Immigration Violations

413.1 PURPOSE AND SCOPE

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

413.2 POLICY

It is the policy of the Louisville 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.

413.3 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 not in any way that would violate the United States or Colorado constitutions.

413.4 DETENTIONS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (CRS § 24-76.6-102).

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, they 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)).

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

413.4.1 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:

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

413.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, an officer should not notify federal immigration officials when booking arrestees at a jail facility. 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.

413.6 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, such as traffic control or peacekeeping efforts.

413.7 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):

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

413.7.1 IMMIGRATION DETAINERS

No individual shall be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime and the detainer is accompanied by a warrant issued by a judge directing that the individual be arrested (CRS § 24-76.6-102). Notification to the federal authority issuing the detainer should be made prior to the release.

413.7.2 STATE RESTRICTIONS

Officers shall not, except as required by state or federal law:

a. Provide personal identifying information that is not publicly available to federal immigration officials for the purposes of federal civil immigration enforcement (CRS § 24-74-103).
b. Inquire into or request information or documents to determine a person's immigration status (CRS § 24-74-104).
c. Collect information about a person's place of birth, immigration or citizenship status, or information from passports, permanent resident cards, alien registration cards, or employment authorization documents (CRS § 24-74-104).

413.8 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 Chief of Police (CRS § 24-4.1-405). The Chief of Policeshould:

1. Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
2. 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 (CRS § 24-4.1-403).
3. Address the request and complete the certification or declaration, if appropriate, in a timely manner in accordance with CRS § 24-4.1-402.
    1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
4. 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.

413.8.1 TIME FRAME FOR COMPLETION

The Chief of Police should ensure that the certification for the U visa is processed within 90 days of the request, unless the victim is in federal immigration removal proceedings or a family member would become ineligible for U nonimmigrant status within 60 days, in which case the certification shall be executed within 30 days of receipt of the request (CRS § 24-4.1-402).

413.8.2 APPROVAL OR DENIAL OF CERTIFICATION

If certification is approved, the Chief of Police, at no charge, shall return the signed certification form with reports relevant to the approval to the requestor (CRS § 24-4.1-403).

If certification is denied, the Chief of Police shall inform the requestor in writing regarding the reason for the denial as provided in CRS § 24-4.1-403.

413.8.3 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 (CRS § 24-4.1-404) (see also the Records Maintenance and Release Policy for additional guidance).

413.8.4 DOCUMENTATION AND REPORTING

The Chief of Police shall keep written documentation regarding the number of certification forms that are (CRS § 24-4.1-406):

a. Requested by a victim.
b. Signed.
c. Denied and for what reason.
d. Decided outside of the statutory timelines.

The Chief of Police or the authorized designee should ensure that the information collected regarding certification forms is reported annually to the Colorado Division of Criminal Justice (CRS § 24-4.1-406).

413.9 TRAINING

The Deputy Chief should ensure that officers receive training.

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.