



## Law Governing Immigration Enforcement Against Juveniles in California January 2014

**A new state law, the TRUST Act, limits collaboration between local law enforcement and federal immigration officials.** On October 5, 2013, Governor Brown signed AB 4, the California TRUST Act. *See* Cal. Gov. Code §§ 7282, 7282.5. The law limits when local law enforcement can respond to certain immigration hold requests. An immigration hold request – also called an ICE hold or detainer – is a *request* from immigration authorities to local law enforcement to hold someone for 48 hours (plus weekends and federal holidays) after the person is eligible for release from criminal custody in order to facilitate his or her deportation. A hold is not a warrant and does not carry the same force of law as a warrant – it is merely a request. While local law enforcement is free to decline to respond to any immigration holds at all, the TRUST Act sets a statewide standard to prohibit the enforcement of immigration holds by local law enforcement in certain circumstances. The TRUST Act went into effect **January 1, 2014**.

**The TRUST Act limits when local law enforcement can hold juveniles for immigration authorities.** Local law enforcement *may* respond to an immigration hold for juveniles who are in the juvenile justice system only in two specific circumstances: **1)** if the juvenile was adjudicated for an offense that was committed when the juvenile was 16 years of age or older and is listed in Cal. Welf. & Inst. Code § 707(b); or **2)** if the juvenile is currently registered on the sex or arson registry. Outside of these two situations, the TRUST Act specifically prohibits local law enforcement from detaining a juvenile in the juvenile justice system on an immigration hold past the time he or she is eligible for release from custody. Even in these types of cases, local law enforcement is *never required* to detain the juvenile pursuant to the immigration hold. If a juvenile is being charged or tried as an adult or is convicted of an offense as an adult, there are a number of circumstances that allow local law enforcement to hold the juvenile for immigration authorities. To see this criteria go to: <http://trustact.weebly.com/resources.html>

**There is no law requiring local law enforcement to investigate, report, or detain immigrant juveniles.** Asking about immigration status is not required by law. Indeed, investigating a juvenile’s immigration status is a complicated legal undertaking that can take up limited resources and subject Counties to liability because of potential erroneous referrals to immigration authorities. Cal. Penal Code § 834(b), which compelled local officials to notify federal authorities of immigration violations, was declared unconstitutional in 1995 by a federal court because it was preempted entirely by federal law.<sup>1</sup> California H&S § 11369, which requires “arresting” agencies to report immigrants arrested for certain drug crimes to immigration authorities, does not apply to juvenile probation agencies because these agencies do not conduct arrests. Moreover, the legislature did not intend for the law to apply to juveniles--the legislation refers to convictions and not juvenile adjudications. Thus, there is no law which requires law enforcement to investigate or report immigrant youth. And any request to hold youth is, as ICE admits, merely “a request.”<sup>2</sup> California Attorney General Kamala Harris confirmed that holds “are not compulsory”<sup>3</sup> and Counties can choose not to comply.

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<sup>1</sup> *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 771 (C.D. Cal. 1995); *see also* Cal. Attn’y Gen. Opinion, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, No. 01-213 (2001), available at <http://www.justice.gov/oig/reports/OJP/a0707/app9.htm>.

<sup>2</sup> David Venturella, ICE Director, Letter to Miguel Marquez, County Counsel, County of Santa Clara (2010), available at <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf>.



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### **California state confidentiality laws prohibit law enforcement from sharing juveniles' confidential immigration information with immigration authorities without a court order.**

California Welf. & Inst. Code §§ 827-28 protects all information in a juvenile's case file, including oral and written immigration information, from dissemination without a court order. The California legislature made exceptions to the confidentiality protections for third parties such as the court personnel, prosecution and defense attorneys, the youth, family members, and law enforcement officers who are "actively participating in criminal or juvenile proceedings involving the minor." Cal. Welf. & Inst. Code § 827(a)(1)(A)–(O). Section 828 also exempts law enforcement agencies such as school district police. Cal. Welf. & Inst. Code § 828. However, these narrow exceptions do not apply to federal immigration authorities. First, unlike all of the other named exceptions, immigration authorities are not state-level officers or participants in the state juvenile justice system. Second, immigration authorities do not "actively participate" in any criminal or juvenile proceedings involving juveniles. Immigration authorities typically have no role in juvenile proceedings. In fact, they often have no knowledge of such proceedings (and therefore cannot participate in the first place) until someone within the system—such as probation—contacts them. Third, even if immigration authorities had already initiated immigration proceedings against a juvenile before he or she became involved in the juvenile justice system, those immigration proceedings are civil in nature and therefore do not constitute "criminal or juvenile proceedings" for the purposes of § 827.<sup>4</sup> Finally, the legislature considered making an exception to the confidentiality requirement for immigration authorities and chose not to.<sup>5</sup> Therefore, law enforcement cannot share a juvenile's confidential immigration information with immigration authorities absent a court order.

**Federal immigration law does not preempt, or supersede, California juvenile confidentiality laws.** Federal statute 8 U.S.C. § 1373 does not allow states to prohibit exchanging information with immigration authorities. Federal law, however, does *not* prohibit general confidentiality laws, such as §§ 827-28, that control how juvenile information is shared.<sup>6</sup> Nothing in 8 U.S.C. § 1373 or any other federal law, supersedes California juvenile confidentiality laws, conflicts with them, or attempts to regulate state juvenile affairs.<sup>7</sup> On the contrary, federal law recognizes the importance of protecting juvenile court records from access by third parties, including other federal agencies.<sup>8</sup> Therefore, local law enforcement must abide by California juvenile confidentiality laws even in light of federal immigration law.

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<sup>3</sup> Kamala Harris, *Responsibilities of Local Law Enforcement Agencies Under Secure Communities*, (Dec. 4, 2012), available at <http://www.immigrationpolicy.org/sites/default/files/docs/Kamala-Harris-guidance-on-immigration-detainers.pdf>.

<sup>4</sup> See *Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952).

<sup>5</sup> S. Cal. Legis. Counsel's Digest, No. 940 (Feb. 23, 2001), available at [http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb\\_0901-0950/sb\\_940\\_bill\\_20010829\\_amended\\_asm.html](http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0901-0950/sb_940_bill_20010829_amended_asm.html).

<sup>6</sup> *City of New York v. United States*, 179 F.3d 29, 35–37 (2d Cir. 1999).

<sup>7</sup> See, e.g., *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (a state law is preempted if the federal law expressly supersedes it, conflicts with it, or regulates the field in question by implication).

<sup>8</sup> See 18 U.S.C. § 5038.



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**Sharing juveniles' immigration information with immigration authorities often undermines the juvenile justice system's goals of family unity and providing treatment that is in the juvenile's best interest.** Contrary to the goals set forth in Cal. Welf. & Inst. Code § 202, families are often torn apart when juveniles are sent to immigration detention centers far away or deported. And it is rarely in a juvenile's best interest to be referred to immigration authorities and ripped away from his or her family, school, and the services he or she needs.

**Reporting youth to ICE may erode community trust.** Immigrants are more reluctant to cooperate with law enforcement including reporting crimes or acting as witnesses, if they fear that they or their families will be reported to immigration authorities and placed in removal proceedings.<sup>9</sup> This lack of trust endangers public safety for everyone.

**Reporting youth to ICE may undermine the rehabilitation of the minor and ultimately threaten the safety of the public.** Juveniles may not receive the full support and services they need for rehabilitation, as set forth in Cal. Welf. & Inst. Code § 202, if they are afraid to cooperate with law enforcement for fear of being deported or if they are sent to detention centers far away. When juveniles are referred to immigration authorities, they can be detained in centers as far as New York or Virginia. Even if they are eligible to obtain legal status in the U.S., it takes at least three months, and often much longer, to get them released back to their families, schools, and the services they need. This lengthy detention makes it more likely that these youth will make negative peer connections and recidivate. They are at an increased risk for negative health, mental health, educational and employment outcomes. In addition, over 90% of juveniles referred to ICE from the juvenile justice system return to their homes, because federal law requires that they be held in the least restrictive setting.<sup>10</sup> Referring them to ICE thus often wastes vast resources in sheltering, educating, and detaining youth who will ultimately be returned home. Juveniles are often best served in their own jurisdictions to ensure their rehabilitation and promote community safety.

For a legal memo discussing these issues in greater detail and for any other information please contact Angie Junck, Supervising Attorney at [ajunck@ilrc.org](mailto:ajunck@ilrc.org), (415) 321-8558 or Alison Kamhi, Staff Attorney, [akamhi@ilrc.org](mailto:akamhi@ilrc.org), (415) 321-9499 ext. 526.

*The **Immigrant Legal Resource Center**, founded in 1979 and based in San Francisco, California is a national resource center that provides training, technical assistance, and publications on immigration law. The ILRC is one of the lead agencies in the United States with expertise on the immigration consequences of crime and delinquency. The ILRC writes some of the only resources on immigration and youth and has counseled judges, law enforcement officials, attorneys, County elected officials, and County Counsel offices throughout California and other states on these and related issues. The ILRC partners with the Office of Refugee Resettlement, a federal agency that is responsible for the care and custody of unaccompanied minors in deportation proceedings, to provide Countywide immigration trainings and information to juvenile probation departments and other juvenile justice system stakeholders.*

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<sup>9</sup> Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Department of Urban Planning and Policy, University of Illinois at Chicago (May 2013).

<sup>10</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457) § 235(c)(2).