

Immigration Violations

609.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Gresham Police Department relating to immigration and interacting with federal immigration officials.

609.2 POLICY

It is the policy of the Gresham 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 national origin or immigration status.

609.3 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 be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or Oregon Constitutions.

609.4 DETENTIONS

This department does not participate in immigration investigation and enforcement activities (ORS 181A.820).

An officer should not detain any individual, for any length of time, for a criminal or civil violation of federal immigration laws unless a warrant is signed by a federal judge (not ICE agent or ICE supervisor).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of federal immigration law may detain the person for a reasonable period of time in order to contact federal immigration officials to verify whether an immigration violation is a federal civil violation or a criminal violation. If the violation is a criminal violation, the officer may continue to detain the person for a reasonable period of time if requested by federal immigration officials (8 USC § 1357(g)(10)). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request a federal immigration official to respond to the location to take custody of the detained person (8 USC § 1357(g)(10)).

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An officer is encouraged to forgo detentions made solely on the basis of a misdemeanor 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.

An officer may arrest any person who is the subject of an arrest warrant issued by a federal magistrate for a criminal violation of federal immigration laws (ORS 181A.820).

An officer should notify a supervisor as soon as practicable whenever an individual is being detained or arrested for a criminal immigration violation.

609.4.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained an individual and established reasonable suspicion or probable cause to believe the person has violated a criminal immigration offense, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Lawfully arrest the person for a criminal offense or pursuant to a judicial warrant (see the Law Enforcement Authority Policy).

609.4.2 IMMIGRATION INQUIRIES PROHIBITED

An officer shall not inquire into an individual's immigration status, citizenship status, or country of birth except where allowed by law (ORS 181A.823).

609.4.3 INDIVIDUAL RIGHT NOTIFICATION

To ensure compliance with all treaty obligations, including consular notification and state and federal laws, an officer should ensure individuals who are detained receive an explanation in writing, with interpretation into another language if requested, of the following (ORS 181A.823):

- (a) The individual's right to refuse to disclose the individual's nationality, citizenship, or immigration status.
- (b) That the disclosure of the individual's nationality, citizenship, or immigration status may result in a civil or criminal immigration enforcement, including removal from the United States.

609.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Any required notification will be handled according to jail operation procedures. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of notification.

609.6 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department should be directed to a supervisor. The Department may provide available support services (unrelated to immigration enforcement), such as peacekeeping efforts (2021 Oregon Laws, c. 550 § 3).

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609.6.1 FEDERAL IMMIGRATION ENFORCEMENT REQUESTS AND DOCUMENTATION

Any requests from federal immigration officials for assistance relating to immigration enforcement (other than a judicial subpoena) shall be declined and the communication or request shall be documented. The documentation shall be forwarded to the Chief of Police or the authorized designee. The Chief of Police or the authorized designee should ensure the documentation is forwarded to the Oregon Criminal Justice Commission (OCJC) as prescribed by the OCJC (ORS 181A.826).

609.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; ORS 181A.823):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

Nothing in this policy restricts sharing information that is permissible under Oregon State Law.

609.7.1 IMMIGRATION HOLDS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

HB 3265 prohibits officers from making civil arrests, absent a judicial warrant or judicial order, in a court or on the grounds adjacent to the court (including sidewalks, parking lots, grass, or landscaped areas, court-related offices, and all entrances and exits), and from making a civil arrest of a person on their way to or returning from a court proceeding, absent a judicial warrant or judicial order.

609.7.2 NON-DISCLOSURE OF CERTAIN INFORMATION

Except as required by state or federal law, members should not disclose for the purpose of enforcement of federal immigration laws the following information about a person or their known relatives or associates, whether current or otherwise (ORS 180.805):

- (a) The person's address
- (b) The person's workplace or hours of work
- (c) The person's school or school hours
- (d) The person's contact information, including telephone number, email address, or social media account information
- (e) The identity of known associates or relatives of the person

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- (f) The date, time, or location of a person's hearings, proceedings, or appointments with the Department that are not matters of public record

609.8 U VISA AND T VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a U visa may be completed by the Administrative Supervisor in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by the Administrative Supervisor in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the the Administrative Supervisor assigned to oversee the handling of any related case. The Administrative Supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner (ORS 147.620).
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

609.8.1 DENIAL OF CERTIFICATION

If certification is denied, the Investigation Division supervisor shall inform the petitioner in writing regarding the reason for the denial as provided in ORS 147.620. A copy of the notice shall be kept for a minimum of three years and in accordance with the established records retention schedule (ORS 147.620).

609.8.2 TIME FRAME FOR COMPLETION

Except under circumstances where there is good cause for delay, the Administrative supervisor shall process the certification for the U visa or T visa within 90 days of the request, unless the victim is in federal immigration removal proceedings, in which case the certification shall be executed within 14 days after the request is received (ORS 147.620).

609.9 TRAINING

The Training Sergeant should ensure officers receive training on this policy.

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Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed.