



THREE NEW LAWS WILL HELP CALIFORNIA IMMIGRANTS¹

Bills to Provide a Much-Needed Reprieve for Immigrants with Criminal Convictions

September 29, 2016

Yesterday Governor Brown signed three bills into law that will help California immigrants who have had contact with the criminal justice system. The laws will go into effect on January 1, 2017. ILRC was a co-sponsor and drafter of each of these laws. The following is a brief summary of each law. We will distribute practice advisories in the near future. Many thanks to the legislators, organizations, and immigrants who worked so hard to get these new protections.

AB 813 Provides a New Vehicle to Vacate a California Conviction. See text at

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB813

AB 813 creates California Penal Code § 1473.3, authorizing people who are no longer in criminal custody to file a motion to vacate their criminal convictions. A § 1473.3 motion must allege one of the following claims:

- 1) The conviction or sentence is legally invalid due to the defendant's inability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, *or*
- 2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence.

Claims alleging "failure to understand the immigration consequences of a conviction" must be filed with "reasonable diligence" after the issuance of a Notice to Appear or a final removal order, whichever is later. Claims alleging innocence must be filed without "undue delay" from the date the party discovered or could have discovered the new evidence of innocence. All motions are entitled to a hearing

This bill fills a critical void in California criminal procedure, and brings California in line with the great majority of other states, by ensuring that people can challenge unlawful and illegal convictions and end the lifelong devastation that these convictions can cause.

¹ 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. For the latest version of this practice advisory, please visit www.ilrc.org. For questions regarding the content of this advisory, please contact kbrady@ilrc.org or rcahn@ilrc.org.

Save the Date – AB 813 Webinar: On December 6, 2016, ILRC will present a webinar on new AB 813 and other means to vacate a California conviction, with speakers Rose Cahn, Michael Mehr, and Kathy Brady. To register go to <https://www.ilrc.org/webinars/how-vacate-california-criminal-conviction>

SB 1242 Makes the 364-Day Misdemeanor Law Retroactive. See text at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1242

California Penal Code § 18.5, effective January 1, 2015, changed the maximum possible punishment for a California misdemeanor from 365 days to 364 days. This law was passed to stop California immigrants from being penalized due to a disparity between state and federal law. The new definition applied prospectively, to misdemeanor convictions from January 1, 2015 forward – but it provided no help to persons convicted of a California misdemeanor before that date.

SB 1242 amends Penal Code § 18.5 to apply retroactively, in two ways. First, every California misdemeanor conviction, regardless of date, that had a potential sentence of 365 days now has a potential 364 days. This change automatically will apply to all misdemeanors as of January 1, 2017; an individual will not need to take any action in criminal court to correct her record. Second, the new law provides that persons who before January 1, 2015 actually were sentenced to a year in county jail for a misdemeanor can apply in criminal court to have their sentence reduced by one day, to 364 days.

The one-day change will save California families by preventing needless deportation based on a long-ago misdemeanor conviction. A single conviction of an offense that is a "crime involving moral turpitude" (e.g., theft) can have adverse immigration consequences if it has a *potential* sentence of 365 days, even if no sentence was imposed. As of January 1, 2017, no California misdemeanor will have this effect. In addition, some California misdemeanors qualify as so-called "aggravated felonies" under immigration law if a sentence of a year was *imposed*. Individuals can ask a criminal court judge to lower their imposed sentence by one day, in order to avoid that consequence.

SB 2792 (TRUTH Act) Protects the Rights of Immigrants in California Jails. See text at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2792

The TRUTH Act helps to provide due process for immigrants held in local jails. It requires that if Immigration and Customs Enforcement (ICE) places a detainer (any of various requests by ICE to transfer custody or receive notice of release) on someone in a California jail, the jailor, called the "custodial law enforcement agency," also must provide the person with a copy of the detainer. Currently, many immigrants in custody are not notified that a detainer request has been placed, making it difficult for their defense counsel to effectively protect their rights. In addition, if a jailor does notify ICE of an inmate's release date, they must provide the same notification in writing to the immigrant and their attorney or designee.

Significantly, the TRUTH Act provides detainees with procedural rights in ICE interviews. It requires law enforcement agencies to give inmates whom ICE wants to interview "a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present." This will help jailed immigrants to protect themselves from coercion and intimidation by ICE agents.

In addition, all records relating to ICE access to jail information will now be public records under the California Public Records Act, which acts as an accountability measure to enforce the other protections of the TRUTH Act. It also ensures that California communities have oversight over their local law enforcement agency's relations with ICE. And starting in 2018, the TRUTH Act requires annual public review and input on any local dealings with ICE.