

COLUMBIA POLICE DEPARTMENT

Policy and Procedure Manual

IMMIGRATION VIOLATIONS

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428 IMMIGRATION VIOLATIONS

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to employees of the Columbia Police Department in reporting, investigating and enforcing immigration laws.

428.2 POLICY

It is incumbent upon all employees of this department to make a personal and professional commitment to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

428.3 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 law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may often be necessary to determine the identity of a victim or witness, employees shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or Missouri Constitutions.

428.4 ENFORCEMENT

Officers may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law. Federal authorities shall be notified as soon as possible and the detained individual shall be immediately released if the federal authorities do not want the individual held. Officers should not detain for any length of time any individual, for a civil violation of federal immigration laws.

428.4.1 FEDERAL CIVIL VERSUS CRIMINAL OFFENSES

An individual who enters into the United States illegally has committed a misdemeanor 8 USC § 1325(a). Generally, an alien who initially made a legal entry into the United States but remains beyond what is a legal period of time has committed a federal civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize law-abiding citizens except to the extent permitted by the United States or Missouri Constitution. Instead, the totality of the

circumstances shall be used to determine reasonable suspicion and include factors weighing for and against reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal violation has occurred may include, but are not limited to:

1. An admission that the person entered the United States illegally.
2. Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
3. While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency.
4. Other factors based upon training and experience.

428.4.2 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

1. A peace officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer), or
2. Immigration and Customs Enforcement (ICE), or
3. U.S. Customs and Border Protection (CBP).

The officer shall verify from a 287(g) certified officer, ICE or CBP whether the person's presence in the United States relates to a federal civil violation or a criminal violation.

If the officer has facts that establish probable cause to believe that the detained person has committed a criminal immigration offense, the officer may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, officers should notify a supervisor as soon as practicable.

Officers are encouraged to forgo detentions made solely on the basis of a misdemeanor criminal federal immigration offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

428.4.3 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained a person and established probable cause to believe the person has violated a criminal immigration offense, the supervisor should:

1. Confirm that the detained person's immigration status was properly verified.
2. Ensure that the detained person is taken into custody when appropriate and that no steps are taken that would unreasonably limit or restrict the enforcement of immigration laws. Appropriate steps may include, but are not limited to:
 - a. Transfer to federal authorities.

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- b. Lawful arrest for a criminal offense or warrant.

428.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

In the event that an arrestee is confined to jail, the arresting officer shall query the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security (DHS) or other office or agency designated for that purpose by DHS to determine if the prisoner is in the United States unlawfully. If it is determined that the person is in the United States unlawfully, the officer will notify DHS. No arrestee who is otherwise ready to be released on a bond or other form of release shall be detained longer than necessary because questions about the person's status are unresolved (§ 577.680, RSMo).

The arresting officer need not query LESO if the jail has operational procedures to handle the query and notification.

428.6 INFORMATION SHARING

Unless otherwise dictated by law, it is the policy of the Columbia Police Department that:

1. No employee will prohibit, or in any way restrict, any other employee from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):
 - a. Sending information to, or requesting or receiving such information from, ICE.
 - b. Maintaining such information in department records.
 - c. Exchanging such information with any other federal, state, or local government entity.
2. Employees should cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration (§67.307 RSMo).

428.7 U-VISA/T-VISA NON-IMMIGRANT 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 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:

1. Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
2. Review the instructions for completing the declaration/certification. Instructions for completing Forms I-918/I-914 can be found on the DHS website at <http://www.uscis.gov/portal/site/uscis>.
3. 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.

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4. Address the request and complete the declaration/certification, if appropriate, in a timely manner.

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 certification in the case file.

428.8 TRAINING

The Training and Recruitment Sergeant shall ensure that all applicable employees receive appropriate immigration training.

428.9 ICE REQUEST FOR ASSISTANCE

Specific requests for assistance by ICE or any other federal agency should be directed to a supervisor. This department may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies.