Immigration Violations

415.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the DeKalb County Sheriff's Office relating to immigration and interacting with federal immigration officials.

415.2 POLICY

It is the policy of the DeKalb County Sheriff's Office 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.

415.3 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 Illinois constitutions.

415.4 DETENTIONS

A deputy should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (5 ILCS 805/15).

A deputy shall not inquire into an arrestee’s immigration or citizenship status or country of birth unless there is a connection between the information and an investigation into a violation of state or local criminal law (5 ILCS 805/15).

A deputy 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 deputy 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 deputy has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, the deputy 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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A deputy 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.

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

415.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, a deputy 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.

415.6 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department should be directed to a supervisor.

No member of the DeKalb County Sheriff's Office, unless presented with a federal criminal warrant or otherwise required by federal law, shall (5 ILCS 805/15):

(a) Participate in federal immigration enforcement operations, including offering collateral assistance such as the use of equipment, transporting individuals, or establishing a security or traffic perimeter.

(b) Give federal immigration agents access, including by telephone, to any individual in the DeKalb County Sheriff's Office’s custody.

(c) Transfer any person into a federal immigration agent’s custody.

(d) Permit federal immigration agents the use of department facilities or equipment, including any agency electronic databases not available to the public, for investigative interviews or any other investigative or immigration enforcement purpose.

(e) Enter into or maintain any agreement with any federal agency enforcing civil immigration violations granting direct access to any electronic database or other data-sharing platform maintained by the DeKalb County Sheriff's Office.

(f) Provide to any federal immigration agent information not otherwise available to the public relating to an individual’s release or contact information, or otherwise facilitate an immigration agent’s apprehension or questioning of an individual for immigration enforcement.

415.7 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; 5 ILCS 805/5):

(a) Sending information to, or requesting or receiving such information from federal immigration officials

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(b) Maintaining such information in department records

(c) Exchanging such information with any other federal, state, or local government entity

415.7.1 REPORTING TO THE ILLINOIS ATTORNEY GENERAL

The Chief Deputy shall ensure that data regarding the number of requests for assistance from federal immigration authorities and of civil immigration detainers and warrants received is collected and provided to the Custodian of Records for required reporting to the Attorney General (see the Records Maintenance and Release Policy) (5 ILCS 805/25).

415.8 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)). The Chief Deputy is designated to complete the law enforcement certification for a U visa.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). The Chief Deputy is designated to complete a law enforcement declaration for a T visa (5 ILCS 825/10).

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

1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
2. There is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of a qualifying crime if the victim has not refused or failed to provide information or assistance (5 ILCS 825/10).
3. The appropriate form should be completed within 90 business days of the request unless (5 ILCS 825/10):
    (a) There is a written agreement with the victim or the victim's representative extending the time to complete the form.
    (b) The victim is eligible for expedited completion of the form.
4. Complete and reissue an appropriate form within 90 days of a request to reissue by a victim unless the circumstances of the victim require expedited completion (5 ILCS 825/10).

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(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.

The Chief Deputy and any designee processing requests should receive periodic training regarding the requirements of 5 ILCS 825/10 (5 ILCS 825/25).

415.8.1 NON-DISCLOSURE OF IMMIGRATION STATUS

No member shall disclose the immigration status of the victim or the person requesting the certification form unless authorized in writing by the individual or as required by law (5 ILCS 825/10).

415.8.2 PUBLICATION OF DECLARATION AND CERTIFICATION FORM PROCESS

The Chief Deputy should make the department's procedures for certification requests publicly available for victims and their representatives (5 ILCS 825/10).

415.8.3 DENIAL OF CERTIFICATION

If certification is denied, the Chief Deputy shall inform the victim or the victim's representative in writing of the reason for the denial and the opportunity to appeal the decision. The Chief Deputy should respond to any appeals within 30 business days of receipt (5 ILCS 825/11).

415.8.4 U VISA AND T VISA DOCUMENTATION AND REPORTING

The Chief Deputy shall collect written documentation regarding the number of requests that were (5 ILCS 825/20):

(a) Received by the DeKalb County Sheriff's Office with the dates of receipt.

(b) Granted and with the dates granted.

(c) Denied and with the dates denied.

The Chief Deputy or the authorized designee should ensure that the information collected regarding certification forms is transmitted in a timely manner to the Custodian of Records for annual reporting to the Illinois Attorney General.

415.9 TRAINING

The Division Commander should ensure deputies 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.

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