



# Agenda

## PUBLIC PROTECTION COMMITTEE

November 6, 2017

10:30 A.M.

651 Pine Street, Room 101, Martinez

Supervisor Federal D. Glover, Chair

Supervisor John Gioia, Vice Chair

### Agenda Items:

Items may be taken out of order based on the business of the day and preference of the Committee

1. Introductions
2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).
3. APPROVE Record of Action from the October 2, 2017 meeting. **(Page 4)**
4. CONSIDER recommending nominees for appointment to the CY2018 Community Corrections Partnership (CCP) and CY2018 Community Corrections Partnership Executive Committee. **(Timothy Ewell, Committee Staff) (Page 8)**
5. CONSIDER accepting reports from staff related to the upcoming implementation requirements of Senate Bill 54 (Chapter 475, Statutes of 2017) related to immigration and an update on potential impacts to the County certain immigration related federal grant conditions imposed on state and local jurisdictions. **(Timothy Ewell, Committee Staff) (Page 16)**
6. The next meeting is will be scheduled for February 2018.
7. Adjourn

---

*The Public Protection Committee will provide reasonable accommodations for persons with disabilities planning to attend Public Protection Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.*

---

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Public Protection Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.*

---

*Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.*

---

For Additional Information Contact:

Timothy Ewell, Committee Staff  
Phone (925) 335-1036, Fax (925) 646-1353  
[timothy.ewell@cao.cccounty.us](mailto:timothy.ewell@cao.cccounty.us)

## **Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):**

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

---

<b>AB</b>	Assembly Bill	<b>HIPAA</b>	Health Insurance Portability and Accountability Act
<b>ABAG</b>	Association of Bay Area Governments	<b>HIV</b>	Human Immunodeficiency Syndrome
<b>ACA</b>	Assembly Constitutional Amendment	<b>HOV</b>	High Occupancy Vehicle
<b>ADA</b>	Americans with Disabilities Act of 1990	<b>HR</b>	Human Resources
<b>AFSCME</b>	American Federation of State County and Municipal Employees	<b>HUD</b>	United States Department of Housing and Urban Development
<b>AICP</b>	American Institute of Certified Planners	<b>Inc.</b>	Incorporated
<b>AIDS</b>	Acquired Immunodeficiency Syndrome	<b>IOC</b>	Internal Operations Committee
<b>ALUC</b>	Airport Land Use Commission	<b>ISO</b>	Industrial Safety Ordinance
<b>AOD</b>	Alcohol and Other Drugs	<b>JPA</b>	Joint (exercise of) Powers Authority or Agreement
<b>BAAQMD</b>	Bay Area Air Quality Management District	<b>Lamorinda</b>	Lafayette-Moraga-Orinda Area
<b>BART</b>	Bay Area Rapid Transit District	<b>LAFCo</b>	Local Agency Formation Commission
<b>BCDC</b>	Bay Conservation & Development Commission	<b>LLC</b>	Limited Liability Company
<b>BGO</b>	Better Government Ordinance	<b>LLP</b>	Limited Liability Partnership
<b>BOS</b>	Board of Supervisors	<b>Local 1</b>	Public Employees Union Local 1
<b>CALTRANS</b>	California Department of Transportation	<b>LVN</b>	Licensed Vocational Nurse
<b>CalWIN</b>	California Works Information Network	<b>MAC</b>	Municipal Advisory Council
<b>CalWORKS</b>	California Work Opportunity and Responsibility to Kids	<b>MBE</b>	Minority Business Enterprise
<b>CAER</b>	Community Awareness Emergency Response	<b>M.D.</b>	Medical Doctor
<b>CAO</b>	County Administrative Officer or Office	<b>M.F.T.</b>	Marriage and Family Therapist
<b>CCCFPD</b>	(ConFire) Contra Costa County Fire Protection District	<b>MIS</b>	Management Information System
<b>CCHP</b>	Contra Costa Health Plan	<b>MOE</b>	Maintenance of Effort
<b>CCTA</b>	Contra Costa Transportation Authority	<b>MOU</b>	Memorandum of Understanding
<b>CDBG</b>	Community Development Block Grant	<b>MTC</b>	Metropolitan Transportation Commission
<b>CEQA</b>	California Environmental Quality Act	<b>NACo</b>	National Association of Counties
<b>CIO</b>	Chief Information Officer	<b>OB-GYN</b>	Obstetrics and Gynecology
<b>COLA</b>	Cost of living adjustment	<b>O.D.</b>	Doctor of Optometry
<b>ConFire</b>	(CCCFPD) Contra Costa County Fire Protection District	<b>OES-EOC</b>	Office of Emergency Services-Emergency Operations Center
<b>CPA</b>	Certified Public Accountant	<b>OSHA</b>	Occupational Safety and Health Administration
<b>CPI</b>	Consumer Price Index	<b>Psy.D.</b>	Doctor of Psychology
<b>CSA</b>	County Service Area	<b>RDA</b>	Redevelopment Agency
<b>CSAC</b>	California State Association of Counties	<b>RFI</b>	Request For Information
<b>CTC</b>	California Transportation Commission	<b>RFP</b>	Request For Proposal
<b>dba</b>	doing business as	<b>RFQ</b>	Request For Qualifications
<b>EBMUD</b>	East Bay Municipal Utility District	<b>RN</b>	Registered Nurse
<b>ECCFPD</b>	East Contra Costa Fire Protection District	<b>SB</b>	Senate Bill
<b>ECCRPC</b>	East Contra Costa Regional Planning Commission	<b>SBE</b>	Small Business Enterprise
<b>EIR</b>	Environmental Impact Report	<b>SRVRPC</b>	San Ramon Valley Regional Planning Commission
<b>EIS</b>	Environmental Impact Statement	<b>SWAT</b>	Southwest Area Transportation Committee
<b>EMCC</b>	Emergency Medical Care Committee	<b>TRANSPAC</b>	Transportation Partnership & Cooperation (Central)
<b>EMS</b>	Emergency Medical Services	<b>TRANSPLAN</b>	Transportation Planning Committee (East County)
<b>EPSDT</b>	State Early Periodic Screening, Diagnosis and Treatment Program (Mental Health)	<b>TRE or TTE</b>	Trustee
<b>et al.</b>	et alii (and others)	<b>TWIC</b>	Transportation, Water and Infrastructure Committee
<b>FAA</b>	Federal Aviation Administration	<b>VA</b>	Department of Veterans Affairs
<b>FEMA</b>	Federal Emergency Management Agency	<b>vs.</b>	versus (against)
<b>F&amp;HS</b>	Family and Human Services Committee	<b>WAN</b>	Wide Area Network
<b>First 5</b>	First Five Children and Families Commission (Proposition 10)	<b>WBE</b>	Women Business Enterprise
<b>FTE</b>	Full Time Equivalent	<b>WCCTAC</b>	West Contra Costa Transportation Advisory Committee
<b>FY</b>	Fiscal Year		
<b>GHAD</b>	Geologic Hazard Abatement District		
<b>GIS</b>	Geographic Information System		
<b>HCD</b>	(State Dept of) Housing & Community Development		
<b>HHS</b>	Department of Health and Human Services		



# Contra Costa County Board of Supervisors

## Subcommittee Report

### PUBLIC PROTECTION COMMITTEE

3.

**Meeting Date:** 11/06/2017

**Subject:** RECORD OF ACTION - October 2, 2017

**Submitted For:** PUBLIC PROTECTION COMMITTEE,

**Department:** County Administrator

**Referral No.:** N/A

**Referral Name:** RECORD OF ACTION - October 2, 2017

**Presenter:** Timothy Ewell, Committee Staff **Contact:** Timothy Ewell, (925) 335-1036

---

#### **Referral History:**

County Ordinance requires that each County body keep a record of its meetings. Though the record need not be verbatim, it must accurately reflect the agenda and the decisions made in the meeting.

#### **Referral Update:**

Attached for the Committee's consideration is the Record of Action for its October 2, 2017 meeting.

#### **Recommendation(s)/Next Step(s):**

APPROVE Record of Action from the October 2, 2017 meeting.

#### **Fiscal Impact (if any):**

No fiscal impact. This item is informational only.

---

#### **Attachments**

Record of Action - October 2017

---





# Agenda

## PUBLIC PROTECTION COMMITTEE

\*\*\*RECORD OF ACTION\*\*\*

October 2, 2017

10:30 A.M.

651 Pine Street, Room 101, Martinez

Supervisor Federal D. Glover, Chair  
Supervisor John Gioia, Vice Chair

### Agenda Items:

Items may be taken out of order based on the business of the day and preference of the Committee

Present: Federal D. Glover, Chair  
John Gioia, Vice Chair

Staff Present: Timothy M. Ewell, Committee Staff

#### 1. Introductions

*Convene - 10:30 AM*

#### 2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).

*The Committee received public comment.*

#### 3. APPROVE Record of Action from the July 10, 2017 meeting.

*Approved as presented.*

Vice Chair John Gioia, Chair Federal D. Glover

AYE: Chair Federal D. Glover, Vice Chair John Gioia

Passed

#### 4. 1. DIRECT staff on the utilization of the balance of CRRG funds in the amount of \$16,040.12 derived from the John F. Kennedy School of Law "Driver's License Restoration Clinic" project.

2. CONSIDER allocating the funds to the Reentry Strategic Plan Update for additional community engagement/outreach efforts.

*Approved as presented.*

Chair Federal D. Glover, Vice Chair John Gioia

AYE: Chair Federal D. Glover, Vice Chair John Gioia

Passed

5.
  1. RECOMMEND nominees for appointment to seats on the CY2018 Community Corrections Partnership & Executive Committee (see attachments);
  2. PROVIDE direction to staff on an alternative recruitment process for membership on the CCP and the CCP Executive Committee

*The Committee provided the following direction to staff:*

*1. Refer recruitment process of the Community Based Organizations seat to the Community Corrections Partnership - Community Advisory Board and return with recommendation at the November 2017 Public Protection Committee meeting.*

Chair Federal D. Glover, Vice Chair John Gioia

AYE: Chair Federal D. Glover, Vice Chair John Gioia

Passed

6.
  1. ACCEPT a report on the refunding of certain fees assessed in the juvenile justice system;
  2. FORWARD a recommendation to the Board of Supervisors;
  3. PROVIDE any additional direction to staff.

*Approved with the following direction to staff:*

*1. Juvenile Cost of Care fee: Recommend to the Board of Supervisors, that overpayments received during the period 2010-2016 (the duration of the Probation Collections Unit responsibility for collecting the fee) for cases where families were charged the fee for juveniles residing in juvenile detention facilities, but a petition was not sustained, be refunded to the parties that paid the fee. For accounts active before 2010, create a claim process allowing parties to submit a claim against the County, which will be reviewed by the Probation Department.*

*2. Juvenile Electronic Monitoring fee: The Probation Department will review charging of this fee for the period 2010-2016 and return to the Committee in 2018 for an update.*

*3. Develop a letter to be provided to parties impacted in No. 1 above who believe that a credit reporting agency has included the debt on consumer credit reports.*

*4. Develop a request to the Superior Court to execute an action extinguishing any court ordered debt for the above fees.*

Vice Chair John Gioia, Chair Federal D. Glover

AYE: Chair Federal D. Glover, Vice Chair John Gioia

Passed

7. The next meeting is currently scheduled for Monday, November 6, 2017 at 10:30 AM.

8. Adjourn

***Adjourn - 11:28 AM***

---

*The Public Protection Committee will provide reasonable accommodations for persons with disabilities planning to attend Public Protection Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.*

---

---

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Public Protection Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.*

---

---

*Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.*

---

For Additional Information Contact:

Timothy Ewell, Committee Staff  
Phone (925) 335-1036, Fax (925) 646-1353  
timothy.ewell@cao.cccounty.us



# Contra Costa County Board of Supervisors

## Subcommittee Report

### PUBLIC PROTECTION COMMITTEE

4.

**Meeting Date:** 11/06/2017

**Subject:** APPOINTMENTS TO THE CY2018 COMMUNITY CORRECTIONS  
PARTNERSHIP & EXECUTIVE COMMITTEE

**Submitted For:** PUBLIC PROTECTION COMMITTEE,

**Department:** County Administrator

**Referral No.:** N/A

**Referral Name:** APPOINTMENTS TO THE CY2018 COMMUNITY CORRECTIONS  
PARTNERSHIP & EXECUTIVE COMMITTEE

**Presenter:** Timothy Ewell, (925)335-1036 **Contact:** Timothy Ewell, (925)335-1036

---

### **Referral History:**

The California Legislature passed Assembly Bill 109 (Chapter 15, Statutes of 2011), which transferred responsibility for supervising certain lower-level inmates and parolees from the California Department of Corrections and Rehabilitation (CDCR) to counties. Assembly Bill 109 (AB109) took effect on October 1, 2011 and realigned three major areas of the criminal justice system. On a prospective basis, the legislation:

- Transferred the location of incarceration for lower-level offenders (specified nonviolent, non-serious, non-sex offenders) from state prison to local county jail and provides for an expanded role for post-release supervision for these offenders;
- Transferred responsibility for post-release supervision of lower-level offenders (those released from prison after having served a sentence for a non-violent, non-serious, and non-sex offense) from the state to the county level by creating a new category of supervision called Post-Release Community Supervision (PRCS);
- Transferred the custody responsibility for parole and PRCS revocations to local jail, administered by county sheriffs

AB109 also created an Executive Committee of the local Community Corrections Partnership (CCP) and tasked it with recommending a Realignment Plan (Plan) to the county Board of Supervisors for implementation of the criminal justice realignment. The Community Corrections Partnership is identified in statute as the following:

### ***Community Corrections Partnership***

1. Chief Probation Officer (Chair)
2. Presiding Judge (or designee)
3. County supervisor, CAO, or a designee of the BOS

4. District Attorney
5. Public Defender
6. Sheriff
7. Chief of Police
8. Head of the County department of social services
9. Head of the County department of mental health
10. Head of the County department of employment
11. Head of the County alcohol and substance abuse programs
12. Head of the County Office of Education
13. CBO representative with experience in rehabilitative services for criminal offenders
14. Victims' representative

Later in 2011, the Governor signed Assembly Bill 117 (Chapter 39, Statutes of 2011), which served as “clean up” legislation to AB109. Assembly Bill 117 (AB117) changed, among other things, the composition of the local CCP-Executive Committee. The CCP-Executive Committee is currently identified in statute as the following:

***Community Corrections Partnership-Executive Committee***

1. Chief Probation Officer (Chair)
2. Presiding Judge (or designee)
3. District Attorney
4. Public Defender
5. Sheriff
6. A Chief of Police
7. The head of either the County department of social services, mental health, or alcohol and drug services (as designated by the board of supervisors)

Although AB109 and AB117 collectively place the majority of initial planning activities for Realignment on the local CCP, it is important to note that neither piece of legislation cedes powers vested in a county Board of Supervisors' oversight of and purview over how AB109 funding is spent. Once the Plan is adopted, the Board of Supervisors may choose to implement that Plan in any manner it may wish.

**Referral Update:**

Each year, the PPC reviews the membership of the Community Corrections Partnership and makes recommendations for appointment to non *ex-officio* seats to the Board of Supervisors. The Board has made these appointments on a calendar year basis. Today's action is seeking direction from the Public Protection Committee to either:

1. Forward nominees to the Board of Supervisors following a determination and vote of the Committee today, or
2. Direct staff to conduct a recruitment process for all or a portion of the Board appointment members of the CCP and CCP Executive Committee.

At the October 2017 PPC meeting, the Committee requested that the CCP-Community Advisory Board provide a recommendation regarding appointment to the Community Based Organization seat on the CCP for 2018. Subsequently, the CAB met and determined that a recommendation

could not be made to the PPC until vacancies were filled on the CAB.

Committee staff is recommending that the PPC provide direction regarding nominations for appointment to the CCP and CCP-Executive Committee at today's meeting to ensure that those recommendations can be forwarded to the Board of Supervisors for consideration by the end of the current calendar year.

**Recommendation(s)/Next Step(s):**

1. RECOMMEND nominees for appointment to seats on the CY2018 Community Corrections Partnership & Executive Committee (see attachments);
2. PROVIDE direction to staff on an alternative recruitment process for membership on the CCP and the CCP Executive Committee

**Fiscal Impact (if any):**

No fiscal impact.

---

**Attachments**

CY2017 CCP Membership

CY2017 CCP Executive Committee Membership

CSAC Informational Letter

---

## EXHIBIT A - 2017 COMMUNITY CORRECTIONS PARTNERSHIP

<u>Seat</u>	<u>Appointee</u>	<u>Term Expiration</u>
Chief Probation Officer ( <i>Chair</i> )	Todd Billeci	<i>ex-officio</i>
Presiding Judge ( <i>or designee</i> )	Stephen Nash ( <i>designee of Presiding Judge</i> )	<i>ex-officio</i>
County supervisor, CAO, or a designee of the BOS	David J. Twa, County Administrator	December 31, 2017
District Attorney	Diana Becton	<i>ex-officio</i>
Public Defender	Robin Lipetzky	<i>ex-officio</i>
Sheriff	David O. Livingston	<i>ex-officio</i>
Chief of Police	Allwyn Brown, City of Richmond	December 31, 2017
Head of the County department of social services	Kathy Gallagher, Employment and Human Services Director	<i>ex-officio</i>
Head of the County department of mental health	Cynthia Belon, Director of Behavioral Health Services	<i>ex-officio</i>
Head of the County department of employment	Donna Van Wert, Executive Director-Workforce Development Board	<i>ex-officio</i>
Head of the County alcohol and substance abuse programs	Fatima Matal Sol, Director of Alcohol and Other Drugs	<i>ex-officio</i>
Head of the County Office of Education	Karen Sakata, County Superintendent of Schools	<i>ex-officio</i>
CBO representative with experience in rehabilitative services for criminal offenders	Roosevelt Terry	December 31, 2017
Victim's Representative	Devorah Levine, Zero Tolerance Program Manager	December 31, 2017

## EXHIBIT B - 2017 COMMUNITY CORRECTIONS PARTNERSHIP EXECUTIVE COMMITTEE

<u>Seat</u>	<u>Appointee</u>	<u>Term Expiration</u>
Chief Probation Officer ( <i>Chair</i> )	Todd Billeci	<i>ex-officio</i>
Presiding Judge ( <i>or designee</i> )	Stephen Nash ( <i>designee of Presiding Judge</i> )	<i>ex-officio</i>
District Attorney	Diana Becton	<i>ex-officio</i>
Public Defender	Robin Lipetzky	<i>ex-officio</i>
Sheriff	David O. Livingston	<i>ex-officio</i>
Chief of Police	Allwyn Brown, City of Richmond	December 31, 2017
Representative approved by BOS from the following CCP members:	Kathy Gallagher, Employment and Human Services Director	December 31, 2017
*Head of County department of Social Services		
*Head of County department of mental health		
*Head of County department of alcohol and substance abuse programs		





## MEMORANDUM

July 12, 2011

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: Members, Board of Supervisors  
County Administrative Officers

From: Paul McIntosh  
Executive Director

Re: AB 117 and the Community Corrections Partnership (CCP)

---

There continues to be a great deal of confusion and misunderstanding regarding the changes in the Community Corrections Partnership (CCP) encompassed in Assembly Bill 117 (Chapter 39, Statutes of 2011), passed as part of the 2011-12 budget. AB 117 did not change the make-up of the CCP, first formed in SB 678 in 2009, but does provide for revisions to the makeup of the CCP's Executive Committee, which originally was established in AB 109 (Chapter 15, Statutes of 2011).

The fourteen-member CCP in each county remains essentially unchanged and is comprised of the following (Penal Code Section 1230.1):

- Chief Probation Officer (Chair)
- Presiding Judge (or designee)
- County supervisor, CAO, or a designee of the BOS
- District Attorney
- Public Defender
- Sheriff
- Chief of Police
- Head of the County department of social services
- Head of the County department of mental health
- Head of the County department of employment
- Head of the County alcohol and substance abuse programs
- Head of the County Office of Education
- CBO representative with experience in rehabilitative services for criminal offenders
- Victims' representative

AB 117 requires the CCP to prepare an implementation plan that will enable the county to meet the goals of the public safety realignment. AB 117 is silent as to what those goals may be and provides counties with flexibility in how to address realignment. AB 117 does not abdicate the board of supervisor's authority over appropriations and does not enable the CCP to direct how realignment funds will be spent.

The seven-member CCP Executive Committee, as provided in AB 117, is comprised of the following:

Chief Probation Officer (Chair)

Presiding Judge (or designee)

District Attorney

Public Defender

Sheriff

A Chief of Police

The head of either the County department of social services, mental health, or alcohol and drug services (as designated by the board of supervisors)

Under AB 117, the CCP would develop an implementation plan and the Executive Committee would vote to approve the plan and submit it to the board of supervisors. The plan would be deemed accepted unless the board of supervisors voted via a 4/5 vote to reject the plan and send it back to the CCP. Concerns have been raised regarding why the CAO or board member is not part of the Executive Committee and why a 4/5 vote is required to reject the plan.

CSAC's role in the drafting of this component of AB 117 was as one of several stakeholders involved in the public safety realignment. While most of the county stakeholders maintained general agreement on realignment issues during each phase of negotiations in general, there were disparate opinions in how the planning process should unfold. CSAC felt strongly that the only way realignment will be successful is if the planning effort results in a significant shift away from a predominantly incarceration model and movement to alternatives to incarceration. Therefore, it was critical that the planning process be structured to encourage compromise in the CCP to reach the goals of the community in a manner acceptable to the board of supervisors.

The CAO, as you know, must be in a position to remain objective and provide the board of supervisors with unvarnished recommendations on matters that come before them. Having the CAO or a board member as part of the Executive Committee, and therefore casting a vote on the plan to be presented to the board of supervisors, would represent a conflict of interest to the CAO or board member and place them in a position that could compromise their independence. Rather, this approach seemed to capture the best of both worlds – the CAO is part of the planning process and can bring that global vision to that process but is also free to make contrary recommendations to the board of supervisors should they disagree with the ultimate plan adopted. Likewise with a member of the board of supervisors being part of the executive committee.

Some have commented that the 4/5 vote requirement to reject the plan submitted by the CCP limits local flexibility and discretion of the board of supervisors. While the dynamics of the planning process will differ from county to county, the goal was to force consensus within the CCP and the planning process and not

provide an avenue for a participant to try to push their opinion outside of the CCP with the board of supervisors. A super majority makes an “end run” difficult, but still enables the board to reject the plan if the board disagrees with it. A 4/5 vote requirement is not unusual, but does place a higher level of focus on the planning process. It should be noted, as well, that counsel has opined that meetings of the CCP and the Executive Committee will be subject to the Brown Act and all discussions will be required to be conducted in a public meeting.

AB 117 is not a perfect solution but it represents a negotiated agreement that will enable California’s counties to move forward with the dramatic changes necessary to make realignment successful. Clearly the successful implementation of realignment will require a significant paradigm shift in our public safety communities. The successful model will not be an incarceration model, but one that seeks to divert and rehabilitate citizens, returning them to be productive members of our community. Hopefully, the construct of the CCP – that is intended to drive the local public safety community to a consensus about a “different way of doing business” - will ultimately lead to that approach.



# Contra Costa County Board of Supervisors

## Subcommittee Report

### PUBLIC PROTECTION COMMITTEE

5.

**Meeting Date:** 11/06/2017

**Subject:** COUNTY LAW ENFORCEMENT PARTICIPATION AND INTERACTION  
WITH FEDERAL IMMIGRATION AUTHORITIES

**Submitted For:** PUBLIC PROTECTION COMMITTEE,

**Department:** County Administrator

**Referral No.:** N/A

**Referral Name:** COUNTY LAW ENFORCEMENT PARTICIPATION AND INTERACTION  
WITH FEDERAL IMMIGRATION AUTHORITIES

**Presenter:** Timothy Ewell, 925-335-1036    **Contact:** Timothy Ewell, 925-335-1036

---

### **Referral History:**

On February 7, 2017, the Board of Supervisors referral to the Public Protection Committee the topic of law enforcement participation and interaction with Federal immigration authorities. A copy of the Board's referral is attached for reference.

Subsequently, the PPC introduced this referral at it's March 2017 meeting, primarily to discuss Senate Bill 54 (De Leon), which at the time was newly introduced in the Legislature. The Committee directed the County Probation Department to have County Counsel review the current policy on immigration (including cooperation with the federal government and serving clients that are undocumented residents of the County) and return to the Committee with an update. In addition, the Committee requested a review of the Sheriff's Office contract with the US Marshal service, which is also used by the Department of Homeland Security - Immigration and Customs Enforcement (ICE) to house undocumented individuals who are in the custody of the federal government.

The Committee has not heard an update on this issue, pending the outcome of SB 54, which ultimately was passed by the Legislature and signed into law by Governor Brown earlier this year. Following its passage and enrollment, the Probation Department and Sheriff's Office have worked with County Counsel proactively to ensure that the County is in compliance with the requirements of the new law.

### **Federal Grant Requirements and Related Legal Challenges**

Since the Committee last met on this topic, the US Department of Justice has begun implementation of conditioning certain federal grant awards to state and local governments on the cooperation with federal immigration authorities. This has been rolled out in the form of 1) requesting the jurisdictions receiving grants to self certify (under penalty of perjury by the Chief Legal Officer, in our case County Counsel) that the jurisdiction is in compliance with the

conditions of Executive Order 13768, and 2) that the jurisdiction would honor 10 hour detainer requests for undocumented individuals already in local custody for separate criminal law violations. Neither the Probation Department nor the Sheriff's Office honor detainer requests from the federal government and have not done so for several years.

There have been several legal challenges to the Administration's various actions on immigration. Most notably with regard to the withholding of funding from state and local governments is *City of Chicago vs. Sessions III*, where a nationwide injunction has been ordered against the new regulations sought to be imposed by the USDOJ. An article from the Chicago Tribune has been included in today's packet for additional information.

Also, a coalition of local jurisdictions nationwide, including cities and counties, filed an *amicus* brief in *City of Philadelphia vs. Sessions III* on October 19th of this year in support of the City's motion for preliminary injunction. In this case, the City is largely requesting an injunction very similar to that ordered in the Chicago case. A copy of the brief is included in today's packet for reference.

### **Potential for Financial Impact to the County**

As the legal challenges described above progress, the County will continue to be mindful of the potential impacts to County programs. At first glance, it may be easy to determine that any financial impact from the change in federal policy would only impact law enforcement activities; however, several County departments receive funding from USDOJ and DHS. The summary below illustrates a worst case scenario to the County - that is, that all grant funds from both federal agencies are discontinued.

<b>Potential Impacts of Executive Order 13768</b>			
<b>Contra Costa County</b>			
Sheriff's Office	\$	19,836,390	
Employment and Human Services	\$	1,984,787	
Probation	\$	1,143,496	
County Administrator	\$	983,971	
District Attorney	\$	563,848	
Public Defender	\$	180,412	
<b>Total \$ 24,692,904</b>			

The federal government has been choosing certain grants to apply the new regulations to, but there generally does not seem to be a specific criteria used to determine what grants the regulations may be applied to. For this reason, it is highly unlikely that the entire \$24.7 million could be impacted, but in the interest of proactively understanding the portfolio of grants maintained by the County, staff prepared this chart as a tool for discussion purposes.

### **Referral Update:**

Staff will present a follow up report on how the County is working proactively to ensure smooth implementation of the requirements of SB 54, to the extent that the County does not already meet those requirements. Attached for convenience is an analysis by County Counsel of the current policies for each department against the new requirements of SB 54 for easy reference. Also, the actual policies from both the Sheriff's Office and the Probation Department (draft) are included for reference.

In addition, Committee staff will provide a brief overview on the issues related to the potential financial impacts from US DOJ and DHS grant conditions on certain federal grant awards.

**Recommendation(s)/Next Step(s):**

1. ACCEPT report from staff related to the upcoming implementation requirements of Senate Bill 54 (Chapter 475, Statutes of 2017) related to immigration; and
2. ACCEPT an update on potential impacts to the County certain immigration related federal grant conditions imposed on state and local jurisdictions; and
3. PROVIDE direction to staff on next steps.

---

**Attachments**

Board of Supervisors' Referral

Senate Bill 54 (De León), Chapter 495 Statutes of 2017

Senate Bill 54 (De León) - Redline of Existing Law

Senate Bill 54 Analysis - County Counsel

Sheriff's Office Policy on Immigration. May, 2017

Probation Department Policy on Immigration, October 2017 (Draft)

Chicago Tribune Article, October 13, 2017

Brief of Amici Curiae - City of Philadelphia vs Sessions III, filed October 19, 2017

---



**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Gioia, District I Supervisor  
Date: February 7, 2017

Subject: REFERRAL TO PUBLIC PROTECTION COMMITTEE OF COUNTY LAW ENFORCEMENT  
PARTICIPATION AND INTERACTION WITH FEDERAL IMMIGRATION AUTHORITIES

---

**RECOMMENDATION(S):**

REFER the issue of Contra Costa County law enforcement participation and interaction with federal immigration authorities to the Public Protection Committee.

**FISCAL IMPACT:**

None.

**BACKGROUND:**

There has been growing public concern around the county, especially among immigrant communities, about the nature of local law enforcement interaction with federal immigration authorities. This concern has been increasing due to the current political environment and has impacted the willingness of residents of immigrant communities to access certain health and social services provided by community-based organizations. For example, the Executive Director of Early Childhood Mental Health has reported that a number of Latino families have canceled mental health appointments for their children due to concerns over

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **02/07/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 7, 2017

, County Administrator and Clerk of the Board of Supervisors

Contact: Supervisor John Gioia  
(510) 231-8686

By: Stephanie Mello, Deputy

cc:

being deported. It is timely and in the public interest to refer this issue to the Public Protection Committee.



## **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.



**SB-54 Law enforcement: sharing data. (2017-2018)**

**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) ~~"Immigration hold" means an immigration detainer issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual. "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 ~~federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold~~ immigration authorities only if doing so would not violate any federal, state, or local law, or ~~any~~ local policy, and ~~only under any of~~ 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 ~~at any time~~ 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 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, a felony punishable by imprisonment in state prison, or any felony listed in paragraph (2) or (3) other than domestic violence, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code.~~

~~(6)~~ (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) If none of the conditions listed in subdivision (a) is satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody. 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) 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.

~~11369. When there is reason to believe that any person arrested for a violation of Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550, 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.~~

**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.

	<b>SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018 Amends Gov. Code §§ 7282, 7282.5<sup>1</sup>, adds Gov. Code §§ 7284-7284.12; Repeals Health &amp; Safety Code § 11369</b>	<b>Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)</b>	<b>Draft Probation Immigration Policy 428 (Rev. Oct. 2017)</b>
1.	Law enforcement officials may cooperate with immigration authorities in response to a notification request for persons convicted of specified felonies “within the last 15 years”- changed from convicted “anytime” in the past.  § 7282.5(a)(3)	Amendment suggested to reflect change in the law. IV.F.3.c.-d.	Complies.
2.	Law enforcement officials may cooperate with immigration authorities only if information is public or in response to a notification request for release date (such as I-247N <sup>2</sup> ) if person arrested and taken before a magistrate for a serious or violent felony described in PC 667.5(c) or 1192.7(c), or a felony punishable by imprisonment in state prison.  §7282.5(b); §7284.6(a)(1)(C)	Complies.	Complies.
3.	Law enforcement agencies shall not use agency money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes  §7284.6(a)(1)	Requires further information from Sheriff's Office on interpretation and current practice. III.A.	Complies.
4.	Law enforcement agencies shall not inquire into an individual's immigration status.  §7284.6(a)(1)(A)	Complies.	Complies.
5.	Law enforcement agencies shall not detain on basis of a hold request- as defined in § 7283(b) <sup>3</sup> .  §7284.6(a)(1)(B)	Complies.	Complies.
6.	Law enforcement agencies shall not provide information on a release date or other information unless the information is available to the public or in response to a notification request per 7282.5.  §7284.6(a)(1)(C)	Requires further information from Sheriff's Office on interpretation and current practice. IV.F.	Complies.

<sup>1</sup> Also known as the Trust Act- CA Gov. Code §§ 7282-7282.5 [Amended by SB 54 (2017)]

<sup>2</sup> Forms I-247N, I-247D, I-247X were rescinded by I.C.E. on April 2, 2017, and replaced with Form I-247A- Immigration Detainer- Notice of Action.

<sup>3</sup> Also known as the Truth Act- CA Gov. Code §§ 7283-7283.2 [Not Amended by SB 54 (2017)]

	<b>SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018 Amends Gov. Code §§ 7282, 7282.5<sup>1</sup>, adds Gov. Code §§ 7284-7284.12; Repeals Health &amp; Safety Code § 11369</b>	<b>Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)</b>	<b>Draft Probation Immigration Policy 428 (Rev. Oct. 2017)</b>
7.	Law enforcement agencies shall not provide personal information, as defined in CC 1798.3, including home address or work unless the information is available to the public.  §7284.6(a)(1)(D)	Not covered by policy.	Complies.
8.	Law enforcement agencies shall not make or intentionally participate in arrests based on civil immigration warrants.  §7284.6(a)(1)(E)	Requires further information from Sheriff's Office on interpretation and current practice. III.A.	Complies.
9.	Law enforcement agencies shall not assist immigration in activities described in 8 U.S.C. 1357(a)(3), perform immigration officer functions, or place peace officers under supervision of federal agencies for purposes of immigration enforcement.  §7284.6(a)(1)(F), (G), & (a)(2)	Requires further information from Sheriff's Office on interpretation and current practice. III.A. IV.B.2.	Complies.
10.	Law enforcement agencies shall not transfer to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination or in accord with 7282.5.  §7284.6(a)(4)	Complies.	Complies.
11.	Law enforcement agencies shall not contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees, except per 7310 (June 15, 2017 cutoff for new contracts or renewal or modification of an existing contract.)  §7284.6(a)(6)	Not covered by policy.	Not covered by policy.
12.	Repeals H&S Code 11369.  SB 54, Sec. 4	Amendment suggested to reflect repeal of this law. IV.D.2.(i)	Complies.



<p align="center"><b>Contra Costa County Office of the Sheriff</b></p> <p align="center"><b>General Policy and Procedure</b></p>	<p align="center"><b>CCCSO</b></p>	<p align="center"><b>NUMBER: 1.02.28</b></p>
	<p><b>RELATED ORDERS:</b> AB 4 (Trust Act), Gov't. Code 7282, 7282.5, 7283.1, 8 CFR 287.7, 8 USC 1101(a)(43)</p>	
<p><b>ISSUE DATE:</b> 12-3-2013 <b>REVISION DATE:</b> 5-9-2017</p>	<p><b>CLEARANCE:</b> <b>Office of the Sheriff</b></p>	
<p><b>CHAPTER:</b> <b>Law Enforcement Role and Authority</b></p>	<p><b>SUBJECT:</b> <b>IMMIGRATION STATUS</b></p>	

**I. POLICY.**

- A. No person shall be contacted, detained, or arrested solely on the basis of his or her immigration status.
- B. The Contra Costa County Office of the Sheriff will equally enforce the laws and serve the public without regard to immigration status. Except as specifically set forth in this Policy, the immigration status of a person, and the lack of immigration documentation, should have no bearing on the manner in which Deputies execute their duties.

**II. DEFINITIONS.**

- A. **IMMIGRATION DETAINER.**  
An Immigration Detainer is a request by the U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) that law enforcement agencies advise ICE, prior to releasing an individual, in order for ICE to arrange to assume custody for the purpose of deportation.
- B. **REQUEST FOR VOLUNTARY NOTIFICATION.**  
The Forms I-247A and I-247N request the receiving local law enforcement agency (LEA) notify ICE of the pending release from custody of a suspected priority removable individual at least 48 hours prior to release, if possible. These requests for notification will be honored under certain circumstances.
- C. **REQUEST FOR VOLUNTARY ACTION.**  
The Forms I-247-A, I-247D, and I-247X request the receiving LEA maintain custody of the priority individual for a period not to exceed 48 hours beyond the time when he or she would have otherwise been released from custody. These detainer requests will *not* be honored.

### **III. GENERAL.**

- A. **IMMIGRATION ENFORCEMENT JURISDICTION.** ICE has primary responsibility to investigate and enforce federal immigration laws. Office of the Sheriff personnel may assist ICE in the enforcement of federal immigration laws upon its specific request and in those situations where ICE-initiated investigations have led to the discovery of criminal violations of California law. Assistance to ICE will also be provided in response to officer safety issues.
- B. **LAW ENFORCEMENT CONTACTS.** Contacts (whether consensual or not), detentions, and arrests shall be based on reasonable suspicion or probable cause. A Deputy may never initiate any law enforcement action based on observations relating to immigration status (such as lack of documentation), but such issues may, as part of several factors, be relevant to the direction and analysis of an investigation.

### **IV. PROCEDURES.**

- A. **IMMIGRATION VIOLATION COMPLAINTS.**
  - 1. If members of the public contact the Office of the Sheriff to report suspected immigration violations, such persons should be directed to ICE.
- B. **IMMIGRATION STATUS.**
  - 1. A Deputy's suspicion about any person's immigration status shall not be used as a sole basis to initiate contact, detain, or arrest that person unless such status is reasonably relevant to the investigation of a crime, such as trafficking, smuggling, harboring, and terrorism.
  - 2. Sweeps intended solely to locate and detain undocumented immigrants are not permitted. Deputies will not participate in ICE-organized sweeps to locate and detain undocumented aliens. Office of the Sheriff personnel may, however, provide support services, including traffic control, during an ICE operation, upon the specific request of ICE for assistance.
- C. **ESTABLISHING IDENTITY.**
  - 1. Deputies should attempt to identify any person whom they detain or arrest.
  - 2. Any person who would be cited and released, but who is unable to present satisfactory evidence of his or her identity, will be detained for the purpose of establishing his or her identity.
  - 3. A person taken into custody pursuant to CVC 40302(a) may be detained for no more than two hours regardless of whether his or her identity has been verified pursuant to CVC 40307.
- D. **NOTIFICATION TO ICE OF IMMIGRATION VIOLATIONS.**
  - 1. Generally, Custody Deputies will not notify ICE of the immigration status of inmates.
  - 2. Generally, Patrol Deputies will not notify ICE of the immigration status of arrestees, except notification to ICE will be made:



(i) If a Deputy has cause to believe that a person arrested for any violation listed in H&S section 11369, is not a citizen of the United States, and (ii) such person will not be transported to the MDF for booking (i.e., transport to hospital).

E. WITNESSES AND VICTIMS.

1. Undocumented immigrants must feel secure that contacting the Office of the Sheriff will not put them at risk of deportation. The immigration status of crime victims or witnesses should not be probed.
2. U-Visa Nonimmigrant Status. Federal law grants immigration benefits to victims of qualifying crimes who have been helpful to the investigation and/or prosecution of the case. A law enforcement certification is prepared and issued by the Administrative Lieutenant.

F. ICE IMMIGRATION DETAINEES. The Office of the Sheriff regularly receives Immigration Detainer requests Forms I-247A, I-247N, I-247D, and I-247X from ICE. A detainer serves to advise that ICE seeks custody of an individual presently in custody for the purpose of deportation. The detainer is a request that the law enforcement agency advise ICE, prior to releasing the individual, in order for ICE to arrange to assume custody. I-247D and I-247X detainer requests will *not* be honored. However, I-247A and I-247N notification requests will be honored under the following circumstances:

1. TRUST ACT. The Trust Act (AB 4) provides that a person may not be held in custody solely on the basis of an immigration detainer if he or she is otherwise eligible to be released from custody, unless at the time the individual becomes eligible for release from custody certain conditions are met. "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:
  - a. All criminal charges against the individual have been dropped or dismissed; or
  - b. The individual has been acquitted of all criminal charges filed against him or her; or
  - c. The individual has served all the time required for his or her sentence; or
  - d. The individual has posted a bond; or
  - e. The individual is otherwise eligible for release under state or local law, or local policy.
2. IMMIGRATION DETAINERS. Inmates who are eligible for release from custody shall *not* be held, pursuant to an immigration hold, beyond the time he or she would otherwise be released.
3. IMMIGRATION NOTIFICATION. The Office of the Sheriff will provide information in response to ICE requests for notification (forms I-247A and I-247N) in conjunction with the conditions set forth in subparagraphs a-e below.

ICE requests for notification will be honored for inmates who have been **convicted** of **certain offenses or felonies**, or convicted (i) of a **serious felony** [PC 1192.7(c)] or a **violent felony**, [PC 667.5(c)] (see listing below); or (ii) convicted of a felony, other than a state or local offense for which an essential element was the inmate's immigration status.

- a. As used in PC 1192.7(c), "**serious felony**" means any of the following:
- (1) murder or voluntary manslaughter
  - (2) mayhem
  - (3) rape
  - (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
  - (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
  - (6) lewd or lascivious act on a child under 14 years of age
  - (7) any felony punishable by death or imprisonment in the state prison for life
  - (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm
  - (9) attempted murder
  - (10) assault with intent to commit rape or robbery
  - (11) assault with a deadly weapon or instrument on a peace officer
  - (12) assault by a life prisoner on a non-inmate
  - (13) assault with a deadly weapon by an inmate
  - (14) arson
  - (15) exploding a destructive device or any explosive with intent to injure
  - (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem
  - (17) exploding a destructive device or any explosive with intent to murder
  - (18) any burglary of the first degree
  - (19) robbery or bank robbery
  - (20) kidnapping
  - (21) holding of a hostage by a person confined in a state prison
  - (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life
  - (23) any felony in which the defendant personally used a dangerous or deadly weapon
  - (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, or any of the precursors of methamphetamines



- (25) any violation of PC 289(a) where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person
- (26) grand theft involving a firearm
- (27) carjacking
- (28) any felony offense, which would also constitute a felony violation of PC 186.22
- (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation
- (30) throwing acid or flammable substances
- (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter
- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft
- (34) commission of rape or sexual penetration in concert with another person
- (35) continuous sexual abuse of a child
- (36) shooting from a vehicle
- (37) intimidation of victims or witnesses
- (38) criminal threats
- (39) any attempt to commit a crime listed in this subdivision other than an assault
- (40) any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies]
- (41) a violation of subdivision (b) or (c) of Section 11418
- (42) any conspiracy to commit an offense described in this subdivision

And any offense committed in another state, which if committed in California, would be punishable as a listed serious felony.

- b. As used in PC 667.5(c), "**violent felony**" means any of the following:

- (1) Murder or voluntary manslaughter
- (2) Mayhem
- (3) Rape
- (4) Sodomy
- (5) Oral copulation
- (6) Lewd or lascivious act
- (7) Any felony punishable by death or imprisonment in the state prison for life
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved, or any felony in which the defendant uses a firearm which use has been charged and proved

- (9) Any robbery
- (10) Arson
- (11) Sexual penetration
- (12) Attempted murder
- (13) A violation of PC 18745, 18750, or 18755 (explosives)
- (14) Kidnapping
- (15) Assault with the intent to commit a specified felony, in violation of Section 220
- (16) Continuous sexual abuse of a child
- (17) Carjacking
- (18) Rape, spousal rape, or sexual penetration
- (19) Extortion, which would constitute a felony violation of PC 186.22
- (20) Threats to victims or witnesses, which would constitute a felony violation of PC 186.22
- (21) Any burglary of the first degree, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary
- (22) Any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies]
- (23) A violation of PC 11418(b) or (c)(weapon of mass destruction)

And any offense committed in another state, which if committed in California, would be punishable as a listed violent felony.

Notification requests will be honored for any conviction or prior conviction for a felony punishable by imprisonment in the state prison.

- c. Notification requests will be honored for any conviction or prior conviction for which the person is required to register on the California Sex and Arson Registry (CSAR) as a sex offender pursuant to PC 290 or as an arson offender pursuant to PC 457.1
- d. Notification requests will be honored for (i) any **felony conviction** (at any time), or (ii) any misdemeanor conviction within the past five years that is punishable as either a misdemeanor or a felony (i.e.: "wobbler") involving the following specified crimes:
  - (A) Assault
  - (B) Battery
  - (C) Use of threats
  - (D) Sexual abuse, sexual exploitation, or crimes endangering children
  - (E) Child abuse or endangerment
  - (F) Burglary, robbery, theft, fraud, forgery, or embezzlement
  - (G) Driving under the influence of alcohol or drugs, but only for a felony conviction
  - (H) Obstruction of justice
  - (I) Bribery

- (J) Escape
  - (K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction
  - (L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (PC 16000)
  - (M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances
  - (N) Vandalism with prior convictions
  - (O) Gang-related offenses
  - (P) An attempt, or any conspiracy, to commit an offense specified in this section
  - (Q) A crime resulting in death, or involving the personal infliction of great bodily injury
  - (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
  - (T) False imprisonment, slavery, and human trafficking
  - (U) Criminal profiteering and money laundering
  - (V) Torture and mayhem
  - (W) A crime threatening the public safety
  - (X) Elder and dependent adult abuse
  - (Y) A hate crime
  - (Z) Stalking
  - (AA) Soliciting the commission of a crime
  - (AB) An offense committed while on bail or released on his or her own recognizance
  - (AC) Rape, sodomy, oral copulation, or sexual penetration
  - (AD) Kidnapping
  - (AE) A violation of CVC 20001(c)
- e. Notification requests should also be honored for any federal conviction of any crime that meets the definition of an aggravated felony as set forth in the Immigration and Nationality Act (8 U.S.C. Sec. 1101 at Section 1101(a)(43)(A) to (P). The full listing of specified crimes follows:
- The term "aggravated felony" means –
- (A) murder, rape, or sexual abuse of a minor
  - (B) illicit trafficking in a controlled substance
  - (C) illicit trafficking in firearms or destructive devices
  - (D) laundering of monetary instruments if the amount of the funds exceeded \$10,000
  - (E) an offense relating to explosive materials
  - (F) a crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year
  - (G) a theft offense or burglary offense for which the term of imprisonment is at least one year
  - (H) the demand for or receipt of ransom
  - (I) child pornography
  - (J) racketeer influenced corrupt organizations or gambling offenses, for which a sentence of one year imprisonment or more may be imposed



- (K) owning, controlling, managing, or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons
- (L) gathering or transmitting national defense information relating to disclosure of classified information relating to sabotage, relating to treason, relating to protecting the identity of undercover intelligence agents or relating to protecting the identity of undercover agents
- (M) fraud or deceit in which the loss to the victim or victims exceeds \$10,000; tax evasion in which the revenue loss to the Government exceeds \$10,000
- (N) alien smuggling (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent)
- (O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph
- (P) falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument and for which the term of imprisonment is at least 12 months (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual.))

4. TRUTH ACT NOTIFICATION (Gov't Code 7283.1; AB-2792). Upon receiving any ICE notification request Form I-247A, I-247N, I-247D, or I-247X, the named inmate shall be provided a copy of the respective form. If ICE is to be notified of the proposed release of an inmate, he or she shall be notified as well. Additionally, the inmate's attorney or an additional person of the inmate's choosing shall be notified.

- a. In advance of any interview between ICE and an inmate, the inmate shall be provided with a written consent form either consenting or declining to participate in the interview. Standardized copies of this form are available at [http://www.bscc.ca.gov/m\\_divisions.php](http://www.bscc.ca.gov/m_divisions.php).

5. EQUALITY OF ACCESS. All persons arrested for a criminal offense and held in our custody will have equal access to custody programs if otherwise program-eligible.
6. COURT ORDERS. Court Orders and warrants are entirely separate and should not be confused with I-247A, I-247N, I-247D, and I-247X requests. Duly issued warrants will, in all cases, be honored.

# Immigration

## 428.1 DEFINITIONS

1. **Individual** – An “individual” is any person with whom the Probation Department interacts or otherwise encounters while in performance of the authorized functions of the Department, including, but not limited to, adults or juveniles under the Department’s supervision, juveniles in the custody of the Department, victims, witnesses, and those defendants in the criminal courts for whom the Department prepares reports.
2. **ICE** – “ICE” is the United States Department of Immigration and Customs Enforcement.
3. **Probation ICE Liaison** – The “Probation ICE Liaison” is the Probation Manager designated by the Chief Probation Officer as the person responsible for communicating with ICE on matters pertaining to immigration. The Chief Probation Officer will inform staff of who he has designated as the Probation ICE Liaison.

## 428.2 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to Contra Costa County Probation staff concerning cooperation with ICE on matters involving the immigration status of individuals.

## 428.3 POLICY

Contra Costa County is committed to treating everyone fairly, without regard to immigration status. The County also has an obligation to follow state and federal law, including, but not limited to, 8 U.S.C. Section 1373. It is the policy of this Department not to inquire into or report the immigration status of any individual, absent a legal mandate to do so or in situations involving a public safety concern. The purpose of this policy is to clarify this Department’s legal responsibilities and delineate the role of Probation staff in responding to immigration matters.

## 428.4 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 the Probation Department will not automatically lead to immigration inquiry and/or deportation. Staff shall treat all individuals equally and without regard to race, color or national origin in full compliance with the United States and California Constitutions.

## 428.5 PROVIDING INFORMATION/ASSISTANCE TO ICE

Probation staff shall refer all ICE inquiries to the Probation ICE Liaison, or in the absence of the Probation ICE Liaison, to the Assistant Chief Probation Officer or Chief Probation Officer. Other than the Probation ICE Liaison, Probation staff are not authorized to contact ICE.

The primary role of the Probation ICE Liaison is to respond to ICE requests about an individual’s citizenship or immigration status. When the Probation Department receives a request from ICE, the only information

that the Probation ICE Liaison is required to report to ICE under this policy is the citizenship or immigration status of an individual under Probation's supervision or custody, if known.

The Probation Department shall not use Department resources 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 of an individual on the basis of a hold request.
- C) Providing information regarding a person's release dates 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 of the Government Code.
- 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, work address or telephone number unless the 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.

The Probation ICE liaison shall keep a written record of all communication with ICE that includes the following information: who requested information and the type of information requested, the ICE contact, the date and type of information that was disseminated and by whom, the identifying information about the individual that is the subject of the inquiry that includes Probation ID Number (PID), name and date of birth, current charges, and the assigned Deputy Probation Officer.

If Probation staff members have any questions regarding the citizenship or immigration status of an individual that should be communicated to ICE, they shall immediately notify their supervisor, who will contact the Probation ICE Liaison. The Probation ICE Liaison will determine the appropriate course of action through consultation with the Assistant Chief Probation Officer or Chief Probation Officer.

Sworn Probation Department staff who are in the field may choose to render mutual aid per Penal Code Section 830.5(a)(5)(A) to any law enforcement agents, including ICE agents, if there is significant danger of personal injury or major property damage. If such assistance is rendered, the staff shall complete an Incident Report.

#### **428.7 CONFIDENTIAL JUVENILE MATTERS**

ICE detainers and transfer requests for individuals involved in juvenile cases will not be honored at the John A. Davis Juvenile Hall or the Orin Allen Youth Rehabilitation Facility. The individual who is the subject of the ICE detainer and/or transfer request and his or her guardian, if applicable, shall be given a copy of the documentation received from ICE regarding his or her detainer or transfer request, along with written notice that the Probation Department will not be complying with that ICE request. (Gov. Code Section 7283.1.)

Pursuant to Welfare and Institutions Code Section 831, Probation staff shall not provide information regarding an individual involved in a juvenile case to any Federal Agency absent a court order, as required by Welfare and Institutions Code Section 827.

#### **428.8 NOTICE TO INDIVIDUALS**

In all cases other than those set forth in section 428.7, above, when ICE has issued a hold, notification, or transfer request for an individual, that individual shall be given a copy of the documentation received from ICE regarding his or her hold, notification, or transfer request, along with written notice as to whether the

Probation Department will or will not comply with that ICE request. If the Probation Department notifies ICE that an individual in its custody is being or will be released on a certain date, a copy of that notification shall be provided in writing to the individual and his/her attorney or to one additional person who the individual may designate (Gov. Code Section 7283.1).

No individual who is otherwise ready to be released from custody will be detained solely for the purpose of making notification to immigration authorities, except in cases where the Probation Department is in possession of a valid arrest warrant.

#### **428.9 ICE INTERVIEWS**

In advance of any interview regarding civil immigration violations between ICE and an individual in the Probation Department's custody or supervision, the Probation 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. (Gov. Code Section 7283.1(a).)

Any interview for an individual in the Probation Department's custody or supervision shall be facilitated through the Probation ICE Liaison, after consultation with the Assistant Chief Probation Officer or the Chief Probation Officer.

#### **428.10 IMMIGRATION STATUS IN REPORTS AND FILE DOCUMENTATION**

Probation staff shall not ask an individual about his or her immigration status or document an individual's immigration status in a Court report. Staff may ask an individual about his or her language skills, place of birth, and related social history factors and may document that information in Court reports. Probation staff may document spontaneous statements made by individuals regarding immigration status in internal case notes.

#### **428.11 STAFF INQUIRIES WITH ICE – WHEREABOUTS**

If Probation staff suspects that an individual under the Probation Department's supervision has been deported or is in the custody of ICE, staff shall request the Probation ICE Liaison to contact ICE to inquire about the individual's whereabouts. If ICE confirms that an individual under the Probation Department's supervision has been deported, and that individual's matter is still active, Probation staff shall discuss the matter with their supervisor to determine the appropriate course of action in order to retain jurisdiction and/or toll time in the event that individual returns to the United States. Appropriate actions may include submitting a petition to revoke with a warrant request for adult cases or file a Welfare and Institutions Code Section 777 notice of violation for juvenile cases.

**Revision Date – 10/17**

# Judge in Chicago refuses to change ruling on sanctuary cities



U.S. Attorney General Jeff Sessions speaks about the asylum system at the Executive Office for Immigration Review in Falls Church, Va., on Oct. 12, 2017. (Jim Lo Scalzo/EPA-EFE)

By **Jason Meisner**  
Chicago Tribune

OCTOBER 13, 2017, 5:00 PM

**A** federal judge in Chicago on Friday refused to alter his previous ruling barring Attorney General **Jeff Sessions** from requiring sanctuary cities nationwide to cooperate with immigration agents in exchange for receiving public safety grant money.

In granting the preliminary injunction last month, U.S. District Judge Harry Leinenweber said Mayor Rahm Emanuel's administration could suffer "irreparable harm" in its relationship with the immigrant community if it were to comply with the U.S. Department of Justice's new rules. **The judge also said the attorney general overstepped his authority by imposing the special conditions, agreeing with the city's argument that it was an attempt to usurp power from Congress over the country's**

**Support Quality Journalism**  
**Subscribe for only 99¢**

**START NOW >**



In a motion filed Sept. 26, Sessions asked Leinenweber to narrow the ruling to apply only to Chicago, arguing it would unfairly punish smaller cities that depend on the Edward Byrne Memorial Justice Assistance Grants.

But Leinenweber wrote in his decision Friday that the “rule of law is undermined” if he allowed Sessions to continue what is likely unconstitutional conduct in other cities while the lawsuit here is pending.

“An injunction more restricted in scope would leave the Attorney General free to continue enforcing the likely invalid conditions against all other Byrne JAG applicants,” wrote Leinenweber, who was appointed to the bench by President Ronald Reagan in 1985.

A separate appeal of Leinenweber’s preliminary injunction is pending before the 7th U.S. Circuit Court of Appeals in Chicago.

President Donald Trump’s administration wants to require cities applying for the annual grants for public safety technology to give notice when immigrants in the country illegally are about to be released from custody and allow immigration agents access to local jails.

The new regulations, announced by Sessions in July, also would require local authorities to give 48 hours’ notice “where practicable” before releasing from custody people whom federal immigration agents suspect of being in the country illegally.

The Byrne grants have become a high-profile battlefield between local governments and the Trump administration over the president’s immigration policies.

This week, the [Justice Department](#) announced it had sent letters contending that Chicago and Cook County violated federal immigration laws last year when they were awarded public safety grants.

The letters to Chicago police Superintendent Eddie Johnson and Cook County Board President Toni Preckwinkle, along with a handful of other so-called sanctuary cities around the country, do not specify why the city and county are in violation, but it gives them until Oct. 27 to prove otherwise before the Justice Department reaches “its final determination” on the matter.

In a statement Friday, Emanuel claimed victory but said the “battle is not over.”

“This ruling is a victory for both Chicago and cities nationwide, because no city in America should be forced to abandon its values in order to get public safety funding from the federal government,” the

**Sponsored. Quality Journalism**  
may say so.  
Subscribe for only 99¢

**START NOW ›**

[jmeisner@chicagotribune.com](mailto:jmeisner@chicagotribune.com)

Twitter @jmetr22b

**RELATED:**

**Justice Department says Chicago violated immigration rules on earlier grant »**

**Judge rules in city's favor on sanctuary cities, grants nationwide injunction »**

Copyright © 2017, Chicago Tribune

This 'attr(data-c-typename)' is related to: [Immigration](#), [Jeff Sessions](#), [U.S. Department of Justice](#)

**Support Quality Journalism**  
Subscribe for only 99¢

**START NOW ›**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

THE CITY OF PHILADELPHIA,

Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS III,  
in his official capacity as Attorney General of  
the United States,

Defendant.

Case No. 2:17-cv-03894-MMB

**BRIEF OF AMICI CURIAE COUNTY OF SANTA CLARA,  
24 ADDITIONAL CITIES, COUNTIES AND MUNICIPAL AGENCIES,  
THE U.S. CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES,  
THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND  
THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION**

**IN SUPPORT OF**

**THE CITY OF PHILADELPHIA'S MOTION FOR PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
III. ARGUMENT .....	6
A. Local Officials Must Be Allowed to Adopt Law Enforcement Policies Tailored to the Needs and Unique Characteristics of Their Communities. ....	6
B. Policies Restricting Local Immigration Enforcement Promote Public Safety. ....	9
C. The Byrne JAG Conditions Have Created Uncertainty and Operational Challenges. ....	12
IV. CONCLUSION .....	17

## **TABLE OF AUTHORITIES**

### **CASES**

<i>City of Chicago v. Sessions</i> 2017 WL 4081821 (N.D. Ill. Sept. 15, 2017) .....	2, 4, 5, 13
<i>Cty. of Santa Clara v. Trump</i> 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) .....	2, 3
<i>Cty. of Santa Clara v. Trump</i> 2017 WL 3086064 (N.D. Cal. July 20, 2017) .....	3
<i>Gonzales v. Oregon</i> 546 U.S. 243 (2006) .....	6
<i>Medtronic, Inc. v. Lohr</i> 518 U.S. 470 (1996) .....	6
<i>Nat’l Fed’n of Indep. Bus. v. Sebelius</i> 567 U.S. 519 (2012) .....	6, 8
<i>Pennhurst State Sch. &amp; Hosp. v. Halderman</i> 451 U.S. 1 (1981) .....	16
<i>S. Dakota v. Dole</i> 483 U.S. 203 (1987) .....	8
<i>United States v. Lopez</i> 514 U.S. 549 (1995) .....	6
<i>United States v. Morrison</i> 529 U.S. 598 (2000) .....	6

### **STATUTES**

#### **Federal**

8 U.S.C. section 1373 .....	3, 4, 5, 15, 16
42 U.S.C. § 3751(a)(1) .....	7

#### **State**

Cal. Gov’t Code § 7283.1(a) .....	13
D.C. Code § 24-211.07(d)(1) .....	13
Massachusetts General Laws Ch. 40B Section 24 .....	1

**Local**

Cook County Code § 46-37(b).....	14
King County Code § 2.15.010-2.15.020 .....	9
Municipal Code of the City and County of Denver, § 28-252.....	14
N.Y.C. Administrative Code 9-131(h)(1) .....	16

**OTHER AUTHORITIES**

Rob Arthur, <i>Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office</i> (May 18, 2017) .....	10
<i>Border Insecurity: The Rise of MS-13 and Other Transnational Criminal Organizations</i> , Hearing before the Committee on Homeland Security and Governmental Affairs of the United States Senate (May 24, 2017) .....	10
Bureau of Justice Statistics, <i>Jail Inmates in 2015</i> (2016).....	12
Cato Institute, <i>Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin</i> , 1 & n.4, 2 (Mar. 15, 2017) .....	9
Darcy Costello, “New LMPD policy: No working with immigration officials to enforce federal laws,” <i>The Courier-Journal</i> (Sept. 22, 2017).....	11
County of Santa Clara, Bd. of Supervisors Policy No. 3.54.....	9, 14
Department of Justice Programs, Grants 101, Overview of OJP Grants and Funding, Types of Funding.....	7
Executive Order 13768 .....	2, 3
H.R. Rep. No. 109-233 .....	8
Houston Police Dep’t, Immigration Policy Questions and Answers.....	9
Kate Howard, “Louisville Police Don’t Enforce Immigration – But Help the Feds Do It,” <i>Ky. Ctr. for Investigative Reporting</i> (Sept. 17, 2017).....	11
Immigrant Legal Resource Center, Detainer Policies.....	9
International Association of Chiefs of Police, <i>Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement</i> .....	7
Jasmine C. Lee, Ruby Omri, and Julia Preston, "What Are Sanctuary Citites," <i>New York Times</i> (Feb. 6, 2017) .....	2
Brooke A. Lewis, “HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year,” <i>Houston Chronicle</i> (Apr. 6, 2017) .....	10
Major Cities Chiefs Ass'n, <i>Immigration Policy</i> (2013) .....	6

Katie Mettler, “‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse,” <i>Wash. Post</i> (Feb. 16, 2017) .....	14
James Queally, “ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court,” <i>Los Angeles Times</i> (Mar. 16, 2017).....	14
James Queally, “Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says,” <i>Los Angeles Times</i> (Mar. 21, 2017) .....	10
Nik Theodore, Dep’t of Urban Planning and Policy, University of Chicago, <i>Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement</i> , 5-6 (2013).....	10
Tucson Policy Dep’t Gen. Orders, Gen. Order 2300 .....	9
Transcript of Donald Trump’s Immigration Speech <i>The New York Times</i> (Sept. 1, 2016) .....	2
U.S. Dep’t of Justice, Office of Justice Programs, <i>Certifications of Compliance with 8 U.S.C. § 1373</i> .....	4
U.S. Dep’t of Justice, Office of Public Affairs, <i>Attorney General Sessions Delivers Remarks on Sanctuary Policies</i> (Aug. 16, 2017).....	15
U.S. Dep’t of Justice, Office of Public Affairs, <i>COPS Office: Immigration Cooperation Certification Process Background</i> .....	4
U.S. Dep’t of Justice, Office of Public Affairs, <i>Department of Justice Announces Priority Consideration Criteria for COPS Office Grants</i> (Sept. 7, 2017) .....	4
U.S. Dep’t of Justice, Office of Public Affairs, <i>Justice Department Announces that Commitment to Reducing Violent Crime Stemming from Illegal Immigration will be Required for Participation in Public Safety Partnership Program</i> (Aug. 3, 2017) .....	4
U.S. Dep’t of Justice, Office of Public Affairs, <i>Justice Department Provides Last Chance for Cities to Show 1373 Compliance</i> .....	15
Chuck Wexler, “Police chiefs across the country support sanctuary cities because they keep crime down,” <i>Los Angeles Times</i> (Mar. 6, 2017).....	9
The White House, Office of the Press Secretary, <i>Press Briefing by Press Secretary Sean Spicer</i> , 2/1/2017, #6 (Feb. 1, 2017) .....	3
Tom K. Wong, Center for American Progress, <i>The Effects of Sanctuary Policies on Crime and the Economy</i> , ¶ 12 (2017) .....	9, 11

I.

INTRODUCTION

Amici are 24 cities, counties, and municipal agencies,<sup>1</sup> and four major associations of local governments and their officials: The United States Conference of Mayors, the National League of Cities, the International Municipal Lawyers Association, and the International City/County Management Association.<sup>2</sup> Local governments bear responsibility for protecting the safety and welfare of our communities. Our law enforcement officials patrol our streets, operate our jails, investigate and prosecute crimes, and secure justice for victims. To fulfill these responsibilities, amici cities and counties must build and maintain the trust of our residents, regardless of their immigration status, and we must be able to adopt policies which foster that trust and meet our communities' unique needs.

Since January, President Trump and his Administration have targeted local jurisdictions, like the amici cities and counties, that have determined the needs of their communities are best met, and public safety is best secured, by limiting local involvement with the enforcement of federal immigration law. In one of his first acts upon taking office, President Trump issued an Executive Order ("Order") directing his Administration to deny federal funds to so-called

---

<sup>1</sup> The Metropolitan Area Planning Council is the Regional Planning Agency serving the people who live and work in the 101 cities and towns of Metropolitan Boston. *See* Massachusetts General Laws Ch. 40B Section 24. The agency provides extensive technical assistance to cities and towns in the Greater Boston region, and supports the ability of cities and towns to adopt and implement best practices for maintaining a productive relationship with all residents of their communities, regardless of their immigration status.

<sup>2</sup> The United States Conference of Mayors is the official non-partisan organization of cities with populations of 30,000 or more. There are 1,408 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor. The National League of Cities ("NLC") is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans. The International Municipal Lawyers Association ("IMLA") is owned by its more than 2,500 members and serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before courts nationwide. The International City/County Management Association ("ICMA") is a non-profit professional and educational organization with more than 11,000 members, the appointed chief executives and professionals who serve local governments throughout the world.



“sanctuary” jurisdictions. Executive Order 13768, §§ 2(c), 9(a). Three months later, Judge William H. Orrick of the United States District Court for the Northern District of California granted a nationwide preliminary injunction barring enforcement of Section 9(a) of the Order. *Cty. of Santa Clara v. Trump*, No. 17-CV-00574, *City & Cty. of San Francisco v. Trump*, No. 17-CV-00485, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) (hereinafter *Santa Clara*). Despite that injunction, the Department of Justice (“DOJ”) is attempting yet again to deny federal funds to jurisdictions that choose to limit their participation in enforcing federal immigration law.

The DOJ’s new conditions on the Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) program violate federal law, usurp local control over public safety policy, erode the community trust on which local law enforcement depends, and create uncertainty for local governments like amici. A district court in Chicago has already recognized this and preliminarily enjoined the enforcement of two of these conditions on a nationwide basis. *City of Chicago v. Sessions*, No. 17-CV-5720, 2017 WL 4081821, at \*14 (N.D. Ill. Sept. 15, 2017). But the federal government continues to dispute the nationwide scope of this injunction, and a preliminary injunction is required from this Court to protect Philadelphia and prevent irreparable harm to its law enforcement efforts and its local residents.

## II.

### BACKGROUND

Hundreds of local jurisdictions nationwide have concluded they can best promote the safety and well-being of their communities by limiting their involvement in immigration enforcement. *See, e.g.*, Jasmine C. Lee, Rudy Omri, and Julia Preston, “What Are Sanctuary Cities,” *New York Times* (Feb. 6, 2017), <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?mcubz=1>. Although these jurisdictions are just as safe as – if not safer than, *see infra* at 9-11 – those that devote local resources to enforcing federal immigration law, President Trump has blamed them for “needless deaths” and promised to “end . . . [s]anctuary” jurisdictions by cutting off their federal funding. Transcript of Donald Trump’s Immigration Speech, *The New York Times* (Sept. 1, 2016), <https://www.nytimes.com/2016/09/02/us/>

politics/transcript-trump-immigration-speech.html.

On January 25, 2017, President Trump issued Executive Order 13768, which directed the Attorney General and the Secretary of Homeland Security to ensure that “sanctuary jurisdictions” do not receive any “[f]ederal funds.” Executive Order 13768, §§ 2(c), 9(a). The White House made clear that the Order aimed to “end[] sanctuary cities” by stripping them of *all* federal funding. *See, e.g.*, Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/1/2017, #6* (Feb. 1, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6>.

Shortly thereafter, the County of Santa Clara and the City and County of San Francisco filed related lawsuits challenging the Order and moved for a preliminary injunction barring its enforcement. At oral argument on the motions, DOJ attempted to walk back the Order’s sweeping language by arguing the Order was merely an “exercise of the President’s ‘bully pulpit’” to exert political pressure on local government entities, and only applied narrowly to three specific federal grants (including Byrne JAG). *Santa Clara*, 2017 WL 1459081, at \*1. The district court rejected this interpretation, finding it irreconcilable with the plain language of the Order, and issued a preliminary injunction in April prohibiting enforcement of Section 9(a)’s broad funding ban.<sup>3</sup> *Id.* at \*9. The Executive Order remains preliminary enjoined, and Santa Clara and San Francisco have moved for a permanent injunction.

Meanwhile, the Attorney General has shifted to a grant-by-grant approach. In April 2017, as it became increasingly likely that the Executive Order would be enjoined, DOJ took action to enforce a condition on Byrne JAG funding initially imposed in 2016. *See* Compl. ¶¶ 69-74 (Dkt. No.1). This condition (the “certification condition”) requires recipients of Byrne JAG program funds to certify compliance with 8 U.S.C. section 1373, which prohibits

---

<sup>3</sup> DOJ relied on an Attorney General memorandum purporting to reinterpret the Executive Order to seek reconsideration of the preliminary injunction, but the district court rejected that attempt. *See Cty. of Santa Clara v. Trump*, No. 17-CV-00574, *City & Cty. of San Francisco v. Trump*, No. 17-CV-00485, 2017 WL 3086064 (N.D. Cal. July 20, 2017).

restrictions on the sharing of citizenship and immigration status information. On April 21, 2017, the DOJ sent letters to nine jurisdictions, including Philadelphia, suggesting they did not comply with section 1373 and requiring them to submit an “official legal opinion” and supporting documentation to demonstrate their compliance by June 30, 2017. Compl. ¶ 78.

Then, on July 25, 2017, the Attorney General officially announced three conditions applicable to the Byrne JAG program, including the existing certification condition and two new conditions that require recipients to (1) “permit personnel of [DHS] to access any detention facility in order to meet with an alien and inquire as to his or her right to be or remain in the United States” (“access condition”), and (2) “provide at least 48 hours advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction’s custody when DHS requests such notice in order to take custody of the alien” (“notice condition”). Compl. ¶ 5 & Exs. 1, 15. The DOJ has indicated that these conditions may be applied to other grants, *see* U.S. Dep’t of Justice, Office of Justice Programs, *Certifications of Compliance with 8 U.S.C. § 1373*, <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>, and has made local immigration enforcement a selection criterion for other federal grant programs.<sup>4</sup>

Several jurisdictions filed suit to challenge the Byrne JAG conditions.<sup>5</sup> After the City of

---

<sup>4</sup> On August 3, 2017, the DOJ announced that to be selected for the Public Safety Partnership program, local jurisdictions must “show a commitment to reducing crime stemming from illegal immigration.” U.S. Dep’t of Justice, Office of Public Affairs, *Justice Department Announces that Commitment to Reducing Violent Crime Stemming from Illegal Immigration will be Required for Participation in Public Safety Partnership Program* (Aug. 3, 2017), <https://www.justice.gov/opa/pr/justice-department-announces-commitment-reducing-violent-crime-stemming-illegal-immigration>. Applicants are now required to report whether they have access and notice policies that mirror the access and notice conditions of the JAG grants and whether they honor ICE detainees. *Id.* On September 7, 2017, the DOJ announced that applicants for competitive Office of Community Oriented Policing Services (COPS Office) grants will receive priority consideration if they certify that they provide DHS access to their detention facilities and advance notice to DHS of “an illegal alien’s release date and time.” U.S. Dep’t of Justice, Office of Public Affairs, *COPS Office: Immigration Cooperation Certification Process Background*, <https://www.justice.gov/opa/press-release/file/995376/download> (last accessed Oct. 12, 2017); *see also* U.S. Dep’t of Justice, Office of Public Affairs, *Department of Justice Announces Priority Consideration Criteria for COPS Office Grants* (Sept. 7, 2017), <https://www.justice.gov/opa/pr/departments-justice-announces-priority-consideration-criteria-cops-office-grants>.

<sup>5</sup> *See City of Chicago v. Sessions*, No. 17-CV-05720 (N.D. Ill., filed Aug. 7, 2017); *City & Cnty. of San Francisco v. Sessions*, No. 17-CV-04642-WHO (N.D.Cal., filed Aug. 11, 2017); *State of*

Chicago moved for a preliminary injunction in its case, the DOJ again changed course and represented that the conditions announced on July 25 – and subsequently included in the Fiscal Year 2017 Byrne JAG solicitations – were not “actual” conditions, but “only advised prospective applicants regarding the *general tenor* of the conditions.” Def.’s Opp. To Pl.’s Mot. to Expedite Briefing Schedule, at 3 n.2, *Chicago v. Sessions*, No. 17-CV-05720 (N.D. Ill. Aug. 14, 2017), ECF No. 28 (emphasis added). DOJ then submitted a pair of award letters, dated August 23, 2017, that set forth what are purportedly the “actual” conditions. In these letters, the DOJ modified the condition requiring 48 hours’ notice to DHS before an inmate is released from local custody to require notice “as early as practicable.” Declaration of Alan R. Hanson (“Hanson Decl.”), Exs. A & B, ¶¶55-56, *Chicago v. Sessions*, No. 17-CV-5720 (N.D. Ill. Aug. 14, 2017), ECF No. 32. And DOJ modified the access condition to require a local policy or practice designed to ensure that federal agents “in fact” are given access to correctional facilities for the purpose of meeting with individuals believed to be aliens and inquiring into their right to remain in the country. *Id.*

On September 15, 2017, Judge Harry D. Leinenweber, of the Northern District of Illinois, issued a nationwide preliminary injunction prohibiting enforcement of the notice and access conditions, but leaving in place the certification condition.<sup>6</sup> *Chicago*, 2017 WL 4081821, at \*14. Chicago has moved for reconsideration of the portion of the order allowing enforcement of the certification condition, and the DOJ has appealed.<sup>7</sup>

---

*California v. Sessions* No. 17-CV-4701-WHO (filed Aug. 14, 2017 N.D. Cal.); *City of Philadelphia v. Sessions*, No. 17-CV-03894-MMB (E.D.Pa., filed Aug. 30, 2017); *City of Los Angeles v. Sessions*, No. 17-CV-07215-R-JC (C.D.Cal., filed Sept. 29, 2017).

<sup>6</sup> The DOJ moved to stay the nationwide application of the preliminary injunction, but the district court denied its motion. See Mem. Op. & Order, *Chicago v. Sessions*, No. 17-CV-5720 (N.D. Ill. Oct. 13, 2017), ECF No. 98. The DOJ has also moved to stay the nationwide application of the preliminary injunction in the Seventh Circuit.

<sup>7</sup> Chicago moved for reconsideration based on a letter from DOJ, discussed *infra* at pages 15-16, that found Chicago to be in violation of 1373 and contradicted representations DOJ made to the district court. Chicago has moved to hold DOJ’s appeal in abeyance pending resolution of this motion.

### III. ARGUMENT

#### A. **Local Officials Must Be Allowed to Adopt Law Enforcement Policies Tailored to the Needs and Unique Characteristics of Their Communities.**

Our nation’s constitutional structure is premised on the notion that states and localities, as the governments closest to the people, bear responsibility for protecting the health and safety of their residents. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (“health and safety . . . are primarily, and historically, matters of local concern”) (internal quotation marks and alterations omitted). Within the “structure and limitations of federalism,” state and local governments possess “great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (internal quotation marks omitted). This local control ensures that matters which “concern the lives, liberties, and properties of the people” are determined “by governments more local and more accountable than a distant federal bureaucracy.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012).

The duty to protect local residents from crime lies at the heart of the police power vested in state and local jurisdictions. *See United States v. Morrison*, 529 U.S. 598, 618 (2000) (there is “no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims”). In carrying out this duty, cities and counties possess – and must be allowed to exercise – broad discretion to develop and implement law enforcement and public safety policies tailored to the needs of their communities. *See United States v. Lopez*, 514 U.S. 549, 561 (1995).

This is a matter not only of constitutional law, but of sound law enforcement policy. Police chiefs and sheriffs nationwide have stated that “decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities must be left in the control of local governments.” Major Cities Chiefs Ass’n, *Immigration Policy* (2013),

[https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf). Local control is no less critical when policy decisions concern enforcement of federal immigration law. *See id.* (“The decision to have local police officers perform the function and duties of immigration agents should be left to the local government[.]”).

Amici share the judgment that local participation in federal immigration enforcement can be detrimental to community safety. But one need not agree with Philadelphia’s specific policy decisions – or those of the city and county amici – to agree these decisions should rest with the local entities tasked with keeping our communities safe. The International Association of Chiefs of Police (“IACP”) has taken no position on whether local law enforcement agencies should engage in immigration enforcement. IACP, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, 1, <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf> (hereinafter *Enforcing Immigration Law*). But the IACP is not neutral on *who* should decide whether local police do so. In its view, “local law enforcement’s participation in immigration enforcement is an *inherently local* decision that *must* be made by a police chief, working with their elected officials, community leaders and citizens.” *Id.* at 1 (emphasis added). Attempts to coerce participation by withholding federal funds are “unacceptable.” *Id.* at 5.

In creating the Byrne JAG program, Congress recognized the need for local control over law enforcement policy and structured the program to maximize local discretion. As Philadelphia has explained, the Byrne JAG program is a formula grant,<sup>8</sup> available for use in eight broad areas, including law enforcement; prosecution and courts; prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvement; crime victim and witness programs; and mental health. *See* 42 U.S.C. § 3751(a)(1). Congress designed the program in this manner to “give State and local governments

---

<sup>8</sup> A formula grant is a non-competitive grant in which funds are allocated based upon a statutory formula, without a competitive process. Department of Justice Programs, Grants 101, Overview of OJP Grants and Funding, Types of Funding, <https://ojp.gov/grants101/typesoffunding.htm>.

more flexibility to spend money for programs that work for them rather than to impose a ‘one size fits all’ solution.” H.R. Rep. No. 109-233, at 89 (2005). Empowering states and localities to make their own policy choices is thus a central purpose of the program. Local jurisdictions, including many of the amici, put these funds to diverse uses, reflecting both the varied law enforcement needs of different communities and Congress’s intent to preserve local discretion and flexibility in Byrne JAG-funded law enforcement programs. For example:

- Iowa City, Iowa (population 74,398) uses Byrne JAG funds to promote traffic safety, to establish a search and rescue program aimed at individuals at risk for wandering, to partially fund a drug task force, and to purchase equipment.
- Portland, Oregon (population 639,863) has used Byrne JAG funds to support its New Options for Women (NOW) program, which provides services to women who have experienced sexual exploitation while working in the commercial sex industry.
- Sacramento, California (population 493,025) uses Byrne JAG funds to support the ongoing maintenance and operation of its Police Department’s helicopter program.
- San Francisco, California (population 870,887) uses Byrne JAG funds to operate a Youth Adult Court aimed at reducing recidivism for youth ages 18-25 by providing case management and other services that account for young adults’ unique developmental needs.

If the Byrne JAG conditions are allowed to stand, local governments will be forced to choose between losing critical funding for these diverse programs or giving up control over inherently local law enforcement policies. Such a result would not only undermine the ability of local entities to enact policies reflecting the needs and unique characteristics of their communities – thus subverting a central purpose of the funding – but also allow the executive branch to wield powers vested exclusively in Congress. Under the Spending Clause, only Congress – whose members are elected by and accountable to local communities – can place substantive conditions on federal funds. *S. Dakota v. Dole*, 483 U.S. 203, 206 (1987) (“Incident to [its Article I spending] power, *Congress* may attach conditions on the receipt of federal funds[.]”) (emphasis added). And any conditions must be germane to the purpose of the funding. *Sebelius*, 567 U.S. at 632. In the case of Byrne JAG funding, Congress chose to preserve local discretion, and DOJ has no authority to upend that decision.



**B. Policies Restricting Local Immigration Enforcement Promote Public Safety.**

In exercising its discretion over local law enforcement policy, Philadelphia has made the considered judgment that devoting local resources to immigration enforcement would be detrimental to community safety. Compl., ¶¶ 2-3, 27-30. Philadelphia is not alone in this judgment. More than 600 counties and numerous cities – including many of the amici – have opted to limit their engagement in federal immigration enforcement efforts. Tom K. Wong, Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy*, ¶ 12 (2017) (hereinafter “*Effects of Sanctuary Policies*”) (identifying 608 counties coded by Immigration and Customs Enforcement (“ICE”) as limiting involvement with immigration enforcement), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>; Immigrant Legal Resource Center, *Detainer Policies*, <https://www.ilrc.org/detainer-policies> (listing city and county policies to decline detainer requests). The policies of these counties and cities are themselves diverse, reflecting the varied needs and judgments of each jurisdiction.<sup>9</sup>

Policies that restrict local entanglement with ICE reflect the judgment of local governments and law enforcement agencies that community trust in local law enforcement is vital to the work of public safety. Local law enforcement agencies rely upon all community members – regardless of immigration status – to report crimes, serve as witnesses, and assist in investigations and prosecutions. *See, e.g.*, Chuck Wexler, “Police chiefs across the country support sanctuary cities because they keep crime down,” *Los Angeles Times* (Mar. 6, 2017), <http://www.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html>. Immigrants – again, regardless of immigration status – are less likely to commit crimes than native U.S. citizens. *See, e.g.*, Cato Institute, *Criminal Immigrants: Their*

<sup>9</sup> *See, e.g.*, County of Santa Clara, Bd. of Supervisors Policy No. 3.54, <https://www.sccgov.org/sites/bos/Legislation/BOS-Policy-Manual/Documents/BOSPolicyCHAP3.pdf>; Houston Police Dep’t, Immigration Policy Questions and Answers, [http://www.houstontx.gov/police/pdfs/immigration\\_facts.pdf](http://www.houstontx.gov/police/pdfs/immigration_facts.pdf); King County Code § 2.15.010-2.15.020, [http://aqua.kingcounty.gov/council/clerk/code/05\\_Title\\_2.pdf](http://aqua.kingcounty.gov/council/clerk/code/05_Title_2.pdf); Tucson Police Dep’t Gen. Orders, Gen. Order 2300, <https://www.tucsonaz.gov/files/police/general-orders/2300IMMIGRATION.pdf>.

*Numbers, Demographics, and Countries of Origin*, 1 & n.4, 2 (Mar. 15, 2017), [https://object.cato.org/sites/cato.org/files/pubs/pdf/immigration\\_brief-1.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/immigration_brief-1.pdf). But “[t]he moment [immigrant] victims and witnesses begin to fear that their local police will deport them, cooperation with their police then ceases.” *Border Insecurity: The Rise of MS-13 and Other Transnational Criminal Organizations*, Hearing before the Committee on Homeland Security and Governmental Affairs of the United States Senate (May 24, 2017) (statement of J. Thomas Manger, Chief of Police, Montgomery County, Maryland). Indeed, in the experience of amici, even the *perception* that local law enforcement is assisting in immigration enforcement can erode trust, disrupt lines of communication, and make law enforcement’s job much more difficult.

Recent data bear this out. Since President Trump took office and promised to ramp up deportations, Latinos have reported fewer crimes relative to reports by non-Latinos. Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office* (May 18, 2017) (analyzing data from Dallas, Denver, and Philadelphia), <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>. Disturbingly, some jurisdictions have identified declines specifically in reports of sexual assault and domestic violence. *Id.*<sup>10</sup> Local police chiefs have attributed these declines to community members’ increased fear that interactions with law enforcement could lead to their deportation, or the deportation of a family member. *Id.*; *see also supra* at 10 n.10. Indeed, 50% of foreign-born individuals and 67% of undocumented individuals surveyed reported being less likely to offer information about crimes to law enforcement for fear that officers will inquire about their or others’ immigration status. Nik Theodore, Dep’t of Urban Planning and Policy, University of Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration*

---

<sup>10</sup> *See also* Brooke A. Lewis, “HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year,” *Houston Chronicle* (Apr. 6, 2017), <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>; James Queally, “Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says,” *Los Angeles Times* (Mar. 21, 2017), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

*Enforcement*, 5-6 (2013), [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

Local policies that limit entanglement with ICE help mitigate these fears, facilitate engagement with immigrant communities, and ultimately improve public safety by ensuring that those who commit crimes are brought to justice. Contrary to President Trump and Attorney General Sessions’ unsupported rhetoric, research has shown that policies limiting cooperation with federal immigration authorities are associated with *lower* crime rates – on average, 35.5 fewer crimes per 10,000 people. *Effects of Sanctuary Policies*, ¶ 16. The association is even stronger in large metropolitan areas: counties with large, urban centers that limit local involvement with ICE experience 65.4 fewer crimes per 10,000 people than similar counties that do not limit such involvement. *Id.*, ¶ 15. Indeed, Philadelphia has experienced these effects first-hand. *See* Compl. ¶¶ 28, 37 (describing decrease in crime in Philadelphia following adoption of policies to limit cooperation with federal immigration enforcement efforts).

Even localities that previously engaged in extensive cooperation with ICE enforcement efforts, such as the City of Louisville, Kentucky, have since determined that having local police assist with immigration enforcement undermines community trust to the detriment of local public safety, and have discontinued the practice except in limited circumstances. *See* Kate Howard, “Louisville Police Don’t Enforce Immigration – But Help the Feds Do It,” *Ky. Ctr. for Investigative Reporting* (Sept. 17, 2017), [http://kycir.org/2017/09/07/louisville-police-dont-enforce-immigration-but-they-help-ice-do-it/?\\_ga=2.181999650.449997577.1505784164-179920009.1505784164](http://kycir.org/2017/09/07/louisville-police-dont-enforce-immigration-but-they-help-ice-do-it/?_ga=2.181999650.449997577.1505784164-179920009.1505784164); Darcy Costello, “New LMPD policy: No working with immigration officials to enforce federal laws,” *The Courier-Journal* (Sept. 22, 2017).

If the new Byrne JAG conditions are not enjoined, jurisdictions like Philadelphia and some of the amici will be compelled to make choices that undermine public safety: either abandon non-entanglement policies that increase community trust and lower crime rates, or lose funding for critical law enforcement programs. This is not a choice that cities and counties should have to make; it is not a choice that can be imposed consistent with the purpose of the

Byrne JAG program; and, as Philadelphia has demonstrated, it is not a choice that DOJ has the legal authority to require.

**C. The Byrne JAG Conditions Have Created Uncertainty and Operational Challenges.**

Since President Trump’s Executive Order punishing sanctuary jurisdictions was issued, the DOJ’s position on immigration-related funding conditions has become a constantly moving target. *See supra* at 3-5. The new Byrne JAG conditions are surrounded by an untenable level of uncertainty and pose operational challenges for jurisdictions that rely on this funding.

**Notice Condition.** As announced by the Attorney General and described in the FY 2017 solicitations, the new notice condition required Byrne JAG recipients to “provide *at least* 48 hours’ advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction’s custody.” Compl., Ex. 1 (emphasis added). This created significant uncertainty and operational concerns for local jurisdictions, including some amici, that operate detention facilities whose populations are primarily – or exclusively – *unsentenced* individuals held in custody pending resolution of criminal charges or transfer to another facility. *See* Bureau of Justice Statistics, *Jail Inmates in 2015*, at 5 tbl. 4 (2016), <https://www.bjs.gov/content/pub/pdf/ji15.pdf> (63% of jail inmates nationwide are unsentenced).

Unsentenced inmates typically do not have a “scheduled release date and time” that can be determined 48 hours in advance, and many are in custody for less than 48 hours before they post bail or are ordered released. For this reason, the Attorney General’s announcement and the FY 2017 solicitation created confusion and concern that the notice condition may have been intended to require local jurisdictions to continue to detain unsentenced inmates after they would otherwise be released in order to provide sufficient notice to DHS.<sup>11</sup> DOJ now represents that this condition requires notice only “as early as practicable,” and does not require any locality to hold an inmate beyond the time he or she would otherwise be released. Def.’s Opp. to Pl.’s Mot.

---

<sup>11</sup> In its response to Philadelphia’s motion for preliminary injunction, the DOJ represents that the access condition applies to *any* immigrant detained in local custody for whom ICE requests notification, regardless of whether the immigrant is sentenced or unsentenced or has a scheduled release date. *See* Mem. in Opp. to Pl.’s Mot. for Prelim. Inj. (“Opp.”) at 31-32, ECF No. 28.

for Preliminary Injunction, 20, *Chicago*, No. 17-CV-5720 (N.D. Ill., Aug. 24, 2017), ECF No. 32; Hanson Decl., Exs. A & B, ¶¶55-56, *Chicago*, No. 17-CV-5720 (N.D. Ill., Aug. 24, 2017), ECF No. 32. Even assuming DOJ adheres to this latest articulation of the condition, it nonetheless presents operational concerns: for agencies that detain arrestees and unsentenced individuals, there are likely to be many instances in which giving *any* advance notice is impracticable. It also conflicts with the local laws or policies of some amici, which have limited their responses to ICE notification requests for the reasons discussed in Section II, *supra*. Moreover, given DOJ's inconsistent position, amici remain concerned about how this condition will be enforced in practice.

**Access Condition.** The award letters submitted by DOJ with its opposition to Chicago's preliminary injunction motion require Byrne JAG recipients to have a policy or practice in place to ensure that federal agents "in fact are given access" to a local "correctional facility for the purpose of permitting such agents to meet with individuals who are (or are believed by such agents to be) aliens and to inquire as to such individuals' right to be or remain in the United States." Hanson Decl., Exs. A & B, ¶ 56(1)(A), *Chicago*, No. 17-CV-5720 (N.D. Ill., Aug. 24, 2017), ECF No. 32. The award letter does not explain what "access" "in fact" means, leaving jurisdictions to guess at what they must do to comply and, in some cases, whether compliance is consistent with state law. In California, state law requires local agencies to provide a consent form prior to any interview with ICE that explains the purpose of the interview, that the interview is voluntary, and that the inmate may decline to be interviewed or choose to be interviewed only with his or her attorney present. Cal. Gov't Code § 7283.1(a). Other jurisdictions require an inmate's written consent prior to allowing any interview with ICE, *see* Compl. ¶¶ 50-51 (describing Philadelphia policy), or provide that inmates must be permitted to have an attorney present during ICE interviews, *see* D.C. Code § 24-211.07(d)(1). The DOJ has represented in this litigation that the access condition requires Byrne JAG recipients to permit ICE interviews even if the inmate does not consent to the interview or declines to answer questions. (Opp. at 32.) If DOJ in fact maintains that position, some jurisdictions may be forced

to forego Byrne JAG funds to comply with state or local laws. For other jurisdictions, ambiguity surrounding how DOJ will ultimately enforce the condition continues to cause confusion and concern.

Whether to allow ICE to operate inside city and county detention facilities is an inherently local decision that should be left to local governments and local law enforcement officials. *See Enforcing Immigration Law* at 1. Local agencies are responsible for maintaining order and security within jails and other detention facilities, and they must retain the discretion to decide how that responsibility is best fulfilled. Some jurisdictions have made the judgment that permitting ICE to operate in local detention facilities interferes with correctional operations – for example, by increasing fear among inmates and decreasing their trust of correctional staff – and is not in the best interests of staff, inmates, or the broader community. *See, e.g.*, Cook County Code § 46-37(b); County of Santa Clara, Bd. of Supervisors Policy No. 3.54, <https://www.sccgov.org/sites/bos/Legislation/BOS-Policy-Manual/Documents/BOSPolicyCHAP3.pdf>; Revised Municipal Code of the City and County of Denver, § 28-252.

Moreover, local officials have already expressed concern that ICE’s practice of arresting immigrants at courthouses – including crime victims – deters immigrants both from pursuing justice for crimes committed against them, and from appearing in court to answer any charges they may be facing, thereby endangering local prosecutions. *See, e.g.*, Katie Mettler, “‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse,” *Wash. Post* (Feb. 16, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm\\_term=.b1c3c0902b1b](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.b1c3c0902b1b); James Queally, “ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court,” *Los Angeles Times* (Mar. 16, 2017), <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>. Immigrant inmates who see ICE operating in local jails or detention facilities may assume that ICE is permitted in other government buildings, such as courthouses, and may be more likely to abscond, denying victims the opportunity for justice.

**Certification Condition.** Finally, the Trump Administration has created significant uncertainty and concern over how it intends to enforce requirements that federal grant recipients comply with 8 U.S.C. § 1373. On its face, section 1373 addresses only state and local restrictions on the sharing of information on citizenship or immigration status with ICE or other governmental entities; the statute does not mandate that state and local governments collect this information, nor does it impose any additional requirements. *See* 8 U.S.C. § 1373. Nonetheless, the Administration has repeatedly suggested that a broad range of local policies – including policies limiting compliance with ICE detainer requests – violate section 1373. *See* U.S. Dep’t of Justice, Office of Public Affairs, *Attorney General Sessions Delivers Remarks on Sanctuary Policies* (Aug. 16, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-sanctuary-policies> (suggesting that Miami-Dade County is “now in full compliance” following its decision to begin honoring detainer requests); Compl., Ex. 1 (section 1373 “generally bars restrictions on communications” between local agencies and DHS).

On October 12, 2017, the DOJ completed a preliminary review of the legal opinions and supporting documentation it demanded from nine jurisdictions, and sent letters to five jurisdictions – including Philadelphia and amici Chicago, Cook County, and New York City – stating that they “have preliminarily been found to have laws, policies, or practices that may violate 8 U.S.C. 1373.” *See* U.S. Dep’t of Justice, Office of Public Affairs, *Justice Department Provides Last Chance for Cities to Show 1373 Compliance*, <https://www.justice.gov/opa/pr/justice-department-provides-last-chance-cities-show-1373-compliance>.<sup>12</sup> These letters only add

---

<sup>12</sup> *See also* Letter from Alan Hanson, Acting Assistant Attorney General, U.S. Dep’t of Justice to the Honorable Jim Kenney, Mayor of Philadelphia (Oct. 11, 2017), <https://www.justice.gov/opa/press-release/file/1003046/download> (“Philadelphia Letter”); Letter from Alan Hanson, Acting Assistant Attorney General, U.S. Dep’t of Justice to Eddie T. Johnson, Chicago Superintendent of Police (Oct. 11, 2017), <https://www.justice.gov/opa/press-release/file/1003016/download> (“Chicago Letter”); Letter from Alan Hanson, Acting Assistant Attorney General, U.S. Dep’t of Justice to Toni Preckwinkle, President, Cook County Board of Commissioners (Oct. 11, 2017), <https://www.justice.gov/opa/press-release/file/1003026/download> (“Cook County Letter”); Letter from Alan Hanson, Acting Assistant Attorney General, U.S. Dep’t of Justice to the Honorable Mitchel Landieu, City of New Orleans Criminal Justice Coordination (Oct. 11, 2017), <https://www.justice.gov/opa/press-release/file/1003036/download> (“New Orleans Letter”); Letter from Alan Hanson, Acting



to the uncertainty surrounding the certification condition and confirm that DOJ intends to enforce an insupportably broad interpretation of the statute.

For example, several of the letters indicate that policies limiting sharing of information about *custody status* or *release dates* violate section 1373.<sup>13</sup> See Philadelphia Letter at 1; Chicago Letter at 1; Cook County Letter at 1; New York Letter at 2-3. But DOJ provides no explanation of how such policies “prohibit, or in any way restrict” what section 1373 addresses: the sharing of information about *immigration status*.<sup>14</sup> Some of the letters also state, without further explanation, that DOJ “is not relying on” policies limiting compliance with ICE detainer requests in its “preliminary assessment[s].” Philadelphia Letter at 1 n.1; New York Letter at 2 n.1. This cryptic language could suggest that DOJ is leaving open the possibility that such policies may violate section 1373 – leaving jurisdictions to wonder whether DOJ will “rely[] on” such policies in the future and, if so, what position it will take.

DOJ’s failure to provide a clear and lawful interpretation of section 1373 has created uncertainty and forces jurisdictions to guess at how DOJ will view their policies – or what policy changes DOJ would view as sufficient – when it begins enforcing this condition. Local jurisdictions may not lawfully be placed in this position. See *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (even where Congress imposes conditions on receipt of

---

Assistant Attorney General, U.S. Dep’t of Justice to Elizabeth Glazer, Director, New York City Mayor’s Office of Criminal Justice (Oct. 11, 2017), <https://www.justice.gov/opa/press-release/file/1003041/download> (“New York Letter”).

<sup>13</sup> New York City law permits Department of Correction personnel to provide federal immigration authorities with information related to a person’s citizenship or immigration status, but prohibits the sharing of information about incarceration status and release dates unless an enumerated exception applies. N.Y.C. Administrative Code 9-131(h)(1). The New York Letter states that to comply with section 1373, New York would need to certify that it interprets this ordinance to “not restrict New York officers from sharing information regarding immigration status with federal immigration officers, *including information regarding an alien’s incarceration status and release date and time.*” New York Letter at 2-3 (emphasis added).

<sup>14</sup> In a footnote in its opposition brief, the DOJ takes the position that section 1373 covers “information that assists the federal government in carrying out its statutory responsibilities under the [Immigration and Nationality Act.]” Opp. at 39 n.11. This statement only increases confusion about the range of information DOJ believes local officials must be able to share with ICE in order to certify compliance and receive Byrne JAG funds.

federal funds, “it must do so unambiguously” and cannot leave a grant recipient “unable to ascertain what is expected of it”).

#### **IV.**

#### **CONCLUSION**

By structuring the Byrne JAG program as a broad formula grant, Congress recognized the need for local discretion over law enforcement programs, and created a (non-competitive) source of funding on which local jurisdictions should be able to rely. The new conditions imposed by Attorney General Sessions upend congressional intent. Instead of preserving flexibility for local operations, the new conditions constrain local choices and require localities to adopt federally mandated policies that will make their communities *less* safe. Instead of preserving a reliable stream of funding, DOJ’s shifting positions force localities to guess at whether DOJ will deem them eligible for funding – and whether they will be able to comply with the conditions on that funding if they accept it. An injunction is needed to halt DOJ’s unlawful effort to impose these conditions and to protect the safety of local communities.

Dated: October 19, 2017

Respectfully Submitted,

COUNTY OF SANTA CLARA  
JAMES R. WILLIAMS,  
County Counsel

By: /s/ Laura S. Trice  
Laura S. Trice  
Lead Deputy County Counsel

Laura S. Trice (*pro hac vice*)  
Kavita Narayan (*pro hac vice*)  
OFFICE OF THE COUNTY COUNSEL  
70 West Hedding Street, East Wing, 9<sup>th</sup> Floor  
San Jose, CA 95110-1770  
(408) 299-5900

By: /s/ John C. Grugan  
John C. Grugan  
Associate Counsel for the County of Santa Clara

John C. Grugan (Attorney No. 83148)  
Jason A. Leckerman (Attorney No. 87915)  
Emilia McKee Vassallo (Attorney No. 318428)  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
(215) 665-8500

*Attorneys for Amicus Curiae County of Santa Clara*

*Full List of Amici Curiae and  
Additional Counsel for Amici Curiae Provided Below*

*List of Amici Curiae*

The County of Santa Clara, California; the City of Austin, Texas; the City of Cambridge, Massachusetts; the City of Chelsea, Massachusetts; the City of Chicago, Illinois; Cook County, Illinois; the City and County of Denver, Colorado; the District of Columbia; the International City/County Management Association; the International Municipal Lawyers Association; the City of Iowa City, Iowa; King County, Washington; the City of Los Angeles, California; the City of Madison, Wisconsin; the Metropolitan Area Planning Council; the National League of Cities; the City of New York, New York; the City of Oakland, California; the City of Pittsburgh, Pennsylvania; the City of Portland, Oregon; the City of Providence, Rhode Island; the City of Rochester, New York; the City of Sacramento, California; the City and County of San Francisco, California; the County of Santa Cruz, California; the City of Seattle, Washington; the City of Somerville, Massachusetts; The United States Conference of Mayors; and the City of West Hollywood, California.

*Additional Counsel for Amici Curiae*

Anne L. Morgan  
City Attorney, City of Austin  
P.O. Box 1546  
Austin, TX 78767-1546

*Attorney for the City of Austin, Texas*

Nancy E. Glowa  
City Solicitor, City of Cambridge  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

*Attorney for the City of Cambridge,  
Massachusetts*

Cheryl Watson Fisher  
City Solicitor  
City of Chelsea Law Department  
500 Broadway, Room 307  
Chelsea, MA 02150

*Attorney for the City of Chelsea,  
Massachusetts*

Edward N. Siskel  
Corporation Counsel of the City of Chicago  
30 N. LaSalle Street, Suite 800  
Chicago, IL 60602

*Attorney for the City of Chicago, Illinois*

Kimberly M. Foxx  
States Attorney for Cook County  
69 W. Washington, 32nd Floor  
Chicago, IL 60602

*Attorney for Cook County*

Kristin M. Bronson  
City Attorney, City and County of Denver  
1437 Bannock Street, Room 353  
Denver, CO 80202

*Attorney for the City and County of Denver,  
Colorado*

Karl A. Racine  
Attorney General, District of Columbia  
One Judiciary Square  
441 4th Street NW, Suite 1100 South  
Washington, DC 20001

*Attorney for the District of Columbia*

Charles W. Thompson, Jr.  
Executive Director, General Counsel  
International Municipal Lawyers Association  
51 Monroe Street, Suite 404  
Rockville, MD 20850

*Attorney for the International Municipal  
Lawyers Association*

Eleanor M. Dilkes  
City Attorney, City of Iowa City  
410 E. Washington St.  
Iowa City, IA 52240

*Attorney for the City of Iowa City, Iowa*

Dan Satterberg  
King County Prosecuting Attorney  
516 Third Avenue, W400  
Seattle, WA 98104

*Attorney for King County, Washington*

Michael N. Feuer  
City Attorney, City of Los Angeles  
200 N. Main Street, 800 CHE  
Los Angeles, CA 90012

*Attorney for the City of Los Angeles,  
California*

Michael P. May  
City Attorney, City of Madison  
210 Martin Luther King Jr. Blvd, Room 401  
Madison, WI 53703

*Attorney for the City of Madison, Wisconsin*

Jennifer R. García  
General Counsel  
60 Temple Place, 6th Floor  
Boston, MA 02111

*Attorney for the Metropolitan Area Planning  
Council*

Zachary W. Carter  
Corporation Counsel of the City of New York  
100 Church Street  
New York, NY 10007

*Attorney for the City of New York, New York*

Barbara J. Parker  
City Attorney, City of Oakland  
One Frank H. Ogawa Plaza, Sixth Floor  
Oakland, CA 94612

*Attorney for the City of Oakland, California*

Lourdes Sánchez Ridge  
City Solicitor & Chief Legal Officer,  
City of Pittsburgh  
313 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219

*Attorney for the City of Pittsburgh,  
Pennsylvania*

Tracy Reeve  
City Attorney, City of Portland  
430 City Hall  
1221 SW 4th Avenue  
Portland, OR 97204

*Attorney for the City of Portland, Oregon*

Jeffrey Dana  
City Solicitor, City of Providence  
444 Westminster Street, Suite 220  
Providence, RI 02903

*Attorney for the City of Providence, Rhode  
Island*

Brian F. Curran  
Corporation Counsel, City of Rochester  
30 Church St., Room 400A  
Rochester, NY 14614

*Attorney for the City of Rochester, New York*

Matthew Ruyak  
Interim City Attorney, City of Sacramento  
915 I Street, Fourth Floor  
Sacramento, CA 95814

*Attorney for the City of Sacramento, California*

Dennis J. Herrera  
City Attorney, City and County of San  
Francisco  
City Hall Room 234  
One Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102

*Attorney for the City and County of San  
Francisco, California*

Dana McRae  
County Counsel, County of Santa Cruz  
701 Ocean Street, Room 505  
Santa Cruz, CA 95060

*Attorney for the County of Santa Cruz,  
California*

Peter S. Holmes  
City Attorney, City of Seattle  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097

*Attorney for the City of Seattle, Washington*

Francis X. Wright, Jr.  
City Solicitor, City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

*Attorney for the City of Somerville,  
Massachusetts*

Michael Jenkins  
City Attorney, City of West Hollywood  
JENKINS & HOGIN, LLP  
Manhattan Towers  
1230 Rosecrans Avenue, Suite 110  
Manhattan Beach, CA 90266

*Attorney for the City of West Hollywood,  
California*