

## DRAFT POLICY ON IMMIGRATION ENFORCEMENT ISSUES

[Alternative language is in red in brackets]

*(Explanatory language is in blue)*

### **POLICY STATEMENT**

It is the policy of this department that our officers and civilian employees shall comply with all applicable state and federal laws regarding immigration enforcement issues and constitutional limitations on that authority.

### **I. DEFINITIONS**

“ICE” means the Immigration & Customs Enforcement branch of the federal government.

“Officer” means a sworn peace officer under the laws of the state of Texas.

“Department employee” collectively means sworn officers and civilian employees of the department.

“Proof of residency” shall include a government issued photographic identification card or a document issued by the federal government indicating current legal immigrant status. It shall include, for these limited purposes, expired, revoked or suspended driver’s licenses.

“Detainer request” means a 48 hour hold issued by ICE based upon probable cause that a person has violated immigration restrictions and is civil in nature.

“Lawful detention” means a detention based upon reasonable suspicion that the detainee has committed, is committing or is about to commit a criminal offense other than an immigration violation. For purposes of this directive the term “lawful detention” shall not include a detention of a person who is a victim or witness of an offense.

“Lawful arrest” means an arrest based upon probable cause that the arrestee has committed a criminal offense other than an immigration violation.

### **II. COMPLIANCE WITH POLICY MANDATORY**

All employees shall comply with this directive. It shall be the duty of all supervisors to monitor employee activities to insure compliance. A violation of this directive may result in discipline up to and including termination.

### **III. INQUIRIES REGARDING IMMIGRATION STATUS**

Officers shall follow these guidelines [rules] when inquiring about immigration status. Nothing in this section is intended to prohibit an officer’s sending or receiving information to or from any federal agency charged with enforcing immigration issues or any local agency or campus police agency.

- A. During a lawful detention officers may inquire about the detainee's immigration status. Officers should be mindful that if the detainee has provided proof of residency further inquiries about immigration status are not necessary.
- [Optional - Officers shall inquire about immigration status in all detentions when the person lawfully detained: (1) does not have proof of residency; (2) a TCIC/NCIC inquiry fails to locate proof of residency using the information provided by the detained person]. *(The reasoning behind this language derives from the requirement in SB 4 that agencies may not engage in racial profiling regarding immigration status inquiries. If departments permit officers to make such inquiries based on the race of the detainee or arrestee, then the agency may run afoul of the profiling prohibition; thus, the requirement that all detained persons without the requisite proof of residency be interviewed regarding immigration status.)*
- [Optional - Should an officer decide to exercise his or her discretion and inquire about immigration status, the officer shall, during all lawful detentions or arrests, inquire about the immigration status of all lawfully detained or arrested persons who (1) do not have proof of residency; or, (2) for whom TCIC/NCIC contains no record of proof of residency. *(This option leaves the initial decision to make such inquiries up to the officer, but once the officer decides to make such inquiries, he or she shall do so in all instances.)*
- B. During a lawful detention officers may make inquiries via TCIC/NCIC to determine if the detainee is the subject of any ICE warrants or detainer requests. Officers shall not take the detainee into custody based solely upon an ICE detainer request.
- C. During a lawful detention officers may make inquiries via the local ICE agent or representative. Officers shall be mindful that a person cannot be detained for an extended period of time to await the response of an ICE agent or representative. Officers shall not take the person into custody solely for an ICE detainer. An ICE agent must respond to the officer's location to take charge of the individual. If the person is not arrested for a separate criminal charge the officer shall not transport the individual to any facility to await the arrival of an ICE agent.
- D. Officers are reminded that a person who is lawfully detained is not obligated to respond to questions, including questions about identity and immigration status. Officers shall not compel a detained person to provide identification. Officers shall not arrest a person who refuses to identify himself or herself during a lawful detention, unless such a refusal violates state law. Officers may arrest a lawfully detained person if the person lies (is untrueful) about his or her identity. [Prior to asking questions about a person's immigration status, officers shall advise the detained person that they do not have to answer questions.]
- E. During a lawful arrest officers may inquire about the arrestee's immigration status. Officers should be mindful that if the arrestee has provided proof of residency, further inquiries about immigration status are not necessary. [During a lawful arrest officers shall inquire about the arrestee's immigration status. Officers should be mindful that if the arrestee has provided proof of residency, further inquiries about immigration status are not necessary.]

- F. During a lawful detention officers may make inquiries via TCIC/NCIC to determine if the detainee is the subject of any ICE warrants or detainer requests. [During a lawful detention officers shall make inquiries via TCIC/NCIC to determine if the detainee is the subject of any ICE warrants or detainer requests.]
- G. Officers are reminded that a person under arrest is not required to answer any questions except to provide his or her name, residence and date of birth.

#### **IV. DETAINERS**

- A. This department shall honor ICE detainers for a period no longer than 48 hours after the point the arrested person has posted bond or is to be released on a personal bond.
- B. If an arrested person produces proof of residency the department shall not honor a detainer request. The arrested person may be released following standard procedures. The employee or officer shall make photocopies of all documents establishing proof of residency. These records shall be retained per department policy.
- C. If an arrested person fails to show proof of residency jail staff may contact ICE to determine if ICE wants to respond to the jail for additional investigation. [If an arrested person fails to show proof of residency jail staff shall contact ICE to determine if ICE wants to respond to the jail for additional investigation.]
- D. The presence or absence of a detainer shall not affect normal transport procedures. Arrested persons shall be transported to the county jail facility as per standard operating procedure. ICE shall be notified of the transfer.
- E. Once an arrestee has posted bond and that person is to be detained for additional time pursuant to an ICE detainer request the employee shall contact the supervisor on duty and advise the supervisor of the situation.
- F. Should an employee receive a writ or other court notice regarding the person detained for an ICE hold the employee shall immediately notify the supervisor on duty. The supervisor on duty shall immediately notify the staff legal advisor to review the document. Following a review by legal staff it is expected the department will honor the writ or court order.

#### **V. ENFORCEMENT COOPERATION**

Officers and civilian staff are authorized to assist immigration officials in enforcement actions pursuant to the following rules. Officers and staff shall cooperate with immigration officials who are investigating immigration matters.

Jail staff will not interfere with a request from ICE to interview an arrested person.

Officers and civilian staff shall not assist or cooperate with immigration authorities if the enforcement action is to take place at a place of worship. [This language is not mandatory. SB 4 gives local agencies the option to opt out of enforcement actions at places of worship]

Any officer or civilian staff who receives a request to assist in an (an ICE) enforcement action shall immediately contact the supervisor on duty and relay the request. The supervisor will then determine whether there is sufficient personnel to assist ICE.

[When the department has sufficient personnel to assist ICE that assistance shall be limited to establishing a secure perimeter for the enforcement action.]