

<p>California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Joe Dominic, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> California Values Act's Database Guidance</p>	<p><i>No.</i> 18-10-CJIS</p>	<p><i>Contact for information:</i> CLETS Administration Section CAS@doj.ca.gov</p>
	<p><i>Date:</i> 10-01-2018</p>	

TO: ALL CHIEFS OF POLICE, SHERIFFS, and EXECUTIVES OF CALIFORNIA LAW ENFORCEMENT AGENCIES

DATABASE GUIDANCE – Senate Bill 54

This Information Bulletin (IB) provides guidance to state and local law enforcement agencies (LEAs) on best practices regarding the governance of databases regarding Senate Bill (SB) No. 54 (De León; 2017-2018 Regular Sessions) (“the Values Act”) to ensure information is limited for immigration enforcement purposes to the fullest extent practicable and consistent with federal and state law. The Values Act mandates that the Attorney General, by October 1, 2018, publish “guidance, audit criteria, and training recommendations aimed at ensuring that” databases operated by state and local law enforcement agencies “are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement.” LEAs are strongly encouraged to review and update their existing database governance policies consistent with this guidance.

This IB is not intended to displace any current policies that are aligned with or provide greater protections than those included herein. Nor does the lack of a particular recommendation necessarily indicate disapproval of any policy. Rather, this IB provides some foundational recommendations and should serve as a resource to enhance current policies with respect to the Values Act’s goal of ensuring that databases are governed in a manner that limits the availability of information to the fullest extent practicable and consistent with federal and state law for the purpose of immigration enforcement.

GUIDING PRINCIPLES

In enacting the Values Act, the Legislature 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.) The Values Act’s core purpose is to ensure effective policing and to protect the safety, well-being, and constitutional rights of all the people of California, regardless of immigration status. The Values Act set the parameters under which LEAs may engage in “immigration enforcement.” “Immigration enforcement,” as defined by the Values Act, includes any efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any 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, reentry to, or employment in, the United States.

The Values Act generally prohibits LEAs from using agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including providing personal information for that purpose. (Gov. Code, § 7284.6, subd. (a)(1)(D).) The Values Act, however,

permits LEAs to participate in law enforcement task forces, including sharing confidential information pursuant to these task forces, where the primary purpose of the task force is not immigration enforcement. (Gov. Code, § 7284.6, subd. (b)(3).) And, the Values Act permits LEAs to provide immigration authorities with information about a person's criminal history accessible through the California Law Enforcement Telecommunications System (CLETS). (Gov. Code, § 7284.6, subd. (b)(2).) The specific requirements for LEAs under the Values Act are set forth more fully in IB 2018-DLE-01, and specific data reporting requirements can be referenced in IB 18-02-CJIS.

Additional principles of state and federal law should also be used to guide LEAs in developing database governance policies that limit the availability of information for purposes of immigration enforcement. Under California law, LEAs are generally prohibited from asking a person about his or her immigration status. (Gov. Code, §7284.6, subd. (a)(1)(A).) Also, LEAs are restricted from sharing personal information about a person that is not available to the public, and that is not attached to a person's criminal history. (Gov. Code, § 7284.6, subd. (a)(1)(D), (b)(2).) Notwithstanding that prohibition, consistent with federal law, 8 U.S.C. § 1373, nothing in this IB prohibits or restricts LEAs from sending or receiving information regarding a person's immigration status or citizenship status to or from federal immigration enforcement authorities, or prohibits or restricts LEAs from maintaining information regarding a person's immigration status.¹ Federal courts have found that Section 1373 only prohibits restrictions on the sharing of immigration or citizenship status information, and not restrictions on the sharing of home and work addresses, and release dates.² Courts have also found 8 U.S.C. § 1373 to be unconstitutional under the Tenth Amendment of the U.S. Constitution, so LEAs should ask their counsel to monitor developments in the law.³

Consistent with federal and state law, this IB offers guidance on steps LEAs can take to govern the use of criminal justice information (CJI) that is non-criminal history information. Non-criminal history information contained within databases accessed through CLETS, other DOJ criminal justice information systems, as well as LEAs' individual databases should not be used for the purpose of immigration enforcement. And, any implementation of the policy recommendations in this IB should be applied to all law enforcement agencies equally, regardless of whether they are federal, state, or local law enforcement. Federal immigration authorities should not be denied access to law enforcement databases solely based on their status as a federal immigration authority, so long as they comply with the policies governing use of the databases.

GUIDANCE SURROUNDING USE OF NON-CRIMINAL HISTORY INFORMATION

All users should agree that they will not use any information for purposes of immigration enforcement, as defined in California Government Code section 7284.4, subdivision (f), with respect to an individual who does not possess a criminal history. Individuals who have a criminal history include those with a prior criminal arrest or conviction. This restriction does not impact persons with criminal records within CJI systems. Users are also not prohibited or restricted from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities information regarding a person's immigration status, maintaining such information, or exchanging such information with any other federal, state, or local government entity, pursuant to 8 U.S.C. §§ 1373 and 1644.

¹ 8 U.S.C. § 1373(a), (b).

² *United States v. California* (E.D. Cal. 2018), 314 F. Supp. 3d 1077, 1101-04; *City of Philadelphia v. Sessions* (E.D. Pa. June 6, 2018), ---F.Supp.3d ---, 2018 WL 2725503, at *35; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015-1016.

³ *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) --- F.Supp.3d ---, 2018 WL 3608564, at *10; *Philadelphia*, 309 F.Supp.3d at 331; see also *California*, 314 F.Supp.3d at 1101 (finding Section 1373's constitutionality "highly suspect").

LEAs are encouraged to adopt the following policies surrounding the use of non-criminal history data:

1. As part of any application, memorandum of understanding, or agreement to access any law enforcement databases, LEAs should inquire regarding the purpose for which the LEA intends to use the information contained within the database. Users who state that they will be using the information for immigration enforcement purposes should be required, as a condition for accessing the database, to agree that they will only do so for those individuals with a criminal history, or for information regarding the immigration or citizenship status of any individual. Users should likewise be required to agree they will not use non-criminal history information, aside from information regarding immigration or citizenship status, for immigration enforcement purposes.
2. Database login screens should be updated to include instruction on the proper use of the information contained in the database. Sample language is provided below:

“Federal, state or local law enforcement agencies shall not use any non-criminal history information contained within this database for immigration enforcement purposes. This restriction does not pertain to any information that is regarding a person’s immigration or citizenship status pursuant to 8 U.S.C. §§ 1373 and 1644.”
3. Any policies governing the use of non-criminal history information should include the above-referenced language.
4. Any data sharing agreements, memorandums of understanding, and/or contracts between law enforcement agencies and vendors/service providers should be updated to reflect policies that prohibit the use of non-criminal history information for immigration enforcement purposes.
5. Limit, wherever possible, the collection of personal information of victims and witnesses of crime(s). Further, consider adopting retention periods no longer than is necessary to fulfill the purpose justifying collection of the information.
6. Agencies should survey their databases to determine which databases contain criminal history information, non-criminal history information, and/or both criminal history and non-criminal history information to assist with audits, training, and policy compliance.

TRAINING RECOMMENDATIONS FOR NON-CRIMINAL HISTORY INFORMATION

1. Initial security awareness training for new employees and ongoing biannual recertification should be updated to include questions to demonstrate knowledge of the updated governance policies regarding, limitations on the use of non-criminal history information for immigration enforcement purposes.

AUDIT CRITERIA FOR NON-CRIMINAL HISTORY INFORMATION

1. When internal database compliance audits are conducted, agencies should ensure database users are in compliance with policies that limit the use of non-criminal history information for immigration enforcement purposes.

2. Agencies should update internal policies regarding the reporting of misuse of non-criminal history information that is used for immigration enforcement purposes.

Sincerely,



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For XAVIER BECERRA
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