NEW CALIFORNIA LAW AB 899[1] STRENGTHENS CONFIDENTIALITY PROTECTIONS FOR JUVENILE COURT-INVOLVED YOUTH

PROTECTS IMMIGRANT YOUTH FROM ICE DETECTION & DEPORTATION

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What is AB 899?

AB 899 is a new law that clarifies that California law does not permit the automatic sharing of confidential information from juvenile court proceedings with any federal official, including immigration officials. Specifically, it makes clear that it is unlawful for local and state entities to share information with immigration officials, unless immigration officials file a petition in court requesting disclosure of the minor's information and the court determines that sharing the information is appropriate, taking into account the best interests of the minor. The law took effect January 1, 2016.

Who does AB 899 protect?

AB 899 protects all youth regardless of their immigration status by safeguarding their juvenile records from unauthorized disclosure to federal officials. It protects immigrant youth in particular because it prohibits the automatic sharing of their information with immigration authorities that may result in deportation.

What problem does AB 899 address?

California has long had juvenile confidentiality laws that protect juvenile information and files arising out of dependency and delinquency proceedings from being shared without a court order. Under pre-existing California law, only certain individuals and agencies are permitted to have automatic access to this information. While California law never exempted federal officials from having to petition the court to obtain juvenile case information and files, many local counties disagreed, citing that there was no explicit statement in the law that federal officials had to follow this process. Consequently, some local agencies were automatically sharing information with federal immigration officials without following state law. This not only undermined immigrant youth rights under state law, but also put these youth at serious risk of deportation with many being deported. The information shared by state and local agencies was frequently used to extend their local detention for immigration officials, initiate deportation proceedings against youth, justify high-security immigration detention, and negatively affect their chances at success in fighting deportation.

What does AB 899 do?

AB 899 makes clear that under pre-existing California law, Welfare & Institutions Code Section 827 protects juvenile information and files arising out of dependency and delinquency proceedings from being disclosed to federal officials, including immigration officials, without the juvenile court's permission.

As discussed above, California law has long made "juvenile case files" confidential. The juvenile case file is defined to cover "a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer."[2] The courts have interpreted the protections of Section 827 to apply broadly not only to the documents contained in juvenile records,

[1] Cal. Welf. & Inst. Code § 831.
[2] Cal. Welf. & Inst. Code § 827(e).

but also to the information contained in those documents.[3] AB 899 also defines juvenile information expansively to include not only the juvenile case file, but also information related to the juvenile, including name, date or place of birth, and immigration status.[4] Only certain individuals and agencies – such as court personnel, the district attorney, the minor and minor's parents or guardians, and the attorneys for the parties – are permitted to have automatic access to information and files regarding juveniles.[5] Everyone else must petition the juvenile court to request access to the juvenile court file under Section 827(a)(1)(P). This petitioning procedure is stringent and requires filing a petition, providing notice to the minor and the minor's family (among others), and finally allowing the juvenile court to determine whether "the need for disclosure outweighs the policy considerations favoring confidentiality."[6] With AB 899, it is now beyond dispute that immigration officials must follow this petitioning process in order to get access to juvenile files. Pre-existing law and AB 899 also make clear that documents and information from the juvenile case file cannot be disseminated to anyone other than the persons who have automatic access under Section 827(a)(1), and that these documents cannot be attached to any other documents without the prior approval of the presiding judge of the juvenile court.[7] In practice, this means that documents and information from the juvenile case file cannot be shared with immigration officials without an order from the juvenile court permitting such sharing.

How does AB 899 affect the ability of local law enforcement agencies to detain youth for immigration officials?

A number of limitations have been placed on the ability of local law enforcement officials to hold immigrants for immigration authorities over the last few years preceding the enactment of AB 899. Most recently, holding immigrants for immigration authorities has been found to be unconstitutional.[8] Even before ICE holds were found to be unconstitutional, the California TRUST Act[9] limited the set of circumstances in which local law enforcement could respond to immigration hold requests.[10] The TRUST Act deals with when local law enforcement may *detain* a youth for immigration authorities, while AB 899 addresses when local officials may s*hare information* from the juvenile court file with immigration authorities. Although local law enforcement can no longer legally detain youth for ICE, AB 899 should still minimize the number of cases in which immigration officials are even alerted to youth's undocumented status, which can lead to arrest and other immigration requests including for immigration holds.

The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people.

[3] *See, e.g. T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780 ("section 827 reposes in the juvenile court control of juvenile records and requires the permission of the court before any information about juveniles is disclosed to third parties by any law enforcement official").
[4] Cal. Welf. & Inst. Code § 831(e).
[5] *See* Cal. Welf. & Inst. Code § 827(a)(1).
[6] Cal. R. Ct. 5.552(e).
[7] *See* Cal. Welf. & Inst. Code § 831(c); Cal. Welf. & Inst. Code § 827(a)(4).
[8] *See, e.g. Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014).
[9] Cal. Gov. Code §§ 7282, 7282.5.
[10] 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 after the person is eligible for release from criminal custody in order to facilitate his or her deportation. Pursuant to the TRUST Act, local law enforcement may respond to an immigration hold for juveniles who are in the juvenile justice system only in certain limited 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.