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Some jails may limit federal immigration 'holds'

BY RYAN GABRIELSON California Watch

In the next year, many of California's local jails might limit federal immigration "holds" to detainees with felony convictions, greatly reducing the number of people deported from the state solely for entering the country without permission.

Gov. Jerry Brown met with leaders from the California State Sheriffs' Association recently to discuss ways to give city police and county sheriff's departments discretion on immigration enforcement.

Alameda County Sheriff Gregory Ahern said he recommended legislation to amend state Penal Code 834b. The code mandates that law enforcement cooperate with federal agents "regarding any person who is arrested if he or she is suspected of being present in the United States in violation of federal immigration laws."

Brown informed the sheriffs association that his office is working on draft legislation to that effect, Ahern said.

At issue is how local law enforcement should participate in Secure Communities, an Immigration and Customs Enforcement program operating in most of the state.

The program checks detainees' residency status using fingerprint data collected from county jails. Immigration and Customs Enforcement can then place a hold on those found to be in the country illegally. Federal officials have cast the effort as critical to finding and deporting unauthorized immigrants who are dangerous criminals.

However, Secure Communities frequently has snared detainees with no criminal histories.

A review of the program by state Attorney General Kamala Harris' office found that 28 percent of people deported from local jails had no conviction on their records. Last week, Harris spurred debate and action by releasing a legal opinion that local jails are not required to participate in Secure Communities.

"Under the principles of federalism, neither Congress nor the federal executive branch can require state officials to carry out federal programs at their own expense," the attorney general's opinion said. "If such detainers were mandatory, forced compliance would constitute the type of commandeering of state resources forbidden by the Tenth Amendment."

The opinion reversed direction that Brown gave to police agencies two years ago while he was the attorney general.

That opinion, however, is unlikely to change business at Kern County jails. Kern County Sheriff's Chief Deputy Francis Moore said only five inmates are currently being held locally on ICE holds with no other offenses against them.

Plus, Moore said law enforcement agencies want to foster cooperation with each other, and if they don't hold ICE detainees they may not receive help from ICE agents in the future. He said sheriff's officials will examine their policies in light of Harris' opinion, but it's unlikely anything will change as a result of it.

Los Angeles County Sheriff Lee Baca announced that his agency would no longer honor immigration holds on low-level offenders shortly after Harris issued her guidance. Los Angeles Police Chief Charlie Beck took the same step in October.

For the past year, Santa Clara County has refused to incarcerate detainees beyond the standard hold time, which is based only on their current criminal charges, not immigration status.

"This decision by the attorney general confirms the (county's) policy," said Jeff Smith, Santa Clara County's chief executive. "It's consistent with the constitutional rights."

Brown vetoed legislation this fall -- AB 1081, commonly referred to as the Trust Act -- intended to make participation in Secure Communities optional. The governor argued that the measure would have directed local jails to disregard immigration holds even when detainees had past convictions for serious crimes like child abuse or drug trafficking.

Ahern, a vice president on the sheriffs association board, said most of the state's elected law enforcement officials are not looking to cut ties with federal immigration authorities. Rather, they seek small tweaks in the relationship.

Local police want to focus their resources on dangerous criminals, Ahern said, not all unauthorized immigrants.

Often, opponents of local immigration enforcement highlight cases in which a college student, brought to the country illegally as a child, is arrested for a minor offense but faces deportation. Ahern said sheriffs should be able to decline immigration holds in such cases.

"The great majority of us disagree with those types of actions," Ahern said.

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