



January 17, 2017

The Honorable Kevin de León  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

**Re: SB 54 – SUPPORT with Suggestions**

Dear Senate President pro Tempore de León:

On behalf of the Electronic Frontier Foundation (EFF), I write to thank you for your leadership on SB 54. EFF strongly supports this important bill. Now more than ever, the State of California must protect immigrants and other vulnerable populations from database abuse by the incoming federal administration.

EFF respectfully suggests the following improvements to the bill. We hope we can discuss them with you.

**1. “Creating lists” in addition to “requiring registration”**

The bill bars state, local, and school police from participating in federal programs “requiring registration” based on protected classifications. *See* 885.6(a)(2) & (3). No doubt the federal government might try to create a Muslim registry by requiring Muslims to register, and this bill would block state and local police from participating. But the federal government might also try to create a list of Muslims by mining databases, with no new action required of listed Muslims themselves.

To ensure that the federal government cannot commandeer California police to carry out such a program, EFF respectfully suggests amending the bill to add “or creating lists” after “requiring registration” in these two sections.

**2. Private database vendors for law enforcement**

The bill forbids *police* from sharing their databases with the federal government for immigration enforcement or requiring registries. *See* 885.6(3). But it does not explicitly apply to third-party private vendors who hold data for customer police agencies. If the federal government finds itself unable to obtain information directly from a police agency, it may try to obtain that information indirectly from a police agency’s vendor.

EFF respectfully suggests the addition of language that applies to such private vendors. One approach would be to amend the database section of the bill, so that it states that police agencies cannot “[make] agency or department databases, including any databases maintained by private vendors contracting with the agency, available” for immigration enforcement or requiring registration. *See* 885.6(2) (proposed new language underlined).

### 3. Third-party contracted databases with state agencies

The bill commands “state agencies” to review their confidentiality policies and identify ways to minimize the data they collect. However, the bill does not contemplate the relationship between state agencies and private third parties as contractors for state government. For example, California mandates that college students obtain health insurance but has several private contracts with insurance providers off campus that requires data sharing of sensitive information. In addition, several private technology vendors partner with school campuses to provide access to online services and hardware and obtain personally identifiable information for commercial purposes.

EFF recommends that Section 885.8(b) be expanded to task the Office of the California Attorney General with publishing model contractual provisions for all state agencies that partner with private vendors for data collection purposes. The bill should require these models to include explicit restrictions on private vendors collecting sensitive information that can be used for immigration enforcement purposes.

### 4. Additional data flows

EFF is concerned that the bill as written might not address some kinds of data flows from state and local police to federal immigration and registration programs:

- When police officers arrest a person, police generally transmit their finger prints to the FBI for identification purposes. Then the FBI generally transfers the prints to ICE for immigration enforcement purposes.
- Many federal agencies (including ICE) have access to many state and local criminal justice data systems (including CalGang and the state’s six fusion centers). The federal agencies might assert at the time they harvest this information that they have a purpose other than immigration enforcement. They might later re-purpose the information for immigration enforcement.

EFF recommends that SB 54 be expanded to task the Office of the California Attorney General with studying the matter, with input from the public, and recommending statutory solutions to prevent such data flows.

### 5. State agency review of confidentiality policies: transparency

The bill would require all state agencies to review their confidentiality policies, ensure they only collect from individuals information that is “necessary” to perform agency duties, ensure such information is not used or disclosed “for any other purpose,” and make any necessary policy changes to achieve these goals. *See* 885.8(a).

This review and revision process should be transparent. The agencies should be required to publish a report describing their review, and attach to their report all revised policies. Also, the agencies should be required to notify the public of the existing policies; to

invite public comment on how to avoid collecting, using, or disclosing information from individuals in a manner not necessary to perform agency duties; and to incorporate any public comments into the review and revision process.

## **6. State agency review of confidentiality policies: deadline**

The bill would require state agencies to complete this review and revision process “as expeditiously as possible.” *See* 885.8(a). EFF respectfully suggests a more concrete deadline, such as “six months.”

## **7. Enforcement**

The bill would be more likely to achieve its salutary objectives with an enforcement mechanism. The best enforcement mechanism would be a private right of action to enforce the new law, with the remedy of a judicial declaration and injunction, plus reasonable attorney fees for successful plaintiffs.

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Again, EFF strongly supports SB 54, and thanks you for your leadership of this important bill. EFF also respectfully requests the improvements suggested above. If you have any questions or comments, please do not hesitate to call me at (415) 436-9333, extension 176, or to email me at [adam@eff.org](mailto:adam@eff.org).

Sincerely,

Adam Schwartz  
Senior Staff Attorney

cc: Angela Chan, Asian Americans Advancing Justice  
[angelac@advancingjustice-alc.org](mailto:angelac@advancingjustice-alc.org))  
Jessica Karp Bansal, National Day Laborer Organizing Network  
[jbansal@ndlon.org](mailto:jbansal@ndlon.org)