

Immigration Violations

413.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Olympia Police Department relating to immigration laws and interacting with federal immigration officials (RCW 43.10.315).

413.2 DEFINITIONS

"Civil immigration warrant" means any warrant for a violation of federal civil immigration law issued by a federal immigration authority. A "civil immigration warrant" includes, but is not limited to, administrative warrants entered in the National Crime Information Center database, warrants issued on Immigration and Customs Enforcement (ICE) Form I-200 (Warrant for Arrest of Alien), Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.

"Court order" and **"judicial warrant"** mean a directive issued by a judge or magistrate under the authority of Article III of the United States Constitution or Article IV of the Washington Constitution. A "court order" includes, but is not limited to, judicially authorized warrants and judicially enforced subpoenas. Such orders and warrants do not include civil immigration warrants, or other administrative orders, warrants, or subpoenas that are not signed or enforced by a judge or magistrate.

"Federal immigration authority" means any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement. "Federal immigration authority" includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

"Hold request" or **"immigration detainer request"** means a request from a federal immigration authority, without a court order, that a state or local law enforcement agency maintain custody of an individual beyond the time the individual would otherwise be eligible for release in order to facilitate transfer to a federal immigration authority. A "hold request" or "immigration detainer request" includes, but is not limited to, DHS Form I-247A (Immigration Detainer–Notice of Action) or prior or subsequent versions of form I-247. Detainers issued on ICE Form I-247 are not court orders.

"Immigration detention agreement" or **"IGSA"** means any contract, agreement, intergovernmental service agreement, or memorandum of understanding that permits a state or local law enforcement agency or officer to house or detain individuals for federal civil immigration violations.

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"Immigration or citizenship status" means such status as has been established to such individual under the Immigration and Nationality Act.

"Language services" includes, but is not limited to, translation, interpretation, training, or classes.

"Translation" means written communication from one language to another while preserving the intent and essential meaning of the original text. **"Interpretation"** means transfer of an oral communication from one language to another.

"Law enforcement agency" or "LEA" means any agency of the state of Washington (state) or any agency of a city, county, special district, or other political subdivision of the state (local) that is a "general authority Washington law enforcement agency," as defined by RCW 10.93.020, or that is authorized to operate jails or maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

"Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to, cities, counties, school districts, and special purpose districts. It does not include sovereign tribal governments.

"Necessary to perform duties" means that, after following appropriate procedures to verify a course of action, no reasonably effective alternative appears to exist that would enable the performance of one's legal duties and obligations.

"Notification request" means a federal immigration authority's request for affirmative notification from a state or local law enforcement agency of an individual's release from the LEA's custody. "Notification request" includes, but is not limited to, oral or written requests, including DHS Form I-247A, Form I-247N, or prior or subsequent versions of those forms.

"Personal information" means names, date of birth, addresses, GPS [global positioning system] coordinates or location, telephone numbers, e-mail addresses, social media handles or screen names, Social Security numbers, driver's license numbers, parents' or affiliates' names, biometric data, or other personally identifiable information. "Personal information" does not include immigration or citizenship status.

"Physical custody of the department of corrections" means only those individuals detained in a state correctional facility but does not include minors detained pursuant to chapter 13.40 RCW, or individuals in community custody as defined in RCW 9.94A.030, including those serving a term of detention at a local LEA due to a community custody violation.

"T visa" is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(T), as further defined in RCW 7.98.010(1), that enables victims of a severe form of human trafficking and certain qualifying family members to remain in the United States for four years or longer if they have assisted law enforcement in an investigation or prosecution of human trafficking.

"U visa" is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(U), as further defined in RCW 7.98.010(1), that enables victims of certain crimes who have suffered mental or

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physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity, and certain qualifying family members, to remain in the United States for four years or longer.

413.3 ARREST/DETENTION

413.3.1 IMMIGRATION ENFORCEMENT PROHIBITED

The Olympia Police Department does not engage in, or assist with, civil immigration enforcement.

413.3.2 IMMIGRATIONS HOLD/DETAINMENT

Officers shall not stop, detain, interrogate, or place an immigration hold on any person solely for the purpose of ascertaining immigration status or in any other way attempt to enforce federal immigration laws.

Officers shall not inquire into or collect information about an individual's immigration status, citizenship status, or place of birth, unless there is a connection between such information and an investigation into a violation of state or local criminal law.

A person shall not be held or detained any longer than is necessary to complete the normal processes in connection with a criminal charge or traffic violation for which the person was arrested. The time cannot be extended solely to allow ICE, CBP, or other immigration personnel enough time to respond.

If an officer needs the assistance of an interpreter because of a language barrier, they may use the "Language Line" or other department resources. ICE, CBP, or other immigration officials shall not be used.

Officers shall not provide a person's location to ICE, CBP, or other immigration personnel except under exigent circumstances that threaten officer or public safety, or as necessary for an investigation into a violation of state or local criminal law.

413.3.3 NCIC RETURNS INVOLVING U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

Administrative warrants do not establish probable cause and shall not be the basis for an arrest.

If an officer receives a National Crime Information Center (NCIC) return showing a federal criminal arrest warrant, the officer shall immediately contact their supervisor to determine an appropriate course of action. The supervisor may authorize the ICE NCIC warrant arrest after they confirm that the warrant is a criminal warrant issued and signed by a U.S. District Court Judge or Magistrate for a U.S. code.

The supervisor must confirm each warrant with ICE, obtain a copy of the warrant, and answer the following questions to ensure the NCIC return is an actual criminal arrest warrant:

- (a) Is this a criminal warrant? NCIC returns should specify "Administrative Warrant" or "Criminal Warrant."

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- (b) What is the specific criminal charge? Pursuant to policy and court order, the Department does not enforce civil immigration laws. Therefore, any arrest on an ICE NCIC return must be based on an underlying charge for which the Department has authority to make such an arrest.
- (c) What citation to the U.S. code is listed?
- (d) Which U.S. District Court issued the warrant? Only a U.S. District Court can issue a federal criminal warrant. Is it signed by a U.S. District Court Judge or Magistrate? Only a U.S. District Court Judge or Magistrate can sign a federal criminal warrant. An Immigration Judge or an Administrative Law Judge is not a U.S. District Court Judge or Magistrate.

No communications with ICE during warrant confirmation shall include the location of the officer or individual in question. Officers shall not maintain or transfer custody of an individual if they learn that the NCIC return was not based on a criminal warrant signed by a US District Court Judge or Magistrate.

413.4 ENFORCEMENT OF FEDERAL IMMIGRATION LAW AND POLICIES PROHIBITED

The federal government, not the Olympia Police Department, has primary jurisdiction over the enforcement of federal immigration law. The Department recognizes that removal from the United States, including investigations and arrests made as part of that process, is a civil matter overseen by federal immigration authorities. The Department recognizes that unauthorized presence in the United States, standing alone, is not a violation of state or local law. The immigration or citizenship status of an individual or an individual's presence in, entry or reentry to, or employment in the United States alone is not subject to enforcement by the Department or its members. The Department shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.

Members shall not engage or assist in civil immigration enforcement.

Department resources, including any individuals' personal information ascertained by the Department or its members, shall not be used or shared to assist in civil immigration enforcement.

Members shall complete the Department's mandatory training regarding immigration enforcement policies and procedures and compliance with all other requirements of RCW 10.93.160, which places restrictions on law enforcement action concerning immigration and citizenship status of individuals.

Members shall not initiate or participate in any law enforcement action based solely on an individual's immigration or citizenship status, or place of birth, or in any other way attempt to enforce or assist in the enforcement of federal civil immigration laws or policies.

Members shall not inquire about any person's immigration or citizenship status, or place of birth, unless the information is directly connected to the officer's investigation into a violation of state or local law.

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The Department's policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against all persons.

Members shall not conduct investigations, interviews, questioning, take statements, or otherwise engage in similar contact with any individual in the presence, including within hearing distance, of any person engaged, or intending to engage, in immigration enforcement, including a known federal immigration authority, unless the person's presence is directly connected to the Department's investigation into a violation of state or local criminal law and necessary to perform the officer's duties.

Members shall not arrest, detain, take into custody, or otherwise hold any person solely to determine their citizenship or immigration status unless the information is directly connected to the officer's investigation into a violation of state or local law.

Civil immigration warrants, hold requests, and immigration detainer requests do not establish probable cause and shall not be the basis for any Olympia Police Officer to arrest, detain, or otherwise hold any person in custody.

If members receive a court order or judicial warrant authorizing any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to assume custody of an in-custody individual, officers shall immediately contact their supervisor to determine the appropriate course of action.

Before authorizing any arrest, detention, or hold, a Lieutenant shall confirm that the federal criminal arrest warrant is issued and signed by a U.S. District Court Judge or Magistrate Judge authorizing the holding or detention of the individual by:

- (a) Obtaining a copy of the warrant
- (b) Identifying the criminal charge and citation to the federal law violation for which the warrant was issued
- (c) Identifying which U.S. District Court issued the warrant
- (d) Verifying that the warrant includes the correct date and location for detention, and
- (e) Confirming that a U.S. District Court Judge or Magistrate's signature is on the warrant

Members shall not disclose the location of the Olympia Police Officer or individual to any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, before or during the warrant confirmation process.

All requests for assistance by any person engaged, or intending to engage, in immigration enforcement, including federal immigration authority, whether oral or written, shall be directed to the Chief of Police or designee to determine an appropriate course of action.

Members shall not assist or participate in any joint operations, task forces, or any other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from the office of the Chief of Police or their designee.

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413.5 DATA COLLECTION PROHIBITED

Members shall not inquire about or request any documents or information from a person for the purpose of determining the person's immigration or citizenship status, or place of birth, unless the information is directly connected to the officer's investigation into a violation of state or local law.

Members processing fingerprint card or Automated Biometric Identification System (ABIS) submissions shall enter "Unknown" or "XX" for the fields addressing immigration, citizenship status and place of birth.

Members shall not take enforcement action or otherwise use immigration or citizenship status, or place of birth information, against crime victims or witnesses.

Members shall use the "Language Line" or other approved resources for any language services necessary to perform duties for the Department. members shall not utilize or accept language services from any person engaged in, or intending to engage, in immigration enforcement, including federal immigration authorities to include, but not limited to, ICE, CBP, or other immigration officials. Members shall presume that federal immigration authorities are engaged in immigration enforcement.

413.6 CONSULAR NOTIFICATION

Consular notification may be mandatory when certain foreign nationals are arrested, when explicitly requested by the foreign national. The Operations Support Lieutenant will ensure that the U.S. Department of State's list of countries and jurisdictions that require mandatory notification is readily available to members. There should also be a published list of foreign embassy and consulate telephone and fax numbers, as well as standardized notification forms that can be transmitted and then retained for documentation. Prominently displayed signs informing foreign nationals of their rights related to consular notification should be posted in areas used for the temporary detention of adults (e.g. holding cell), in several languages.

Upon request of the foreign national to contact their consulate, determine whether the foreign national's country is on the U.S. Department of State's mandatory list.

- (a) If the country is on the mandatory notification list, then:
 - 1. Notify the country's nearest embassy or consulate of the arrest or detention by email, fax or telephone without delay.
 - 2. Tell the individual that this notification has been made and inform them without delay that they may communicate with consular officers.
 - 3. Forward any communication from the individual to their consular officers without delay.
 - 4. Document all notifications to the embassy or consulate and attach the emailed or faxed notification and any delivery confirmation to the report.
- (b) If the country is not on the mandatory notification list and the individual requests that their consular offices be notified, then:

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1. Notify the country's nearest embassy or consulate of the arrest or detention by email, fax or telephone.
2. Forward any communication from the individual to their consular officers without delay.

413.7 RESPONDING TO REQUESTS FOR INFORMATION

Members shall not provide or disclose information in response to any notification request or other immigration enforcement related request for information regarding a person's release date from custody without a court order or judicial warrant, except that the Department shall provide all records as required by the Public Records Act, chapter 42.56 RCW, in response to any qualifying request.

If members receive a court order or judicial warrant that mandates the sharing of information regarding a person's immigration or citizenship status, members shall contact their supervisor.

The court order or judicial warrant will be forwarded to the records division through the employee's chain of command. Any member who shares or discloses a person's immigration or citizenship status to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, shall immediately notify the Chief of Police or designee of the information provided, reason for sharing said information, and identity of the person and agency to whom the information was shared. Members shall not share, provide, or disclose personal information about any person to anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without a court order or judicial warrant requiring the information's disclosure, except that the Department shall provide all records as required under the Public Records Act, chapter 42.56 RCW. Public records requests shall be processed pursuant to Department procedures. Any member receiving a public records request shall forward the request to the records unit.

The Chief of Police or designee shall log all instances of members sharing any person's immigration or citizenship status with a person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, with the basis for sharing the information. The log shall be a public record and shall be made publicly available except that information may be redacted or withheld as permitted by the Public Records Act.

413.8 ACCESS TO PERSONS DETAINED OR IN CUSTODY

Members shall not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in Department custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented. Access to detainees for this purpose will only be granted during normal visiting hours.

To obtain written consent from a person held, detained, or in custody, prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal

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immigration authority, the officer shall provide the person with an oral explanation and a written consent form that explains:

- (a) The purpose of the interview;
- (b) That the interview is voluntary;
- (c) That the person may decline to be interviewed and will not be punished or suffer retaliation for doing so; and
- (d) That the person may choose to be interviewed only with the person's attorney present.

Officers shall provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands. The Department shall maintain copies of the consent form in English, Spanish, and any other language that the Department deems appropriate.

If a person chooses to be interviewed with their attorney present, officers shall help facilitate contact with the attorney. Members shall not proceed with permitting any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has chosen to proceed pro se.

413.9 EQUAL TREATMENT FOR PERSONS HELD, DETAINED, OR IN CUSTODY

Persons held, detained, or otherwise in the custody of the Department are entitled to, and shall be provided, the same services, benefits, privileges, rights, opportunities, and resources regardless of their nationality, or immigration or citizenship status.

Members shall not deny or otherwise limit any person held, detained, or otherwise in Department custody such services, benefits, privileges, rights, opportunities, or resources based on any civil immigration warrant, hold request, immigration detainer request, notification request, administrative subpoena or similar request by a person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, or indication of the person's nationality, immigration or citizenship status.

Members shall not transfer custody of any person held, detained, or otherwise in the custody of the Department to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, without court order or judicial warrant. If presented with such an order by a person engaged, or intending to engage, in immigration enforcement, including by a federal immigration authority, to take custody of a person in Department custody, members shall immediately contact their supervisor to determine an appropriate course of action.

Before authorizing any transfer of custody, the supervisor shall consult with a Lieutenant and confirm that the court order is issued and signed by a U.S. District Court Judge or Magistrate Judge and authorizes the holding or detention of the individual by:

- (a) Obtaining a copy of the court order;
- (b) Confirming that a U.S. District Court Judge or Magistrate signed the court order;

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- (c) Confirming that the court order identifies the individual for whom the transfer of custody is sought by name; and
- (d) Verifying that the court order has a valid date or is not otherwise expired or previously executed.

Members shall not disclose the location of the individual to any person engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, before or during the process of confirming the court order.

The Department shall not deny or otherwise limit any person's social visitation solely on the basis of the person's inability to effectively communicate through video-visitation technology. The Department shall not collect immigration or citizenship status information of persons visiting an individual in Department custody and shall minimize collection of visitors' personal information to the extent necessary to perform duties of the Department. Members shall not disclose or otherwise share visitors' personal information with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, absent a court order or judicial warrant for the information or approval by a district commander or designee.

413.10 CONTRACTS INVOLVING IMMIGRATION ENFORCEMENT

Members shall not enter into any contract, agreement, or other arrangement, whether written or oral, that would grant federal immigration enforcement authority or powers to the Department, including but not limited to, agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements under the Immigration and Naturalization Act.

All Department agreements to assist or participate in any joint operations, task forces, or other multi-jurisdictional activities shall include assurances that all other parties to those agreements shall not use or share department resources, including any individuals' personal information ascertained by the Department or its members, with any third parties or to support or engage in immigration enforcement activities.

The Department shall not be a party to any agreement, joint operation, task force, or other multi-jurisdictional activity with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without legally binding assurances, in writing and pre-approved by the Chief or designee, that no department resources, including any individuals' personal information ascertained by the Department or its members, shall be used to support or assist with civil immigration enforcement in any way.

Officers shall not assist or participate in any joint operations, task forces, or other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from the Chief or designee.

The Department shall not be a party to any immigration detention agreement, IGSA, or other arrangement with any person engaged, or intending to engage, in immigration enforcement,

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including federal immigration authorities, providing for detention of any person by Olympia Police Officers or using department resources for immigration enforcement purposes.

Members shall not be a party to any agreement or contract for language services, including translation, interpretation, training or classes, from any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, nor shall any language services be accepted by members from any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, for free or otherwise. Members shall presume federal immigration authorities are engaged in immigration enforcement.

All Department agreements permitting access to department databases or information shall include legally binding assurances that all other parties to those agreements shall not use or share department information or database access with any third parties supporting or engaged in immigration enforcement activities.

413.11 U AND T VISA CERTIFICATIONS

U and T Visa certification requests under the Washington Safety and Access for Immigrant Victims Act, RCW 7.98.020, will be forwarded to the Investigations Unit Lieutenant.

The fact of any request for U or T Visa certification and any personal information submitted with such request shall not be disclosed or shared outside of the Department, department legal counsel, or the county prosecuting attorney without a court order or judicial warrant, or approval by a Deputy Chief unless expressly authorized, in writing, by the subject of the request or the subject's guardian, or as otherwise required by law.

The Investigations Unit Commander shall process U and T Visa certification requests within 90 days of receipt by the Department, except under circumstances requiring a shorter timeframe.

The Investigations Unit Commander shall review any U or T Visa certification request submitted to the Department in full and verify all information submitted in support of the certification request using existing department records, personal knowledge, or other available evidence. The Investigations Unit Commander may confer with department legal counsel and/or the county prosecuting attorney to determine whether certification by the department is proper.

Any U or T Visa certification request for a person in federal removal proceedings shall be immediately processed by the Lieutenant such that the certification, if approved, is executed within 14 days of the Department receiving the request.

U or T Visa certifications shall be expedited upon request for any person who will, or whose child(ren) will, reach age 21 before the 90-day processing deadline date and thus will otherwise lose their benefits. In any such instance, the Lieutenant shall execute the certification, if approved, no later than 14 days before the person or child turns 21 years old.

The Lieutenant shall complete required training on U and T Visa certifications and review the full instructions for completing U and T Visa certification forms on the Washington State Department of Commerce, Safety and Access for Immigrant Victims Program website.

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Olympia Police Officers shall not leverage U or T Visa certifications as a means to compel any victim or witness to cooperate with their investigations.