff Sessions and Thomas Homan, acting director of U.S. Immigration and Customs Enforcement, have publicly criticized SB 54. Immigration reform advocates and community organizations have hailed the legislation as a positive step to counter the Trump administration's aggressive crackdown of undocumented immigrants. Advocates of the bill say it reflects a compromise between immigrant advocates and local law enforcement.

The bill removes most of the discretion that local law enforcement agencies previously had to cooperate with federal immigration authorities, but permits cooperation in narrow circumstances.

Federal immigration laws are generally enforced through civil proceedings administered by the U.S. Department of Homeland Security. These civil proceedings often lead to deportation. Some immigration violations are also designated as crimes, usually misdemeanors. The two most common types of criminal immigration law violations are entering the U.S. without being inspected and admitted, i.e., illegal entry (8 U.S.C. Section 1325, a misdemeanor or a felony) and reentry, without permission, after a prior removal order (8 U.S.C. Section 1326).

SB 54 draws a distinction between the enforcement of civil and criminal immigration laws. The bill prevents local law enforcement from making or intentionally participating in arrests based on civil immigration warrants. It also prohibits officers from (a) inquiring into an individual's immigration status; (b) voluntarily detaining an individual based on an ICE hold request beyond the time that said individual would otherwise be eligible for release from custody; (c) with certain exceptions, providing information regarding a detainee's release date to ICE; and (d) performing the functions of an immigration officer. The significant prohibitions are contained in Government Code Section 7284.6(a).

Additionally, SB 54 amends California law on narcotics enforcement and its interrelationship with immigration law. Prior law, found at Health and Safety Code Section 11369, provided that when there is reason to believe that a person arrested for a violation of specified controlled substance provisions may not be a U.S. citizen, the arresting agency was required to notify ICE or other appropriate agency. SB 54 repeals this provision.

It is unclear, however, how local agencies will interpret "discretionary" provisions, largely found in Government Code Section 7284.6(b), as applicable to the enforcement of criminal immigration law. A department likely would not want individual officers making a decision regarding how to respond to a federal agent's request, so local agencies will need to adopt policies to clarify whether and when they will cooperate with federal immigration authorities. For example, local agencies will need to decide whether to allow their officers to (1) investigate, enforce, detain or arrest a person with a prior serious criminal offense upon reasonable suspicion, during an unrelated law enforcement activity, that a violation of federal law prohibiting illegal reentry, without permission, after a prior removal order, has occurred; (2) enforce federal criminal immigration laws unrelated to immigration status or employment, such as marriage fraud (8 U.S.C. Section 1325(c)), entrepreneurship fraud (8 U.S.C. Section 1325(d)), document/ benefit fraud (8 U.S.C. Section 1324c), and alien smuggling (8 U.S.C. Section 1324); (3) respond to a request from immigration authorities for information about a specific person's criminal history; (4) transfer a person in their custody to ICE, under limited circumstances, (5) conduct enforcement or investigative duties associated with a joint law enforcement task force where an immigration agency is a member (but the task force must be unrelated to immigration enforcement); and (5) give federal immigration authorities access to interview an individual in department custody.

SB 54 contains a number of other provisions. If a local law enforcement agency decides to participate in a joint task force, for which the agency has agreed to dedicate personnel or resources on an ongoing basis, it is required to submit annual reports to the California Department of Justice. The bill also gives a slightly wider amount of discretion to the California Department of Corrections and Rehabilitation. At the same time, it prohibits certain ministerial actions that would otherwise punish a detainee on the basis of citizenship or immigration status. For example, the Department of Corrections and Rehabilitation cannot consider citizenship and immigration status as a factor in determining a person's custodial classification level.

By Oct. 1, 2018, the state attorney general must publish model policies "limiting assistance with immigration enforcement to the fully extent possible" for use at public schools, public libraries, public health facilities, courthouses, shelters, and certain California administrative agencies. It is expected that Lexipol will develop its own model policy for law enforcement agencies. SB 54 also requires by next October that the attorney general publish "guidance, audit criteria, and training recommendations aimed at ensuring" that databases maintained by local law enforcement agencies are not used for immigration enforcement to the fullest extent practicable. Until these model policies are adopted, local law enforcement agencies are on their own to implement the changes made by SB 54.

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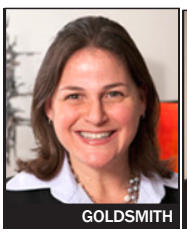
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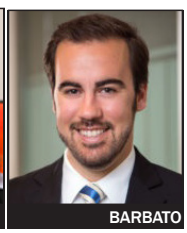
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