

San Mateo County Sheriff's Office  Corrections Division  Policy and Procedures Manual  Applicable to all facilities	SECTION:	NUMBER OF PAGES:
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	RELATED STANDARDS: AB 4 (TRUST ACT), GOV'T. CODE 7282, 7282.5 8 CFR 287.7	
	ISSUE DATE: 01/28/13	REVISION DATE: 12/30/13 PENDING
CHAPTER:	SUBJECT:	
RELEASES	ICE HOLDS	

I. **PURPOSE:** To provide direction to Corrections Division staff regarding the application of the Immigration and Customs Enforcement (ICE) hold I-247, also known as "ICE detainers," and the application of the TRUST Act (AB 4).

II. **POLICY:** Effective January 1, 2014, the Sheriff's Office Corrections Division staff will follow California's new TRUST Act policy (AB 4). Officers shall review the criminal history of inmates with ICE holds to determine whether to release the inmate pursuant to AB 4, or to retain the inmate and honor the ICE detainer. AB 4 does not affect the Sheriff's Office existing policy on the clerical process of receiving and booking the ICE hold. Sheriff's Office clerical staff shall process the hold, make the appropriate entries into CJIS, and provide the inmate with a copy of the I-247 Form. AB 4 does not provide new forms for inmates.

III. **PROCEDURE:** [Refer to subsection E for the updated procedure in adherence to the TRUST Act AB 4.]

**Procedure for the Timing of Releases After AB 4 Status Is Determined**

If ICE has checked the box on the I-247: "Consider this request for a hold operative only upon the subject's conviction," the following notation will be made in CJIS in ALL CAPS: "This hold becomes operative only upon conviction. Check the inmate jacket and verify that the inmate has been convicted on the charges that were the basis for the hold." In addition, the Sheriff's Office will place in the inmate jacket a notice form that reiterates the need to verify that the inmate was convicted before activating the hold.

Once the inmate with a current ICE hold is ordered released, the inmate's time has been served, or a peace officer releases the inmate pursuant to Penal Code Section 9849(b), ICE has not more than 48 hours (excluding Saturdays, Sundays, Federal holidays, inmate medical emergency, or facility emergency) to pick up the inmate. If ICE fails to pick up the inmate in that 48-hour period, the inmate will be released. The 48-hour time period starts when the inmate would normally have been released.

**A. If the Inmate is Ordered Released**

If an inmate goes to court on the morning calendar and is ordered released from custody, the inmate would likely be released from custody in the normal course by 1800 hours that day. If an inmate goes to court on the afternoon calendar and is ordered released, the inmate would likely be released in the normal course by 2400 hours.

Accordingly, the Sheriff's Office's policy is to start the "48-hour clock" at either 1800 hours if the inmate is ordered released in the morning, or 2400 hours if the inmate is ordered released in the afternoon. For inmates who have been ordered released, notification to ICE that ICE has 48 hours should be made as soon as is practical. If an inmate would have been released in the afternoon, it is expected that the notification to ICE will normally be made by 1800 hours. If an inmate would have been released in the evening, it is expected that the notification to ICE will normally be made by 2400 hours.

**B. If the Inmate's Time Has Been Served**

For an inmate that is scheduled to be released after serving his or her time, the 48-hour period should be calculated from the time the inmate would be normally released. Ordinary course for the Maguire Correctional Facility is to release time served inmates at approximately 0800 hours. If an inmate is time served, and has an ICE hold, that 48-hour clock starts at 0800 that day.

For an inmate who is scheduled to be released after serving his or her time, the notification to ICE can be made whenever the Facility staff becomes aware an inmate with an ICE hold is going to be released. In the case of an inmate who is time served, ICE could be notified several days before the inmate is released. However, the 48-hour clock starts at 0800 hours the day the inmate is scheduled to be released.

**C. If a Peace Officer Authorizes Release of an Inmate Pursuant to Penal Code Section 849(b)**

If a peace officer has authorized the release of an inmate pursuant to Penal Code Section 849(b), and no other charges or cases would keep them in custody other than the ICE hold then the "48-clock" should be calculated based on the time the Peace Officer informs the jail staff of the 849(b) release and jail staff has received the required paperwork from the peace officer of requesting agency. Accordingly, the Sheriff's Office's policy is to start the "48-hour clock" 6 hours after the jail staff has received the required paperwork from the peace officer or requesting agency.

**D. No Extension of the 48-Period**

There should be no extension of the 48-hour period, excluding Saturdays, Sundays, and Federal holidays. The 48-hour period will not be extended,

even if ICE was not notified at the correct time before the inmate's release. If an inmate is found to be held past the 48-hour period the inmate will be released immediately, and ICE will be notified in the event that it has not been previously notified. If any concerns about the application of this policy arise, contact the on-duty Watch Commander immediately.

**E. The TRUST Act (AB 4)**

Effective on January 1, 2014, the San Mateo County Sheriff's Office will comply with California State Assembly Bill 4, known as the TRUST Act. With the passage of the TRUST Act, the ICE detainer requests and procedures (see above) will *not* be honored except as stated below:

1. TRUST ACT. 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 to be released from custody, *unless at the time the individual becomes eligible for release from custody certain conditions are met*. These conditions are listed in F1 (a-f). "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- a. All criminal charges against the individual have been dropped or dismissed; or
- b. The individual has been acquitted of all criminal charges filed against him or her; or
- c. The individual has served all the time required for his or her sentence; or
- d. The individual has posted a bond; or
- e. The individual is otherwise eligible for release under state or local law, or local policy.

**F. ICE Immigration Detainees – AB 4 Status**

1. Inmates who are eligible for release from custody shall not be held, pursuant to an immigration hold, beyond the time he or she would otherwise be released, unless the conditions set forth in subparagraphs a-f apply.

- a. Immigration detainers shall be honored for inmates who are charged with **certain felonies**, if the individual is arrested on (i) a charge involving a **serious felony** [PC 1192.7(c)] or a **violent felony**, [PC 667.5(c)](see listing below); or (ii) a felony punishable by imprisonment in state prison, *other than domestic violence*; or (iii) any felony listed in section 2(e), *other than domestic violence*; and a magistrate has made a finding of probable cause as to that charge

pursuant to Section 872 of the Penal Code (i.e., a judge has signed the "PC Dec").

- i. As used in PC 1192.7(c), "**serious felony**" means any of the following:
  - (1) Murder or voluntary manslaughter;
  - (2) mayhem;
  - (3) rape;
  - (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
  - (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
  - (6) lewd or lascivious act on a child under 14 years of age;
  - (7) any felony punishable by death or imprisonment in the state prison for life;
  - (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
  - (9) attempted murder;
  - (10) assault with intent to commit rape or robbery;
  - (11) assault with a deadly weapon or instrument on a peace officer;
  - (12) assault by a life prisoner on a non-inmate;
  - (13) assault with a deadly weapon by an inmate;
  - (14) arson;
  - (15) exploding a destructive device or any explosive with intent to injure;
  - (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
  - (17) exploding a destructive device or any explosive with intent to murder;
  - (18) any burglary of the first degree;
  - (19) robbery or bank robbery;
  - (20) kidnapping;
  - (21) holding of a hostage by a person confined in a state prison;
  - (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
  - (23) any felony in which the defendant personally used a dangerous or deadly weapon;
  - (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, or any of the precursors of methamphetamines;

- (25) any violation of PC 289(a) where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- (26) grand theft involving a firearm;
- (27) carjacking;
- (28) any felony offense, which would also constitute a felony violation of PC 186.22;
- (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation;
- (30) throwing acid or flammable substances;
- (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter;
- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee;
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft;
- (34) commission of rape or sexual penetration in concert with another person;
- (35) continuous sexual abuse of a child;
- (36) shooting from a vehicle;
- (37) intimidation of victims or witnesses;
- (38) criminal threats;
- (39) any attempt to commit a crime listed in this subdivision other than an assault;
- (40) any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies];
- (41) a violation of subdivision (b) or (c) of Section 11418;
- (42) any conspiracy to commit an offense described in this subdivision.

And any offense committed in another state, which if committed in California, would be punishable as a listed serious felony.

ii. As used in PC 667.5(c), "**violent felony**" means any of the following:

- (1) Murder or voluntary manslaughter
- (2) Mayhem.
- (3) Rape
- (4) Sodomy
- (5) Oral copulation
- (6) Lewd or lascivious act
- (7) Any felony punishable by death or imprisonment in the state prison for life.

- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved, or any felony in which the defendant uses a firearm which use has been charged and proved
- (9) Any robbery.
- (10) Arson
- (11) Sexual penetration
- (12) Attempted murder.
- (13) A violation of PC 18745, 18750, or 18755 (explosives).
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child
- (17) Carjacking
- (18) Rape, spousal rape, or sexual penetration
- (19) Extortion, which would constitute a felony violation of PC 186.22
- (20) Threats to victims or witnesses, which would constitute a felony violation of PC 186.22
- (21) Any burglary of the first degree, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies].
- (23) A violation of PC 11418(b) or (c)(weapon of mass destruction)

And any offense committed in another state, which if committed in California, would be punishable as a listed violent felony.

- b. ICE detainers will be honored for any conviction or prior conviction for **serious felonies** (see PC 1192.7(c)) or **violent felonies** (see PC 667.5(c)), as listed in (a)(i) and (a)(ii) above;
- c. Detainers will be honored for any conviction or prior conviction for a felony currently punishable by imprisonment in the state prison;
- d. Detainers will be honored for 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;
- e. Detainers will be honored for: (i) any misdemeanor conviction within the last five years, that could also have been charged either as a misdemeanor or as a felony (i.e., “wobblers”) involving the following specified crimes; or (ii) any felony conviction (at any time), involving the following specified crimes:

- (A) Assault.
- (B) Battery
- (C) Use of threats
- (D) Sexual abuse, sexual exploitation, or crimes endangering children
- (E) Child abuse or endangerment
- (F) Burglary, robbery, theft, fraud, forgery, or embezzlement
- (G) Driving under the influence of alcohol or drugs, but only for a felony conviction
- (H) Obstruction of justice
- (I) Bribery
- (J) Escape
- (K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction
- (L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (PC 16000)
- (M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.
- (N) Vandalism with prior convictions
- (O) Gang-related offenses
- (P) An attempt, or any conspiracy, to commit an offense specified in this section.
- (Q) A crime resulting in death, or involving the personal infliction of great bodily injury
- (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
- (T) False imprisonment, slavery, and human trafficking
- (U) Criminal profiteering and money laundering
- (V) Torture and mayhem
- (W) A crime threatening the public safety
- (X) Elder and dependent adult abuse
- (Y) A hate crime
- (Z) Stalking
- (AA) Soliciting the commission of a crime
- (AB) An offense committed while on bail or released on his or her own recognizance
- (AC) Rape, sodomy, oral copulation, or sexual penetration
- (AD) Kidnapping
- (AE) A violation of CVC 20001(c)

- f. Detainers should also be honored for 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. Sec. 1101 at Section 1101(a)(43)(A) to (P). The full listing of specified crimes follows:

- (43) The term "aggravated felony" means –
  - (A) murder, rape, or sexual abuse of a minor;
  - (B) illicit trafficking in a controlled substance
  - (C) illicit trafficking in firearms or destructive;
  - (D) laundering of monetary instruments if the amount of the funds exceeded \$10,000;
  - (E) an offense relating to explosive materials;
  - (F) a crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year;
  - (G) a theft offense or burglary offense for which the term of imprisonment is at least one year;
  - (H) the demand for or receipt of ransom;
  - (I) child pornography;
  - (J) racketeer influenced corrupt organizations or gambling offenses, for which a sentence of one year imprisonment or more may be imposed;
  - (K) owning, controlling, managing, or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons;
  - (L) 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;
  - (M) 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;
  - (N) 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);
  - (O) 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;
  - (P) falsely making, forging, counterfeiting, mutilating, 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).



*g. If none of the conditions listed in a-f above are satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody.*

2. IMMIGRATION DETAINER ELIGIBILITY FORM

a. *Flagging the jacket:* For inmates who fall under the parameters of the TRUST Act, the Booking LOS will insert the "Immigration Eligibility Detainer" form (see attached) into the inmate's jacket. Flagging the jacket shall take place at the initial time of booking, or at any point while the inmate is in custody.

b. The Classification Unit, in the Corrections Division's Administration Office, shall be responsible for reviewing all necessary documentation of inmates with ICE holds in preparation for their release, in addition to completing the "Eligibility" form. The Classification Unit shall determine if the ICE hold will be honored (and the inmate is to be held), *or* if the inmate will be released in accordance with the TRUST Act (AB 4).

c. When the Classification unit is closed (nights, weekends, holidays), the on-duty Intake Sergeant shall be responsible for reviewing flagged jackets and following the above procedures.

3. CHANGED CIRCUMSTANCES.

a. Compliance with ICE detainer requests will be rescinded and the detainer requests will not be furthered honored whenever the factors justifying the detainer no longer exist.

b. Similarly, if new evidence is developed meeting the requirements for honoring the detainer request, a prior determination not to honor the detainer request will be reevaluated pursuant to the provisions of the Trust Act.

4. EQUALITY OF ACCESS. All persons arrested for a criminal offense and held in our custody pursuant to an ICE Detainer will have equal access to custody programs if otherwise program-eligible.

5. WARRANTS. Detainers and warrants are entirely separate and should not be confused. Duly issued warrants will in all cases be honored.