



Council Agenda Report

From: Robert Burton, Chief of Police

Subject: Senate Bill 54 – Sanctuary State Legislation and Implications for Paso Robles

Date: April 17, 2018

Facts

1. On April 3, 2018 the City Council directed staff to prepare a report on Senate Bill 54 (SB 54). The City Council was specifically interested in understanding SB 54 and its implications for the City of Paso Robles.
2. In 2017, Governor Brown signed into law several legislative bills designed to protect “nonresidents” from federal immigration laws and regulations, including Senate Bill 54 (“SB 54”), called the “California Values Act.” Those laws became effective January 1, 2018.
3. SB 54 generally prohibits California law enforcement agencies from using agency money, personnel, or resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes. For example, local law enforcement agencies may not (a) inquire into an individual’s immigration status, (b) detain an individual on the basis of an ICE or US Customs and Border Protection hold request, or (c) provide information regarding a person’s release date from local or State custody. A limited exception allows local law enforcement to provide information about an individual’s release date, or to transfer an individual to immigration authorities if the individual has been convicted of an enumerated serious or violent felony.
4. SB 54 has not resulted in any significant changes for the Paso Robles Police Department (PRPD), nor are any anticipated in the future. The main impact of SB 54 has to do with limiting the use of local law enforcement resources (staff time mainly) for Immigration and Customs Enforcement (ICE) operations. With SB 54, PRPD now has to be careful not to use PRPD staff time or resources to assist in these-type of federal immigration enforcement matters. When conducting its work, ICE generally relies upon cooperation or notification from local law enforcement to the extent practicable and allowed by state and local laws and practices. PRPD is continuing to operate consistent with this expectation. Refusing to provide such notice or cooperation limits, but does not prevent, the federal government’s ability to enforce federal immigration laws.
5. In order to reach a balance between ensuring the confidence of those the Police Department serves, while at the same time addressing the presence of serious offenders, department members consider the totality of circumstances of each case when deciding to arrest and book an individual into San Luis Obispo County Jail. When an individual is booked into San Luis Obispo County Jail, the department does not need to notify ICE since the arrestee information is already automatically sent to ICE. For this reason, the department’s procedures have not had to change when we book serious offenders into jail, those who have committed crimes such as criminal street gang offenses, aggravated or violent felonies, significant misdemeanors, or violators who otherwise pose a threat to public safety.

6. Every PRPD officer takes the oath of office, requiring them to support and defend the United States Constitution and the California Constitution. However, neither the oath nor any law requires our officers to enforce every federal and state law, including immigration law. That would impose requirements that would be impossible to meet.
7. The City and PRPD are not violating federal law by following SB 54. Nothing in SB 54 prevents the federal government from enforcing federal law. SB 54 makes it clear that the PRPD can provide information to immigration about individuals if those persons have been convicted of any number of serious crimes or if there is a subpoena or warrant.
8. In March 2018, the federal government sued the State of California, Governor Brown, and Attorney General Becerra over the sanctuary state laws. The lawsuit seeks a declaration that the laws, including SB 54, conflict with federal law, and seeks an injunction enjoining the State's enforcement of the laws.
9. Since the lawsuit was filed, a number of cities across the State have weighed in on SB 54 and the federal lawsuit. The City of Los Alamitos was among the first to enact an ordinance taking a position against SB 54.
10. Following Los Alamitos' action, additional public agencies including the County of Orange and the Cities of Aliso Viejo, Yorba Linda, Huntington Beach, and Mission Viejo passed resolutions or have taken other action expressing their opposition to SB 54 and/or supporting the federal government's lawsuit. Some cities, such as the City of Santa Ana, have expressed their support for SB 54 and the State of California.
11. The federal lawsuit against the State, and the actions of the cities who are choosing to ignore SB 54, are likely to lead to a number of court cases testing the constitutionality of those actions.

Options

1. Take no action.
2. Receive and file, directing the City Manager and City Attorney to bring this issue back to the Council if and when conditions warrant.
3. Provide alternative direction.

Analysis and Conclusions

This report provides the City Council the opportunity to discuss taking a position on SB 54. The City of Paso Robles has several options regarding SB 54, including the option to take or not to take a public position on the laws. Although some of the deadlines in the Federal government's lawsuit have passed, there will be future opportunities to file a brief in support of either the Federal government or the State in the pending litigation, should the Council decide to do so.

If the City wishes to publicly oppose the State laws, the City Attorney advises that attempting to opt out of or exempt the City from State law could pose significant legal risks for the City. Instead of expressly "opting out" or "exempting" the City from State law, the City could make the same point by adopting a strongly worded resolution opposing or criticizing the State law. If this is the Council's desire, staff would return with such a resolution at a future date.

Fiscal Impact

There is no cost to receiving and filing now, and bringing the issue back to Council if conditions warrant.

There are relatively limited costs to directing the City Attorney to draft a resolution criticizing SB 54.

There would be significant legal, operational, and community costs if the City Council decided to opt out of SB 54 and participate in litigation against SB 54. Opting out would reduce the level of trust between the PRPD and our residents, therefore making the task of apprehending suspected criminals more difficult and expensive.

The expense of litigation would vary depending on the scope of the City's involvement. Drafting an amicus brief would likely range from \$2,500-5,000, while becoming an active party in either the federal or Huntington Beach litigation would likely exceed \$10,000, with the budget depending on whether Paso Robles would have to participate in discovery or other more extensive proceedings. Even if such litigation were successful, there is little chance that the City could recover its legal expenses.

Recommendation [Option 2]

1. Receive and file this report, affirming the City's current practice of making personal and professional commitments to equal enforcement of the law and equal service to the public. Current practice also permits the exchange of law enforcement information that would comply with both federal and state law, and does not expose the City to the potential expense of litigation.
2. Direct the City Manager and City Attorney to return to the Council at any time conditions warrant, or at some pre-determined interval, as directed by Council.

Attachments

1. SB 54 text and other background information

EXHIBIT A

Senate Bill No. 54

CHAPTER 495

An act to amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (commencing with Section 7284) to Division 7 of Title 1 of, the Government Code, and to repeal Section 11369 of the Health and Safety Code, relating to law enforcement.

[Approved by Governor October 5, 2017. Filed with
Secretary of State October 5, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 54, De León. Law enforcement: sharing data.

Existing law provides that when there is reason to believe that a person arrested for a violation of specified controlled substance provisions may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

This bill would repeal those provisions.

Existing law provides that whenever an individual who is a victim of or witness to a hate crime, or who otherwise can give evidence in a hate crime investigation, is not charged with or convicted of committing any crime under state law, a peace officer may not detain the individual exclusively for any actual or suspected immigration violation or report or turn the individual over to federal immigration authorities.

This bill would, among other things and subject to exceptions, prohibit state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified, and would, subject to exceptions, proscribe other activities or conduct in connection with immigration enforcement by law enforcement agencies. The bill would apply those provisions to the circumstances in which a law enforcement official has discretion to cooperate with immigration authorities. The bill would require, by October 1, 2018, the Attorney General, in consultation with the appropriate stakeholders, to publish model policies limiting assistance with immigration enforcement to the fullest extent possible for use by public schools, public libraries, health facilities operated by the state or a political subdivision of the state, and courthouses, among others. The bill would require, among others, all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses to implement the model policy, or an equivalent policy. The bill would state that, among others, all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy. The bill would require

that a law enforcement agency that chooses to participate in a joint law enforcement task force, as defined, submit a report annually pertaining to task force operations to the Department of Justice, as specified. The bill would require the Attorney General, by March 1, 2019, and annually thereafter, to report on the types and frequency of joint law enforcement task forces, and other information, as specified, and to post those reports on the Attorney General's Internet Web site. The bill would require law enforcement agencies to report to the department annually regarding transfers of persons to immigration authorities. The bill would require the Attorney General to publish guidance, audit criteria, and training recommendations regarding state and local law enforcement databases, for purposes of limiting the availability of information for immigration enforcement, as specified. The bill would require the Department of Corrections and Rehabilitation to provide a specified written consent form in advance of any interview between a person in department custody and the United States Immigration and Customs Enforcement regarding civil immigration violations.

This bill would state findings and declarations of the Legislature relating to these provisions.

By imposing additional duties on public schools and local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 7282 of the Government Code is amended to read:

7282. For purposes of this chapter, the following terms have the following meanings:

(a) "Conviction" shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.

(b) "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

(1) All criminal charges against the individual have been dropped or dismissed.

(2) The individual has been acquitted of all criminal charges filed against him or her.

(3) The individual has served all the time required for his or her sentence.

(4) The individual has posted a bond.

(5) The individual is otherwise eligible for release under state or local law, or local policy.

(c) “Hold request,” “notification request,” and “transfer request” have the same meanings as provided in Section 7283. Hold, notification, and transfer requests include requests issued by the United States Immigration and Customs Enforcement or the United States Customs and Border Protection as well as any other immigration authorities.

(d) “Law enforcement official” means any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of individuals in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities.

(e) “Local agency” means any city, county, city and county, special district, or other political subdivision of the state.

(f) “Serious felony” means any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.

(g) “Violent felony” means any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

SEC. 2. Section 7282.5 of the Government Code is amended to read:

7282.5. (a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the following circumstances:

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d,

266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(R) Possession or use of a firearm in the commission of an offense.

(S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

(6) In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.

(b) In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall additionally have discretion to cooperate with immigration

officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6.

SEC. 3. Chapter 17.25 (commencing with Section 7284) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.25. COOPERATION WITH IMMIGRATION AUTHORITIES

7284. This chapter shall be known, and may be cited, as the California Values Act.

7284.2. The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

(d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.

(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See *Sanchez Ochoa v. Campbell, et al.* (E.D. Wash. 2017) 2017 WL 3476777; *Trujillo Santoya v. United States, et al.* (W.D. Tex. 2017) 2017 WL 2896021; *Moreno v. Napolitano* (N.D. Ill. 2016) 213 F. Supp. 3d 999; *Morales v. Chadbourne* (1st Cir. 2015) 793 F.3d 208; *Miranda-Olivares v. Clackamas County* (D. Or. 2014) 2014 WL 1414305; *Galarza v. Szalczyk* (3d Cir. 2014) 745 F.3d 634.

(f) This chapter seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments.

(g) It is the intent of the Legislature that this chapter shall not be construed as providing, expanding, or ratifying any legal authority for any state or local law enforcement agency to participate in immigration enforcement.

7284.4. For purposes of this chapter, the following terms have the following meanings:

(a) "California law enforcement agency" means a state or local law enforcement agency, including school police or security departments.

“California law enforcement agency” does not include the Department of Corrections and Rehabilitation.

(b) “Civil immigration warrant” means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

(c) “Immigration authority” means any federal, state, or local officer, employee, or person performing immigration enforcement functions.

(d) “Health facility” includes health facilities as defined in Section 1250 of the Health and Safety Code, clinics as defined in Sections 1200 and 1200.1 of the Health and Safety Code, and substance abuse treatment facilities.

(e) “Hold request,” “notification request,” “transfer request,” and “local law enforcement agency” have the same meaning as provided in Section 7283. Hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other immigration authorities.

(f) “Immigration enforcement” includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.

(g) “Joint law enforcement task force” means at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

(h) “Judicial probable cause determination” means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.

(i) “Judicial warrant” means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

(j) “Public schools” means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the California State University, and the California Community Colleges.

(k) “School police and security departments” includes police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts.

7284.6. (a) California law enforcement agencies shall not:

(1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(A) Inquiring into an individual’s immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

(D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

(E) Making or intentionally participating in arrests based on civil immigration warrants.

(F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

(G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

(2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

(3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

(4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Section 7282.5.

(5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.

(6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8 (commencing with Section 7310).

(b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).

(2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through

the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

(3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:

(A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.

(C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.

(4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).

(c) (1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The law enforcement agency shall report the following information, if known, for each task force of which it is a member:

(A) The purpose of the task force.

(B) The federal, state, and local law enforcement agencies involved.

(C) The total number of arrests made during the reporting period.

(D) The number of people arrested for immigration enforcement purposes.

(2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer, pursuant to paragraph (4) of subdivision (a).

(3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this

section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

7284.8. (a) The Attorney General, by October 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, the Agricultural Labor Relations Board, the Division of Workers Compensation, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement the model policy, or an equivalent policy. The Agricultural Labor Relations Board, the Division of Workers' Compensation, the Division of Labor Standards Enforcement, shelters, libraries, and all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy.

(b) For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the Attorney General shall, by October 1, 2018, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that those databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity

for the purpose of immigration enforcement. All state and local law enforcement agencies are encouraged to adopt necessary changes to database governance policies consistent with that guidance.

(c) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), the Department of Justice may implement, interpret, or make specific this chapter without taking any regulatory action.

7284.10. (a) The Department of Corrections and Rehabilitation shall:

(1) In advance of any interview between the United States Immigration and Customs Enforcement (ICE) and an individual in department custody regarding civil immigration violations, provide the individual with 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. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

(2) Upon receiving any ICE hold, notification, or transfer request, provide a copy of the request to the individual and inform him or her whether the department intends to comply with the request.

(b) The Department of Corrections and Rehabilitation shall not:

(1) Restrict access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

(2) Consider citizenship and immigration status as a factor in determining a person's custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

7284.12. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. Section 11369 of the Health and Safety Code is repealed.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXHIBIT B



OFFICE OF THE GOVERNOR

OCT 05 2017

To the Members of the California State Senate:

I am signing Senate Bill 54, the California Values Act.

This bill states that local authorities will not ask about immigration status during routine interactions. It also bans unconstitutional detainer requests and prohibits the commandeering of local officials to do the work of immigration agents. The bill further directs our Attorney General to promulgate model policies for local and state health, education, labor and judiciary officials to follow when they deal with immigration matters.

In enshrining these new protections, it is important to note what the bill does not do. This bill does not prevent or prohibit Immigration and Customs Enforcement or the Department of Homeland Security from doing their own work in any way. They are free to use their own considerable resources to enforce federal immigration law in California. Moreover, the bill does not prohibit sheriffs from granting immigration authorities access to California jails to conduct routine interviews, nor does it prevent cooperation in deportation proceedings for anyone in state prison or for those in local jails for any of the hundreds of serious offenses listed in the TRUST Act.

These are uncertain times for undocumented Californians and their families, and this bill strikes a balance that will protect public safety, while bringing a measure of comfort to those families who are now living in fear every day.

Sincerely,


Edmund G. Brown Jr.

EXHIBIT C

California Department of Justice
DIVISION OF LAW ENFORCEMENT
Kevin Gardner, Chief



INFORMATION BULLETIN

Subject:

Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act

No.

DLE-2018-01

Date:

3/28/2018

Contact for information:

Kevin Gardner, Chief
Division of Law Enforcement
(916) 210-6300

TO: Executives of State and Local Law Enforcement Agencies

This bulletin provides guidance to law enforcement agencies regarding Senate Bill 54, effective January 4, 2018 (Sen. Bill No. 54 (2017-2018 Reg. Sess.)). SB 54 makes significant changes to California's Transparency and Responsibility Using State Tools (TRUST) Act (Gov. Code, §§ 7282 and 7282.5), establishes California's Values Act (Gov. Code, §§ 7284, 7284.2, 7284.4, 7284.6, 7284.10, and 7284.12), and repeals Health and Safety Code section 11369. Together, these provisions define the parameters under which state and local law enforcement agencies may engage in immigration enforcement-related activities.

The Transparent Review of Unjust Transfers and Holds (TRUTH) Act, Government Code sections 7283, 7283.1, 7283.2, effective January 1, 2017, creates mandatory notice and procedural protections for individuals in the custody of local law enforcement agencies should federal immigration officers wish to contact them. This bulletin also provides guidance regarding local law enforcement agencies' obligations under the TRUTH Act, including similar provisions within SB 54 that apply to the California Department of Corrections and Rehabilitation (CDCR).

This bulletin replaces the previous law enforcement bulletins entitled "Responsibilities of Local Law Enforcement Agencies under Secure Communities and the TRUST Act," Information Bulletin No. 14-01 (June 25, 2014) and "Responsibilities of Local Law Enforcement Agencies under Secure Communities," Information Bulletin No. 2012-DLE-01 (Dec. 4, 2012). This bulletin does not provide guidance on the reporting obligations of law enforcement agencies to the California Department of Justice with respect to the activities of joint law enforcement task forces and transfers of individuals to immigration authorities; these reporting requirements are set forth in a separate information bulletin entitled California Values Act's Statistical Reporting Requirements (18-02-CJIS).

SUMMARY

I. Amendments to the TRUST Act

The TRUST Act previously described the circumstances under which a local California law enforcement agency could detain an individual past their scheduled release in response to a hold request from immigration authorities. As amended by SB 54, the TRUST Act no longer addresses detentions in response to hold requests because the Values Act prohibits such detentions. The TRUST Act, as amended by SB 54, now describes the circumstances under which a California law enforcement agency can respond to transfer and notification requests from immigration authorities.

II. Overview of the Values Act

In enacting the Values Act, the Legislature made clear in its findings that immigrants are valuable and essential members of the California community. The Legislature further determined that "a relationship of trust between

California's immigrant community and state and local agencies is central to the public safety of the people of California." (Gov. Code, § 7284.2). Thus, the core purpose of the Values Act is to ensure effective policing and to protect the safety, well-being, and constitutional rights of the people of California. (*Ibid.*)

The Values Act does the following:

1. Sets the parameters under which California state and local law enforcement agencies may engage in "immigration enforcement," as defined, and requires certain information about joint law enforcement task forces and transfers of individuals to immigration authorities to be reported to the California Department of Justice.
2. Requires the CDCR to provide individuals in its custody with information about their legal rights should federal immigration officers request to make contact with them, similar to the requirements of the TRUTH Act (Gov. Code, § 7283 et seq.), which applies to local law enforcement agencies.
3. Requires the Attorney General's Office to issue model policies, to be adopted by public schools, state or locally operated health facilities, courthouses and other enumerated state and local facilities, that limit assistance with immigration enforcement to the fullest extent possible consistent with federal and state law. The Attorney General's Office will further provide guidance to agencies regarding ways to protect privacy and limit the dissemination of information contained in their databases for immigration enforcement purposes, as permitted under federal and state law.

It should be noted that the Values Act defines many terms, some of which may seem familiar to law enforcement officers, but have special meaning within the context of this new law. For example, the Values Act defines "California law enforcement agency" as "a state or local law enforcement agency, including school police or security departments." (Gov. Code, § 7284.4, subd. (a).) This term, however, does not include the CDCR. (*Ibid.*) Therefore, the provisions of Government Code sections 7284.6 and 7284.8 do not apply to the CDCR.

Further, the Values Act defines "immigration enforcement" as "any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States." (Gov. Code, § 7284.4, subd. (f).) And, under the Values Act, a "judicial warrant" means "a warrant based upon probable cause for a violation of *federal criminal immigration* law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant." (Gov. Code, § 7284.4, subd. (i), emphasis added.) While this bulletin points out a few of the relevant definitions, individual agencies should review the law to ensure full understanding of all the key terms in the Values Act.

III. The Discretion of California Law Enforcement Agencies to Participate in Immigration-Related Activities is Limited By SB 54 in the Following Ways:

- 1. Prohibits use of resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including:**

- a. Inquiring into an individual's immigration status;¹
- b. Detain an individual in response to a hold request²;
- c. Provide personal information, as defined in Civil Code section 1798.3, including but not limited to home or work addresses, unless this information is "available to the public." For purposes of this prohibition, "personal information" means "any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual." (Civ. Code, § 1798.3, subd. (a).)

Although not expressly defined in the act, the phrase "available to the public" refers to information where a law enforcement agency has a practice or policy of making such information public, such as disclosing the information on its website or if it has a practice or policy of providing the information to individuals in response to specific requests. Law enforcement agencies should, in addition to ensuring compliance with the Values Act, take care to ensure that they comply with applicable state or federal privacy laws.

However, there is an important exception to this limitation on providing personal information: federal law (8 U.S.C. §§ 1373, 1644) prohibits restrictions on the exchange of information regarding a person's citizenship or immigration status, and all California law enforcement agencies should comply with these laws.

- d. Make or intentionally participate in arrests based on "civil immigration warrants," which means any warrant for a violation of federal civil immigration law and includes civil immigration warrants entered in the National Crime Information Center database; and
- e. Assist immigration authorities in immigration enforcement activities at the United States borders, as described in 8 U.S.C. § 1357(a)(3), or performing the functions of an immigration officer whether informally or formally, through an 8 U.S.C. § 1357(g) agreement or any other law, regulation or policy.

¹ This provision does not prohibit inquiries into an individual's immigration status to immigration authorities, or exchanging immigration status information with any other federal, state, or local government entity, pursuant to 8 U.S.C. §§ 1373 and 1644. (See Gov. Code, § 7284.6, subd. (e).)

² "Hold request" means a request by any immigration authority that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to an immigration authority. (Gov. Code, §§ 7283, subd. (b); 7284.4, subd. (e).)

"Notification request" means a request by any immigration authority that a local law enforcement agency inform an immigration authority of the release date and time in advance of the public of an individual in its custody. (Gov. Code, §§ 7283, subd. (f); 7284.4, subd. (e).)

"Transfer request" means a request by any immigration authority that a local law enforcement agency facilitate the transfer of an individual in its custody to an immigration authority. (Gov. Code, §§ 7283, subd. (g); 7284.4, subd. (e).)

Hold, notification, and transfer requests include requests issued by U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection as well as any other immigration authorities. (Gov. Code, § 7284.4, subd. (e).)

"Immigration authority" means any federal, state, or local officer, employee or person performing immigration enforcement functions. (Gov. Code, § 7284.4, subd. (c).)

2. California law enforcement agencies cannot honor transfer and notification requests or provide information regarding a person's release date except in certain circumstances:

California law enforcement agencies are never *required* to respond to transfer or notification requests -- under the Values Act they retain the discretion to decline these requests for any reason. (Gov. Code, § 7282.5, subd. (a).) Thus, law enforcement agencies may honor transfer and notification requests as specified in the Values Act as follows:

- a. **Transfer Requests:** Responding to transfer requests is permitted only if:
- i. The transfer is authorized by a judicial warrant, as defined by Government Code section 7282.4, subdivision (i), or a judicial probable cause determination, as defined by Government Code section 7282.4, subdivision (h), regarding a violation of federal criminal immigration law;

or

 - ii. Where the transfer would not otherwise violate any federal, state, or local law, or local policy, and the individual in custody meets any one of the conditions set forth in the TRUST Act, Government Code section 7282.5, subdivision (a). These qualifying conditions are:
 - 1) The individual has been convicted at any time of a serious or violent felony, as defined in Penal Code section 1192.7, subdivision (c), or Penal Code section 667.5, subdivision (c).
 - 2) The individual has been convicted at any time of a felony that is presently punishable by imprisonment in state prison.
 - 3) The individual was convicted within the past 15 years of a felony listed in Government Code section 7282.5, subdivision (a)(3), or within the past five years of a wobbler (i.e., a crime punishable as either a felony or a misdemeanor) listed in Government Code section 7282.5, subdivision (a)(3).
 - 4) The individual is a current registrant on the California Sex and Arson Registry.
 - 5) The individual has been convicted of certain specified federal aggravated felonies identified in section 101(a)(43)(A)-(P) of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(A)-(P)).
 - 6) The United States Department of Homeland Security's Immigration and Customs Enforcement (ICE) identifies the person as the subject of an outstanding federal felony arrest warrant for any federal crime.

Furthermore, if a law enforcement agency does transfer an individual to immigration authorities, Government Code section 7284.6, subdivision (c)(2) requires the agency to report to the California Department of Justice the number of transfers it makes in a calendar year, as well as the offense that allowed for the transfer. For more information regarding these reporting obligations, please see Information Bulletin 18-02-CJIS (California Values Act's Statistical Reporting Requirements).

- b. **Notification Requests:** Providing information regarding a person's release date or responding to notification requests from immigration authorities by providing an individual's release date or other information is permitted only if:
- i. The information is available to the public;
- or
- ii. The individual is subject to (1) the qualifying conditions in the TRUST Act, Government Code section 7282.5, subdivision (a) described above with respect to transfer requests; or (2) the individual has been arrested and taken before a magistrate judge on the following types of charges, and the magistrate makes a probable cause determination (Pen. Code, § 872) for the charge: (i) a serious or violent felony (Pen. Code, §§ 1192.7, subd. (c) or 667.5, subd. (c)); or (ii) a felony that is punishable by imprisonment in state prison. (Gov. Code, § 7282.5, subd. (b)).

A conviction for a straight misdemeanor, i.e., a crime that is *presently* punishable *only* as a misdemeanor, is not listed in section 7285, subdivision (a), and therefore is not a valid justification for honoring a transfer or notification request. And misdemeanor convictions for crimes affected by Proposition 47 (2014), the "Safe Neighborhoods and Schools Act," including felony convictions that were reduced to misdemeanors or re-designated as misdemeanors by a court as a result of Proposition 47, cannot serve as the basis for transfers or providing release date information to immigration authorities. (Gov. Code, § 7285.5, subd. (a)(6)). The crimes affected by Proposition 47 include, but are not limited to: simple drug possession for personal use, shoplifting, forgery, writing bad check, petty theft, and receiving stolen property.

Before honoring a transfer or notification request on the basis of a qualifying conviction, California law enforcement agencies should carefully review an individual's Record of Arrests and Prosecutions to determine whether a listed felony conviction was reduced to a misdemeanor, or re-designated as a misdemeanor, by a court under Proposition 47. If so, cooperation with immigration authorities is prohibited, unless there is another valid basis for cooperation (for transfers, a judicial warrant; for notifications, if the information is publicly available).

3. Other Restrictions on Immigration Enforcement

California law enforcement agencies may not (1) allow officers to be supervised by federal agencies or deputized for immigration enforcement purposes; (2) use immigration authorities as interpreters for law enforcement matters relating to individuals in custody; (3) provide office space exclusively for immigration authorities in city or county law enforcement facilities; or (4) enter into a contract, after June 15, 2017, with the federal government to house or detain adult and minor noncitizens in a locked detention facility for purposes of immigration custody; agencies with existing federal contracts cannot renew or modify the contract if doing so would expand the number of contract beds available to detain noncitizens for purposes of civil immigration custody. (Gov. Code, §§ 7310, 7311).

IV. If agency policy or local law or policy permit, a California law enforcement agency has discretion, but is not required, to perform the following immigration enforcement activities:

- 1. Investigate, enforce, detain persons upon reasonable suspicion of, or arrest, persons for violation of 8 U.S.C. § 1326(a), the federal criminal violation for reentry by a noncitizen after removal, but only if the individual was removed because of an aggravated felony conviction under 8 U.S.C. § 1326(b)(2) and the suspected violation was detected during an unrelated law enforcement activity. This is the one limited circumstance in which the Value Act permits a law enforcement official to exercise their discretion to

arrest or assist in the arrest of a person for a *federal immigration law violation*. Transfers of these individuals to immigration authorities are subject to the above restrictions regarding transfers.

2. Provide individual criminal history in response to a request from immigration authorities about a specific person's criminal history, including information obtained from CLETs or similar local databases, as long as it is otherwise permitted by state law.
3. Participate in a joint law enforcement task force, including the sharing of confidential information with task force participants, if all of the following conditions are met:
 - a. The task force's primary purpose is not immigration enforcement;
 - b. Enforcement or investigative duties are primarily related to violations of state or federal law unrelated to immigration enforcement; and
 - c. The local law or policy that the agency is subject to permits such participation.

Nothing in the Values Act prohibits a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters, i.e., engaging in an investigation, detention or arrest for criminal activities based upon California state law, even when its activities may indirectly impact or assist a federal agency that is engaged in immigration enforcement as part of a joint task force or otherwise. (Gov. Code, § 7284.6, subd. (f).) This includes circumstances in which an officer is responding to a call for service involving a violation of a state criminal law or during an immigration enforcement action where the safety of the public or a law enforcement officer, including an immigration enforcement officer, is in danger. In these limited circumstances, a California law enforcement officer may assist any law enforcement official, even if those officials are engaged in immigration enforcement, but only when the California law enforcement officer is enforcing state law. This narrow public safety exception should not be used to avoid the prohibitions in the Values Act on using state resources to conduct immigration enforcement.

If a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis to a task force, it must report the information set forth in Government Code section 7284.6 subdivision (c)(1) concerning the activities of the task force to the Department of Justice, as explained in Information Bulletin 18-02-CJIS (California Values Act's Statistical Reporting Requirements).³

4. Ask for information necessary to certify potential victims of crime or human trafficking with respect to T-visas and U-visas (8 U.S.C. §§ 1101(a)(15)(T) and 1101(a)(15)(U)),⁴ or to comply with 18 U.S.C. § 922(d)(5), which prohibits the sale or disposition of firearms or ammunition to a person who law enforcement knows or has reasonable cause to believe is not lawfully present in the United States. California Penal Code sections 679.10 and 679.11 mandate that certifying state and local agencies submit certifications for T- or U-Visa applicants when certain conditions are met. Certifying law enforcement agencies are prohibited from disclosing the immigration status information of a victim or person requesting T- or U-visa certification forms except to comply with federal law or legal process, or if authorized by the victim. For guidance regarding law enforcement agencies' obligations under

³ An "ongoing basis" means more than one interaction with any federal, state, or local LEA on a task force to discuss task force operations. Accordingly, isolated interactions with a federal law enforcement agency are not subject to these reporting requirements because the California LEA did not dedicate personnel or resources to the task force on more than one occasion.

⁴ The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 is a federal law that, among other things, provides temporary immigration benefits to individuals without immigration status who are victims of specified qualifying crimes including human trafficking. (VTVPA, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).)

California Penal Code section 679.10 with respect to U-Visas, see the Information Bulletin by California Department of Justice Division of Law Enforcement, dated October 28, 2015, available at https://oag.ca.gov/system/files/attachments/press_releases/dle-2015-04.pdf.

5. Provide ICE with access to interview an individual in custody, if the agency gives the notices required by the TRUTH Act (Gov. Code, § 7283 et seq.). Local law or policy, or agency policy, may be more restrictive than the Values Act. Agencies should determine whether, even if the Values Act permits assistance in immigration enforcement related activities, the agency's policy or local law or policies prohibit such activities. Further, if a particular activity is prohibited by the agency or the agency's jurisdiction, the agency must comply with the more restrictive conditions of the agency or jurisdiction so long as the local law or policy complies with 8 U.S.C. §§ 1373 and 1644, governing restrictions on the exchange of a person's immigration and citizenship status with government officials.

In addition, if officers are working in a school district pursuant to a memorandum of understanding (MOU) between the law enforcement agency and the district, the officer must adhere to the requirements of the MOU, even if that MOU conflicts with agency policy with respect to immigration enforcement matters, so long as the MOU complies with 8 U.S.C. §§ 1373 and 1644.

V. Additional Law Enforcement Activity Under the Values Act

1. The Values Act does not prohibit a law enforcement agency from exchanging information regarding a person's immigration status with governmental entities, including immigration authorities, and the Act specifically cites 8 U.S.C. § 1373 and 8 U.S.C. § 1644 as authority for that provision. Under those federal statutes, law enforcement officers must be allowed to:
 - a. Send to, or receive from, federal immigration authorities, information regarding the citizenship or immigration status, whether lawful or unlawful, of any individual;
 - b. Request information from federal immigration authorities regarding any individual's immigration status, whether lawful or unlawful; and
 - c. Maintain or exchange information regarding the immigration status of any individual with other governmental entities.

The Values Act also permits the disclosure of an individual's name for purposes of making or responding to an inquiry about an individual's immigration or citizenship status to other governmental entities.

2. One federal district court in California has ruled on the scope of 8 U.S.C. § 1373 and determined that Section 1373 does not bar *all* restrictions on communications between state and local law enforcement and the federal government, and specifically, does not bar restrictions on the sharing of inmates' release dates. That court determined that Section 1373 "only" prohibits restrictions on the exchange of information regarding a person's citizenship or immigration status. (*Steinle v. City & Cty. of San Francisco* (N.D. Cal. 2017) 230 F. Supp. 3d 994, 1015.) Thus, under the Values Act, the disclosure of all other personal information that does not encompass information regarding a person's citizenship or immigration status, including a person's home and work address, is prohibited from disclosure unless it is publicly available or permitted under Government Code section 7284.6, subdivision (b)(2).

VI. The Requirements of the TRUTH Act

The TRUTH Act, Government Code sections 7283, 7283.1, 7283.2, provides individuals who are in the custody of local law enforcement agencies with information about their procedural and legal rights should ICE wish to contact them. Specifically, the statute requires:

1. Before any interview between ICE and an individual in custody of a local law enforcement agency regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form,⁵ that explains all of the following:
 - a. The purpose of the interview;
 - b. That the interview is voluntary; and
 - c. That the individual may decline the interview or may choose to be interviewed with only their attorney present.
2. Upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall:
 - a. Provide a copy of the request to the individual; and
 - b. Inform the individual whether the law enforcement agency intends to comply with the request. However, with respect to ICE hold requests, the LEA may not hold an individual past the time that he or she normally would be released, as is now required under the Values Act. (Gov. Code, § 7284.6, subd. (a)(1)(B).)
3. If a local law enforcement agency chooses to provide ICE with notification that an individual will be released from custody on a certain date, the local law enforcement agency must promptly provide the same notification in writing to the individual and to his or her attorney or other person designated by the individual being held. (Gov. Code, § 7283.1, subd. (b).)
4. All records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that Act. The TRUTH Act explicitly provides that personal identifying information may be redacted prior to public disclosure as provided under the California Public Records Act. When responding to such requests, law enforcement agencies should therefore keep in mind California's privacy laws and all applicable exemptions under the California Public Records Act that protect such personal information from disclosure.⁶ (Gov. Code, § 7283.1, subd. (c).)
5. Beginning January 1, 2018, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last

⁵ The local law enforcement agency is required to make the written consent form available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, and any additional languages that meet the county threshold as defined in Health and Safety Code section 128552, subdivision (d), if certified translations in those languages are made available to the local law enforcement agency at no cost. In keeping with the spirit of the law to advise individuals of their rights, a local law enforcement agency should not pre-populate or presuppose the responses in the consent form.

⁶ Records relating to ICE access as provided in the TRUTH Act include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

year is required to hold at least one community forum open to the public during the following year. (Gov. Code, § 7283, subd. (d).)

VII. SB 54 Requires State Prisons Provide Similar Information Required by the TRUTH Act

The Values Act requires CDCR to provide an individual in custody with a written consent form and other notifications before allowing an interview between ICE and the individual regarding civil immigration violations. Specifically, this form must explain the purpose of the interview, that the interview is voluntary, and that the individual may decline to be interviewed or may choose to be interviewed only with their attorney present. The consent form must be available in English, Spanish, Chinese, Tagalong, Vietnamese and Korean. The CDCR must also give a copy of an ICE hold, notification, or transfer request to the individual and inform the person whether the agency or CDCR intends to comply with the request. (Gov. Code, § 7284.10.)

In addition, CDCR cannot restrict access to certain opportunities based solely on an individual's citizenship or immigration status (Gov. Code, § 7284.10, subd. (b)(1)), and cannot consider citizenship or immigration status in determining an individual's custodial classification level. (Gov. Code, § 7284.10, subd. (b)(2).)

VIII. Repeal of Health and Safety Code section 11369

SB 54 also repeals Health and Safety Code section 11369, which required an arresting law enforcement agency to notify the appropriate federal agency if it believed that a person arrested for certain drug violations may not be a United States citizen.

Sincerely,



KEVIN GARDNER, Chief
Division of Law Enforcement

For XAVIER BECERRA
Attorney General

EXHIBIT D

Immigration Violations

414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Paso Robles Police Department relating to immigration and interacting with federal immigration officials.

414.2 POLICY

It is the policy of the Paso Robles Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

414.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, ethnicity or national origin in any way that would violate the United States or California constitutions.

414.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

414.5 DETENTIONS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 UCS § 1326(a) (unlawful reentry) that may be subject to enhancement may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

Paso Robles Police Department

Paso Robles PD Policy Manual

Immigration Violations

An officer shall not detain any individual, for any length of time, for any other criminal violation of federal immigration laws (Government Code § 7284.6).

An officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

414.5.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has arrested an individual for violation of 8 USC § 1326(a), the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

414.6 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

414.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state or local government entity

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

414.7.1 IMMIGRATION DETAINEES

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state penitentiary.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).

Paso Robles Police Department

Paso Robles PD Policy Manual

Immigration Violations

- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

414.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification or transfer request along with information as to whether the Paso Robles Police Department intends to comply with the request (Government Code § 7283.1).

If the Paso Robles Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

414.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Paso Robles Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary and that he/she may decline to be interviewed or may choose to be interviewed only with his/her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

414.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist:

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

414.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Paso Robles Police Department

Paso Robles PD Policy Manual

Immigration Violations

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Detective Bureau supervisor assigned to oversee the handling of any related case. The Detective Bureau supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

414.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

414.8.2 REPORTING TO LEGISLATURE

The Detective Bureau supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

414.9 TRAINING

The Training Manager should ensure that all appropriate members receive training on immigration issues.

Paso Robles Police Department

Paso Robles PD Policy Manual

Immigration Violations

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).