

Immigration Violations

417.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Bellingham Police Department regarding enforcement of immigration laws.

417.2 POLICY

It is the policy of the Bellingham Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status. As a result, members of the Bellingham Police Department shall not enforce federal immigration laws, i.e. those laws set forth in Title 8 U.S. Code (USC) or in the U.S. Immigration and Nationality Act (INA), except for those offenses that are criminal and serious in nature due to their classification as federal felonies.

417.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of city law enforcement will not result in city enforcement of federal civil immigration laws. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to civil immigration status, race, religion, creed, national origin, or lack of proficiency in speaking the English language. Members shall treat all individuals in a manner consistent with the United States and Washington Constitutions.

417.3.1 DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is within the jurisdiction and responsibility of the U.S. Customs and Border Protection (CBP) and/or Immigration and Customs Enforcement (ICE). Members shall not request documents relating to a person's civil immigration status or inquire into the immigration status of an individual unless necessary to investigate criminal activity (e.g. harboring, smuggling, terrorism). Members may continue to confirm identity under state law which lists valid forms of identification related to drivers' licenses and permit requirements [RCW 46.20.035](#).

417.4 ENFORCEMENT

An officer shall not detain any individual, solely for the purpose of determining immigration status. An Officer shall not take any individual into custody or hold an individual in custody solely for the purpose of determining immigration status or based solely on a civil immigration warrant, or an immigration hold request.

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An Officer may detain an individual or take an individual into custody based on a federal warrant only if the warrant is: (a) based on a violation other than those contained in Title 8 U.S.C. as misdemeanor offenses and (b) issued by a judge or judicial magistrate.

Unless immigration status is relevant to another criminal offense or investigation (other than misdemeanor offenses contained in Title 8 U.S.C., the fact that an individual is suspected of being an undocumented person shall not be the sole basis for contacting, stopping, questioning, interrogating, investigating, detaining or arresting the individual. For example, investigation into violations of harboring or trafficking may be a basis for determining immigration status.

Officers shall not use any city funds or resources solely to enforce civil or administrative federal immigration laws. Nor shall officers use any city funds or resources solely to enforce misdemeanor offenses contained in Title 8 U.S.C. "Enforce" includes stopping, questioning, interrogating, investigating or arresting an individual and also includes assisting with such activities.

The Bellingham Police Department does not participate in U.S. Immigration and Customs Enforcement (ICE) 287 (g) Program. The Department does not have a Warrant Service Officer (WSO) model agreement with ICE.

417.4.1 SWEEPS AND FAIR/IMPARTIAL POLICING CONSIDERATIONS

The Bellingham Police Department does not conduct sweeps or other concentrated efforts to detain suspected individuals who are in violation of civil federal immigration laws or misdemeanor offenses contained in Title 8 U.S.C.

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), should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

417.4.2 IDENTIFICATION

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

Arrests, Identifications, and Bookings of persons of questionable immigration status shall be conducted in the same manner as those for any other person and in accordance with Policy 413 (Citation Releases Policy), and without regard to immigration status.

417.4.3 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who is unlawfully present in the United States is not subject to criminal penalties solely for being undocumented. Rather, such offenses are punishable by civil penalties enforced by ICE and Customs and Border Protection. Enforcement regarding improper entry into the United

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States, which is subject to criminal penalties under section [8 USC § 1325\(a\)](#) is the responsibility of ICE and Customs and Border Protection.

417.4.4 IDENTIFICATION CONFIRMATION

If a circumstance requires verification of someone's identity via Department of Homeland Security service forms, for example to investigate a crime or to confirm identity in connection with drivers' licenses and permit requirements, and the individual cannot provide the forms or provided forms need to be confirmed, then identification may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under [8 USC § 1357](#) to verify or ascertain an individual's immigration status (sometimes referred to as a 287(g) certified officer). The Bellingham Police Department does not have a current 287 (g) agreement with the Department of Homeland Security.
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

417.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

The Bellingham Police Department does not operate its own jail but rather uses the Whatcom County jail as its primary correctional facility. The Whatcom County jail determines its notification policies and procedures. Bellingham Police Departments members shall not detain individuals who are otherwise ready to be released solely for the purpose of notification of Customs and Border Protection or ICE. Immigration officials may seek to interview suspected undocumented persons who have been booked into jail on criminal charges.

417.6 ICE REQUEST FOR ASSISTANCE

"Requests by ICE, or any other federal agency, for assistance from this department shall be directed to a supervisor and the Bellingham Police Department shall comply with the provisions of State Engrossed Second Substitute Senate Bill 5497 which relate to enforcement, cooperation, assistance regarding federal registration and surveillance programs. shall be in compliance with HB 5497.

Members of the Bellingham Police Department are prohibited from using agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration status, citizenship status, national origin or ethnic origin.

No section of this policy is intended to limit or prohibit any officer from: (1) sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person or maintaining such information, or exchanging the citizenship or immigration status of an individual

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with any other federal, state, or local government agency, in accordance with 8 U.S.C. Sec 1373; or (2) Complying with any other state or federal law.

Nothing in this policy prohibits the collection, use or disclosure of information that is: (a) required to comply with state or federal law; (b) in response to a lawfully issued court order; (c) necessary to perform departmental duties, functions or other business as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement; (d) required to comply with policies, grants, waivers, or other requirements necessary to maintain funding; or (e) in the form of deidentified or aggregated data, including census data.

If any part of this policy is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the city, the conflicting part of this policy is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of this policy.

417.7 CERTIFICATIONS FOR U OR T NON-IMMIGRANT STATUS (VISA)

Federal law allows for issuance of U Non-immigrant Status (U Visa), to victims and witnesses of certain qualifying crimes (pursuant to Title 8 USC § 1101 (a)(15)(U) and T Non-immigrant Status (T Visa) for certain qualifying victims of human trafficking (pursuant to Title 8 USC § 1101(a)(15)(T).

Consistent with RCW 7.98 and federal law, upon the request of the victim or their representative, a certifying official with the Bellingham Police Department shall:

- (a) Make a determination on U.S. Citizenship and Immigration Services form I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or
- (b) make a determination on U.S. Citizenship and Immigration Services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable request from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim and
- (c) keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the Office for Victims of Crime annually; and
- (d) ensure the completion of the certification, if appropriate, occurs within 90 days of the request or 14 days of the request if the victim is in federal immigration removal proceedings or in any case where the victim's children would lose any benefits by virtue of having reached the age of 21 within 90 days of receiving the certification

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request, no later than 14 days before date the victim or child turn 21, whichever is earlier (requests for expedited certification must be raised by the victim; and

U and T petitions for non-immigrant status, supplemental certification forms, and supporting documents shall be reviewed by the Chief of Police for approval or denial of the certification request consistent with state and federal law. If applicable, the Department's affirmative determination shall provide specific details regarding the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity.

Additional considerations when reviewing a U or T certification request:

- If a certification is denied, the investigations Lieutenant should notify the requestor of the reason(s) for the denial and provide an opportunity for reconsideration to ensure the agency has all pertinent information.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification from a certifying official.
- Consistent with state law, the Bellingham Police Department may only withdraw the certification if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the Department.
- The Department shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims of criminal activity.
- The Department shall reissue any certification within 90 days of receiving a request from the victim, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.
- The Department shall not disclose personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by federal law, a court order, or written authorization from the victim, or if a minor victim, from the victim's parent or guardian. This subsection does not apply to the Department's obligation pursuant to *Brady v. Maryland*.

417.8 TRAINING

The Administrative Services Sergeant shall ensure that all appropriate members receive policy review through training bulletins.