

DETENTION PROCEDURE

Date: March 31, 2014

SUBJECT: AB4 – TRUST ACT COMPLIANCE

POLICY:

The Lassen County Sheriff's Office shall not detain an individual on the basis of an immigration detainer issued pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations ("ICE Hold") after that individual becomes eligible for release from custody unless one of the criteria set forth in Government Code section 7282.5 is met.

As set forth in more specific detail below, no person may be detained beyond his or her regular release date solely on the basis of an ICE hold unless that person has been convicted of one of the felony offenses specified below or convicted of specific misdemeanor offenses within the previous 5 years. If the subject of the ICE Hold does not have a previous conviction, the subject can only be detained for an ICE hold based on their current felony arrest after they have been held to answer at a preliminary examination and the felony is not for Domestic Violence.

This policy does not affect the continued detainer of an individual with a pending Federal felony warrant, nor does it prevent ICE agents from taking custody of individuals with holds prior to the individual's scheduled release date as governed under current policy.

PURPOSE:

To establish a procedure and guidelines for the review and implementation of immigration detainees as regulated by Government Code section 7282.5.

REFERENCE:

Government Code sections 7282 and 7282.5.

PROCEDURE:

- A. When an ICE Hold is received by Booking, it will be delivered to the Shift Supervisor for review and determination of whether the Sheriff's Office will comply with it. In the absence of the Shift Supervisor, the Booking Officer will accomplish this task.
 1. If the Sheriff's Office will not comply with the ICE Hold because the subject does not fall within one of the categories listed in Section C below, the subject's record will be flagged with the notation "3 Day Early ICE Release." Subjects with this notation

will not be detained after their scheduled release date, but may be turned over to ICE prior to their scheduled release date according to current policy.

- B. If the Sheriff's Office confirms that the subject of the ICE Hold falls within one of the categories set forth in Section C below, the subject's record will be flagged with the Ice Hold. These subjects may be detained under the ICE Hold after their scheduled release date.
- C. Subjects that fall within any of the following categories are subject to the ICE Hold:
 - 1. The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.
 - 2. The individual has been convicted of a felony punishable by imprisonment in the state prison. **NOTE: After AB109, many felonies are no longer punishable by state prison. If using this section, make sure to confirm that the felony at issue is still punishable by imprisonment in the state prison.**
 - 3. The individual has been convicted at any time of a felony for, or within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, any of the following offenses:
 - a. Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.
 - b. Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.
 - c. Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.
 - d. Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

- e. Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.
- f. Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.
- g. Driving under the influence of alcohol or drugs, **but only for a conviction that is a felony.**
- h. Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.
- i. Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.
- j. Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.
- k. Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.
- l. Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).
- m. An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.
- n. Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.
- o. Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

- p. An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.
- q. A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.
- r. Possession or use of a firearm in the commission of an offense.
- s. An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.
- t. False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.
- u. Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.
- v. Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.
- w. A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.
- x. Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.
- y. A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.
- z. Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.
- aa. Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

- bb. An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.
 - cc. Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.
 - dd. Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.
 - ee. A violation of subdivision (c) of Section 20001 of the Vehicle Code.
- 4. The individual is a current registrant on the California Sex and Arson Registry.
 - 5. 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) above **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.
 - 6. The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), 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.
- D. If none of the conditions listed in Section C, above, is satisfied, an individual shall not be detained on the basis of an ICE Hold after the individual becomes eligible for release from custody.

Matt McFarland, Captain

Immigration Violations

428.1 PURPOSE AND SCOPE

The immigration status of individuals alone is generally not a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

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.

428.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the sole basis for contact, detention, or arrest.

428.3.2 SWEEPS

The Lassen County Sheriff's Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

428.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary

Lassen County Sheriff's Department

Policy Manual

Immigration Violations

basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

428.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor or felony), the investigating deputy should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

428.3.5 ARREST

If the deputy intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the deputy may take the person into custody on the suspected criminal violation (see Vehicle Code § 40302(a) and Penal Code § 836, if pertinent to the circumstances). A field supervisor shall approve all such arrests.

428.3.6 BOOKING

If the deputy is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

428.3.7 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Whenever a deputy has reason to believe that any person arrested for any offense listed in Health & Safety Code §11369 or any other felony may not be a citizen of the United States and the individual is not going to be booked into county jail, the arresting deputy shall cause ICE to be notified for consideration of an immigration hold.

If a deputy has an articulable belief that an individual taken into custody for any misdemeanor is an undocumented alien, and after he/she is formally booked there is no intention to transport to the county jail, ICE may be informed by the arresting deputy so that ICE may consider placing an immigration hold on the individual.

In making the determination whether to notify ICE in such circumstances, the deputy should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

- (a) Seriousness of the offense
- (b) Community safety
- (c) Potential burden on ICE
- (d) Impact on the immigrant community

Lassen County Sheriff's Department

Policy Manual

Immigration Violations

Generally, deputies will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges and notification will be handled according to jail operation procedures.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Lassen County Sheriff's Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if a deputy suspects that a victim or witness is an undocumented immigrant, the deputy need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict deputies from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigation Unit sergeant assigned to supervise the handling of any related case. The Investigation Unit sergeant should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- (b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/certification in the case file.