



PROTECTIONS FOR NONCITIZEN YOUTH: HOW CALIFORNIA LAWS PROTECT YOUTH INVOLVED IN THE YOUTH JUSTICE SYSTEM AGAINST IMMIGRATION ENFORCEMENT

How may local and state law enforcement agencies be involved in immigration enforcement against noncitizen youth?¹

Much of immigration enforcement in the United States happens in jails and prisons, which can include youth detention facilities and youth prisons. Immigration and Customs Enforcement (ICE) – the federal agency that enforces federal immigration laws within the United States – often co-opts local law enforcement, including at times juvenile probation officials, to detect, arrest, and detain noncitizens in the U.S. so that they can be deported. For many years, California law enforcement led the country in the reporting of noncitizen youth to immigration authorities: juvenile probation and detention officers in various parts of the state routinely interrogated youth about their immigration status or information related to it, reported them to ICE and detained them for ICE to pick up.² However, this was entirely voluntary; there are no federal laws requiring state or local agencies to help with immigration enforcement.³ While these practices and policies changed as a result of grassroots advocacy and a California state law passed in 2016, there are still ways in which local and state entities may be involved in the deportation of immigrant youth.

What does California law say about local officials sharing juvenile records and information with federal officials, including immigration authorities?

Juvenile records created in delinquency and dependency court proceedings, and the information contained in them, are confidential under California law. This means that most people (those not directly involved in the proceedings) cannot access the documents or the information contained in the documents without filing a petition with the juvenile court and obtaining the court's permission. This confidential information includes the youth's name, date or place of birth, and immigration status. In addition, no one can disseminate, or share with third parties, the documents or information contained in them without first obtaining juvenile court permission. Even in situations where a child is not ultimately made a ward of the juvenile court, the police department must receive permission from the juvenile court before releasing information about the arrest to any third party.⁴

¹ For questions about this advisory, please contact Rachel Prandini at rprandini@ilrc.org.

² See, e.g., UC Irvine School of Law, Immigrant Rights Clinic, "Second Chances for All: Why Orange County Probation Should Stop Choosing Deportation Over Rehabilitation for Immigrant Youth" (Dec. 2013), https://www.law.uci.edu/academics/real-life-learning/clinics/UCILaw_SecondChances_dec2013.pdf; Bonnie Eslinger, "San Mateo County admits mistakenly reporting arrested minors to ICE agents," The Mercury News, July 12, 2012, <https://www.mercurynews.com/2012/07/12/san-mateo-county-admits-mistakenly-reporting-arrested-minors-to-ice-agents/>

³ *United States v. California*, No. 18-16496 (9th Cir. 2019).

⁴ *T.N.G. v. Superior Court* (1971) 4 Cal. 3d 767, 780 (Noting that in a case that did not result in the children being made wards of the juvenile court, "(t)he police department of initial contact may clearly retain the information that it obtains from the youths' detention, but it must receive the permission of the juvenile court pursuant to section 827 in order to release that information to any third party, including state agencies.")

How does this protect noncitizen youth in California?

This protects noncitizen youth in two main ways:

1. Noncitizen youth should not be reported to ICE by youth justice officials. Youth justice officials need juvenile court permission to report youth to ICE, which has never in our experience been requested. If youth justice officials contact ICE and share information about youth in their care without court permission, they are in violation of Cal. Welf. & Inst. Code §§ 827, 831.⁵ (Unfortunately, if ICE already has information about a youth, California’s confidentiality laws will not prevent ICE from pursuing that youth after an arrest.)
2. Noncitizen youth who are applying for some kind of legal status in the United States (such as a U-Visa, a visa for victims of serious crime, or Special Immigrant Juvenile Status) do not have to disclose extensive information about their juvenile history when they submit their application. However, this does not mean that immigration authorities won’t know anything about the juvenile record, for two reasons:
 - Most immigration application forms ask broad questions about whether the applicant has ever been arrested or cited, and people with juvenile records still have to answer this question in the affirmative, even though the records are confidential, and even if they are sealed.
 - Certain juvenile information gets entered into the Department of Justice (DOJ) database pursuant to provisions of the Welfare & Institutions Code (e.g. Cal. Welf. & Inst. Code § 602.5) that require the sharing of certain information with DOJ. Any information shared with DOJ may come up in the youth’s background check that they are required to perform when they apply for any kind of immigration status.

Hearings in juvenile court are generally closed to the public. Information about juvenile court hearings is also generally not to be publicized, meaning ICE should not typically know about, or be able to attend, juvenile court hearings. A few important exceptions are set out in Cal. Welf. & Inst. Code § 676 that come up in cases involving more serious offenses.

What does SB 54 (California’s “Statewide Sanctuary” law) say about the limits of local law enforcement cooperation with immigration authorities regarding youth?

Although noncitizen youth are already well protected under California’s confidentiality laws, SB 54 makes absolutely clear that law enforcement agencies (including youth justice officials) cannot detain youth for ICE by responding to an ICE hold⁶ or otherwise provide assistance to ICE. In addition, they cannot expend any resources, including money or personnel, on inquiring into a youth’s immigration status, cannot share information with ICE, and cannot act as ICE agents. Although there are criminal exceptions to SB 54 that allow ICE notification in certain circumstances, the only time these could arguably apply to juvenile delinquency adjudications is with respect to certain serious offenses committed when youth are 16 or older (as specified in Penal Code Section 667(d)(3) and Welf. & Inst. Code Section 707(b)). However, because of the confidentiality protections of the Welfare & Institutions Code, it is the ILRC’s position that law enforcement agencies cannot lawfully share information with ICE even in these circumstances, unless they first obtain juvenile court permission, as discussed above.

For further information about California’s confidentiality laws and how they impact immigrant youth, see ILRC, *Confidentiality of Juvenile Records in California: Guidance for Immigration Practitioners in Light of California’s New Confidentiality Law* (Apr. 2016), <https://www.ilrc.org/confidentiality-juvenile-records-california-guidance-immigration-practitioners-light-california’s>.

⁵ Although there are some exceptions to confidentiality set out in Welfare & Institutions Code Section 676 when youth are adjudicated for specific offenses, these only make the youth’s name “not confidential” and make certain documents available for public inspection not able to be disseminated. In order to refer a child to ICE, youth justice officials would also necessarily have to share additional information about the youth, such as immigration status, release date, location, country of origin, or immigration history, which Section 676 does not permit, and Section 831 prevents.

⁶ An ICE hold is a request to the agency holding an individual to notify immigration authorities of his or her release in order to facilitate transfer to ICE for deportation, based on information that the arrestee was born outside of the United States.