


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Kevin Gardner, Chief</p> 	<p>INFORMATION BULLETIN</p>	
<p><i>Subject:</i> Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act</p>	<p><i>No.</i> DLE-2018-01</p>	<p><i>Contact for information:</i> Kevin Gardner, Chief Division of Law Enforcement (916) 210-6300</p>
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TO: Executives of State and Local Law Enforcement Agencies

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

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

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

SUMMARY

I. Amendments to the TRUST Act

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

II. Overview of the Values Act

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

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

The Values Act does the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

Hold, notification, and transfer requests include requests issued by U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection as well as any other immigration authorities. (Gov. Code, § 7284.4, subd. (e).)
"Immigration authority" means any federal, state, or local officer, employee or person performing immigration enforcement functions. (Gov. Code, § 7284.4, subd. (c).)

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

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

- a. **Transfer Requests:** Responding to transfer requests is permitted only if:
- i. The transfer is authorized by a judicial warrant, as defined by Government Code section 7282.4, subdivision (i), or a judicial probable cause determination, as defined by Government Code section 7282.4, subdivision (h), regarding a violation of federal criminal immigration law;
- or
- ii. Where the transfer would not otherwise violate any federal, state, or local law, or local policy, and the individual in custody meets any one of the conditions set forth in the TRUST Act, Government Code section 7282.5, subdivision (a). These qualifying conditions are:
 - 1) The individual has been convicted at any time of a serious or violent felony, as defined in Penal Code section 1192.7, subdivision (c), or Penal Code section 667.5, subdivision (c).
 - 2) The individual has been convicted at any time of a felony that is presently punishable by imprisonment in state prison.
 - 3) The individual was convicted within the past 15 years of a felony listed in Government Code section 7282.5, subdivision (a)(3), or within the past five years of a wobbler (i.e., a crime punishable as either a felony or a misdemeanor) listed in Government Code section 7282.5, subdivision (a)(3).
 - 4) The individual is a current registrant on the California Sex and Arson Registry.
 - 5) The individual has been convicted of certain specified federal aggravated felonies identified in section 101(a)(43)(A)-(P) of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(A)-(P)).
 - 6) The United States Department of Homeland Security's Immigration and Customs Enforcement (ICE) identifies the person as the subject of an outstanding federal felony arrest warrant for any federal crime.

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

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

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

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

3. Other Restrictions on Immigration Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Additional Law Enforcement Activity Under the Values Act

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

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

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

VI. The Requirements of the TRUTH Act

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

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

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

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

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

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

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

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

VIII. Repeal of Health and Safety Code section 11369

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

Sincerely,



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For XAVIER BECERRA
Attorney General