 <h1 style="font-size: 48pt; margin: 0;">Agenda</h1>	<h2 style="margin: 0;">PUBLIC PROTECTION COMMITTEE</h2> <p style="color: red; margin: 0;">***SPECIAL MEETING***</p> <p style="margin: 0;">December 7, 2017 9:00 A.M.</p> <p style="margin: 0;">651 Pine Street, Room 101, Martinez</p>
---	--

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 November 6, 2017 meeting. **(Page 4)**
4. 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 from certain immigration related federal grant conditions imposed on state and local jurisdictions and DIRECT the County Administrator to forward the report to the full Board of Supervisors for review. **(Timothy Ewell, Committee Staff) (Page 8)**
5. CONSIDER approving a policy for the review of certain contracts funded by the community corrections allocation of AB109 Public Safety Realignment funding and forward to the Board of Supervisors for review and approval. **(Donte Blue, ORJ Deputy Director) (Page 85)**
6. CONSIDER accepting recommendations of the review panel for the Local Innovation Fund Projects request for proposal process and directing staff to utilize remaining fiscal year 2016-17 unspent Local Innovation Fund revenue for a "Capacity Building Project". **(Donte Blue, ORJ Deputy Director) (Page 90)**
7. CONSIDER approving the calendar year 2017 Public Protection Committee Annual Report for submission to the Board of Supervisors. **(Timothy Ewell, Committee Staff) (Page 95)**
8. The next meeting is currently scheduled for February 2018.
9. 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

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:

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



Contra Costa County Board of Supervisors

Subcommittee Report

PUBLIC PROTECTION COMMITTEE

3.

Meeting Date: 12/07/2017

Subject: RECORD OF ACTION - November 6, 2017

Submitted For: PUBLIC PROTECTION COMMITTEE,

Department: County Administrator

Referral No.: N/A

Referral Name: RECORD OF ACTION - November 6, 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 November 6, 2017 meeting.

Recommendation(s)/Next Step(s):

APPROVE Record of Action from the November 6, 2017 meeting.

Fiscal Impact (if any):

No fiscal impact. This item is informational only.

Attachments

November 2017 - Record of Action



Agenda

PUBLIC PROTECTION COMMITTEE

RECORD OF ACTION

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

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 October 2, 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. 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

Approved as presented with the following direction to staff:

1. Reappoint all current appointees in non ex-officio seats for the calendar year 2018 term, with the exception of the CBO representative seat. For that appointment, the CCP-CAB will provide a recommendation for consideration by the Committee at it's February 2018 meeting.

2. Forward recommendations to the full Board of Supervisors for action.

Chair Federal D. Glover, Vice Chair John Gioia

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

Passed

5.
 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.

Approved as presented with the following direction to staff:

1. Schedule a special meeting of the Committee for December 2017 to continue the discussion.

2. Direct County Counsel to update the analysis included in the November 2017 agenda packet to include exact policy and statute language to assist with the December 2017 discussion.

3. Direct County Counsel to continue monitoring existing litigation throughout the country on this topic and provide an update at the December 2017 meeting.

4. Direct County Counsel to opine on what constitutes a renewal or modification to existing contracts, as defined by SB-54, with the federal government for the housing of undocumented individuals in the custody of the Immigration and Customs Enforcement (ICE) Agency.

5. Direct staff to provide a copy of the contract between the Sheriff's Office and the US Marshal service, which is used by ICE for the housing for federal detainees.

6. Review the reference of \$82.00 /day rate for the housing of detainees against estimates cited by the BSCC that suggest that the actual cost is higher.

Vice Chair John Gioia, Chair Federal D. Glover

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

Passed

6. The next meeting is will be scheduled for February 2018.

The Committee directed staff to schedule a special meeting for December 2017.

7. Adjourn

Adjourned

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: 12/07/2017

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.

Potential Impacts of Executive Order 13768			
Contra Costa County			
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	
Total \$ 24,692,904			

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.

On November 6, 2017, the Committee received an update on this referral and directed staff to schedule a special meeting in December for followup. Specifically, staff presented a 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. This included an analysis by County Counsel of the current policies for each department against the new requirements of SB 54 for easy reference. The Committee asked for an updated version of the analysis for the December meeting, which is included in today's packet. Also, the actual policies from both the Sheriff's Office and the Probation Department (draft) were included for reference. In addition, Committee staff provided a brief overview on the issues related to the potential financial impacts from US DOJ and DHS grant conditions on certain federal grant awards.

The Committee also discussed the Sheriff's Office contract with the US Marshal services, which is used by ICE to house detainees currently in the custody of the federal government and requested a copy of the contract be included in the December packet for reference.

Referral Update:

Staff will present an update to the Committee on various, ongoing litigation items across the country and the status of updates to the immigration policies of the Sheriff's Office and Probation Department. In addition, County Counsel has prepared an updated analysis of existing policies and Committee staff has included a copy of the interagency agreement between the US Marshal services and the Sheriff's Office for review as directed by the Committee last month. The US Marshal contract is used by the Immigration and Customs Enforcement (ICE) Agency to house undocumented detainees that are already in the custody of the federal government in County jail facilities.

Ultimately, the County Administrator is recommending that this issue be forwarded to the Board of Supervisors for discussion at the December 19, 2017 meeting to ensure resolution prior to the January 1, 2018 effective date of SB 54.

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. DIRECT the County Administrator to forward the report to the Board of Supervisors for determination; 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

UPDATE: 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

Letter from USDOJ to Contra Costa re: 8 USC 1373 Compliance

Interagency Service Agreement - US Marshal Service



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.

O



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.

Senate Bill 54 Review- Updated
Public Protection Committee- December 7, 2017

	SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018 ¹ Amends Gov. Code §§ 7282, 7282.5 ² , adds Gov. Code §§ 7284-7284.12; Repeals Health & Safety Code § 11369	Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)	Draft Probation Immigration Policy 428 (Rev. Oct. 2017)
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. <u>Current policy:</u> IV.F.3. 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)...	Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... 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.
2403	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 ³) 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. <u>Current policy:</u> IV.F.3. 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 convicted of certain offenses or felonies , or convicted... a. As used in PC 1192.7(c), “ serious felony ” means... b. As used in PC 667.5(c), “ violent felony ” means...	Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... 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.

¹ Effective date delayed until January 4, 2018, due a potential statewide referendum on SB 54 that is in the signature-gathering phase.

² Also known as the Trust Act- CA Gov. Code §§ 7282-7282.5 [Amended by SB 54 (2017)]

³ 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.

Senate Bill 54 Review- Updated
Public Protection Committee- December 7, 2017

	SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018 ¹ Amends Gov. Code §§ 7282, 7282.5 ² , adds Gov. Code §§ 7284-7284.12; Repeals Health & Safety Code § 11369	Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)	Draft Probation Immigration Policy 428 (Rev. Oct. 2017)
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. <u>Current policy:</u> III. A. 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...	Complies. <u>Draft policy:</u> 428.6- 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 :... 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.
4.	Law enforcement agencies shall not inquire into an individual's immigration status. §7284.6(a)(1)(A)	Complies. <u>Current policy:</u> III.B. 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... IV.B.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...	Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... A) Inquiring into an individual's immigration status
5.	Law enforcement agencies shall not detain on basis	Complies.	Complies.

Senate Bill 54 Review- Updated
Public Protection Committee- December 7, 2017

	<p>SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018¹ Amends Gov. Code §§ 7282, 7282.5², adds Gov. Code §§ 7284-7284.12; Repeals Health & Safety Code § 11369 of a hold request- as defined in § 7283(b)⁴.</p>	<p>Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)</p>	<p>Draft Probation Immigration Policy 428 (Rev. Oct. 2017)</p>
	<p>§7284.6(a)(1)(B)</p>	<p><u>Current policy:</u> IV.F. 2. Inmates who are eligible for release from custody shall <i>not</i> be held, pursuant to an immigration hold, beyond the time he or she would otherwise be released.</p>	<p><u>Draft policy:</u> 428.6- The Probation Department shall not... B) Detaining of an individual on the basis of a hold request.</p>
<p>6.</p>	<p>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)</p>	<p>Requires further information from Sheriff's Office on interpretation and current practice. <u>Current policy:</u> IV.F. The Office of the Sheriff regularly receives... However, I-247N notification requests will be honored under the following circumstances: 1. TRUST ACT. The Trust Act (AB4) 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 for release from custody, unless at the time the individual becomes eligible for release from custody certain conditions are met....</p>	<p>Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... 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.</p>
<p>7.</p>	<p>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)</p>	<p>Not covered by policy.</p>	<p>Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... D) Providing personal information as defined in Section 1798.3 of the Civil Code, about an individual... unless the information is available to the public.</p>
<p>8.</p>	<p>Law enforcement agencies shall not make or</p>	<p>Requires further information from Sheriff's Office on</p>	<p>Complies.</p>

⁴ Also known as the Truth Act- CA Gov. Code §§ 7283-7283.2 [Not Amended by SB 54 (2017)]
Page 3 of 5

Senate Bill 54 Review- Updated
Public Protection Committee- December 7, 2017

	<p>SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018¹ Amends Gov. Code §§ 7282, 7282.5², adds Gov. Code §§ 7284-7284.12; Repeals Health & Safety Code § 11369</p> <p>intentionally participate in arrests based on civil immigration warrants.</p> <p>§7284.6(a)(1)(E)</p>	<p>Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)</p> <p>interpretation and current practice. <u>Current policy:</u> III. A. 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...</p> <p>Requires further information from Sheriff's Office on interpretation and current practice. <u>Current policy:</u> III.A. 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...</p> <p>IV.B.2. Sweeps intended solely to locate and detain undocumented immigrants are not permitted. Deputies will not participate in ICE-organized sweepsOffice of the Sheriff personnel may, however, provide support services, including traffic control, during an ICE operation, upon the specific request of ICE for assistance.</p> <p>Complies. <u>Current policy:</u></p>	<p>Draft Probation Immigration Policy 428 (Rev. Oct. 2017)</p> <p><u>Draft policy:</u> 428.6- The Probation Department shall not... E) Making or intentionally participating in arrests based on civil immigration warrants.</p>
<p>Page 35 of 103</p>	<p>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.</p> <p>§7284.6(a)(1)(F), (G), & (a)(2)</p>		<p>Complies. <u>Draft policy:</u> 428.6- The Probation Department shall not... F) Assisting immigration authorities in the activities described in Section 1375(a)(3) of title 8 of the United States Code.</p>
<p>10.</p>	<p>Law enforcement agencies shall not transfer to immigration authorities unless authorized by a</p>	<p>Complies. <u>Draft policy:</u></p>	<p>Complies. <u>Draft policy:</u></p>

Senate Bill 54 Review- Updated
Public Protection Committee- December 7, 2017

	<p>SB 54 (Chapter 495, October 5, 2017) Effective Jan. 1, 2018¹ Amends Gov. Code §§ 7282, 7282.5², adds Gov. Code §§ 7284-7284.12; Repeals Health & Safety Code § 11369</p>	<p>Sheriff Immigration Policy No. 1.02.28 (Rev. May 2017)</p>	<p>Draft Probation Immigration Policy 428 (Rev. Oct. 2017)</p>
	<p>judicial warrant or judicial probable cause determination or in accord with 7282.5. §7284.6(a)(4)</p>	<p>IV.F. 2. Inmates who are eligible for release from custody shall <i>not</i> be held, pursuant to an immigration hold, beyond the time he or she would otherwise be released. 6. 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.</p>	<p>428.7- ICE detainees 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.</p>
<p>11. Page 36 of 103</p>	<p>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)</p>	<p>Not covered by policy.</p>	<p>Not covered by policy.</p>
<p>12.</p>	<p>Repeals H&S Code 11369. SB 54, Sec. 4</p>	<p>Amendment suggested to reflect repeal of this law. <u>Current policy:</u> IV.D.2.(i) If a Deputy has cause to believe that a person arrested for any violation listed in <u>H&S</u> section 11369...</p>	<p>Complies. Draft policy does not reference Health and Safety Code section 11369.</p>

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

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.

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
mayor said.
Subscribe for only 99¢

START NOW ›

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. & 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,¹ 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.² 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

¹ 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.

² 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.³ *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

³ 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.⁴

Several jurisdictions filed suit to challenge the Byrne JAG conditions.⁵ After the City of

⁴ 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>.

⁵ *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.⁶ *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.⁷

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).

⁶ 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.

⁷ 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. 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,⁸ 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

⁸ 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.⁹

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*

⁹ *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; King County Code § 2.15.010-2.15.020, 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. 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.*¹⁰ 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*

¹⁰ *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.

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; 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.¹¹ 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.

¹¹ 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; 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>.¹² These letters only add

¹² *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 1373.¹³ 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*.¹⁴ 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”).

¹³ 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).

¹⁴ 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, 9th 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*



U.S. Department of Justice

Office of Justice Programs

Washington, D.C 20531

November 15, 2017

Mary Jane Robb
Sheriff of Contra Costa County
651 Pine Street, 11th Floor
Martinez, CA 94553

Dear Sheriff Robb,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373. Section 1373 compliance is an ongoing requirement that the Department of Justice monitors. The Department is concerned that the following Contra Costa County laws, policies, or practices may violate section 1373:

- Contra Costa Sheriff's Office General Policy and Procedure No. 1.02.28. Part III.D.1 states that a custody deputy shall not "notify ICE of the immigration status of arrestees" except in limited circumstances. The Department is concerned that this appears to restrict the sending or requesting of information regarding immigration status, in violation of section 1373(a) and (b).
- Contra Costa Sheriff's Office General Policy and Procedure No. 1.02.28. Part III.D.2 states that a custody deputy shall not "notify ICE of the immigration status of inmates." The Department is concerned that this appears to restrict the sending or requesting of information regarding immigration status, in violation of section 1373(a) and (b).

By December 8, 2017, please submit a response to this letter that addresses whether Contra Costa County has laws, policies, or practices that violate section 1373, including those discussed above. In addition to your compliance in FY 2016, please address whether you would comply with section 1373 throughout the award period, should you receive an FY 2017 Byrne JAG grant award. To the extent Contra Costa County laws or policies contain so called "savings clauses," please explain in your submission the way these savings clauses are interpreted and applied, and whether these interpretations are communicated to Contra Costa County officers or employees.


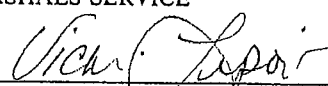
The Department has not made a final determination regarding Contra Costa County's

compliance with section 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan R. Hanson". The signature is fluid and cursive, with the first name "Alan" and last name "Hanson" clearly legible, and "R." as a middle initial.

Alan Hanson
Acting Assistant Attorney General

1. AGREEMENT NUMBER 12-92-0024		2. EFFECTIVE DATE 4 / 1 / 92		3. REQUISITION/PURCHASER/REQUEST NO. 247-92		4. CONTROL NO.	
5. ISSUING OFFICE UNITED STATES MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 600 ARMY NAVY DRIVE ARLINGTON, VA 22202-4210				6. GOVERNMENT ENTITY NAME AND ADDRESS (Street, city, county, State and ZIP code) Contra Costa County West County Justice Center 1000 Ward Street Martinez, CA 94553		FACILITY CODE(S) 0CK	
7. APPROPRIATION DATA 15X1020				Contact Person Larry R. Ard, Chief Deputy Area Code & Telephone No. ▶ (510) 646-4497			
8. ITEM NO.	9. SUPPLIES/SERVICES			10. QUANTITY	11. UNIT	12. UNIT PRICE	13. AMOUNT
	This Agreement is for the housing, safekeeping and subsistence of adult male and female federal prisoners in accordance with the contents set forth herein.			ESTIMATED USMS PRISONER DAYS/YR. 1,000	PDs	FIXED RATE \$69.08	ESTIMATED ANNUAL PAYMENT \$69,080.00
14. AGENCY CERTIFYING <i>To the best of my knowledge and belief, data submitted in support of this agreement is true and correct, the document has been duly authorized by the governing body of the Department or Agency and the Department or Agency will comply with ALL PROVISIONS SET FORTH HEREIN.</i>				15. NAME AND TITLE OF PERSON(S) AUTHORIZED TO SIGN OFFER  (Signature) Richard K. Rainey Sheriff-Coroner Name (Type or Print) Title (Signature) _____ Date _____ Name (Type or Print) Title			
16. TYPE OF USE <input type="checkbox"/> Hold Over <input checked="" type="checkbox"/> Regular Support <input type="checkbox"/> Seasonal Support <input type="checkbox"/> Other		17. PRISONER TYPE TO BE INCLUDED UNSENTENCED SENTENCED <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female <input type="checkbox"/> Juvenile Female <input type="checkbox"/> Aliens <input type="checkbox"/> Work Release <input type="checkbox"/> YCA Male <input type="checkbox"/> YCA Female		19. This Negotiated Agreement is Hereby Approved and Accepted for THE UNITED STATES OF AMERICA BY DIRECTION OF THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE BY  (SIGNATURE OF CONTRACTING OFFICER)			
18. LEVEL OF USE <input type="checkbox"/> Minimum <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Major		20. ANTICIPATED ANNUAL USAGE UNSENTENCED SENTENCED ALIENS TOTAL No. of Prisoners _____ Prisoner Days 1,000 _____ 1,000 Guard Hours _____		21. NAME OF AUTHORIZING OFFICIAL (Type or Print) Vicki Lipov		22. DATE SIGNED 4, 2, 92	

PRIOR EDITIONS ARE OBSOLETE AND ARE NOT TO BE USED

FORM USM-241
(Rev. 9/91)

U.S. GOVERNMENT PRINTING OFFICE: 1991 - 312-317/51191

GPO 908-293

Intergovernmental Service Agreement Schedule

IGA No.

12-92-0024

Page No.

2 of 6

ARTICLE I - PURPOSE

The purpose of this Intergovernmental Service Agreement (IGA) is to establish a formal binding relationship between the U.S. Marshals Service (USMS) and other federal user agencies (the Federal Government) and Contra Costa County (the Local Government) for the detention of persons charged with or convicted of violations of Federal law or held as material witnesses (federal prisoners) at the West County Justice Center (the facility).

ARTICLE II - SUPPORT AND MEDICAL SERVICES

1. The Local Government agrees to accept and provide for the secure custody, care and safekeeping of federal prisoners in accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.

2. The Local Government agrees to provide federal prisoners with the same level of medical care and services provided local prisoners including the transportation and security for prisoners requiring removal from the facility for emergency medical services. All costs associated with hospital or health care services provided outside the facility will be paid directly by the Federal Government.

3. The Local Government agrees to notify the U.S. Marshal as soon as possible of all emergency medical cases requiring removal of a prisoner from the facility and to obtain prior authorization for removal for all other medical services required.

ARTICLE III - RECEIVING AND DISCHARGE

1. The Local Government agrees to accept as federal prisoners those persons committed by federal law enforcement officers for violations of federal laws only upon presentation by the officer of proper law enforcement credentials.

2. The Local Government agrees to release federal prisoners only to law enforcement officers of agencies initially committing the prisoner (i.e. DEA, INS, etc.) or to a Deputy United States Marshal. Those prisoners who are remanded to custody by a U.S. Marshal (USM) may only be released to a USM or an agent specified by the USM of the Judicial District.

3. The Federal Government agrees to maintain federal prisoner population levels at or below the level established by the facility administrator.

Intergovernmental Service Agreement Schedule	IGA No. 12-92-0024	Page No. 3 of 6
--	-----------------------	--------------------

4. Federal prisoners may not be released from the facility or placed in the custody of state or local officials for any reason except for medical emergency situations. Federal prisoners sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement of Detainers and then only with the concurrence of the District U.S. Marshal.

ARTICLE IV - PERIOD OF PERFORMANCE

This Agreement shall be in effect indefinitely until terminated in writing by either party. Should conditions of an unusual nature occur making it impractical or undesirable to continue to house prisoners, the Local Government may suspend or restrict the use of the facility by giving written notice to the U.S. Marshal. Such notice will be provided 30 days in advance of the effective date of formal termination and at least two weeks in advance of a suspension or restriction of use unless an emergency situation requires the immediate relocation of prisoners.

ARTICLE V - PER DIEM RATE AND ECONOMIC PRICE ADJUSTMENT

1. Per diem rates shall be established on the basis of actual and allowable costs associated with the operation of the facility during a recent annual accounting period or as provided for in an approved annual operating budget for detention facilities.

2. The Federal Government shall reimburse the Local Government at the fixed day rate identified on page 1 of this Agreement. The rate may be renegotiated not more than once per year, after the agreement has been in effect for twelve months.

3. The rate covers one (1) person per "prisoner day". The Federal Government may not be billed for two days when a prisoner is admitted one evening and removed the following morning. The Local Government may bill for the day of arrival but not for the day of departure.

4. When a rate increase is desired, the Local Government shall submit a written request to the USM at least 60 days prior to the desired effective date of the rate adjustment. All such requests must contain a completed Cost and Pricing Data Sheet which can be obtained from the USM. The Local Government agrees to provide additional cost information to support the requested rate increase and to permit an audit of accounting records upon request of the USM.

Intergovernmental Service Agreement Schedule

IGA No.
12-92-0024

Page No.
4 of 6

5. Criteria used to evaluate the increase or decrease in the per-diem rate shall be those specified in the federal cost standards for contracts and grants with State and Local Governments issued by the Office of Management and Budget.

6. The effective date of the rate modification will be negotiated and specified on the IGA Modification form approved and signed by a USMS Contracting Officer. The effective date will be established on the first day of the month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized local official to the USM.

7. Unless other justifiable reasons can be documented by the Local Government, per-diem rate increases shall not exceed the National Inflation rate as established by the U.S. Department of Labor, Bureau of Labor Statistics.

ARTICLE VI - BILLING AND FINANCIAL PROVISIONS

1. The Local Government shall prepare and submit original and separate invoices each month to the Federal Agencies listed below for certification and payment.

United States Marshals Service
P.O. Box 36056
San Francisco, CA 94102

(215) 556-3930

Bureau of Prisons
Western Region
7950 Dublin Blvd. - 4th Floor
Dublin, CA 94568

(510) 803-4736

2. To constitute a proper monthly invoice, the name and address of the facility, the name of each Federal prisoner, their specific dates of confinement, the total days to be reimbursed, the appropriate per-diem rate as approved in the IGA, and the total amount billed (total days multiplied by the rate per day) shall be listed. The name, title, complete address and phone number of the local official responsible for invoice preparation should also be listed on the invoice.

3. The Prompt Payment Act, Public Law 97-177 (96 stat. 85, 31 USC 1801) is applicable to payments under this agreement and requires the payment to the Local Government of interest on overdue payments. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and the Office of Management and Budget Circular A-125.

Intergovernmental Service Agreement Schedule	IGA No. 12-92-0024	Page No. 5 of 6
--	-----------------------	--------------------

4. Payment under this agreement will be due on the thirtieth (30th) calendar day after receipt of a proper invoice, in the office designated to receive the invoice. If the due date falls on a nonworking day (e.g. Saturday, Federal holiday), then the due date will be the next working day. The date of the check issued in payment shall be considered to be the date payment is made.

ARTICLE VII - GOVERNMENT FURNISHED PROPERTY

1. It is the intention of the USMS to furnish excess Federal property to local governments for the specific purpose of improving jail conditions and services. Accountable excess property, such as furniture and equipment, remains titled to the USMS and shall be returned to the custody of the USMS upon termination of the agreement.

2. The Local Government agrees to inventory, maintain, repair, assume liability for and manage all federally provided accountable as well as controlled excess property. Such property cannot be removed from the jail without the prior written approval of USMS Headquarters. The loss or destruction of any such excess property shall be immediately reported to the U.S. Marshal and USMS Headquarters. Accountable and controlled excess property includes any property with a unit acquisition value of \$1,000.00 or more, all furniture, as well as equipment used for security and control, communication, photography, food service, medical care, inmate recreation, etc.

3. The suspension of use or restriction of bed space made available to the Marshals Service are agreed to be grounds for the recall and return of any or all government furnished property.

4. The dollar value of property provided each year will not exceed the annual dollar payment made by the USMS for prisoner support unless a specific exemption is granted by the Chief, Prisoner Operations Division.

5. It is understood and agreed that the Local Government shall fully defend, indemnify, and hold harmless the United States of America, its officers, employees, agents, and servants, individually and officially, for any and all liability caused by any act of any member of the Local Government or anyone else arising out of the use, operation or handling of any property (to include any vehicle, equipment, and supplies) furnished to the Local Government in which legal ownership is retained by the United States of America, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto. The Local Government will be solely responsible for all maintenance, storage, and other expenses related to the care and responsibility for all property furnished to the Local Government.

Intergovernmental Service Agreement Schedule

IGA No.
12-92-0024

Page No.
6 of 6

ARTICLE VIII - MODIFICATIONS/DISPUTES

1. Either party may initiate a request for modification to this agreement in writing. All modifications negotiated will be written and approved by the USMS Chief, Prisoner Operations Division and submitted to the Local Government on form USM 241a for approval.

2. Questions or concerns pertaining to this agreement are to be directed to the U.S. Marshal. Disputes, space guarantee questions, and unresolved issues are to be directed to the Chief, Prisoner Operations Division, USMS Headquarters.

ARTICLE IX - INSPECTION AND TECHNICAL ASSISTANCE

1. The Local Government agrees to allow periodic inspections of the facility by USMS Inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement and levels of services.

2. The USMS will endeavor to provide or acquire technical training and management assistance from other federal, state or local agencies or national organizations upon the request of the facility administrator.

ARTICLE X - AVAILABILITY OF FUNDS

The Federal Government's obligation under this agreement is contingent upon the availability of appropriated funds from which payment can be made and no legal liability on the part of the Government for any payment may arise until such funds are available.



Contra Costa County Board of Supervisors

Subcommittee Report

PUBLIC PROTECTION COMMITTEE

5.

Meeting Date: 12/07/2017

Subject: AB 109 Community Programs: Contractor Procurement Policies

Submitted For: David Twa, County Administrator

Department: County Administrator

Referral No.: N/A

Referral Name: AB 109 Community Programs: Contractor Procurement Policies

Presenter: Donte Blue, ORJ Deputy Director **Contact:** Donte Blue, ORJ Deputy Director

Referral History:

On September 12, the Board of Supervisors requested clarification from staff on the Community Corrections Partnership's role in the AB 109 Community Programs procurement process.

On September 19, 2017, the County Administrator's Office of Reentry & Justice (ORJ) was directed by the Board of Supervisors to prepare a policy addressing when contracts for AB 109 Community Programs services should be submitted to the Community Corrections Partnership (CCP) for review, and present the policy to the Community Corrections Partnership for its review and recommendation before presenting the policy to the Board of Supervisors for its consideration.

On November 3, 2017, the ORJ presented the CCP with the policy recommendations now being made to this Committee. Upon review of this recommended policy, the CCP unanimously approved the policy as presented and referred the matter to this Committee for further consideration.

Referral Update:

When the County seeks a contractor to provide AB 109 Community Programs services for implementation of the Board of Supervisors-adopted AB 109 Public Safety Realignment Budget, the ORJ is charged with conducting the procurement process. In compliance with all known local and state regulations and laws related to contracting and confidentiality, the process that staff has followed for the past four years of AB 109 Community Programs implementation includes the steps described below.

1. RFP/Q/I Development

To begin the procurement process, ORJ staff will develop a solicitation document in the form of a Request for Proposals (RFP), a Request for Qualifications (RFQ), or a Request for Interest (RFI). The solicitation document is developed in consultation with key stakeholders, who have included (at various times) staff of the Probation Department, the District Attorney's Office, the Office of the Public Defender, the Employment & Human Services Department, and Health Services Department, in addition to representatives of the Community Advisory Board to the CCP and other subject-matter experts. The procurement documents utilized by other counties are also considered, and the Purchasing Manager is often consulted with as well.

The basic elements of the procurement document include the following:

- a) The Announcement of the procurement opportunity and either a Mandatory or Discretionary Bidders' Conference;

- b) The Timeline of the procurement process;
- c) The Project Description/ Statement of Work;
- d) The RFP/Q/I Requirements and Instructions for Bidders/Responders;
- e) Proposal/ Response Preparation Instructions;
- f) Proposal Review and Selection information;
- g) Evaluation Process/Rating Sheet;
- h) Required Attachments, Forms and Checklist;
- i) County Contract Requirements.

The selection of the procurement document type is also determined in consultation with key stakeholders, and this generally varies depending on the nature of the services sought. An RFP is typically utilized when requesting more detailed information related to a unique or specific program design or service offering that usually requires specific program element costs, and a more detailed implementation timeline. RFQs are generally used when the nature of the services is not anticipated to vary greatly by contractor, and the expertise and experience of the responder is of paramount importance. An RFI is utilized when there is an assumption that there may be a limited number of interested responders; if the RFI generates significant response, an RFP/Q then follows for a more detailed response/proposal from interested contractors. Since 2013, ORJ staff have conducted 24 solicitations. See Attachment A for a list of these solicitations. The solicitation process generally requires a minimum of four months to complete, from the directive to proceed through the establishment of a contract. The timing for the major activities of the process are:

- 1 month for solicitation document development and issuance (minimum)
- 1 month for response preparation by potential contractors (minimum)
- 1 month for response review and contract award
- 1 month for contract development

2. Outreach and Information Process

After issuance of the solicitation document, which then requires additional outreach efforts by staff to identify potential responders, staff of the ORJ will conduct a Bidders' Conference, often in each region of the County if services are to be provided on a regional basis, and made available via webinar.

Questions and answers from the Bidders' Conference and those received during the specified period are published in Addenda to the document, made available on the County's website, BidSync, and distributed electronically to all Bidders' Conference attendees and other potentially interested bidders.

3. Response Review and Contract Award Recommendation Process

ORJ staff then convenes a Review Panel to evaluate responses that ORJ staff determine are compliant with technical specifications of the procurement document. A Review Panel usually consists of five to seven members who are stakeholders and participants in the reentry and justice fields. Staff requests CCP representation on each Review Panel from a minimum of two members. CCP members often delegate their participation to senior staff in their department. The RFP/Q will generally identify the categories of Review Panel membership.

Each member of a Review Panel must sign an Impartiality Statement verifying that they have no conflicts of interest with regard to the contractor(s) being reviewed. (Impartiality Statement is available on request.) Utilizing the services of a neutral and impartial Panel Facilitator, the Review Panel evaluates the responses and assigns a consensus score to each proposal element based on the Rating Sheet included in the solicitation. Interviews may be conducted as needed; the Review Panel makes the determination of the need for a formal interview, which are often held. Upon conclusion of its response review process, the Review Panel makes a contract award recommendation which is published by ORJ staff.

4. Contract Award Review and Approval Process

It has been the practice of the staff of the ORJ, as scheduled meeting time permits, to send the Review Panel recommendations to either the CCP, the Board's Public Protection Committee (PPC), or both, for their review and recommendation prior to final consideration and contract award by the Board of Supervisors. As most contract periods are established to commence on a fiscal year basis, which is a preferable contract term for accounting purposes, this objective can be met only if staff adheres to the CCP meeting schedule, sending all contract award recommendations to the CCP at its June meeting.

There is no legal requirement that either the CCP or the PPC review a contract award recommendation, or a proposed contract between the County and an AB 109 service provider, before its presentation to the Board of Supervisors for its consideration. When either the CCP or the PPC reviews a proposed contract, it has been staff's practice to provide these bodies with the Review Panel's score, a summary of the procurement process, and a description of the Review Panel members. However, in compliance with the County's Better Government Ordinance, each potential contractor's entire response has not been disclosed until after Board of Supervisors awards the contract. It has been staff's practice to provide the Board of Supervisors with the same information provided to the CCP and/or the PPC. The decision on whether to enter into a contract with a contractor for AB 109 services is entirely within the Board's discretion.

To date, the Board of Supervisors has not adopted a policy addressing when AB 109 Community Programs contracts should be submitted to the CCP for a recommendation, or whether RFP/Q/I responses should be part of the CCP recommendation process. If it is determined that responses should be provided to CCP and/or PPC members at any stage in the process, the responses will become public documents at that time. Contractors responding to solicitation documents should be advised of the policy as part of the application process so they will know the circumstances that will result in their responses becoming public records.

Recommendation(s)/Next Step(s):

1. RECOMMEND that the Board of Supervisors (BOS) ADOPT a policy that requires contract award recommendations for all AB 109 Community Programs contracts valued at over \$100,000 be approved by the Community Corrections Partnership-Executive Committee (CCP-EC) and (as their schedule permits) the Public Protection Committee (PPC) prior to submittal to the BOS for contract authorization.

The information that the CCP-EC, PPC and BOS would be provided must include:

- a) A copy of the RFP/RFQ/RFI issued
- b) Copies of all Score Sheets for responses that are scored
- c) A summary of the proposed services by the recommended awardee
- d) A summary of the proposed budget for the services
- e) A staff report that summarizes the procurement process and Review Panel composition.

2. RECOMMEND that the Board of Supervisors (BOS) ADOPT a policy that all issued RFP/RFQ/RFIs (or similar procurement documents) for AB 109 Community Programs contracts must contain a provision that the responses may be made public prior to the contract award.

3. RECOMMEND that the Board of Supervisors (BOS) ADOPT a policy that contract periods may be established for up to two years of service (either calendar or fiscal year), with 3 additional one-year renewal options, subject to funding availability, satisfactory performance, and Board of Supervisors authorization for contracts over \$100,000.

This contract period will obviate the need for more frequent procurement processes. Performance reporting to the CCP may be provided in a manner that that it proscribes.

Attachments

Attachment A - Procurement List

Procurement Processes Conducted by ORJ staff

	<u>Number</u>	<u>Type</u>	<u>Services</u>	<u>Year</u>	<u>Amount</u>	<u>Contract Term</u>	<u>Notes</u>
1	#1302-004	RFP	Employment Support & Placement Services	2013	\$ 2,000,000	June 1, 2013--June 30, 2014	
2	#1302-003	RFP	Short and Long-Term Housing Access	2013	\$ 500,000	June 1, 2013--June 30, 2014	
3	#1302-005	RFP	Peer and Mentoring Services	2013	\$ 200,000	June 1, 2013--June 30, 2014	
4	#1302-007	RFP	Planning 3 One-Stop Centers	2013	\$ 120,000	June 1, 2013--June 30, 2014	
5	#1307-027	RFQ	Reentry Legal Services for Central County	2013	\$ 80,000	Oct. 1, 2013--June 30, 2014	
6	#1306-026	RFQ	Data Collection & Program Evaluation	2013	\$ 246,000	Nov. 1, 2013--June 30, 2014	
7	#1403-059	RFQ	West County Resource Center Plan Implementation	2014	\$ 800,000	May 15, 2014--June 30, 2015	
8	#1403-077	RFQ	East/Central County Network Management Team	2014	\$ 350,100	May 15, 2014--June 30, 2015	\$105,000 Network Manager; \$81,700 Field Coordinator
9	#1403-078	RFQ	East/Central County Network Service Providers	2014	\$ 412,000	May 15, 2014--June 30, 2015	
10	#1504-137	RFP	Transitional Housing for East-Central Reentry Network	2015	\$ 220,000	July 1, 2015--June 30, 2016	
11	#1506-145	RFQ	Field Operations Coordinator Services, Antioch	2015	\$ 66,570	Aug. 1, 2015--June 30, 2016	
12	#1602-167	RFP	Employment Support & Placement Services	2016	\$ 2,000,000	July 1, 2016--June 30, 2019	
13	#1602-168	RFP	Mentoring & Family Reunification Services	2016	\$ 200,000	July 1, 2016--June 30, 2019	
14	#1602-166	RFP	Short and Long-Term Housing Access	2016	\$ 1,180,000	July 1, 2016--June 30, 2019	\$150,000 for Reentry Network Housing included
15	#1602-169	RFQ	Civil Legal Services	2016	\$ 150,000	July 1, 2016--June 30, 2019	
16	#1608-192	RFP	East-Central Network Management Team	2016	\$ 440,000	Nov. 1, 2016--June 30, 2017	
17	#1610-200	RFQ	Ceasefire Program Coordination Services	2016	\$ 83,000	Dec. 1, 2016--June 30, 2017	
18	#1612-205	RFQ	Facilitation and Data Analysis Services for Racial Justice Task Force	2017	\$ 170,000	Feb. 1, 2017--June 30, 2018	
19	#1703-213	RFQ	Strategic Planning Services	2017	\$ 60,000	July 1, 2017--Dec. 31, 2017	
20	#1705-223	RFI	East-Central Reentry Network Services	2017	\$ 185,000	July 1, 2017--June 30, 2018	\$65k Auto Repair Services Training; \$60k Employment & Education Liaison Services; \$60k Gender Responsive In-reach
21	#1706-232	RFP	Gender Responsive Services for Central-East County Reentry Network	2017	\$ 45,000	Oct. 1, 2017--June 30, 2018	
22	#1705-224	RFI	Reentry Resource Center in West County	2017	\$ 540,000	July 1, 2017--June 30, 2018	
23	#1706-231	RFQ	Reentry Resource Center in West County	2017	\$ 408,750	Oct. 1, 2017--June 30, 2018	
24	#1709-252	RFP	Local Innovation Fund Projects	2017	\$ 250,000	Jan. 1, 2018--Dec. 31, 2019	

*RFQ for Program Evaluation Services in the amount of \$320,592 for Prop. 47 CoCo LEAD+ Project was conducted in 2017 as well. Not AB 109 funded.

*Community Recidivism Reduction Grant RFP #1503-125 was conducted in 2015 as well. Not AB 109 funded.



Contra Costa County Board of Supervisors

Subcommittee Report

PUBLIC PROTECTION COMMITTEE

6.

Meeting Date: 12/07/2017
Subject: AB109 Local Innocation Fund Request for Proposals Results
Submitted For: David Twa, County Administrator
Department: County Administrator
Referral No.: N/A
Referral Name: AB109 Local Innocation Fund Request for Proposals Results
Presenter: Donte Blue, ORJ Deputy Director **Contact:** Donte Blue, ORJ Deputy Director

Referral History:

With the passage of SB 1020 in 2012, the County was required to create a Local Innovation Subaccount intended to promote local innovation and county decision making. Revenue deposited in this “Local Innovation Fund” must be used to support local needs, and the law provides the Board of Supervisors with the authority to fund any activity that is otherwise allowable for any of the underlying accounts that fund the innovation subaccount. Beginning with fiscal year 2015-16, any revenue deposited in the Local Innovation Fund each year will come from transferring 10% of the revenue received from the State in the form of growth allocations for the 1) Community Corrections, 2) Trial Court Security, 3) District Attorney and Public Defender, and 4) Juvenile Justice Subaccounts (these are the four source accounts for the Local Innovation Fund).

Because each year’s growth revenue is allocated to the County in the subsequent fiscal year, in fiscal year 2016-17 the County’s first deposit of \$119,186 was made into the Local Innovation Fund from the requisite 2015-16 growth allocations. This fiscal year the County expects another \$186,607 to be deposited in the Local Innovation Subaccount based on the 2016-17 growth allocation projections. This additional deposit means the County’s expected Local Innovation Fund balance for the current fiscal year is \$305,793.

In September 2016, the Quality Assurance Committee (QAC) of the Community Corrections Partnership (CCP) discussed the development of recommendations for the use of Local Innovation Fund revenue. This matter was then forwarded to the CCP Community Advisory Board (CAB) for their input on the recommendations. The matter was considered once more by the QAC in November 2016 as CAB continued to formulate its input on the recommendations.

After the County Administrator’s Office of Reentry and Justice (ORJ) was created in January 2017, the ORJ began working with CAB to determine recommendations for the use of revenue in the Local Innovation Fund. In June 2017 CAB recommended that this revenue be used to fund a capacity building project. CAB recommended a project where a cohort of AB 109 funded community based service providers would be guided through a self-assessment of needs related to organizational development. The cohort would then be provided individualized assistance to help participating agencies build capacity in the critical areas identified through the self-assessment process.

The ORJ received CAB’s input, developed additional considerations, and returned to the QAC in September 2017 where it was agreed that the ORJ would conduct a Request for Proposals (RFP) process for the allocation of up to \$250,000 to be split between a capacity building project as envisioned by CAB, and an innovative reentry program to compliment the array of reentry services currently offered. On October 4, 2017, the ORJ published RFP #1709-252 for “Local Innovation Fund Projects.” The RFP provided up to \$75,000 in funding for a “Capacity Building Project” to be implemented from January 2017 – December 2017, and for up to \$175,000 for an “Innovative Reentry Program” that would start in January 2017 and could end as late as December 2018. A Bidder’s Conference was then held on October 17, 2017, and streamed online as a webinar. Final responses to the RFP were due November 8, 2017, and Panels were convened the week of November 12, 2017 to review the

submitted responses and provide the County with contract award recommendations.

Panel Process and Recommendation

Once the submission deadline passed, the ORJ conducted a technical compliance review of each proposal, and as a result all submitted proposals were forwarded to the appropriate Panel for review. Each Review Panel scored the response(s) submitted using a consensus scoring process that produced a single final consensus score for each proposal.

There was only a single response, from Social Policy Research Associates, for the Capacity Building Project Review Panel to score. The consensus score for this proposal was 51.5 points out of 100. Based on this score, the Panel recommends that the County not award a contract for these services at this time.

There were five proposals submitted to the Innovative Reentry Program Review Panel for scoring. After an initial review of all proposals, the four agencies who submitted the highest scoring proposals were then invited for an interview with the Review Panel. Each of these agencies accepted the invitation, and once these interviews were complete the Panel finalized their scores as follows: *(scoring out of 115 points possible, and full scoresheets are attached)*

Fast Eddies Auto Tech Training	96 pts.
Richmond Workforce Development Board	94 pts.
San Pablo Economic Development Corporation	91 pts.
Centerforce	88 pts.
Mz. Shirliz Transitional	61 pts.

Based upon these results, the Review Panel recommends awarding a one year \$75,000 contract to Fast Eddie's Auto Tech Training, and a contract for \$175,000 over two calendar years to the Richmond Workforce Development Board.

Referral Update:

Remaining Local Innovation Fund Revenue

If the recommendations of the Review Panels are both approved by the Board of Supervisors, there will still be at least \$55,793 of unallocated revenue in the Local Innovation Fund in the current fiscal year. Because efforts to establish a Capacity Building Project were the result of recommendations from CAB, the ORJ recommends this remaining revenue be allocated for a Capacity Building Project. With this Committee's direction, the ORJ would make efforts to determine why the previous procurement process was less effective than desired, and make sure these issues are addressed in an appropriate subsequent attempt to find a provider for these services. The ORJ would then report back to this Committee with the result of these renewed efforts.

Recommendation(s)/Next Step(s):

1. ACCEPT the Review Panels' recommendations that the County:
 - a) Not award a contract for a "Capacity Building Project" at this time,
 - b) Award a contract to Fast Eddie's Auto Tech Training for \$75,000 for the period January 1, 2018 through December 31, 2018, and
 - c) Award a contract to the Richmond Workforce Development Board for \$175,000 for the period January 1, 2018 through December 31, 2019.
2. DIRECT staff to utilize the remaining FY 16-17 revenue of Local Innovation Fund for a "Capacity Building Project."

Attachments

Review Panel Composition

Final Scoresheets

Review Panels for Contra Costa County RFQ #1709-252

Capacity Building Project Review Panel (facilitated by Donté Blue, ORJ Deputy Director)

Name	Affiliation
Jenny Robbins	Contra Costa Health, Housing, Homeless Services
Patrice Guillory	CAB Vice-Chair, HealthRIGHT 360
Mariana Moore	Richmond Community Foundation
John Lowden	Contra Costa Office of the Sheriff-Coroner

Innovative Reentry Program Review Panel (facilitated by Lara DeLaney, ORJ Director)



Name	Affiliation
Lesha Roth	Contra Costa Probation Department
Jody Sicheneder	Contra Costa Office of the Sheriff
Harry Thurston	CCP, Community Advisory Board
Jessie Warner	City of Oakland, Oakland Unite
William Edwards	Rubicon Programs, Reentry Success Center



Final Scoring for “Capacity Building Project”

	Social Policy Research Associates
A. Responder Overview	
1. <i>Relevancy of the organization’s overall services and history (10 pts.)</i>	7 pts.
2. <i>Relation of Qualifications/Expertise to Scope of Work (5 pts.)</i>	3 pts.
3. <i>Demonstrated reentry experience and collaboration (10 pts.)</i>	6 pts.
4. <i>Qualifications & credentials of staff are proper for the duties assigned, and existing staff meet or exceed these requirements (10 pts.)</i>	5 pts.
B. Technical Expertise (15 pts.) Demonstrates a sufficient level of experience and expertise concerning consulting in the areas of organizational development, and the use of data systems to support organizational operations and decision making	8 pts.
C. Approach to Scope of Work	
1. <i>Relevancy of past projects, the extent to which these projects demonstrate mastery of skills and methods likely to be necessary with this scope of work, and the ability to overcome challenges (10 pts.)</i>	5 pts.
2. <i>Clear description of the approach to be used on this project, with methods and timeframes for activities that are appropriate given the nature and scope of services to be delivered (10 pts.)</i>	4 pts.
3. <i>Approach to providing services to multiple agencies is reasonable, with clear descriptions of assistance to be provided to agencies in a group setting, and those to be one-on-one (10 pts.)</i>	4 pts.
4. <i>Plan to track the impact of the capacity building process and cohort satisfaction is adequate (5 pts.)</i>	2.5 pts.
D. Budget and Estimated Costs (15 pts.) Project costs are reasonable, and explanation of costs are clear	7 pts.
Total (100 pts.)	51.5 pts.

Final Scoring for "Innovative Reentry Programs"

		Richmond WDB	Fast Eddie's	Mz. Shirliz	Centerforce	San Pablo EDC
A. <u>Responder Overview</u>	0-15					
1. Relevancy of the organization's overall services and history	5	5	3.5	4	5	4
2. Qualifications and expertise as the relate to the scope of work	5	4	5	3	4	4
3. Demonstrated reentry experience and collaboration	5	4	5	3	5	4
B. <u>Approach to the Scope of Work</u>	0-60					
<i>1. Need to be Addressed by the Proposed Program</i>						
a. Concise and compelling need that is documented for Contra Costa	10	7	7	6	5	9
b. Target population is well-suited to meet the identified need	5	4	5	3	5	4
<i>2. Proposed Program Model</i>						
a. Clear description of the program's design, desired impact, and an adequate justification for the proposed approach	20	16	16.5	12	13	15
b. Proposal includes clear description of activities and their duration, and activities are likely to achieve the program's desired impact	15	13	13	10	13	12
c. Proposal includes innovative elements that are not currently funded by the County's AB 109 Public Safety Realignment program	10	7	8	0	8	10
<i>3. Program Objectives and Outcomes</i>						
a. Objectives and outcomes of the program are reasonable, and effectively respond to the identified need	5	3	3	3	3	4
b. The metrics to be used, and plan to track them, are adequate to measure the successful accomplishment of the program's objectives and outcomes	10	6	5	4	3	5
C. <u>Implementation of the Program</u>	0-15					
1. Implementation activities as described are sufficient to implement the program as designed, and the time allocated to the activities are reasonable given the nature and scope of the program	5	5	5	2	4	4
2. Qualifications & credentials of staff are proper for the duties assigned, and existing staff meet or exceed these requirements	10	10	10	6	10	10
D. <u>Budget and Estimated Costs</u>						
Project costs are reasonable, and explanation of costs are clear	0-10	10	10	5	10	6
Total Score 115		94	96	61	88	91



Contra Costa County Board of Supervisors

Subcommittee Report

PUBLIC PROTECTION COMMITTEE

7.

Meeting Date: 12/07/2017

Subject: CY2017 Annual Report

Submitted For: PUBLIC PROTECTION COMMITTEE,

Department: County Administrator

Referral No.: N/A

Referral Name: CY2017 Annual Report

Presenter: Timothy Ewell, Committee
Staff

Contact: Timothy Ewell, Committee Staff
(5-1036)

Referral History:

Each year, the Committee reviews its prior year activities and submits an annual report to the Board of Supervisors. As part of that process, existing referrals are assessed as to whether they should be continued to the next year, referred to a different Standing Committee or discontinued.

Referral Update:

Attached is a draft of the CY 2017 Public Protection Committee Draft Annual Report put together by staff for review by the Committee.

Staff requests that the Committee review the attached documents and provide comments, amendments and additional direction as necessary.

Recommendation(s)/Next Step(s):

1. APPROVE calendar year 2017 Public Protection Committee Annual Report for submission to the Board of Supervisors;
2. PROVIDE direction to staff as appropriate.

Fiscal Impact (if any):

No fiscal impact.

Attachments

DRAFT CY2017 Annual Report



Contra
Costa
County

To: Board of Supervisors

From: PUBLIC PROTECTION COMMITTEE

Date: December 19, 2017

Subject: 2017 YEAR-END REPORT ON ACCOMPLISHMENTS AND DISPOSITION OF REMAINING REFERRALS TO
THE PUBLIC PROTECTION COMMITTEE

RECOMMENDATION(S):

1. ACKNOWLEDGE that the Board of Supervisors referred eight (8) issues to the Public Protection Committee (PPC) for its review and consideration during 2017.
2. FIND that the 2017 PPC convened six (6) meetings, worked through and provided an opportunity for public input on a number of significant Countywide issues.
3. RECOGNIZE the excellent work of the County department staff who provided the requisite information to the PPC in a timely and professional manner, and members of the Contra Costa community and other public agencies who, through their interest in improving the quality of life in Contra Costa County, provided valuable insight into our discussions, and feedback that helped us to formulate our policy recommendations.
4. ACCEPT year-end productivity report and APPROVE recommended disposition of PPC referrals described at the end of this report.

FISCAL IMPACT:

No fiscal impact. This is an informational report only.

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR

☒ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: 12/19/2017 ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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: December 19, 2017

Contact: Timothy Ewell, (925)
335-1036

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

BACKGROUND:

The Public Protection Committee (PPC) was established on January 8, 2008 to study criminal justice and public protection issues and formulate recommendations for consideration by the Board of Supervisors. At the December 7, 2017 meeting, the Committee discussed all issues currently on referral and has made the following recommendations to the Board of Supervisors for the 2018 PPC work-plan:

1. Opportunities to Improve Coordination of Response to Disasters and Other Public Emergencies.

Approximately three weeks following the November 2007 Cosco Busan oil spill, the Sheriff's Office of Emergency Services (OES) presented to the Board of Supervisors its assessment of the emergency response efforts, including what worked well and didn't work well, and what lessons were learned through those experiences. At the conclusion of the Board discussion, Supervisor Gioia introduced five recommendations that were approved by the Board.

On February 5, 2008 the Board of Supervisors referred this matter to the PPC for continuing development and oversight. PPC received a status report from the Office of the Sheriff and Health Services Department in February 2009 and requested the Hazardous Materials Program Manager to report back to the PPC on the development of mutual aid agreements from local oil refineries. Following a second briefing to the PPC by the Office of the Sheriff, the PPC reported out to the Board of Supervisors on May 6, 2009 with recommendations for follow-up by the Sheriff and Human Resources departments. The Health Services Department made a report to the PPC on April 19, 2010 regarding the resources and connections available to respond to hazardous materials emergencies and, again, on October 18, 2010 regarding who determines which local official participates in incident command if an event is in Contra Costa County. On December 5, 2011, Health Services reported to our Committee regarding training and deployment of community volunteers.

In January 2008, the Board of Supervisors referred to the PPC the matter of improving public response to emergency instructions and protocols through broader and better education, which had previously been on referral to the IOC. The Board suggested that the PPC work with the Office of the Sheriff, the Health Services Department, and the CAER (Community Awareness & Emergency Response) Program to determine what educational efforts are being made and what additional efforts may be undertaken to improve public response and safety during an emergency. In April 2011, the PPC met with CAER (Community Awareness Emergency Response) Executive Director Tony Semenza and staff from the Office of the Sheriff and Health Services to discuss what has been done to better inform the public and what more can be done to improve public response to emergency warnings. CAER provided a thorough report on its countywide community fairs, and programs targeted at the education system and non-English speaking populations. The PPC asked CAER to provide a written outreach strategy that describes how new homeowners are educated about emergency awareness. The Sheriff's Office of Emergency Services provided an update to the Committee at the April 13, 2015 meeting. In addition, the draft update of the Countywide Emergency Operations Plan (EOP) was reviewed and forwarded to the BOS for review and approval in 2015. Since there will be opportunities for the review of future updates to the EOP, we recommend that this issue remain on referral to the Committee.

Recommendation: REFER to the 2018 PPC

2. Welfare Fraud Investigation and Prosecution. In September 2006, the Employment and Human Services (EHS) Department updated the Internal Operations Committee (IOC) on its efforts to improve internal security and loss prevention activities. The IOC had requested the department to report back in nine months on any tools and procedures that have been developed and implemented to detect changes in income eligibility for welfare benefits.

The EHS Director made follow-up reports to IOC in May and October 2007, describing what policies, procedures, and practices are employed by the Department to ensure that public benefits are provided only to those who continue to meet income eligibility requirements, explaining the complaint and follow-through process, and providing statistical data for 2005/06, 2006/07, and for the first quarter of 2007/08.

Upon creation of the PPC in January 2008, this matter was reassigned from the IOC to the PPC. PPC has received status reports on this referral in October 2008, June and October 2010, November 2011, November 2012 and, most recently, in December 2013. The Committee has reviewed the transition of welfare fraud collections from the former

Office of Revenue Collection to the Employment and Human Services Department; the fraud caseload and percentage of fraud findings; fraud prosecutions and the number of convictions; and the amounts recovered.

The Committee received an annual report on this subject from the District Attorney and Employment and Human Services Director on September 26, 2016. The Committee wishes to continue monitoring the performance of the welfare fraud program annually. It is recommended that this matter be retained on referral.

The Committee did not receive an update on this topic in 2017, but would like the issue to remain on referral to the Committee for future oversight.

Recommendation: REFER to the 2018 PPC

3. Multi-Language Capability of the Telephone Emergency Notification System (TENS)/Community Warning System (CWS) Contracts. This matter had been on referral to the IOC since 2000 and was reassigned to the PPC in January 2008. The PPC met with Sheriff and Health Services Department staff in March 2008 to receive an update on the County's efforts to implement multilingual emergency telephone messaging. The Committee learned that the Federal Communications Commission has before it two rulemaking proceedings that may directly affect practices and technology for multilingual alerting and public notification. Additionally, the federally-funded Bay Area "Super Urban Area Safety Initiative" (SUASI) has selected a contractor undertake an assessment and develop a five-year strategic plan on notification of public emergencies, with an emphasis on special needs populations. The Sheriff's Office of Emergency Services reported to the PPC in April 2009 that little has changed since the March 2008 report.

On October 18, 2010, the PPC received a report from the Sheriff's Office of Emergency Services on the Community Warning and Telephone Emergency Notification systems, and on developments at the federal level that impact those systems and related technology. Sheriff staff concluded that multi-lingual public emergency messaging is too complex to be implemented at the local level and should be initiated at the state and federal levels. New federal protocols are now being established to provide the framework within which the technological industries and local agencies can work to develop these capabilities.

In 2011, the Office of the Sheriff has advised staff that a recent conference on emergency notification systems unveiled nothing extraordinary in terms of language translation. The SUASI project had just commenced and Sheriff staff have been on the contact list for a workgroup that will be developing a gap analysis, needs assessment, and five-year strategic plan. This matter has been on committee referral for more than ten years and technology has yet to provide a feasible solution for multilingual public emergency messaging.

On September 18, 2012, following the Richmond Chevron refinery fire, the Board of Supervisors established an *ad hoc* committee to discuss the Community Warning System and Industrial Safety Ordinance. Since that committee is *ad hoc* in nature, we recommend that this issue remain on referral to the PPC.

The PPC received two updates on this issue in CY 2015; one on April 13, 2015 and one on November 9, 2015. Following the November 2015 discussion, the Committee requested the Sheriff's Office to return in six months for an update.

On May 23, 2016, the Committee received an update from the Sheriff's Office on the status of the TEN system and directed staff to provide a summary of the CWS/Emergency services protocols for future review of the Committee and prepare a handout in both English and Spanish that summarizes emergency services protocols.

AtHoc Inc., is a full-service alert and warning company specializing in fixed siren systems and emergency notification systems. Alerting Solutions, Inc., provides support for the Contra Costa County Community Warning System. The Contra Costa County Community Warning System consists of 25 separate and linked control centers, monitoring systems, and communication systems between emergency responders, sirens (40), and other alerting devices (700+), and automated links to radio and television stations serving the community.

On October 18, 2016, the Board of Supervisors referred a review of the AtHoc, Inc. contract to the Committee for additional review and discussion and on October 24, 2016, the Committee met to discuss this item. Representatives

from the Sheriff's Office were present to discuss the item and its importance to the County's Community Warning System (CWS) operations. Following that discussion, the Committee recommended that the contract be rescheduled on the Board of Supervisors' agenda for approval, but directed staff to continue reporting on CWS operating contracts on a periodic basis. Since the Committee has an existing referral on the CWS telephone electronic notification system (TENS), this referral was combined with the TENS referral so that the Committee would receive coordinated updates on both issues in the future beginning in 2017.

The Committee continues to have interest in monitoring the implementation of a multi-lingual telephone ring down system and CWS issues. For this reason, this issue should remain on referral to the Committee in 2018.

Recommendation: REFER to the 2018 PPC

4. County support and coordination of non-profit organization resources to provide prisoner re-entry services, implementation of AB 109 Public Safety Realignment, and appointment recommendations to the Community Corrections Partnership. On August 25, 2009, the Board of Supervisors referred to the PPC a presentation by the Urban Strategies Council on how the County might support and coordinate County and local non-profit organization resources to create a network of re-entry services for individuals who are leaving jail or prison and are re-integrating in local communities. On September 14, 2009, the PPC invited the Sheriff-Coroner, County Probation Officer, District Attorney, Public Defender, Health Services Director, and Employment and Human Services Director to hear a presentation by the Urban Strategies Council. The PPC encouraged County departments to participate convene a task force to work develop a network for prisoner re-entry services, which has been meeting independently from the PPC.

The PPC received a status report from County departments in April 2010. The Employment and Human Services department reported on its efforts to weave together a network of services, utilizing ARRA funding for the New Start Program and on the role of One-Stop Centers in finding jobs for state parolees. Probation reported on the impacts of the anticipated flood of state parolees into the county. The Sheriff reported on the costs for expanding local jail capacity and possible expanded use of GPS (global positioning systems) use in monitoring state parolees released back to our county. The Health Services Department reported on its Healthcare for the Homeless Program as a means to get parolees into the healthcare system and on its development of cross-divisional teams on anti-violence.

Supervisors Glover and Gioia indicated that their staff would continue to coordinate this local initiative when the Urban Strategies Council exhausts its grant funding from the California Endowment. The PPC continued to monitor progress on the initiative and, on February 7, 2011, received a presentation of the completed strategic plan and recommendations. In response to public testimony at the PPC meeting regarding concerns over the "Ban the Box" element of the plan, the plan recommendations were modified to exclude from the "Ban the Box" requirement certain identified sensitive positions in public safety and children's services or as determined by the agency.

On March 22, 2011, representatives from the Urban Strategies Council presented the completed Contra Costa County Re-entry Strategic Plan (100 pages), an Executive Summary (6 pages) of the plan, and a slide show to the Board of Supervisors, which approved the strategic plan and implementation recommendations with one modification: rather than adopt a 'Ban the Box' policy as recommended, which would have removed the question about criminal records from county employment applications during the initial application, the Board agreed to consider adopting such a policy at a future date. The Board directed the County Administrator to work with the offices of Supervisors Glover and Gioia to identify the resources needed to implement the strategic plan and to report back to the Board with his findings and recommendations.

Later in 2011, the California Legislature passed the Public Safety Realignment Act (Assembly Bills 109), which transfers responsibility for supervising specific low-level inmates and parolees from the California Department of Corrections and Rehabilitation (CDCR) to counties. Assembly Bill 109 (AB 109) takes effect October 1, 2011 and realigns three major areas of the criminal justice system. On a prospective basis, the legislation:

- Transfers the location of incarceration for lower-level offenders (specified non-violent, 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;

- Transfers 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);
- Transfers the housing responsibility for parole and PRCS revocations to local jail custody

AB 109 also tasked the local Community Corrections Partnership (CCP) with recommending to the County Board of Supervisors a plan for implementing the criminal justice realignment, which shall be deemed accepted by the Board unless rejected by a 4/5th vote. The Executive Committee of the CCP is composed of the County Probation Officer (Chair), Sheriff-Coroner, a Chief of Police (represented by the Concord Police Chief in 2014), District Attorney, Public Defender, Presiding Judge of the Superior Court or designee, and the Behavioral Health Director.

On October 4, 2011, the Board of Supervisors approved the CCP Realignment Implementation Plan, including budget recommendations for fiscal year 2011/12. Throughout 2012, the PPC received regular status updates from county staff on the implementation of public safety realignment, including recommendations from the CCP-Executive Committee for 2012/13 budget planning. On January 15, 2013 the Board of Supervisors approved a 2012/13 budget for continuing implementation of public safety realignment programming.

The Committee received several reentry/AB 109 related presentations and updates throughout 2014, including program updates, review of the proposed fiscal year 2014/15 AB 109 Public Safety Realignment budget and made appointment recommendations to the Board of Supervisors for the CY 2015 Community Corrections Partnership. In addition, the Committee evaluated the feasibility of submitting a grant proposal for the 2014 Byrne Justice Assistance Grant (JAG) released by the California Board of State and Community Corrections.

In 2016, the Committee reviewed the FY 2016/17 AB 109 budget proposed by the CCP, made appointment recommendations for the CY2017 CCP and CCP-Executive Committee to the Board of Supervisors and advised on grant programs that tie into AB 109 programming infrastructure. In addition, the Committee reviewed the process for allocating the Community Programs portion of the AB109 budget, which was composed of four separate RFPs for: 1) Employment and Placement services, 2) Short and Long-Term Housing services, 3) Monitoring and Family Reunification services and 4) Legal services. In addition, the Committee reviewed the first AB109 Annual Report assembled by Resource Development Associates on behalf of the Community Corrections Partnership and a recommendation to establish an Office of Reentry and Justice in the County Administrator's Office. It is recommended that this matter remain on referral to the 2017 PPC.

In 2017, the Committee continued its oversight responsibilities related to the implementation of AB109 by reviewing the proposed FY 2017/18 AB109 budget assembled by the CCP, reviewing the FY 2015/16 AB 109 Annual Report and receiving staff reports regarding plans to update the Countywide Reentry Strategic Plan and AB109 Operational Plan. The FY 2015/16 AB109 Annual Report was forwarded to the Board on March 14, 2017. At the October and November 2017 meetings, the Committee had discussion regarding appointments to the CCP and the CCP-Executive Committees for CY2018. At the November meeting, the Committee recommended the reappointment of all members with the exception of the CBO-representative seat. The Committee requested the CCP-Community Advisory Board to make a recommendation regarding appointment to that seat, which will be proposed to the Committee in early 2018. Ultimately, the Board approved the CY2018 appointments as recommended by the Committee on November 14, 2017.

Recommendation: REFER to the 2018 PPC

5. Inmate Welfare Fund/Telecommunications/Visitation Issues. On July 16, 2013, the Board of Supervisors referred a review of the Inmate Welfare Fund (IWF) and inmate visitation policies to the Public Protection Committee for review. The Inmate Welfare Fund is authorized by Penal Code § 4025 for the "...benefit, education, and welfare of the inmates confined within the jail." The statute also mandates that an itemized accounting of IWF expenditures must be submitted annually to the County Board of Supervisors.

The Sheriff's Office has made several reports to the Committee throughout 2013 and 2014 regarding funding of IWF programs, visitation/communication policies and an upcoming RFP for inmate telecommunications services. The referral was placed on hold pending further discussion and outcomes of state and federal level changes to statute or

rulemaking that could curtail the collection of telephone commissions individuals contacting inmates and wards housed in county adult and juvenile detention facilities normally pay. Such changes could potentially impact programming provided within the County's detention facilities.

In late 2015, the Federal Communications Commission (FCC) issued new regulations significantly curtailing the costs charged to inmates or the families of inmates for use of a jail or prison telecommunications system. During 2016, a final rulemaking process was anticipated by the FCC. Ultimately, the FCC passed updated regulations related to telecommunications in detention facilities. For this reason, this issue should remain on referral to the Committee in 2018.

Recommendation: REFER to the 2018 PPC (to be scheduled at the request of the Sheriff-Coroner)

6. Racial Justice Task Force Project. On April 7, 2015, the Board of Supervisors received a letter from the Contra Costa County Racial Justice Coalition requesting review of topics within the local criminal justice system. The Public Protection Committee (the "Committee") generally hears all matters related to public safety within the County.

On July 6, 2015, the Committee initiated discussion regarding this referral and directed staff to research certain items identified in the Coalition's letter to the Board of Supervisors and return to the Committee in September 2015.

On September 14, 2015, the Committee received a comprehensive report from staff on current data related to race in the Contra Costa County criminal justice system, information regarding the County's Workplace Diversity Training and information regarding diversity and implicit bias trainings and presentations from across the country.

On December 14, 2015, the Committee received an update from the Public Defender, District Attorney and Probation Department on how best to proceed with an update to the Disproportionate Minority Contact (DMC) report completed in 2008. At that time, the concept of establishing a new task force was discussed. The Committee directed the three departments above to provide a written project scope and task force composition to the Committee for final review.

At the November 9, 2015 meeting, the Committee received a brief presentation reintroducing the referral and providing an update on how the DMC report compares with the statistical data presented at the September meeting. Following discussion, the Committee directed staff to return in December 2015 following discussions between the County Probation Officer, District Attorney and Public Defender with thoughts about how to approach a new DMC initiative in the County.

On April 12, 2016, the Board of Supervisors accepted a report and related recommendations from the Committee resulting in the formation of a 17-member Disproportionate Minority Contact Task Force composed of the following:

- County Probation Officer
- Public Defender
- District Attorney
- Sheriff-Coroner
- Health Services Director
- Superior Court representative
- County Police Chief's Association representative
- Mount Diablo Unified School District representative
- Antioch Unified School District representative
- West Contra Costa Unified School District representative
- (5) Community-based organization (CBO) representatives (at least 1 representative from each region of the County and at least one representative from the faith and family community)
- Mental Health representative (not a County employee)
- Public Member – At Large

Subsequently, a seven-week recruitment process was initiated to fill the (5) five CBO representative seats, the (1) one Mental Health representative seat and the (1) one Public Member - At Large seat. The deadline for submissions was

June 15, 2016 and the County received a total of 28 applications.

On June 27, 2016, the PPC met to consider making appointments to the (5) five CBO representative seats, the (1) one Mental Health representative seat and the (1) one Public Member - At Large seat. The PPC nominated the following individuals to be considered by the full Board of Supervisors:

- 1.CBO seat 1: Stephanie Medley (RYSE, AB109 CAB) (District I)
- 2.CBO seat 2: Donnell Jones (CCISCO) (District I)
- 3.CBO seat 3: Edith Fajardo (ACCE Institute) (District IV)
- 4.CBO seat 4: My Christian (CCISCO) (District V, but works in District III)
- 5.CBO seat 5: Dennisha Marsh (First Five CCC; City of Pittsburg Community Advisory Council) (District V)
- 6.Mental Health: Christine Gerchow, PhD. (Psychologist, Juvenile Hall-Martinez) (District IV)
- 7.Public (At-Large): Harlan Grossman (Past Chair AB 109 CAB, GARE participant) (District II)

During the meeting, it was noted that Ms. Christine Gerchow had an exceptional background in mental health that would be very beneficial to the Task Force discussions. Ms. Gerchow is a County employee in the Health Services department working in the juvenile hall. In light of Ms. Gerchow's qualifications, the Committee voted to recommend her for appointment to the Mental Health representative seat and request that the full Board remove the requirement that the Mental Health representative not be a County employee. At the conclusion of the meeting, the Committee directed staff to set a special meeting for early August to consider the final composition of the entire (17) seventeen member Task Force once all names were received from county departments, school districts, etc. In addition, the Committee recommended changing the title of the Task Force to the "Racial Justice Task Force", which was determined to be more reflective of the current efforts to evaluate racial disparities in the local criminal justice system.

On August 15, 2016, the Committee approved nominations for appointment to the Task Force for consideration by the Board of Supervisors, including a recommendation that the Superior Court designee seat be a non-voting member of the Task Force at the request of the Superior Court.

On September 13, 2016, the Board of Supervisors approved the Task Force. The Task Force will make reports to the Public Protection Committee, as needed, over the course of its work. For this reason, the referral should be continued to the 2018 PPC

Recommendation: REFER to the 2018 PPC

7. Review of Juvenile Fees assessed by the Probation Department. On July 19, 2016, the Board of Supervisors referred to the Public Protection Committee a review of fees assessed for services provided while a minor is in the custody of the Probation Department. Welfare and Institutions Code 903*et seq.* provides that the County may assess a fee for the provision of services to a minor in the custody of its Probation Department. This referral follows a statewide discussion as to whether or not these fees should be imposed by counties on the parents or legal guardians of minors in the custody of the County.

On September 26, 2016, the Public Protection Committee accepted an introductory report on the issue and voted unanimously to refer the issue to the full Board of Supervisors with two separate options: 1) to adopt a temporary moratorium on the fees and/or 2) refer the issue to the newly formed Racial Justice Task Force for review.

On, October 25, 2016, the Board of Supervisors approved a moratorium on certain juvenile fees and directed staff to further review the assessment of juvenile fees and report back to the Public Protection Committee. Ultimately, the Board directed staff and the Committee to return back to the full Board no later than May 2017 with a recommendation as to whether or not juvenile fees should be permanently repealed. For this reason, we recommend that this referral remain with the 2017 PPC.

In 2017, the Committee received several updates related to the repeal of certain juvenile fees assessed by the County via the Probation Department. Ultimately, the Committee recommended and the Board approved the full repeal of juvenile cost of care fees at the Juvenile Hall and the Orin Allen Youth Rehabilitation Facility. The Juvenile

Electronic Monitoring (JEM) fee was also repealed. The Committee also discussed a process by which to refund overpayments made by the guardians of juveniles previously in the custody of the Probation Department and forwarded the issue to the Board on December 12, 2017.

Recommendation: REFER to the 2018 PPC

8. County Law Enforcement Participation and Interaction with Federal Immigration Authorities. On February 7, 2017, the Board of Supervisors referred this issue to the Committee for review. Specifically, 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 being deported.

The Committee introduced this item at the March 6, 2017 meeting and provided direction to staff, including to continue monitoring Senate Bill 54 (De Leon), which was ultimately passed by the Legislature and signed into law by Governor Brown, tracking relevant court cases involving the current federal immigration policies and practices and to return with information regarding the Sheriff's contract to house federal detainees in County detention facilities, including Immigration and Customs Enforcement (ICE) detainees.

At the November 2017 meeting, the Committee received an update on this issue, including the status of current litigation across the country regarding immigration policy and a briefing on the final version of SB 54 (De Leon). County Counsel provided an analysis of policies of the Sheriff's Office and Probation Department showing against the future requirements of SB 54 to become effective January 1, 2018. The Committee directed staff to schedule a special meeting for December 2017 to continue this discussion in advance of the effective date of SB 54 to ensure that the County is in compliance by that time.

Recommendation: REFER to the 2018 PPC

**LIST OF ITEMS TO BE REFERRED TO THE
2018 PUBLIC PROTECTION COMMITTEE**

- Welfare fraud investigation and prosecution
- Multilingual capabilities of the telephone emergency notification system/Community Warning System Contracts
- County support and coordination of non-profit organization resources to provide prisoner re-entry services and implementation of AB109 public safety realignment
- Inmate Welfare Fund/Telecommunications/Visitation Issues
- Opportunities to improve coordination of response to disasters and other public emergencies
- Racial Justice Task Force Project
- Review of juvenile fees assessed by the Probation Department
- County Law Enforcement Participation and Interaction with Federal Immigration Authorities

CONSEQUENCE OF NEGATIVE ACTION:

The Board of Supervisors will not receive the annual report from the 2017 Public Protection Committee.

CHILDREN'S IMPACT STATEMENT:

No impact.