

SENATE BILL REPORT

SB 5270

As of January 26, 2023

Title: An act relating to keeping communities together by limiting the department of corrections' assistance with federal immigration enforcement activities.

Brief Description: Limiting the department of corrections' assistance with federal immigration enforcement activities.

Sponsors: Senators Saldaña, Frame, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Human Services: 1/26/23.

Brief Summary of Bill

- Prohibits the Department of Corrections (DOC) from assisting with an individual's arrest, detention, transfer, interrogation, or deportation in any manner for an immigration enforcement purpose.
- Prohibits DOC from recording certain information, or allowing any federal immigration authority to access DOC's databases.
- Prohibits DOC from using immigration or citizenship status to deny privileges or participation in programs, or to determine custodial classification.
- Removes limitations or exclusions on participation in certain DOC programs and services for persons subject to deportation.
- Repeals authorization for conditional release of certain individuals to the custody of Immigration and Customs Enforcement.

SENATE COMMITTEE ON HUMAN SERVICES

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kelsey-anne Fung (786-7479)

Background: The federal Department of Homeland Security (DHS) oversees United States Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE), which are responsible for the enforcement of federal immigration policies. USCIS oversees lawful immigration to the United States, and ICE enforces federal laws governing border control, customs, trade, and immigration.

Federal 287(g) Program. The federal 287(g) Program allows state and local law enforcement entities to partner with ICE through a memorandum of agreement to receive delegated authority for immigration enforcement within their jurisdictions. In Washington State, legislation from 2019 prohibits any state or local law enforcement officer from entering into any contract, agreement, or arrangement that would grant federal civil immigration enforcement authority or powers to state and local law enforcement officers, including 287(g) agreements.

Detainers and Information on Citizenship and Immigration Status. Federal law provides that any authorized immigration officer may issue an Immigration Detainer-Notice of Action to any other federal, state, or local law enforcement agency to advise that DHS seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise DHS, prior to the release of the alien, for DHS to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible. Federal law prohibits any federal, state, or local government entity from restricting any government entity or official from sending or receiving information from ICE regarding an individual's lawful or unlawful citizenship or immigration status.

State Law. Under state law, individuals in state or local custody, or in the physical custody of the Department of Corrections (DOC), must:

- not be taken or held in custody solely for determining immigration status, or based solely on a civil immigration warrant or hold request;
- not be detained solely for determining immigration status;
- not be denied services, benefits, privileges, or opportunities on the basis of an immigration detainer, hold, notification request, or civil immigration warrant, unless necessary for classification or placement purposes; and
- be provided an explanation, in writing, the individual's right to refuse to disclose their nationality, citizenship, or immigration status, and that disclosure may result in civil or criminal immigration enforcement.

DOC may not give federal immigration authorities access to interview individuals about federal immigration violations while they are in custody, except as required by state or federal law or by court order, unless such individuals consent in writing to be interviewed. Individuals must be advised that they will not be punished or suffer retaliation for declining to be interviewed.

In accordance with federal law, state or local agencies or officers may send and receive information from federal immigration authorities, and exchange information with other federal, state, or local government agencies about an individual's immigration or citizenship status.

Conditional Release for Alien Offenders. Any alien offender who has been sentenced under the Sentencing Reform Act of 1981, and who has been found by the United States Attorney General to be subject to a final order of deportation or exclusion may be placed on conditional release status, and transferred to the custody of ICE for deportation. An offender may not be released on conditional release status unless the DOC secretary has reached an agreement with ICE that the alien offender on conditional release status will be detained in a total confinement facility operated by ICE pending the offender's deportation.

Offenders serving a sentence for a violent or sex offense may not be placed on conditional release status. Once an offender is turned over to ICE, DOC must issue a warrant for the offender's arrest within the United States which will remain in effect indefinitely. The unserved portion of an offender's term of confinement is tolled when the offender is released to ICE. If the offender is arrested, DOC may seek extradition as necessary and the offender may be returned to DOC for completion of the unserved portion of the offender's term of total confinement. The DOC secretary must assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter Washington State.

Department of Corrections Program Eligibility. Offenders subject to a deportation order are not eligible to participate in the Graduated Reentry Program at DOC, which allows offenders to be transferred from a state correctional facility to home detention in the community if it is an appropriate placement and will assist the offender's transition from confinement to the community.

With regards to educational and vocational programming at DOC, incarcerated individuals subject to deportation:

- may not be required to participate in education programming except as may be necessary for maintaining discipline and security;
- may not participate in a postsecondary degree education program offered by DOC or its contracted providers, unless the person's participation in the program is paid for by a third party or by the individual;
- may participate in prevocational or vocational training that may be necessary to participate in a work program; and
- must be subject to applicable financial responsibility provisions.

DOC must develop an individual reentry plan for every incarcerated individual committed to the jurisdiction of DOC, except for incarcerated individuals subject to deportation.

Summary of Bill: DOC may not arrest or assist with the arrest, confinement, detention,

transfer, interrogation, or deportation of an individual under DOC's jurisdiction for an immigration enforcement purpose in any manner, including but not limited to, by notifying another agency or subcontractor of the agency regarding the release date and time of the individual, releasing or transferring an individual into the custody of another agency or subcontractor of the agency, or disclosing personal information about an individual.

DOC may not record or enter the place of birth, or the immigration or citizenship status of any person currently or formerly incarcerated, or under DOC supervision into any database used by DOC, including the Offender Management Network Information (OMNI) system. DOC may not allow any federal immigration authority to access the OMNI system, or any other database used or controlled by DOC.

DOC must outline applicable government assistance and benefit programs that an individual may be eligible for, and explain in writing the individual's right to refuse to disclose their immigration or citizenship status, and that disclosure may result in civil or criminal immigration enforcement, including removal from the United States. DOC may not disclose any information provided by an individual for determining eligibility for government assistance and benefits programs to any federal immigration authority.

DOC may not use an individual's immigration or citizenship status, including the existence of a hold or immigration detainer request, as a factor to deny or recommend denial of privileges or participation in any diversion, rehabilitation, work program, or mental health program or placement in a credit-earning or vocational training program, or to determine a custodial classification level. Immigration or citizenship status, including the existence of a hold or immigration detainer request, may not be considered necessary for classification or placement purposes.

Nothing shall prohibit DOC's compliance with a bench warrant issued by a court for a criminal matter.

A person may bring an action for equitable or declaratory relief against DOC, or any state official that violates this act. A state agency or official that violates this act is also liable for actual and general damages, and reasonable attorneys' fees.

Restrictions limiting or excluding persons subject to deportation from participation in DOC programs, including the Graduated Reentry Program, educational and vocational programming, and individual reentry planning, are removed.

Statutory provisions that allow alien offenders sentenced under the Sentencing Reform Act of 1981 and who have been found by the United States Attorney General to be subject to a final order of deportation or exclusion to be placed on conditional release status and transferred to the custody of ICE are repealed.

The bill contains a severability clause.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: DOC should not be putting Washingtonians in double jeopardy and transferring incarcerated individuals that are born in a different country or perceived to not have immigration status to ICE custody after the person has served their sentence at a state correctional facility. The state should not discriminate on the basis of status, nationality, or where the person comes from. People make mistakes and are held accountable for breaking state laws, but once the person has served their sentence and has been rehabilitated, DOC should not be handing the person over to the custody of ICE, where the person is punished again. A person could be detained in a ICE facility for years, and they often give up hope and accept deportation. DOC's job is to rehabilitate and have people serve their sentence; it should not be helping ICE do its job. The state should not be spending state resources to do federal immigration work.

This bill will make sure individuals subject to deportation are not denied the opportunity to participate in rehabilitation programs at DOC like vocational and work opportunities. They are not allowed to receive job training or work release and are only allowed to clean toilets and make beds. They should be able to learn skills and improve their lives while incarcerated to prepare them for reentry into the community. Access to DOC programming is crucial to giving everyone a chance to succeed. If a person has a detainer, it increases their offender score and limits access to programming that is available to them. ICE detainers are not warrants that are based on probable cause.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Manuel Abrego, La Resistencia; Maru Mora Villalpando, La Resistencia; Elisa Cisneros, La Resistencia; Tim Warden-Hertz, Northwest Immigrant Rights Project.

Persons Signed In To Testify But Not Testifying: No one.