

County Counsel Response Review of Letter from Asian Law Caucus

At its meeting on April 12, 2018, the Public Protection Committee asked that the County Counsel's Office provide the Committee with a response to the legal issues raised in a letter dated April 11, 2108, to Sheriff David Livingston from the Asian Law Caucus alleging that the Sheriff's Immigration Status Policy No. 1.02.28 was not in compliance with the California Values Act ("SB 54"). Their response follows:

Issue #1: Does SB 54 prohibit a Sheriff's Department from having a policy that allows deputies to use their reasonable suspicion about a person's immigration status when it is reasonably relevant to an investigation of crimes such as trafficking or smuggling?

Response to Issue #1: SB 54 does not restrict local law enforcement from investigating activities that may violate state criminal laws. Government Code section 7284.6, subdivision (f), recognizes that local law enforcement agencies retain jurisdiction of criminal law enforcement matters.

Immigration Status Policy Section IV.B.1 states that:

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.

The focus of SB 54 is on restricting the use of local law enforcement for civil immigration enforcement activities. Trafficking, smuggling, harboring, and terrorism are all offenses that may be violations of state criminal laws. Such offenses may be committed by citizens or noncitizens alike and may involve victims or witnesses who are citizens or noncitizens. The Immigration Policy simply recognizes that immigration status may be a factor in the investigations of those crimes.

Issue #2: Is Section III.A.1. of the Immigration Policy inconsistent with SB 54 by permitting a deputy to investigate, enforce, detain, or arrest an individual who is suspected of unlawfully re-entering the United States during an unrelated law enforcement activity?

Response to Issue #2: The Policy language is not inconsistent with SB 54, but admittedly SB 54 does not provide clear guidance on this issue.

Immigration Status Policy Section III.A.1 states that:

Sheriff's Personnel may investigate, enforce, or detain upon reasonable suspicion of, or arrest for a violation of 8 USC 1326(a) (Illegal reentry by a previously deported or removed alien) that is detected during an unrelated law enforcement activity.

If, during a law enforcement activity, a deputy discovers that an individual who was previously deported may have unlawfully entered the United States, then a deputy is permitted to investigate, enforce, detain, or arrest such individuals. (CA Gov. Code § 7284.6(b)(1).) SB 54 includes some additional language to suggest that an individual's prior deportation should have been the result of a conviction of an aggravated felony in order for a deputy to conduct an investigation into the unlawful reentry. (CA Gov. Code § 7284.6(b)(1).) Whether investigations related to unlawful reentry are strictly limited to individuals who were deported following conviction of an aggravated felony is not clear in SB 54. Due to the uncertainty of the intent of the language, the Sheriff's Office could consider adding language to the Policy regarding aggravated felonies.

Issue #3: Is posting of inmate release information on the Sheriff's website a violation of SB 54 if such information was not already posted prior to the effective date of SB 54?

Response to Issue #3: The California Public Records Act specifically identifies inmate release information as public information. (CA Gov. Code § 6254(f)(1), identifying "time and manner of release.") SB 54 recognizes it is lawful to disclose release date information that is available to the public. (CA Gov. Code § 7284.6(a)(C).) For these reasons, the release information posted by the Sheriff's Office is public information, the disclosure of which is not prohibited by SB 54.

The Sheriff's Office advises that it has posted inmate release information on its website since approximately February 2018. Other counties, including Orange, San Diego, and Alameda, also post inmate release information on their websites.