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Texas House Bill 9 (2011)

Below please find an analysis of select provisions of SB 9. The analysis focuses on the Secure Communities program.

Section 1 of SB 9

Adds a new Chapter to the Code of Criminal Procedure by providing that a law enforcement agency that has **custody** of a person **shall** verify the immigration status of the person by the Secure Communities Program.

Concerns with Section 1 of SB 9

Unnecessary Measure: This section is not necessary. As of September 2010, Secure Communities has been activated in all counties in Texas. Thus, this section is redundant and completely superfluous.

Term "Custody" Not Clear: It is not clear what the term "custody" means. Secure Communities is used only when individuals are arrested and brought into the police station for booking purposes. Secure Communities is not operational for individuals that are stopped on the street and issued a citation.

False Assertion about Targets of Program: While Immigration and Customs Enforcement (ICE) touts the program as one that removes dangerous criminals from the community, thus far, the majority of the individuals removed have been convicted of non-violent crimes including misdemeanor and traffic offenses. Data from October 2008 through June 2010 show that the vast majority (79 percent) of those deported under the program were either non-criminal or arrested and convicted for non-serious crimes. Indeed, only 20 percent of the individuals deported under the program were charged or convicted of serious criminal offenses.

Harm to Community Safety: Secure Communities can significantly undermine the building of safe, inclusive communities. This program is often viewed by immigrants as a working partnership between local law enforcement agencies and ICE. This type of partnership often destroys the trust needed for effective community policing and instills fear among members of the immigrant communities. As our law enforcement officers know well, without the trust and cooperation of immigrant witnesses and victims of crime, local law enforcement's ability to identify, arrest and prosecute criminals is seriously jeopardized and makes the entire community less safe. Additionally, Secure Communities marginalizes an already vulnerable population by making immigrants feel more isolated and excluded. Therefore, they are more susceptible to exploitation and to becoming victims of crime.

Civil Rights Violations: Civil rights and community organizations have reported on the increasing number of racial and ethnic profiling incidents as more and more state and local law enforcement agencies take on immigration responsibilities. As noted in a New York Times editorial on November 26, 2009, "Having brown skin, speaking Spanish, seeming nervous in the presence of flashing police lights — none of those things say anything about whether you are here illegally or not, are deportable or not. But any one of them can be enough to get you pulled over in jurisdictions across the country." Indeed, reports by advocates as well as the Office of the Inspector General at Department of Homeland Security have shown that the dearth of training in a complex area of law, coupled with the lack of consistent and quality supervision, has resulted in legal mistakes, costly litigation, and the deprivation of rights in the implementation of programs like Secure Communities.

Additionally, CLINIC is concerned that law enforcement agencies may arrest individuals for low level offenses just so that the individuals will have their immigration status screened through the criminal justice system and then be placed in removal proceedings.

Diverts Scarce Resources: The Secure Communities Program can divert scarce law enforcement resources from more effective safety and crime prevention methods that promote the common good for everyone in the community. Additionally, the costs to communities not only include the cost of the detention and personnel but the other social costs that ensue when primary caretakers and breadwinners are incarcerated and charged with civil immigration violations.

Lack of Transparency in Secure Communities Program: Additionally, many advocates believe that ICE has not been transparent about how the program operates; has not given notice to the local communities that the program is being deployed; and has not been clear about whether or not local communities can decline or limit their participation in the Secure Communities Program. As an example, since the inception of the program, advocates have been led to believe that the program was voluntary and that jurisdictions could opt-out of the program. This perception was reinforced by an August 17, 2010, ICE memo entitled, "Setting the Record Straight." In this memo, ICE set forth its policy on how a jurisdiction can opt-out of the program. This process was later confirmed in a September 7, 2010, letter from DHS Secretary Janet Napolitano to Congress. Subsequently, a senior ICE official told a Washington Post reporter that jurisdictions could not opt-out of Secure Communities. At a press conference on October 6, 2010, DHS Secretary Janet Napolitano reported that participation in Secure Communities was not voluntary. Shortly thereafter, the Director of ICE, John Morton, told the Associated Press that he will meet with individual localities to discuss the issue of opting-out.

Cost of Secure Communities Program: Along with a lack of transparency, advocates are concerned about the cost of the Secure Communities Program. They acknowledge that it simply may not be feasible or sensible for all state and county governments to implement the program. Integrating federal, state and local databases is complex and the capabilities of local jurisdictions vary. Further concerns exist as to the accuracy of the databases. As an example, data shows that 6% of "hits" or matches from October 27, 2008 through December 31, 2009, were for US

citizens. Moreover, advocates note that ICE has never issued regulations regarding operation of Secure Communities.

Criminalization of Immigration: Programs such as Secure Communities tend to “criminalize” the entire issue of migration. Once a person is caught up in the criminal justice system, ICE often labels him/her a “criminal alien” regardless of whether the person is convicted of a crime and regardless of the type of crime. To date, ICE has failed to provide a legal or official definition of “criminal alien.” The term can refer to any non-citizen apprehended by ICE through the criminal justice system. Additionally, ICE uses the term “criminal alien” to promote and defend its programs and to justify the need for more funds. However, the expansive use of this term misinforms the public and Congress about where and on whom ICE expends its resources.

Also, programs like Secure Communities perpetuate the perception that immigrants are likely to commit crimes. This is a false perception. The review of crime statistics shows that immigrants are less likely to commit crimes than the native-born population. Also, new research suggests that growth in immigration may be responsible for a decrease in crime in big cities during the 1990’s and early 2000’s.

Section 3 of SB 9

This section provides that the department will establish an automatic license plate reader pilot program. An automatic license plate reader is a system that reads and records license plate numbers taken from digital photographs. According to SB 9, the readers may be installed in law enforcement motor vehicles used by the department for law enforcement purposes.

Concerns with Section 3 of SB 9

In general, CLINIC is not familiar with automatic license plate readers systems. However, they seem to operate a lot like GPS systems. This section raises three significant concerns. First, it would appear that this program raises major privacy rights issues. Second, it would appear that this program raises civil rights issues and could possibly lead to costly lawsuits. Third, it would appear that this program could prove costly to implement as it involves the purchase and installation of the readers and the training of officers in the operation of the readers. Indeed, this program seems invasive and unnecessary and legislatures backing this bill should have to articulate a genuine need for the license plate readers.

Driver's License Sections of SB 9 and General Concerns

Numerous sections of this bill contain requirements involving driver's licenses. In general, many of these requirements seem burdensome and unnecessary because individuals already have to show that they are authorized before getting a license. It also appears that department employees are being turned into federal immigration agents.

This document was prepared in May 2011 by Karen Herrling. For questions, please contact CLINIC's State & Local Advocacy Attorney, Karen Siciliano Lucas, at klucas@cliniclegal.org or (202) 635-7410.

