TURNING THE GOLDEN STATE INTO A SANCTUARY STATE
A REPORT ON THE IMPACT AND IMPLEMENTATION OF THE CALIFORNIA VALUES ACT (SB 54)

MARCH 2019 **PREPARED BY**

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ORGANIZATIONS

About Asian Americans Advancing Justice – Asian Law Caucus

Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus is the nation's first legal and civil rights organization serving low-income Asian Pacific American communities. Advancing Justice – ALC focuses on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy, civil rights and hate violence, national security, and criminal justice reform. As a founding affiliate of Asian Americans Advancing Justice, the organization also helps to set national policies in immigration, affirmative action, voting rights, Census and language rights. Their three-prong strategy integrates the provision of legal services, educational programs, community organizing initiatives and advocacy.

About the University of Oxford Centre for Criminology

The Centre for Criminology at the University of Oxford is part of the Faculty of Law within the Social Sciences Division and enjoys a reputation as a world-leading research and teaching institution. It is dedicated to pursuing an innovative program of criminological and criminal justice research and to delivering the highest quality undergraduate education on the university's undergraduate Law FHS degree and graduate education at both the master's and doctoral level. The Centre's members are committed to connecting criminological work to the broader concerns of the social sciences; to thinking comparatively about crime and punishment; to bringing together sociological and normative approaches to the analysis of crime and justice; and to working at the intersections between criminology and public policy.

About Border Criminologies

Based at the Centre for Criminology at the University of Oxford, Border Criminologies is an international network of researchers, border control professionals, and those who have experienced border control. Border Criminologies explores the growing interconnections between border control and criminal justice and maintains the first open access scholarly journal on migration, criminal justice, and borders research.

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EXECUTIVE SUMMARY

In October 2017, California Governor Jerry Brown signed into law the "California Values Act," also known by its legislative bill number SB 54, authored by Senate President Kevin de León, to limit local and state law enforcement entanglement with immigration enforcement. This sanctuary state law restricts local law enforcement agencies (LEAs) in California from expending agency resources for the purpose of assisting U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) in identifying, detaining, arresting, and transferring custody of immigrants to these agencies for deportation purposes.

*In its first five months from January 2018 to May 2018, SB 54 implementation led to a **41% decrease** in ICE arrests at local jails compared to the immediately preceding five months from August 2017 to December 2017.*

Notwithstanding its immediate impact in substantially reducing immigration arrests in local jails, implementation of SB 54 remains largely partial and unfinished. This report examines publicly disclosed documents from 169 California LEAs and finds that 23 use out-of-date, pre-SB 54 immigration enforcement-related policies or post-SB 54 policies that nonetheless include out of date provisions or which omit major new prohibitions. Also, 40 additional LEAs use policies primarily drafted for them by a private company, Lexipol, which are not in compliance with the law. Finally, 5 LEAs have no immigration enforcement-related agency policies. **In total, 68 out of 169 LEAs, about 40%, were out of compliance with SB 54.**

This report also finds many LEAs attempted to neutralize the effect of SB 54 by exploiting an exception in the law. Under SB 54, LEAs can only provide release date information to ICE or CBP if detainees meet certain criminal history related requirements, or if the information is already available to the general public. Twenty-four out of fifty-eight, or 41%, of Sheriff's Departments have taken advantage of this latter exception by posting on their department websites release date information for individuals in their custody in advance of their release, upcoming court hearing dates and locations, and detainee personal information including city of residence and occupation. This practice provides ICE an opportunity to detain and deport people at the point of release from LEA custody even though the individual may not have the criminal conviction history that would allow LEAs to conduct an in custody transfer to ICE or directly notify ICE of the individual's release date. A number of Sheriff's Departments began posting this information only after passage of SB 54.

In addition to publicly posting release information, some LEAs also have tried to get around SB 54 by allowing ICE to enter non-public, secure areas of jail facilities to effectuate immigration arrests at

the time the individual is required to be released in the criminal matter. Given that in these "releases," there is no effective break in the chain of custody from LEAs to ICE, these arrests are de facto in custody transfers that nonetheless likely are not recorded or reported as such to the California Attorney General as a part of annual reporting mandated by SB 54. This is the case because the Attorney General's instructions to LEAs for reporting statistics on LEA transfers of individuals to ICE only require LEAs to report transfers that are based in an individual's qualifying criminal convictions and arrests codes logged in jail databases.

LEA officers additionally violate the law in a variety of ways. Officers and Deputies continue to ask people about their immigration status; provide a wide range of information to ICE beyond release date information; detain people in jails for immigration enforcement purposes beyond the time when they would otherwise be released; provide space to ICE in LEA facilities for their exclusive use; and perform the activities of immigration detention officers and patrol the border.

To ensure full compliance with SB 54 and to build on the law's existing protections by further disentangling LEAs from immigration detentions and deportations, this report recommends that the California legislature, Governor, and Attorney General take the following actions.

1. Discontinue information sharing with ICE

Although SB 54 places limits on LEAs sharing release date information, this report finds that a number of LEAs are exploiting exceptions in the law. To prevent the exception from becoming the rule, California should remove SB 54's exceptions for sharing release information based on criminal charges and convictions history or when the information is made public. The state should also prohibit ICE and CBP from accessing information in local and state criminal databases.

2. End LEA custody transfers to immigration authorities and prohibit LEAs from allowing ICE to enter non-public areas of jail facilities

Our review of public records obtained from LEAs has found that LEAs have transferred individuals to ICE in violation of the limits placed by SB 54 by providing ICE access to non-public, secure areas of the jail to effectuate immigration arrests of individuals when they are supposed to be released. We have also found that LEAs have transferred individuals to ICE even if they do not have qualifying criminal histories. We recommend drawing a clear line by prohibiting all LEA transfers to ICE.

3. Prohibit LEA involvement in joint law enforcement task forces that involve immigration enforcement as a purpose, activity, threat, or consequence

SB 54's existing language pertaining to joint task forces with federal immigration authorities allows LEA officers to participate in joint task forces where the "primary purpose of the joint law enforcement task force is not enforcing immigration law." However, there is no clear qualification for what makes a task force primarily focused on immigration enforcement. Recent publications that examine LEA joint task forces with ICE demonstrate that ICE strategically includes threats of immigration enforcement as a central component of their operations.

4. Prohibit LEAs from providing any jail facility space for use by ICE or CBP

In a number of cases, LEAs have been exploiting or violating a provision in SB 54 that prohibits LEAs from providing ICE with "exclusive" office space. Some LEAs have continued to station ICE officers in dedicated offices close to or in release areas of their jails to facilitate their access to released individuals.

5. Prohibit all forms of LEA border policing

LEAs in California have continued to patrol borders with the guidance of CBP under the auspices of enforcing federal criminal law at the border. However, such border policing has served immigration enforcement efforts by turning LEA officers on patrol into de facto border guards.

6. Prohibit LEAs from providing backup services to immigration authorities during federal immigration enforcement operations

This report finds that LEAs continue to participate in immigration enforcement operations with ICE and to support immigration detention facilities by providing them emergency backup support and routine police services such as traffic control. These services ultimately aid in the enforcement of immigration laws and should be considered as part of LEA immigration enforcement activities.

7. Extend all SB 54 protections to state prisons

SB 54 broadly governs local and state law enforcement cooperation in immigration enforcement efforts, however, it only minimally intervenes in the practices of state prisons. SB 54 requires the California Department of Corrections and Rehabilitation (CDCR), which

operates state prisons, to provide individuals in their custody with written consent forms prior to providing ICE access to interview these individuals. However, there are no limits placed on CDCR transfers to ICE custody and communication of release dates to ICE. This is especially concerning as individuals who are released from state prison have either served their prison sentence or earned parole through a rigorous review process by the Board of Parole Hearings and the Governor's Office. For these individuals to be released by CDCR directly into ICE custody subjects these individuals to double punishment and does not allow them an opportunity to be reunified with their communities and families.

8. Ensure compliance with SB 54 through investigating violations and imposing financial penalties.

The California Attorney General plays a crucial role in ensuring that LEAs comply with the intent and the letter of SB 54. The California Attorney General should use this report to reach out to specific LEAs to notify them of their need to modify their policies or to adopt new policies to bring them into compliance with SB 54. The Attorney General should also should establish a process for receiving and reviewing complaints of violations of SB 54 from the public. Finally, SB 54 should be amended to allow the Attorney General to levy fines against LEAs that violate the law's provisions.

A complete list of legislative, executive, and oversight actions to implement this report's recommendations is included at the end of this report.

ACRONYMS

CA DOJ	California Department of Justice
CAP	Criminal Alien Program
CBP	United States Customs and Border Protection
CDCR	California Department of Corrections and Rehabilitation
CLETS	California Law Enforcement Telecommunications System
CPCA	California Police Chiefs Association
CSSA	California State Sheriff's Association
DHS	United States Department of Homeland Security
ICE	United States Immigration and Customs Enforcement
LEA	Law Enforcement Agency
PD	Police Department
SB 54	Senate Bill 54, "The California Values Act," codified in Sections 7282, 7282.5, 7284 to 7284.12 of the California Government Code
TRAC	Transactional Records Access Clearinghouse

BACKGROUND: CALIFORNIA VALUES ACT (SB 54)

In October 2017, California Governor Jerry Brown signed into law an omnibus "sanctuary state" policy, the "California Values Act," also known by its legislative bill number SB 54, following many years of grassroots immigrant advocate organizing, policy advocacy work, and legislative negotiations with statewide law enforcement associations. The primary intent of the law is to limit the degree to which local law enforcement agencies (LEAs) in California can assist the federal government in immigration enforcement. SB 54, which took effect on January 1, 2018, prohibits state and local law enforcement agencies, including school and university police and security departments, from using money or personnel "to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes." The law also regulates LEA involvement with federal immigration enforcement when LEAs engage in joint task force operations with immigration authorities.

SB 54 prohibits LEAs from providing information to ICE regarding the date, time, and location of an individual's release from jail, as well as other related identifying personal information unless the individual meets certain criminal history and criminal charges requirements. This provision is intended to limit the ability of LEAs to assist ICE in arresting individuals at the point when the criminal matter requires their release. However, a major exception to this provision is the allowance for release date information to be shared when the LEA has already made that information available to the public, for instance on their website.[1] While the original SB 54 bill text prohibited information

sharing with ICE without exception, these allowances for sharing information with ICE when a detainee has met certain criminal history screens or when release date information has already been publicly posted, were included as a result of the lobbying by the California State Sheriff's Association (CSSA) and the California Police Chiefs Association (CPCA).[2]

At a California Police Chiefs Association meeting in September 2017, when SB 54 was at the Assembly Floor, CPCA President Ed Medrano reported to the others in attendance, "There are loopholes you can exploit. You can post release dates on your website so ICE can see

1 *See* CA Gov. Code §7284.6(1)(C)-(D).

2 Law enforcement associations involved in these negotiations included the California Police Chiefs Association (CPCA), the California State Sheriff's Association (CSSA), California Police Officers Association (CPOA), California Highway Patrol (CPH), and the Peace Officers Research Association of California (PORAC)

them that way."[3] In a CPCA legislative update email to all members a few days later, the organization's lobbyist mentioned, "Cal Chiefs was successful in neutralizing this bill by getting amendments that provide broad authority for police departments to work with ICE, allow ICE access to jails and expand the ability for local law enforcement to communicate with ICE about inmates in state prison or those incarcerated for one of over 800 crimes listed."[4]

Even though the final version of SB 54 includes the "publicly available" exception to the limitations on sharing release information, if a LEA began posting such information on its website after passage of SB 54, the LEA may be violating the "catch all" provision in SB 54 that prohibits LEAs from using "moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes."[5] In addition, the manner in which departments modify their policies under the auspices of SB 54's prohibitions and allowances is largely determined by whether or not a particular LEA wants to exploit such an information-sharing loophole or not. It comes down to whether an LEA wants to deport as many potentially removable immigrants as are identified through the Secure Communities

3 CPCA Board Executive Committee Meeting, Minutes, September 14, 2017.

4 *See id.*

5 *See* CA Gov. Code §7284.6(a)(1).

Program,[6] or whether they want to refrain from such liberal posting so as to limit their cooperation with ICE. In this manner, implementation comes down to organizational culture and could have the potential to either increase or seriously diminish the number of locally assisted deportations across California.

It is important to note that SB 54 merely establishes a minimum baseline of protections for immigrants, and that SB 54 allows local jurisdictions and LEAs to adopt more protections, including ending all ICE notifications and transfers. For example, in November 2018, the voters of Humboldt County passed Measure K, which sets a higher standard of protections for immigrants than SB 54, including removing exceptions to the limits on local law enforcement sharing information with ICE. In addition, a number of other local jurisdictions, including the City and County of San Francisco, the County of Santa Clara, the City of Santa Ana, and the City of Pacifica, have adopted ordinances that have drawn a brighter line of separation between local law enforcement and ICE.

Largely hailed as the most expansive sanctuary law in the country, affecting over 300 local police departments, 58 sheriff's departments, state law enforcement agencies, and school and university police departments throughout the state, this law in the first year has already had the effect of significantly reducing ICE arrests at jails. Nonetheless, major legislative and oversight action needs to be taken to ensure that LEAs fully implement policies that comply with the intent of the law, minimize the number of arrests ICE is still making as a result of LEA cooperation and information sharing, and address instances where LEAs are outright defying SB 54 and violating its provisions.

It is important to note that SB 54 merely establishes a minimum baseline of protections for immigrants, and that SB 54 allows local jurisdictions and LEAs to adopt more protections, including ending all ICE notifications and transfers.

6 The Secure Communities Program is a Department of Homeland Securities (DHS) program whereby the fingerprints of all people processed in LEA facilities nationwide and which are automatically sent to the Federal Bureau of Investigations (FBI) for criminal background checks are automatically cross-checked for immigration violations in DHS ICE and CBP databases. If DHS databases identify a potentially deportable person, ICE agents are prompted to send the LEA an optional request known as a "detainer" to hold the individual for ICE to question and obtain custody, or for information on when the jail will release the individual to the public where ICE can attempt an arrest.

CA VALUES ACT (SB 54)

OVERVIEW

These prohibitions apply to local and state law enforcement agencies, excluding state prisons, unless otherwise noted. **In all cases, local law enforcement agencies can adopt policies that provide *more* protections.** For more information, visit www.iceoutofca.org.

POLICE-ICE TACTIC	UNDER SB 54
Immigration Holds	**Prohibited.**
Making arrests on civil immigration warrants	**Prohibited.**
287g	**Prohibited.**
Asking about immigration status or using immigration agents as interpreters.	**Prohibited.**
Sharing personal info with ICE (e.g., work, home addresses)	**Prohibited** unless publicly available**.**

Notifying ICE of release dates	**Prohibited** unless:
	• Revised TRUST Act exception applies, including:
	  ◦ Conviction for a felony punishable by imprisonment in state prison at any time
	  ◦ Conviction within past 15 years for any other specified felony. The 15-year "wash" is an improvement on the old TRUST Act standard.
	  ◦ Conviction within the past 5 years for a misdemeanor for a specified wobbler offense.
	  ◦ Charges for a crime that is serious, violent, or punishable by a term in state prison if finding of probable cause has been made by a magistrate pursuant to PC 872.
	• If release dates/times are already publicly available, can be shared

CA VALUES ACT (SB 54)

POLICE-ICE TACTIC	UNDER SB 54
Transfers to ICE	**Prohibited** unless: • Revised TRUST Act exception applies (see above under notifications) • Warrant or probable cause determination from a judge that someone has violated federal criminal immigration law. Local law enforcement required to report number of transfers and basis for transfer to Attorney General's Office.
Local arrests for "criminal" violations of immigration law	**Prohibited** except local law enforcement may arrest someone for unlawful re-entry following deportation *if* • The re-entry is detected during an unrelated law enforcement activity, and • The person has a prior "aggravated felony" conviction Any person arrested for unlawful reentry may be transferred to ICE only if a revised TRUST exception applies.
ICE interviews in jail and prison	TRUTH Act protections essentially expanded to prisons (can't be interviewed by ICE unless sign consent form prior to interview). Prohibition on providing office space exclusively dedicated to ICE in local jails.
Joint Task forces	**Some limitations and reporting requirements imposed.** • Primary purpose of task force must be unrelated to immigration enforcement, and • Participation does not violate any local law or policy. • Local law enforcement required to report information about joint taskforce operations to CA Attorney General and information is available as a public record.
Databases	Attorney General will draft advisory guidelines to ensure that databases are not used for immigration enforcement. State and local law enforcement agencies are encouraged but not required, to adopt guidelines.

THE DATA

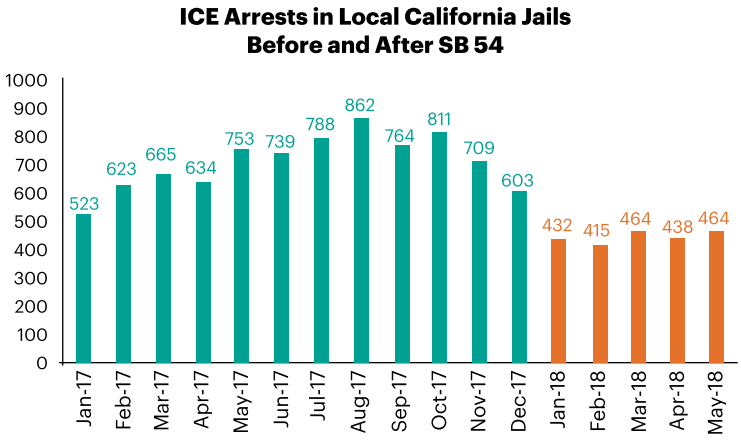
Analysis for this report was completed after review of publicly disclosed documents from 169 law enforcement agencies including 121 police departments and 48 Sheriff's Departments, spanning every county in the state of California. The extensive list of documents and information reviewed included policies, regulations, memorandum, guidance, and forms that LEAs adopted related to the implementation of SB 54; records of materials used to train LEA employees on SB 54 related protocols; communications between the LEA and the public regarding SB 54; communications regarding SB 54 with officials from various agencies including the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), the California Department of Justice, California law enforcement officials including the California State Sheriffs' Association, the California Police Chiefs Association, and any individual California Sheriffs, Police Chiefs, and members of their agencies; records used by LEAs to notify an detained individual's attorney or designee that they are subject of an ICE request or that ICE is seeking to interview them; LEA policies for booking immigration detainees or federal criminal detainees in local facilities; and agreements, contracts, or Memorandum of Understanding between the DHS, CBP, or ICE and the LEA. These public records were requested in March 2018 and most responses were returned in April 2018 to June 2018.

The second set of data that the author examined in the course of preparing this report was the Syracuse University's Transactional Records Access Clearinghouse (TRAC) public data set on "Immigration and Customs Enforcement Arrests" from October 2014 through May 2018, and "Removals Under the Secure Communities Program" from June 2009 through June 2018. TRAC obtained this data from ICE after bringing successful court litigation requiring public FOIA disclosure requests to be honored. This data comprises the most recent data to isolate the ICE arrest types – the "method of apprehension" – on a month-by-month basis.

FINDINGS

1. After the implementation of SB 54 in January 2018, ICE arrests in local jails decreased overall

CHART 1



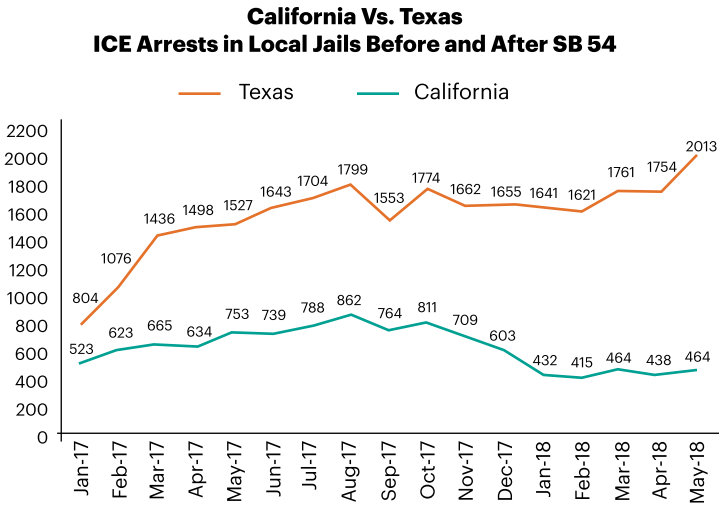
Statistical Source: ICE statistics, "CAP-Local Incarceration" Arrests.[7]

When examining ICE's most recently available arrest data, we can see that in the first five months of SB 54 in 2018, as compared to the same period in 2017, total ICE arrests of detainees in California's local jails decreased by 985 arrests (see Chart 1). This amounted to a 31% drop over the same period in 2017 and accounted for 74% of the total drop in all ICE arrests in California

7 *See* Transactional Records Access Clearinghouse, "Immigration and Customs Enforcement Arrests: ICE Data through May 2018," available at: http://trac.syr.edu/phptools/immigration/arrest/

during this period. In ICE statistical categories, these local jail arrests are logged as "CAP-Local Incarceration" – arrests counted as part of the Criminal Alien Program wherein arrests are made in coordination with local jails and detention facilities where immigrants are being held.

CHART 2



Statistical Source: ICE statistics, "CAP-Local Incarceration" Arrests.[8]

8 *See id.*

By contrast, in Texas, where LEAs are prohibited from implementing sanctuary policies under a state law known as SB 4, ICE arrests in local jails in the first five months of 2018 increased by 39% over the same period in 2017, or by 2449 arrests (see Chart 2).

When comparing the first five months of SB 54 implementation in 2018 with the immediately preceding five months – August to December 2017 – arrests at local jails in California dropped by -1536 arrests (a 41% decrease) from the previous five months or 54% of the total decrease in this period. This stands in stark contrast to an *increase* of 347 ICE arrests (a 4% increase) at local jails in anti-sanctuary state Texas (see Table 2).

TABLE 1 Comparing CA to TX: January–May 2017 to January–May 2018

	Jan–May 2017	Jan–May 2018	Change	% Change
Total ICE Arrests in CA	8,321	7,853	-468	-6%
ICE Arrests in CA LEA Jails	3,198	2,213	-985	-31%
Total ICE Arrests in TX	15,613	18,044	2,431	+16%
ICE Arrests in TX LEA Jails	6,341	8,790	2,449	+39%

TABLE 2 Comparing CA to TX: August–December 2017 to January–May 2018

	Aug–Dec 2017	Jan–May 2018	Change	% Change
Total ICE Arrests in CA	10,356	7,853	-2,503	-24%
ICE Arrests in CA LEA Jails	3,749	2,213	-1,536	-41%
Total ICE Arrests in TX	16,056	18,044	1,988	+12%
ICE Arrests in TX LEA Jails	8,443	8,790	347	+4%

Data source: Transactional Records Access Clearinghouse, "Immigration and Customs Enforcement Arrests: ICE Data through May 2018," available at: http://trac.syr.edu/phptools/immigration/arrest/

2. After SB 54 was signed into law, many LEAs adopted policies created by the private company Lexipol that fell short of full compliance.

Following the passage of SB 54 in October 2017, the California Department of Justice (CA DOJ) was in charge of preparing guidance memos on implementing SB 54 for every law enforcement agency in California. They did not send this guidance until late March 2018. In the absence of guidance from the CA DOJ for SB 54, implementation for these five months after the law was signed, the company Lexipol aimed to sell their updated "Immigration Violations" policy to LEAs, promising they were SB 54 compliant. Lexipol framed SB 54 to its LEA customers as brand new with legally untested provisions that had not yet been "clarified through case law."[9] Lexipol sold their updated Immigration Violations model policy as one that was "carefully crafted to balance the need to protect the civil rights of community members with the need to safeguard lives and property and enforce the law."

This "balanced" new SB-54-inclusive Lexipol policy left out much of the specific language included in the law and subsequently encouraged LEA officers to take immigration enforcement-related action not allowed by SB 54.

9 Email from Lexipol Alerts sent to Lexipol subscribers, "ACLU Memo on Immigration Violations Policy," February 16, 2018.

WHAT IS LEXIPOL?

Lexipol is a private company that develops and sells model department policies to law enforcement agencies throughout California, purporting to assist these agencies in complying with the latest state and federal law and case law. LEA customers may adopt and implement model policies in their entirety, or they may choose to modify these model policies to meet their operational needs. LEAs often adopt a wide variety of Lexipol policies in their Department policies. However, Lexipol does not automatically send their subscribers updates to the Lexipol policies that they are already using; rather, they advertise their updates, and subscribers must request the update and work with Lexipol on edits.

40 of the 169 LEAs examined in this study adopted Lexipol policies that do not comply with SB 54.[10]

A number of police departments failed to adopt SB 54-compliant policies because they contended that SB 54 only pertains to local jails. However, SB 54 applies to all local law enforcement agencies, including police departments.[11] For example, the Police Departments of Del Rey Oaks, Emeryville, and Fairfield, as well as the Modoc County Sheriff, produced no policy implementing SB 54. Some police departments did not update their existing immigration enforcement-related policies to comply with SB 54. For example, the Chula Vista Police Department did not update their Lexipol "Immigration Violators" 428 policy, which allows its patrol officers to conduct the following non-compliant activities:

- Patrol officers may report people to ICE who are suspected of violating California Health and Safety code 11369.[12] This contradicts SB 54 because SB 54 repealed California Health and Safety code 11369.

- Patrol officers may notify ICE of individuals charged with only misdemeanors who are not taken to jail and to release them to ICE at the scene of contact with the person.[13] This violates SB 54 because the law prohibits notifications to ICE for individuals with only misdemeanor charges.

- Patrol officers may release people to ICE who have been determined to be material witnesses to a crime - someone who has information critical to the outcome of a criminal case.[14] SB 54 does not allow witnesses to a crime to be released to ICE.

- Patrol officers may detain, transport to ICE, and release to ICE unaccompanied juveniles over 14 years old who are suspected of violating Welfare and Institutions Code 300. Under SB 54, juvenile offenses cannot be a basis for turning an individual over to ICE.[15]

10 The following police departments adopted a version of this SB-54 focused Lexipol policy: Arroyo Grande, Arvin, Bakersfield, Barstow, Beaumont, Brisbane, Carlsbad, Coalinga, Cypress, Delano, Desert Hot Springs, Ferndale, Fullerton, Gonzales, Hemet, Lincoln, Los Alamitos, Los Gatos, Marina, Novato, Port Hueneme, Reedley, Rialto, Sausalito, Seaside, Selma, Simi Valley, Suisun, Tehachapi, Tiburon, Tulare, and Yuba. Sheriff's Departments that adopted this policy were Imperial County, Lassen County, Merced County, Santa Barbara County, Shasta County, Stanislaus County, and Trinity County, San Benito County

11 *See* CA Gov. Code §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 ...").

12 This violates CA Gov. Code §7284.12(4).

13 This violates CA Gov. Code §§7284.6.(a)(1)(A), 7284.6.(a)(4)

14 This violates CA Gov. Code §7284.6.(a)(4).

15 This violates CA Gov. Code §7284.6.(a)(1)(F) (prohibits activities that includes transportation of detained individuals for the purpose of immigration enforcement) and §7284.6.(a)(4).

LEXIPOL VS. SB 54

One Example from Lindsay Police Department's Lexipol Policy 428: "Immigration Violations"

SB 54	Lindsay PD Lexipol Policy 428 Issued Jan 4, 2018	Why Lindsay PD's Lexipol Policy is Out of Compliance with SB54
7284.6 (a)(1): California law enforcement agencies shall not: (l) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes... 7284.6 (b): Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from [...] (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.**	428.4: "An officer may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the U.S. in violation of a federal criminal law."	**1.** The Lexipol policy violates SB 54 because it does not include SB 54's language limiting officers to acting upon suspicion of a specific type of illegal reentry violation only if it comes up in the course of unrelated law enforcement activities. Thus, the Lexipol policy allows officers to stop and detain individuals for the sole purpose of investigating such immigration violations. **2.** The Lexipol policy also does not include SB54's language explaining that the only federal criminal immigration violation that LEA officers can detain an individual for is 8 U.S.C. 1326(b)(2), which is illegal reentry that occurs after a person has previously been removed from the U.S. subsequent to a conviction for an aggravated felony (a term of art in immigration law). The Lexipol policy therefore violates SB 54 by allowing LEA officers to detain individuals for a wider range of suspected federal criminal law violations than the narrow situation allowed by the law.

3. Many LEAs that created their own policies did not include all of SB 54's prohibitions, rather only selectively included some of them

In their department-crafted policies, LEAs frequently left out that SB 54 prohibits the following activities:

- Sharing detainee private personal information with immigration authorities except when otherwise made public[16]
- Detaining people beyond their release date[17]
- Sharing release date information unless under the exception in SB 54[18]
- Using ICE officers as interpreters[19]
- Placing LEA officers under federal agency supervision[20]
- Transferring individuals to ICE and CBP except under the conditions outlined in SB 54[21]
- Providing LEA space to ICE for their exclusive use[22]
- Working in joint task forces with immigration officials that primarily focus on immigration enforcement[23]
- Providing ICE access to LEA databases[24]
- LEA officers conducting the activities of immigration agents[25]
- Conducting border patrolling activities[26]

These omissions subject the LEA to liability should its officers engage in SB 54 prohibited activity. Most significantly, SB 54 violations have serious consequences for the immigrants whom officers are interacting with. This can include deportation-induced long-term separation from families, loss of parental rights to children left in the wake of a deportation, job loss, financial problems, and psychological trauma.

23 LEAs use out of date, pre-SB 54 Lexipol immigration enforcement policies, or use post-SB 54 policies that nonetheless include out of date provisions and which omit major new prohibitions.[27]

16 Humboldt County Sheriff, Lassen County Sheriff, San Jose PD.
17 Los Angeles County Sheriff, San Jose PD.
18 Humboldt County Sheriff, San Jose PD.
19 Butte County Sheriff, Lassen County Sheriff, San Diego County Sheriff, San Jose PD.
20 Butte County Sheriff, Humboldt County Sheriff, San Jose PD.
21 Lindsay PD, San Jose PD.
22 Humboldt County Sheriff, San Jose PD.
23 San Jose PD.
24 Butte County Sheriff, Humboldt County Sheriff
25 Butte Sheriff, Humboldt Sheriff's Department, Lassen County Sheriff
26 Lassen County Sheriff
27 The police departments that are in this state of noncompliance with SB 54 are the following: Anaheim, Arcata, Atherton, Avernal, Bishop, Campbell, Chula Vista, Daly City, Farmerville, Fountain Valley, Fremont, Gilroy, Huntington Beach, Lindsay, Mountain View, National City, Santa Cruz, Sonora, and Woodlake. The Sheriff's Departments are the Kings County, Lake County, Lassen County, Los Angeles County, and Tulare County.

4. Sheriff's Departments in 24 counties post release dates, times, and locations on jail websites in addition to court hearing dates, times, and locations for individuals in their custody[28]

After SB 54 was signed into law, some LEAs met with or communicated with ICE officers to discuss how they could continue to work together despite SB 54's restrictions on direct information sharing, custody transfers, and access to internal jail space. Many LEAs decided to post release information and court hearing information, including dates, times, and locations online so that ICE could go "independently" to those places to arrest the individuals.

For example, in January 2018, after SB 54 went into effect, in Marin County, Sheriff's Department management communicated directly with an ICE agent who had been working with the jails to notify the agent that they would be placing on their department website the following information:

> Full name, [home] address at time of booking, occupation, arresting agency, physical description, date of birth, date and time of arrest, date and time of booking, amount of bail, next court appearance date/time and place, all current charges (including out of county warrants and probation/parole holds), and release date.[29]

Marin County Sheriff Robert Doyle contended that his department could then respond to all ICE notification requests since their new practice of posting release date information online triggered the "publicly available" exception in SB 54.[30] Marin County Sheriff's management then communicated this development to department deputies and staff and reminded them that Marin County will allow ICE to make their arrests in the "booking area just like any other law enforcement agency." With all of this release information about individuals in the Marin Sheriff's Department's custody and this access to the jail's booking area, ICE agents were reassured that immigration arrests could continue unfettered despite limitations placed by SB 54.

28 As of January 27, 2019, Sheriff's and Corrections Departments that post release date and time information in advance of an individual's release from jail included the following: Alameda County Sheriff, Contra Costa County Sheriff, Fresno County Sheriff, Kern County Sheriff, Kings County Sheriff, Los Angeles County Sheriff, Madera County Department of Corrections (separate from the Sheriff and in charge of the jails), Marin County Sheriff, Placer County Sheriff, Riverside County Sheriff, Sacramento County Sheriff, San Bernardino County Sheriff, San Diego County Sheriff, San Joaquin County Sheriff, San Mateo County Sheriff, Santa Barbara County Sheriff, Santa Cruz County Sheriff, Solano County Sheriff, Stanislaus County Sheriff, Sutter County Sheriff, Tehama County Sheriff, Tulare County Sheriff, and Ventura County Sheriff. Previously, the Orange County Sheriff posted release date information on the department's "Who's in Jail?" public website but has stopped this practice and posted a disclaimer on the site: "Due to security concerns, we have discontinued posting detailed inmate information on this website. Information required to be disclosed under Government Code section 6254(f)(1) of the California Public Records Act may be obtained in person at any Orange County Sheriff jail facility." See Orange county's inmate information website at the following web address: http://ws.ocsd.org/Whoisinjail/Search.aspx. Sheriff's Departments that do not post inmate release information in advance of the release are the following: Humboldt County Sheriff, Imperial County Sheriff, Inyo County Sheriff, Lake County Sheriff, Mariposa County Sheriff, Monterey County Sheriff, Nevada County Sheriff, Orange County Sheriff* (see above), Plumas County Sheriff, San Benito County Sheriff, San Francisco County Sheriff, Sonoma County Sheriff, Trinity County Sheriff, and Tuolumne County Sheriff. The following Sheriff's Departments did not have functioning inmate information websites at the time when research was conducted: Modoc County Sheriff, Shasta County Sheriff, Siskiyou County Sheriff, and Yuba County Sheriff.

29 January 12, 2018 email obtained through Marin County Sheriff PRA response, document 18-331-46.pdf, 16.

30 Hamed Aleaziz, "Sanctuary Split: While SF jail snubs ICE, Marin County does the opposite," *San Francisco Chronicle*, May 25, 2018, available at: https://www.sfchronicle.com/bayarea/article/Sanctuary-split-While-SF-releases-no-inmates-to-12942494.php.

However, because it is evident that the Marin County Sheriff only expended their resources to post release date information online to engage in immigration enforcement, their actions may violate the general prohibition under SB 54 against using resources for immigration enforcement.[31] Moreover, the Marin County Sheriff's Department's practice also violates SB 54 because the "publicly available" exception only applies to SB 54's prohibition on providing release date information to ICE, it is not an exception to SB 54's prohibition on transfers to ICE. When the Sheriff's Department allows ICE access to non-public areas of the jail to arrest individuals for immigration enforcement purposes, it is facilitating an in custody transfer to ICE. In fact, in another county, the Kern County Sheriff's Department, an internal memo from a Lieutenant to Sheriff's Department management expressed concern that allowing ICE access to non-public areas of the jail to facilitate an immigration arrest qualifies as a transfer. The Lieutenant explained:

> *The current practice of processing an inmate as a release and allowing ICE to take custody inside the jail facility could, under legal scrutiny, be deemed a transfer because there is no functional break in custody.*[32]

31 *See* CA Gov. Code 7284.6. (a) (1).

32 Email from Kern County Sheriff's Department Lieutenant to Commander, October 17, 2017, provided through public records request. *Also see* Fresno County Sheriff policy number C-185 "Immigration Status."

ICE ARRESTS OF "RELEASED" INDIVIDUALS IN THE FRESNO COUNTY JAIL

When arresting individuals who are supposed to be released under SB 54 from the Fresno County Jail, ICE officers first check in at the front lobby with Fresno Sheriff's deputies. Deputies then proceed to process individuals for release into a corridor next to a release vestibule. Entering the release vestibule requires securing weapons in a lock box, so ICE uses the release corridor outside the vestibule where they do not have to secure their firearms. Access to the release corridor requires going through a metal detector and is next to the front desk where two deputies provide security for the lobby. ICE additionally parks their caged vehicle in the red zone blocking the front lobby door. The Fresno Sheriff's Department allows this and has provided the ICE officers a special parking placard for parking in this space.

See Fresno County Sheriff's Office Jail Division Policies and Procedures No. C-185 "Immigration Status," section V.E.1.; *see also* December 26, 2017, Email from Fresno County Sheriff's Office Lt. Russell Duran titled "ICE Access Policy C-185."

In jurisdictions like Marin County, where LEAs make parts of an individual's home address - for instance, the city name - available online, ICE agents who are unable to go to the jail's release can also use the partial address information to conduct further research and attempt an immigration enforcement arrest at the individual's home.

When LEAs publicly post release date information online and give ICE access to sally port areas and other areas internal to jail facilities to make arrests of people who do not qualify for pre-release custody transfers, the SB 54 screening process is not one that determines if detainees will be turned over to ICE. Rather, such screening is reduced to a procedure that merely determines where in the jail ICE will arrest a detainee and whether the arrest will occur before the release time or at the point of release.

Some LEAs have additionally provided ICE dedicated office space for their exclusive use in or adjacent to LEA jail release areas to further facilitate their readiness and access to individuals at the time of release. For example, the San Joaquin County Sheriff's Department provides ICE exclusive use of space in their release corridor. The Kern County Sheriff's Directive on the TRUTH Act, originally issued December 21, 2017 and later reissued in April 2018, allows ICE "work space where they can conduct their duties."

5. Some LEAs continue to serve ICE as backup security, ICE detainee escorts, and traffic controllers

SB 54 prohibits LEA officers from participating in immigration enforcement activities in general and provides a comprehensive list of common forms of LEA assistance in deportations that it prohibits. However, some LEAs have interpreted

SAN DIEGO SHERIFF'S DEPARTMENT'S M.O.U. WITH PRIVATE PRISON CONTRACTOR

The San Diego Sheriff's Department (SDSD) signed a Memorandum of Understanding (MOU) with Core Civic, a private company that operates the Otay Mesa Detention Facility for ICE. The MOU sets up an arrangement where the Sheriff's Department provides emergency evacuation services and perimeter security reinforcements to this immigration detention facility. This includes transporting detainees with Sheriff's department vehicles and vans. In the case of an "event, which threatens the security of the facility," SDSD may provide aerial surveillance and dispatch officers to patrol the detention facility to prevent escape of detained immigrants.

See Memorandum of Understanding, March 26, 2018, signed by San Diego Sheriff William Gore and Core Civic of Tennessee, LLC, Warden Fred Figueroa.

this to mean that as long as they do not conduct any of these stated activities such as patrolling the border, or detaining and arresting individuals on the basis of immigration violations, they can still accompany ICE to immigration enforcement operations such as raids to provide routine public safety services. LEA SB 54-related policies have included the following:

- Calling on LEA officers or staff to assist immigration authorities "in emergency" situations without qualifying what consists of an emergency, what qualifies as assistance, and what activities would not be permitted in emergency situations. (Riverside County Sheriff)

- Explicitly allowing LEA officers to "assist federal immigration authorities who are actively engaged in immigration enforcement related activities" in emergency situations. (Riverside County Sheriff)

- Generally allowing LEA officers to assist ICE "at its specific request" (Chula Vista PD, Fullerton PD)

- Requiring officers provide "available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies." (Lindsay PD)

These LEA-created exceptions to SB 54 violate the general prohibition in SB 54 against LEAs engaging in immigration enforcement.

6. Some LEAs continue to provide a wide range of information to ICE in violation of SB 54

A number of LEAs are continuing to report individuals in their custody and provide a wide range of information to ICE in violation of SB 54. Examples include the following:

- Requiring officers to proactively report to ICE information for people who have been charged with drug crimes in California Health and Safety Code 11369, a law that SB 54 repealed (San Jose Police Department)

- Allowing, as a general practice, deputies to provide ICE with detainee probation or parole check-in dates and times (Fresno County Sheriff)

- Treating release date information as "public records" in general even if it is not publicly posted, and then sharing release date information on any detainees with ICE when ICE makes a "public records request" for the release date information, in violation of SB 54's limits on responses to ICE notification requests (Lassen County Sheriff's Department)

- Disclosing personal information about a detainee to ICE once the individual has been screened and found to meet the SB 54 criminal history requirements for sharing release date information with ICE even though criminal history is not an exception to the prohibition under SB 54 for sharing personal information (Butte County Sheriff's Department)

- Sharing release date information for people who have merely been charged for violent felonies and have not received a CA Penal Code 872 probable cause determination from a judge, even though SB 54 requires such a judicial finding prior to sharing release date information based on merely a charge for certain offenses (Lake County Sheriff's Department)

The San Jose Police Department's policy includes language that their policy in no way restricts sharing with ICE "legitimate law enforcement information" rather than "immigration status information" or information about an individual's criminal history. Such permissive, broad, and undefined policy language allows San Jose Police to effectively share any information that officers have with ICE.

Some LEAs also have policies directing their officers to inform interested members of the public that they may report immigration violations to specific departments of ICE that receive tips used to target individuals for arrest and deportation. For instance, the Chula Vista Police Department's "Immigration Violations," Lexipol Policy No. 428, states that, "Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of ICE has primary

jurisdiction for enforcement of Title 8, United States Code."[33]

7. LEAs continue to detain people beyond their release date in response to ICE detainer requests in violation of SB 54

SB 54 prohibits LEAs from responding to any ICE detainer requests. Thus, LEAs cannot hold any individual for extra time for immigration purposes. There is no exception to this bright line rule, which protects LEAs from liability. A number of federal courts have found that holding individuals for extra time in response to an ICE detainer violates the Fourth Amendment protections against unreasonable search and seizure because these ICE requests are not warrants signed by a judge or based on a probable cause finding.[34]

The Stanislaus County Sheriff's policies allow their deputies to detain people in response to an ICE detainer for up to 48 hours beyond their release date if they qualify under SB 54's criminal history screening procedures to be transferred to ICE. This practice is codified in their Adult Detention Facility Procedure Manual "Booking, Classification, Property, & Release" Chapter (2-05.12) which states:

> An inmate shall not be held in custody after the inmate has become "eligible for release" solely on the basis of an immigration hold, except in compliance with the California Values Act (SB 54) and related I.C.E. Laws/regulations, then and only then, can the inmate be held for 48 hours (not counting weekends and holidays for release to an ICE agent).

Later in the same policy's "Court Proceedings" section, it states:

> "If the inmate has a "no bail" ICE hold due to current SB54 requirements only and the inmate is released own recognizance (OR) or bails out, the ICE hold will remain and ICE will be notified immediately and have 48 hours to pick up. If the inmate is not picked up within the 48 hours he/she shall be released in accordance with current release procedures.

The problem with this language is that SB 54, under no circumstance, allows LEAs to hold individuals in local detention after their release time.

8. Some LEA department policies allow for broad border patrolling activities to occur

San Diego Sheriff's Department's "Immigration Laws: Enforcement" policy, which the Sheriff promised to update in a December 2017 bulletin on SB 54, was still in effect in their manual in April 2018 and allowed LEAs to conduct the following activities that violate SB 54:

- Requesting the assistance of the Border Patrol in routine LEA detentions.
- Allowing LEA officers to inquire about immigration status to determine if a felony re-entry crime was committed *under any circumstances*.
- Allowing LEA officers to arrest individuals if they enter the country in his or her presence.

33 *See* Chula Vista Police Department Policy 428, Section 3 "Procedures for Immigration Complaints." See also Marin County Sheriff's Department policies.

34 *See* Morales v. Chadbourne, 996 F. Supp. 2d 19 (D.R.I. 2014) aff'd in part, dismissed in part, 793 F.3d 208, 215-216 (1st Cir. 2015); Miranda-Olivares v. Clackamas County, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); Vohra v. United States, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

OPERATION STONEGARDEN: A CASE STUDY IN LEA BORDER POLICING

LEAs throughout California have signed MOUs to police their respective regions of the U.S. border in coordination with other Operation Stonegarden partner agencies in order to "support the U.S. Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP) efforts in the region to improve border security."[1] According to DHS, the goals of Operation Stonegarden, a program "managed by the Border Patrol"[2] are to "increase our presence along the borders"[3] and "enhance the Department's capabilities to coordinate with state, local and tribal law enforcement in order to effectively deter violence, enforce immigration laws and combat illegal trafficking."[4] The program uses LEAs as a "force-multiplier"[5] for CBP, turning them into an arm of border patrol. The MOU states that the LEAs aim to "enhance enforcement by increasing patrol presence in proximity to the border and/or routes of ingress from the border, including the water borders."[6]

The MOU also states that LEA agencies are focused on enforcing only local and state laws, and not on enforcing or aiding in the enforcement of immigration laws on behalf of CBP. However, various CBP public relations news releases indicate that many of the operations conducted in the past by Operation Stonegarden in California have led only to the apprehension of individuals entering the country illegally with no smugglers identified.[7] CBP press releases about Operation Stonegarden activities in other participating states describe instances when smuggling was not even a factor or consideration in arrests by local LEAs. These releases in some cases describe LEAs aerially identifying groups of individuals attempting to illegally cross the U.S. border with Mexico, and

1 Agreement for the Fiscal Year 2017 Operation StoneGarden (OPSG) Grant, Section 4.2 "Overview of Basic Services," 3 (MOU covers the period September 1, 2017-May 31, 2020 as per section 2.5 of the MOU), available at: https://santabarbara.legistar.com/View.ashx?M=F&ID=6307090&GUID=486B403A-76A6-405D-B227-90E89A93FE40

2 Press Office, U.S. Customs and Border Protection, "Operation Stonegarden Partnership Leads to Arrest of Dangerous Fugitive." March 8, 2019.

3 Office of the Press Secretary of the Department of Homeland Security, "Secretary Napolitano Announces $60 Million in Operation Stonegarden Grants for Border States." June 3, 2009.

4 Office of the Press Secretary of the Department of Homeland Security, "Secretary Napolitano Announces Additional $30 Million in Operation Stonegarden Funds to Secure the Southwest Border." August 11, 2009.

5 Press Office, U.S. Customs and Border Protection, "Smuggling Attempt Thwarted on California Coast." July 19, 2010.

6 Agreement for the Fiscal Year 2017 Operation StoneGarden (OPSG) Grant, sub-section 6.1.1 within the section "Standards of Service: Obligations of the Parties; Anticipated Outcomes Basic Services," 3.

7 *See* "Smuggling Attempt Thwarted on California Coast," Press Office of the US. Customs and Border Protection, July 19, 2010. *See also* "Integrated Border Security Approach Results in Foiled Maritime Smuggling Attempt at Carlsbad State Beach." Press Office of the US. Customs and Border Protection, October 15, 2010.

working with CBP to make arrests on the basis of immigration violations alone.[8]

LEAs receive funding from DHS to participate in Operation Stonegarden, and the San Diego County Sheriff manages the fund dispersal to participating LEAs.[9] When preparing for Operation Stonegarden missions, LEAs draft mission plans that are shared with CBP officers,[10] and at the end of each day of a mission, daily reports are written by LEA officers and sent to CBP.[11] Additionally, source documents cited in the daily reports, such as arrest reports, citations, and field interviews are shared following the end of a mission.[12]

LEAs involved in Operation Stonegarden include the following Sheriff's Departments: San Diego, Los Angeles, Monterey, Orange, San Luis Obispo, San Mateo, Santa Barbara, and Ventura. The following Police Departments and state agencies also are involved: City Police of Carlsbad, Chula Vista, Coronado, Escondido, La Mesa, National City, Oceanside, and San Diego; the San Diego Unified Port District Police (San Diego Harbor Police); the University of California-San Diego Police; the San Diego Probation Department; the California Highway patrol; and the California Departments of Fish and Wildlife and Parks and Recreation.[13]

8 *See* Press Office of the Customs and Border Protection, September 27, 2018 Press Release, "Pinal County Sheriff's Office Assists Border Patrol in Operation Stonegarden," available at: https://www.cbp.gov/newsroom/local-media-release/pinal-county-sheriff-s-office-assists-border-patrol-operation

9 *See* Agreement for the Fiscal Year 2017 Operation StoneGarden (OPSG) Grant, Section 7.3 "Method of Payment," 6.

10 *See id.*, section 6.1.3.

11 *See id.*,section 6.1.4.

12 *See id.*, section 6.1.5.

13 *See id.*, section 1.

RECOMMENDATIONS

To ensure full compliance with SB 54 and to build on these protections by further disentangling LEAs from immigration detentions and deportations, this report recommends that the California legislature, the Governor, and the Attorney General take the following actions:

1. Discontinue information sharing with ICE

Although SB 54 places limits on LEAs sharing release date information and personal information, such as work and home addresses, with ICE or CBP, this report has found that a number of LEAs are exploiting exceptions in the law and in some cases, violating the law. The following recommendations would close these loopholes and create a bright line rule prohibiting LEAs from sharing information with immigration authorities.

The following recommendations would close these loopholes and create a bright line rule prohibiting LEAs from sharing information with immigration authorities.

1a. Remove the exception in SB 54 that allows LEAs to share release information and other related information with ICE when it is available to the public or when it is based on criminal history in CA Gov. Code §7284.6 (a)(1)(C).

1b. Remove the exception in SB 54 that allows for LEAs to share "personal information" with ICE if this information is available to the public. In

particular, remove the following language from §7284.6. (a)(1)(D): "unless that information is available to the public."

1c. Prohibit LEAs from providing information obtained from local and state criminal databases to ICE.

1d. Issue guidance from the California Attorney General clarifying that under SB 54, LEAs are prohibited from directing members of the public to report immigration violations to ICE or CBP, or providing ICE's contact information to members of the public so that they may make such reports that can lead to immigration enforcement activity.

2. End LEA custody transfers to immigration authorities and prohibit LEAs from allowing ICE to enter non-public areas of jail facilities

Studies have shown that LEAs detaining and transferring people in their jails to ICE for deportation purposes has not led to a decrease in crime.[35] LEA entanglement with immigration enforcement is simply not effective crime fighting. To the contrary, when LEAs engage in immigration enforcement, this creates more fear and distrust in immigrant communities. This report recommends California immediately end all LEA transfers to ICE.

LEA entanglement with immigration enforcement is simply not effective crime fighting. To the contrary, when LEAs engage in immigration enforcement, this creates more fear and distrust in immigrant communities.

2a. End transfers from LEAs to ICE by removing language in SB 54 that allows for transfers based on conviction history or whether a judge issues a probable cause determination pertaining to certain criminal charges prior to a conviction. *See* CA Gov. Code § 7284.6. (a)(4).

2b. Prohibit LEAs from allowing ICE to enter non-public areas on LEA property.

2c. Require LEAs to document and report annually to the California Attorney General all ICE arrests made on LEA property of detainees who were "released" to the public in addition to those officially transferred to ICE custody.

3. Prohibit LEA involvement in joint law enforcement task forces that involve immigration enforcement as a purpose, activity, threat, or consequence

SB 54's existing language pertaining to joint task forces with federal immigration authorities

35 See Thomas Miles and Adam Cox, "Does Immigration Enforcement Reduce Crime? Evidence from Secure Communities." Journal of Law and Economics, 2014, available at: https://www.law.uchicago.edu/files/file/does_immigration_enforcement_reduce_crime_082514.pdf; Tom Wong, Center for American Progress, "The Effects of Sanctuary Policies on Crime and the Economy," Jan. 26, 2017, available at: https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/ (Finding there are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to nonsanctuary counties); Nik Theodore, Department of Urban Planning and Policy, University of Illinois at Chicago, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," May 2013, available at https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF

allows LEA officers to participate in joint task forces when the "primary purpose of the joint law enforcement task force is not enforcing immigration law." *See* CA Gov. Code § 7284.6 (b)(3)(A). However, there is no clear qualification for what makes a task force primarily focused on immigration enforcement. For example, ICE has come under criticism for telling LEAs that they are engaging in a criminal enforcement joint taskforce operation when in fact most or all of the arrests that result are for immigration violations.[36]

3a. Modify § 7284.6 (b)(3)(A) to state "LEAs may not enter into joint law enforcement task forces that have immigration enforcement or border policing as a purpose of its operations, that undertake any immigration enforcement activities, employ threats of executing immigration enforcement activities, or result in immigration enforcement as a consequence of the operation."

4. Prohibit LEAs from providing any jail facility space for use by ICE or CBP

Some LEAs have been exploiting SB 54's allowance for ICE office space in LEA facilities that is not for their exclusive use. LEAs have continued to station ICE officers in offices close to or in release areas of their jails to facilitate their access to released individuals. This report recommends California taking the following action:

4a. Prohibit LEAs from making any work space, offices, physical assets in their facilities, or IT infrastructure available for use by federal immigration authorities for any period of time and any frequency whether temporary or permanent.

4b. Remove the SB 54 allowance for ICE to use LEA facility work space by removing the following language from § 7284.6 (a)(5): "exclusively dedicated."

36 *See* Hamed Aleaziz, "Santa Cruz leaders slam feds over immigration detentions during gang operation, San Francisco Chronicle," February 23, 2017, available at https://www.sfgate.com/bayarea/article/Santa-Cruz-leaders-slam-feds-over-immigration-10955358.php.

5. Prohibit all forms of LEA border policing

LEAs in California have continued to patrol borders in conjunction with CBP under the auspices of criminal law enforcement. However, such border policing has served immigration enforcement efforts by turning LEA patrol officers into de facto border guards. This report recommends the following:

5a. End all LEA border policing by deleting §7284.6(b)(1). This carveout in SB 54, which is confusing and complicated, has been misinterpreted by most LEAs to allow LEA officers to investigate more illegal reentry crimes that SB 54 allows.

5b. Enforce SB 54's provisions prohibiting LEAs from participating in border policing operations such as Operation Stonegarden, where LEAs, under the umbrella of policing border crimes, undertake activities in consultation with federal authorities, report back to federal authorities on the activities, and which ultimately lead to the prosecution of individuals for immigration violations.

6. Prohibit LEAs from providing backup services to immigration authorities during federal immigration enforcement operations

This report has found that LEAs continue to participate in immigration enforcement by providing emergency backup support and routine police services, such as traffic control, to ICE or CBP. These services ultimately aid in the enforcement of immigration laws and should be considered as part of LEA immigration enforcement activities. This report recommends the following:

6a. Enforce SB54's existing prohibitions on LEA participation in immigration enforcement activities, including LEAs providing peace-keeping or public safety services, such as traffic control, and backup to ICE and CBP for immigration raids and other immigration enforcement activities.

7. Extend all SB 54 protections to state prisons

SB 54 broadly regulates local and state law enforcement cooperation in immigration enforcement efforts; however, it only minimally intervenes in the practices of state prisons. SB 54 requires the California Department of Corrections and Rehabilitation (CDCR), which operates state prisons to adhere to written consent procedures prior to ICE interviews of incarcerated individuals. However, CDCR continues to funnel individuals in their custody into immigration detention and deportation providing release date information to ICE and facilitating transfers to ICE custody. This is especially concerning as individuals who are released from state prison have served their prison sentence or earned parole through a rigorous review process by the Board of Parole Hearings and the Governor's Office. For these individuals to be released into ICE custody subjects these individuals to double punishment and does not allow them an opportunity to be reunified with their communities and families. This report recommends that California take the following action:

7a. Remove the exception for CDCR in the definition of "California law enforcement agency" so that all of SB 54 also applies to CDCR. See CA Gov. Code § 7284.4 (a).

8. Ensure compliance with SB 54 through investigating violations and imposing financial penalties

The California Attorney General plays a crucial role in ensuring that LEAs comply with the intent and the letter of SB 54. The following recommendations are steps the Attorney General can take to increase compliance with this key immigrant rights law:

8a. The California Attorney General should use this report to reach out to specific LEAs to notify them of their need to modify their policies to bring them into compliance with SB 54.

8b. The California Attorney General also should establish a clear and accessible process for receiving and reviewing complaints of violations of SB 54 from the public. All findings from these investigations, including evidentiary data and disciplinary or corrective action taken, should be made available to the public.

8c. SB 54 should be amended to allow the Attorney General to levy fines for LEAs that violate provisions of SB 54.

CONCLUSION

The California Values Act is one of the most expansive sanctuary laws in the country. As a result of implementation of this new law, there has been a notable drop in LEA-assisted ICE and CBP arrests in the state, especially when compared to anti-sanctuary states such as Texas. However, there is much work to be done by the State to bring LEAs into full compliance with SB 54 and to ensure that the law is not undermined through the exploitation of its policy exceptions. At a time when the federal administration has been hostile to immigrant communities and has ramped up immigration arrests, detentions, and deportations, it is imperative that Californians are confident that their local, county, and state government will not work to deport them, their family members, friends, co-workers, and neighbors.

California must continue to lead the country in welcoming and protecting immigrants by ensuring full compliance with SB 54 and adopting stronger protections that create bright line separation between local and state law enforcement and immigration enforcement.

LAW ENFORCEMENT AGENCIES ANALYZED IN THIS REPORT

Police Departments

Alameda
Anaheim
Anderson
Angels Camp
Antioch
Arcata
Arroyo Grande
Arvin
Atascadero
Atherton
Atwater
Avenal
Bakersfield
Banning
Barstow
Beaumont
Belmont
Bishop
Brisbane
California City
Calistoga
Campbell
Carlsbad
Chula Vista
Citrus Heights
Cloverfield
Coalinga
Concord
Coronado
Cypress
Daly City
Del Rey Oaks
Delano
Desert Hot Springs
Dublin
El Cerrito
El Monte
Emeryville
Escondido
Fairfield
Farmersville
Ferndale
Fortuna
Fountain Valley
Fremont
Fullerton
Gardena
Gilroy
Glendale
Gonzales
Grassville
Gustine City
Hawthorne
Hayward
Hemet
Huntington Beach
Jackson
Kingsburg
La Mesa
La Palma
Lake Shastina
Lincoln
Lindsay
Livingston
Long Beach
Los Alamitos
Los Gatos
Marina
Mendota
Mill Valley
Monrovia
Morgan Hill
Mountain View
Mount Shasta
Napa County
National City
Nevada City
Novato
Oakland
Oakley
Oceanside
Ojai
Orange
Orland
Pacifica
Palm Desert
Port Hueneme
Redding
Reedley
Rialto
Richmond
Ridgecrest
Rio Vista
Ross
Sacramento
San Bernardino
San Diego
San Francisco
San Gabriel
San Ramon
Sand City
Sanger
Santa Cruz
Santa Maria
Santa Paula
Sausalito
Seaside
Selma
Simi Valley
Sonora
South San Francisco
Suisun
Thousand Oaks
Tiburon
Tulare
Turlock
Walnut Creek
Woodlake
Yreka
Yuba

Sheriff's Departments

Alameda County
Butte County
Contra Costa County
Fresno County
Humboldt County
Imperial County
Inyo County
Kern County
Kings County
Lake County
Los Angeles County
Madera County
Marin County
Mariposa County
Merced County
Modoc County
Monterey County
Nevada County
Orange County
Placer County
Plumas County
Riverside County
Sacramento County
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Santa Barbara County
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