

	STANISLAUS COUNTY SHERIFF'S DEPARTMENT ADULT DETENTION DIVISION	NUMBER: 2.05.11
		RELATED ORDERS: PC: 1192.7, 457.1, 872, 667.5 CVC: 20001 (c) TITLE 8: 287.7
CHAPTER 2: BOOKING, CLASSIFICATION, PROPERTY, & RELEASE INMATE RELEASE		REVIEW DATE:
SUBJECT: ICE DETAINDER / HOLD		REVISION DATE:
		ISSUE DATE: 03/10/2014

I. PURPOSE:

- A. To establish the policy as it relates to contacting, placing or releasing a hold for the Department of Homeland Security (D.H.S.), Immigration and Customs Enforcement Agency (ICE) in accordance with the Trust Act (AB 4).

II. POLICY:

- A. The Trust Act (AB 4) provides that a person may not be held in custody solely on the basis of an immigration detainer if he or she is otherwise “Eligible for Release from Criminal Custody” and the continued detention of the individual on the basis of the immigration detainer/hold would not violate any federal, state, or local law, or any local policy unless one of the following exceptions applies:
1. The individual is **arrested and taken before a magistrate** on a charge involving a Serious or Violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, a felony punishable by imprisonment in state prison, or any felony listed in paragraph (2) or (3) other than domestic violence, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code.
 - (1) A Serious Felony is defined as any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.
 - (2) A Violent Felony is defined as any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California,

would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

2. The individual **has been convicted of** a Serious or Violent felony according to a criminal background check or documentation provided to the law enforcement official by the United States Immigration and Customs Enforcement;
 - (1) A Serious Felony is defined as any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.
 - (2) A Violent Felony is defined as any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.
3. Individuals that **have any conviction** or **prior conviction** for which the person is required to register on the **California Sex and Arson Registry** (CSAR) as a sex offender pursuant to PC 290 or as an arson offender pursuant to PC 457.1.
4. An individual with any misdemeanor conviction within the last five years that could have also been charged either as a misdemeanor or a felony (i.e., “**wobblers**”) involving the following specific crimes; or any felony conviction (at any time), involving the following specified crimes:
 - (1) Assault;
 - (2) Battery;
 - (3) Use of Threats;
 - (4) Sexual abuse, sexual exploitation, or crimes endangering children;
 - (5) Child abuse or endangerment;
 - (6) Burglary, robbery, theft, fraud, forgery, or embezzlement;
 - (7) Driving under the influence of alcohol or drugs but only as a felony;
 - (8) Obstruction of justice;
 - (9) Bribery;
 - (10) Escape;
 - (11) Unlawful possession or use of a weapon, firearm, explosive, device or weapon of mass destruction;
 - (12) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (PC 16000);

- (13) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances;
- (14) Vandalism with prior convictions;
- (15) Gang-related offenses;
- (16) An attempt, or any conspiracy to commit an offense specified in this section;
- (17) A crime resulting in death, or involving the personal infliction of great bodily injury;
- (18) Possession or use of a firearm in the commission of an offense;
- (19) An offense that would require the individual to register as a sex offender;
- (20) False imprisonment, slavery, and human trafficking;
- (21) Criminal profiteering and money laundering;
- (22) Torture and mayhem;
- (23) A crime threatening the public safety;
- (24) Elder and dependent abuse;
- (25) A hate crime;
- (26) Stalking;
- (27) Soliciting the commission of a crime;
- (28) An offense committed while on bail or release on his or her own recognizance;
- (29) Rape, sodomy, oral copulation, or sexual penetration;
- (30) Kidnapping;
- (31) A violation of CVC 20001(c);

5. Any **conviction** of any federal crime that meets the definition of an “aggravated felony” as set forth in the Immigration and Nationality Act (8 U.S.C. Section 1001 at Section 1101(a)(43)(A) to (P), or is identified by the United States Department of Homeland Security’s Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. The term “aggravated felony” means (the full listing of specified crimes follows):

- (1) Murder, rape, or sexual abuse of a minor;
- (2) Illicit trafficking in a controlled substance;
- (3) Illicit trafficking in firearms or destructive devices;
- (4) Laundering of monetary instruments if the amount of the funds exceeds \$10,000;
- (5) An offense relating to explosive materials;
- (6) A crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year;
- (7) A theft offense or burglary offense for which the term of imprisonment is at least one year;
- (8) The demand for or receipt of ransom;

- (9) Child pornography;
- (10) Racketeer influenced corrupt organizations or gambling offenses, for which a sentence of one year imprisonment or more may be imposed;
- (11) Owning, controlling, managing, or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons;
- (12) Gathering or transmitting national defense information relating to disclosure of classified information relating to sabotage, relating to treason, relating to protecting the identity of undercover intelligence agents or relating to protecting the identity of undercover agents;
- (13) Fraud or deceit in which the loss to the victim or victims exceeds \$10,000; tax evasion in which the revenue loss to the Government exceeds \$10,000;
- (14) Alien smuggling (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent);
- (15) An offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (16) Falsely making, forging, counterfeiting, manipulating, or altering a passport or instrument and for which the term of imprisonment is at least 12 months (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual).

6. The inmate has been **convicted** of a felony punishable by imprisonment in state prison.

In the event an inmate is held in custody on an immigration detainer pursuant to the above authority, they may be held for 48 hours, excluding weekends and federal holidays, after a scheduled release date.

A. Procedure for Placing an ICE Detainer (AB4)

If ICE requests an ICE hold be placed on an inmate, the booking or court clerk will;

1. Run a rap sheet using the CII#. If the rap comes back as "**California record only**," this is the only rap sheet that you will need to run. If it comes back as a "**Multi-source record**", run a rap sheet using "H08" III NCIC inquiry criminal history, using the FBI#. This will run for all states.

2. Scan through the rap/raps to see if the inmate has ever been convicted of a Violent or Serious crime as defined in Section 1192.7 (c) and Section 667.5 (c) of the Penal Code, a conviction in which the inmate is required to register as a sex or arson offender, or any prior conviction of a misdemeanor as specified within Section (A)(4) of this policy within the last five years that meet the criteria or any felony conviction that meets the criteria listed in this policy.
3. If the inmate does meet AB4 exceptions due to a prior AB4 conviction, place a “**No Bail**” ICE hold and make a notation in the memo section of the DA charge screen as to why the hold is being placed.

Example: 2/28/14 Current AB4 exception conviction. Has prior conviction of 271a pc per rap. Your initials.

4. If the inmate has No prior convictions that meet AB4 exceptions, but is currently arrested on a Serious or Violent charge as defined in section 1192.7 (c) or section 667.5 (c) of the Penal Code, place the ICE hold with a “**Zero Bail**” (\$0.00) amount and make a notation in the memo section on the DA screen as to why the hold is being placed.

Example: 2/28/14 Current AB4 exception charge of (459pc), waiting for judge to determine probable cause. Your initials.

5. After a Judge determines the inmate will be “held to answer” on new, eligible charges (preliminary hearing), change the “**Zero Bail**” ICE hold to a “**No Bail**” hold.

Example: 2/28/14 Current AB4 exception charge of (459pc). Your initials.

6. If the inmate has no prior convictions that meet AB4 exceptions or no current charges that meet AB4 exceptions and ICE requests to place a hold, place a hold with a “**Zero Bail**” and complete the ICE notification form and fax it to ICE, then place it in the inmate’s pouch. (ICE Notification form is located on the G drive under AD forms)
7. Complete an ICE Notification form for each inmate when it has been determined if the hold will be placed as a “**No Bail**” or “**Zero bail**.” Then fax the ICE Notification form to ICE at (209) 547-3762, and place the original ICE Notification form in the inmate’s pouch.
8. If the inmate has a “**No Bail**” hold due to a prior conviction or current AB4 exception charges, he/she will be allowed to bail on the current charges only. The bail bondsman shall be notified that the inmate has an ICE detainer in accordance with AD Policy 2.05.09. 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.

An inmate shall not be held in custody after the inmate has become “Eligible for release from custody” solely on the basis of an immigration hold. If an ICE agent is present at time of release, the inmate may be released from custody in the presence of the ICE agent and turned over to the ICE agent. If an ICE agent is not present at time of release, the inmate shall be released in accordance with current release procedures.

COURT PROCESS:

1. If the inmate has a “**No Bail**” ICE hold placed due to a prior conviction, and the current charges are dismissed, OR (own recognizance), time served, etc. ICE will be notified of the 48 hours to pick up. If the inmate is not picked up within the 48 hours he/she will be released.
2. If the inmate has an “**Zero Bail**” ICE hold due to current AB4 exception charges only and is convicted on these charges or has been “held to answer” by a judge, the “**Zero Bail**” will be changed to a “**No Bail**” ICE hold and a notation will be made on the DA screen as to why the ICE hold bail amount has changed.
3. If the inmate has a “**Zero Bail**” ICE hold due to current AB4 exception charges only and the charges are dropped, discharged, dismissed, OR (own recognizance), the ICE hold will be dropped and the inmate will be released in accordance with current release procedures.
4. If the inmate has a “**No Bail**” ICE hold due to current AB4 exception charges only, and these charges are dropped, discharged or dismissed, the ICE hold will be dropped and the inmate will be released in accordance with current release procedures.
5. If the inmate has a “**No Bail**” ICE hold due to current AB4 exception charges only and the inmate is OR (own recognizance) or Bailed, 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 Classification Clerk will monitor and notify ICE daily by fax or email, Monday – Friday of any ICE hold releases from the prior day or weekend.

B. Notification to ICE of Scheduled Release Date

1. ICE requests notification as soon as possible when an inmate is ready for pick up or with an expected release date. Notification will be made by fax

2. Upon sentencing, a copy of the detainer will be faxed to ICE with the inmate's release date and last day for pick up information.

C. Inmates Ready for Pick up by ICE

In order to provide adequate time for ICE to pick up inmates on their detainer, inmates may be released to ICE up to 120 days prior to their release date.

D. Holds Dropped By ICE

Should ICE desire to drop their hold, they may do so, and will advise by fax.

III. **DEFINITIONS:**

A. "Conviction" shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.

B. "Eligible for Release from Criminal Custody" – an inmate may be released from criminal custody because one of the following conditions has occurred:

1. All criminal charges against the inmate have been dropped or dismissed.
2. The inmate has been acquitted of all criminal charges filed against him or her.
3. The inmate has served all the time required for his or her sentence.
4. The inmate has posted a bond.
5. The inmate is otherwise eligible for release under state or local law, or local policy.

C. "Immigration Hold" or "ICE Hold" - an immigration detainer (Form I-247) issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual.

D. "Law Enforcement Official" - any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of individuals in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities.

E. "Local Agency" - any city, county, city and county, special district, or other Political subdivision of the state.

F. "No Bail Hold" – indicates an inmate has an AB4 exception due to prior conviction or that a judge has determined the inmate will be "held to answer" or becomes convicted on current AB4 exception charges.

- G. “Zero Bail Hold” –indicates an inmate has AB4 exception charges pending while waiting for a judge to determine if the inmate will be “held to answer.” (Preliminary Hearing).

IV. PROCEDURE:

- 1) Adult Detention Division Procedures: Chapter 2; 2-5.11: ICE Detainer / Hold