

## Immigration Violations

### 423.1 PURPOSE AND SCOPE

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Officers shall not contact, question, delay, detain, or arrest an individual because he/she is suspected of violating immigration laws. Officers should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them due to that immigration status. Undocumented presence, in and of itself, is not a criminal violation.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state, or local government entity (Title 8 U.S.C. § 1373 and 8 U.S.C. § 1644).

The immigration status of individuals is generally not a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this community will increase the effectiveness of the Department in protecting and serving the entire community.

### 423.2 POLICY

The Department of Homeland Security has primary jurisdiction for enforcement of the provisions of Title 8, United States Code (U.S.C.) dealing with illegal entry. When assisting DHS at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, U.S.C., §§ 1304, 1324, 1325 and 1326, this department may assist in the enforcement of federal immigration laws.

However, a request from DHS does not provide a legal basis to stop or detain an individual, or to prolong the detention of an individual. Officers must have an independent legal basis to stop or detain any individual. It is the policy of this department that we do not ask about the immigration status unless it is directly related to the crime being investigated.

### 423.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). Port Orchard Police Department staff should not call ICE on their behalf. The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of such immigration violations under Title 8, U.S.C.

#### 423.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g. harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the basis for contact, detention, or arrest.

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#### 423.3.2 SWEEPS

The Port Orchard Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

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, sex (including pregnancy, gender identity, and sexual orientation), age (40 or older), religion, creed, color, national origin, ancestry, disability, marital status, familial status, genetic information, veteran or military status.

The disposition of each contact (e.g. warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, sex (including pregnancy, gender identity, and sexual orientation), age (40 or older), religion, creed, color, national origin, ancestry, disability, marital status, familial status, genetic information, veteran or military status.

#### 423.3.3 DEPARTMENT OF HOMELAND SECURITY (DHS) REQUEST FOR ASSISTANCE

If a specific request is made by DHS or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

#### 423.3.4 IDENTIFICATION

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

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g. telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

#### 423.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (10.31.100).

#### 423.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may be booked into jail for the suspected criminal violation and held for bail.

Any person detained for an infraction pursuant to the authority of RCW 46.61.021, may be detained for a reasonable period for the purpose of determining a person's true identity.

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#### **423.4 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, such as traffic control or peacekeeping efforts.

#### **423.5 WASHINGTON STATE IMMIGRATION RESTRICTIONS**

Members shall not (RCW 10.93.160):

- (a) Inquire into or collect information about an individual's immigration or citizenship status, or place of birth unless there is a connection between such information and an investigation into a violation of state or local criminal law.
- (b) Provide information pursuant to notification requests from federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.
- (c) Provide nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by state or federal law.
- (d) Give federal immigration authorities access to interview individuals about a noncriminal matter while they are in custody, except as required by state or federal law, a court order, or written consent of the individual.
- (e) Allow a federal immigration authority to conduct an interview regarding federal immigration violations with a person who is in custody if the person has not consented in writing to be interviewed. In order to obtain consent, the person shall be provided with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present.
- (f) Detain individuals solely for the purpose of determining their immigration status.
- (g) Take a person into custody or hold a person in custody:
  1. Solely for the purposes of determining immigration status
  2. Based solely on a civil immigration warrant issued by a federal immigration authority
  3. On an immigration hold request

##### **423.5.1 SCHOOL RESOURCE OFFICERS**

Members who are school resource officers shall not (RCW 10.93.160):

- (a) Inquire or collect information about an individual's immigration or citizenship status, or place of birth.
- (b) Provide information pursuant to notification requests from federal immigration officials for the purposes of civil immigration enforcement, except as required by law.

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#### **423.6 U VISA AND T VISA NONIMMIGRANT 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)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigations Unit supervisor assigned to oversee the handling of any related case. The Investigations Unit 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 (RCW 7.98.020).
  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.

#### **423.6.1 TIME FRAME FOR COMPLETION**

The Investigations Unit supervisor should ensure that the certification for the U visa or T visa is processed 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. The certification may be withdrawn only 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 (RCW 7.98.020).

#### **423.6.2 U VISA AND T VISA DOCUMENTATION AND REPORTING**

The Investigations Unit supervisor shall keep written documentation regarding the number of certification forms that are (RCW 7.98.020):

- (a) Requested by a victim.
- (b) Signed.
- (c) Denied.
- (d) Withdrawn.

The Investigations Unit supervisor or the authorized designee should ensure that the information collected regarding certification forms is reported annually to the Office of Crime Victims Advocacy (RCW 7.98.020).

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#### 423.6.3 RELEASE OF INFORMATION

Personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification shall not be disclosed except when allowed by law (RCW 7.98.020). See also the Records Maintenance and Release Policy.

#### **423.7 TRAINING**

The Deputy Chief should ensure that officers receive training on this policy.

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.
- (c) Statutory limitations on immigration enforcement.
- (d) U visa and T visa certification training.
- (e) Appropriate information sharing pursuant to 8 USC § 1373.