ASSEMBLY, No. 4513

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 10, 2020

Sponsored by:
Assemblyman PEDRO MEJIA
District 32 (Bergen and Hudson)

SYNOPSIS

Establishes law enforcement procedures for responding to immigration detainers and certain requests issued by federal immigration authorities.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the enforcement of federal immigration policy and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. As used in this act:

"Federal immigration authorities" means agencies of the United States government responsible for implementing and enforcing federal immigration law, including but not limited to, the United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services within the Department of Homeland Security.

"Detainer request" means a request that a law enforcement agency maintain custody of a person beyond the time that person would otherwise be eligible for release in order to facilitate the transfer of that person to federal immigration authorities.

"Immigration notification" means a detainer request, transfer request, or notification request issued by federal immigration authorities to a law enforcement agency.

"Law enforcement agency" means a State, county, or municipal law enforcement agency and State or county correctional facility.

"Notification request" means a request that a law enforcement agency inform federal immigration authorities of the release of a person from the law enforcement agency's custody and includes, but is not limited to, a Department of Homeland Security Form I-247N.

"Transfer request" means a request that a law enforcement agency facilitate the transfer of an individual to the custody of federal immigration authorities, and includes, but is not limited to, a Department of Homeland Security Form I-247X.

b. A law enforcement agency shall not comply with or detain any person on the basis of an immigration notification unless that person has at any time been convicted of one or more of the following offenses:

(1) N.J.S.2C:11-3, murder;

(2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

(3) N.J.S.2C:11-5, vehicular homicide;

(4) subsection b. of N.J.S.2C:12-1, aggravated assault;

(5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;

(6) N.J.S.2C:13-1, kidnapping;

(7) N.J.S.2C:14-2, sexual assault;

(8) N.J.S.2C:15-1, robbery;

(9) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

(10) N.J.S.2C:17-1, arson and related offenses;

(11) N.J.S.2C:18-2, burglary;

(12) N.J.S.2C:20-5, theft by extortion;

(13) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities;

(14) N.J.S.2C:35-9, strict liability for drug induced deaths;

(15) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

(16) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices;

(17) N.J.S.2C:39-5, unlawful possession of a weapon;

(18) N.J.S.2C:41-2, racketeering, when it is a crime of the first degree;

(19) subsection i. of N.J.S.2C:39-9, firearms trafficking;

(20) N.J.S.2C:24-4, endangering the welfare of a child; or

(21) any crime or offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19).

c. Nothing in this section shall restrict a State, county, or municipal employee, entity, or agency from maintaining, requesting, sending, receiving, or exchanging information regarding a person's citizenship or immigration status, lawful or unlawful, with another Federal, State, or local government entity in accordance with 8 U.S.C. 1373 and 8 U.S.C. 1644.

2. This act shall take effect immediately.

STATEMENT

This bill establishes certain procedures to be followed by State, county, or municipal law enforcement agencies and State or county correctional facilities when responding to voluntary requests for information or detainers issued by federal immigration authorities.

Unlike criminal detainers, which are supported by a warrant and require probable cause, there is no requirement for a warrant and no established standard of proof, such as reasonable suspicion or probable cause, for issuing a federal immigration detainer request. In addition, states are not required to comply with federal immigration detainer requests, information requests, or transfer requests.

The United States Third Circuit Court of Appeals in Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. Pa. 2014) held that states and localities are not required to hold people based on detainers issued by federal immigration authorities. The third circuit's decision was recognized by the United States District Court for the District of Oregon in Miranda-Olivares v. Clackamas County, 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014), which held that a plaintiff's detention based on an "investigatory" detainer issued by immigration authorities violated the plaintiff's Fourth Amendment rights under the United States Constitution.

Under current federal law, an authorized immigration officer may request a State or local law enforcement agency to continue to detain a noncitizen for a limited time (up to 48 hours plus weekends and federal holidays) after the noncitizen is eligible for release from criminal custody in order to give immigration authorities time to take the noncitizen into federal custody. In addition, federal immigration authorities may request a law enforcement agency to inform them of the release of a noncitizen from criminal custody or facilitate the transfer of a noncitizen to the custody of immigration authorities. However, compliance by State, county, and municipal law enforcement is not mandatory.

This bill provides that State, county, or municipal law enforcement agencies and State or county correctional facilities are only to comply with these federal immigration requests when the person of interest has been convicted of a serious crime. The bill provides that State, county, or municipal law enforcement agencies and State or county correctional facilities are not to notify, transfer, or detain any person on the basis of an immigration notification unless that person has been convicted of a serious crime, including: murder; aggravated manslaughter or manslaughter; vehicular homicide; aggravated assault; disarming a law enforcement officer; kidnapping; sexual assault; robbery; carjacking; arson and related offenses; burglary; theft by extortion; booby traps in manufacturing or distribution facilities; strict liability for drug-induced deaths; terrorism; producing or possessing chemical weapons, biological agents or nuclear or radiological devices; unlawful possession of a weapon; racketeering, when it is a crime of the first degree; firearms trafficking; endangering the welfare of a child; or any crime or offense involving domestic violence.

The bill does not prohibit a State, county, or municipal employee, entity, or agency from sharing information regarding a person’s citizenship or immigration status with another Federal, State, or local government entity in accordance with federal law.

This bill is based on California’s “Trust Act,” which limits the state’s cooperation with federal immigration authorities.