

KEEP WASHINGTON WORKING ACT GUIDANCE MODEL POLICIES, AND BEST PRACTICES FOR SHELTERS



Washington State Office
of the Attorney General
BOB FERGUSON

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Vision: The Office of the Attorney General will be the best public law office in the United States.

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- We will deliver high quality legal services and remember that we serve the people of Washington.
- We will conduct ourselves with integrity, professionalism, civility, and transparency.
- We will promote a collegial, diverse, and inclusive workplace that values, respects and supports our employees.

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Letter from the Attorney General



Dear Washingtonians:

Washington strives to be a welcoming place for immigrants and refugees to work and live. To support this goal, in 2019 the Washington State Legislature passed the Keep Washington Working Act (KWW) with bipartisan support to establish statewide practices regarding the enforcement of federal immigration laws by state and local agencies and provide improved support of economic opportunities for all Washingtonians, regardless of their immigration or citizenship status.

KWW also directed the Office of the Attorney General to develop and publish model policies “for limiting immigration enforcement to the fullest extent possible consistent with federal and state law” at courthouses, public schools, publicly operated health facilities, and shelters, “to ensure they remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.” Under this legislative directive, the Office of the Attorney General engaged with state and local stakeholders to develop the required model policies.

This publication is specific to Washington shelters. Its guidance includes model policies, and training and best practices recommendations intended to assist those who operate shelters with understanding and implementing policies consistent with the new law. Shelter personnel interact with Washingtonians across the state during some of their most vulnerable moments. I thank the wide network of shelter facility personnel, volunteers, and the local governmental and community leaders who support them for their leadership ensuring that all members of the community, regardless of citizenship or immigration status, have full access to the services that they provide.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bob Ferguson
Washington State Attorney General
May 21st, 2020

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PART I: HOW TO USE THIS PUBLICATION

A. Understanding the Keep Washington Working Act and Development of the Attorney General's Guidance

The Washington State Legislature passed the Keep Washington Working Act (KWW) during the 2019 Legislative Session¹ to ensure “the state of Washington remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working.”² In furtherance of this goal, KWW makes numerous changes to state law restricting the extent to which state and local agencies may participate in the enforcement of federal immigration laws.³ The Legislature further declared an emergency, expeditiously establishing a statewide policy supporting Washington State’s economy and immigrants’ role therein.⁴

The Legislature also mandated that the Office of the Attorney General (AGO) publish model policies to assist local and state entities in the implementation of KWW. Specifically, KWW requires the AGO publish model policies for a number of public entities, including Washington shelters, for “. . . limiting immigration enforcement to the fullest extent possible consistent with federal and state law . . . to ensure [shelters] remain accessible to all Washington residents, regardless of immigration or citizenship status.”⁵ Under this legislative directive, Attorney General Bob Ferguson created a Keep Washington Working Team of staff to receive input from service providers, local governments, and community members across the state.

This publication provides model policies for shelters operated by state and local agencies. While shelters across Washington State are primarily operated by private enterprises such as non-profits and religious organizations, many receive public funding. As such, the model policies, and training and best practices recommendations included in this publication are intended to assist the governmental officials and others responsible for managing public shelter facilities in compliance with KWW’s requirements. However, the AGO encourages administrators of privately operated shelters to adopt similar policies in their facilities.

Additionally, the AGO recognizes that shelters are not always the first point of contact for vulnerable populations. More often, a broad network of ancillary services, such as social workers, foodbanks, or other supportive resources direct clients to a shelter. As such, the AGO encourages these policies be adopted broadly and collaboratively among related service organizations where possible. The guidance in this publication, including the model policies, and training

1 Laws of 2019, ch. 440 (codified in Chapters 10.93, 43.10, and 43.17 RCW). The full text of the KWW law is in Appendix A.

2 *Id.*, Findings—2019 c 440 (3) in RCW 43.17.425.

3 *See, e.g.*, RCW 10.93.160; RCW 43.10.310, .315; RCW 43.17.425.

4 Effective Date—2019 c 440 (3) in RCW 43.17.425.

5 RCW 43.10.310.

and best practices recommendations, reflects conversations and input garnered from state agencies, local government officials, and community stakeholders across the state, along with research of best practices and policies across the country. Adoption and effective implementation of these model policies can help promote access to critical services for all Washingtonians.

B. Adoption of Model Policies and Guidance

The model policies in this publication address data collection and transmission, access, and services for shelters operations, including for local governments providing or operating shelter services in whole or in part.

KWW encourages “all Washington organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice” to adopt policies consistent with those published here.⁶ Shelters and their administrative and/or operating entities that do not adopt these model policies and guidance, should notify the AGO with (1) the reasons why it is not adopting them, and (2) provide a copy of the shelter’s policies that ensure compliance with KWW.⁷ To submit copies of an agency’s policies, please visit www.atg.wa.gov/publications.

The model policies include placeholders for each shelter or government authority to insert its title or specific jurisdiction information, including “[Shelter Facility]” for the shelter’s name or “[Government Agency]” for the entity adopting a model policy based on its role in operating or supporting a shelter. The placeholders “[shelter] personnel” and “[designated facility administrator]” should be filled with the proper terms or titles of the specific shelter or local government authority personnel who will be responsible for those provisions of the policy. This publication also includes definitions that should accompany adoption of any of the model policies or guidance herein.

Finally, shelters and their administrative and/or operating entities should implement an expeditious review process of this publication such that adoption of the model policies, and training and best practices recommendations may be initiated immediately. The Legislature declared an emergency when passing KWW, putting the law into immediate effect.⁸ The AGO recognizes the additional strain on resources many state and local entities are facing due to the impacts of the COVID-19 outbreak in the United States (U.S.). However, prompt review of the included guidance and adoption of the model policies, and training and best practices recommendations will help ensure the goals established in the law are met.

Questions or comments regarding KWW may be addressed to KWW@atg.wa.gov.

C. Legal Overview and Recommendations for Training & Best Practices

The AGO’s legal overview, and recommendations for training and best practices are aids to guide and assist shelters and their operating entities with implementing the model policies. Appropriate training is essential for compliance with the model policies, KWW’s provisions, and other laws governing shelters or their operating entities. While some training on these issues currently exists, consistent training across the state will best ensure that the requirements in KWW are met.

6 RCW 43.10.310(3).

7 RCW 43.10.310(2).

8 Effective date—2019 c 440 in RCW 43.17.425.

The AGO recognizes that economic hardships will prevent universal adoption of the training and best practices and offers these recommendations with the understanding that shelters will employ them as they are able under their individual circumstances.

D. Appendix

This publication contains references to several official forms and documents, including types of federal administrative requests, court orders, warrants, and other documents. Documents referenced appear in the appendix of this publication.

PART II: APPLICABLE DEFINITIONS

The following definitions should be adopted with the model policies and guidance herein. These definitions are based on the definitions provided in KWW⁹ or other relevant statutory sources.

- “Civil immigration warrant” means any warrant for a violation of federal civil immigration law issued by a federal immigration authority. A “civil immigration warrant” includes, but is not limited to, administrative warrants entered in the national crime information center database, warrants issued on U.S. Immigration and Customs Enforcement (ICE) Form I-200 (Warrant for Arrest of Alien),¹⁰ Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.¹¹
- “Court order” and “judicial warrant” mean a directive issued by a judge or magistrate under the authority of article III of the United States Constitution or article IV of the Washington Constitution. A “court order” includes, but is not limited to, judicially authorized warrants and judicially enforced subpoenas. Such orders and warrants do not include civil immigration warrants, or other administrative orders, warrants or subpoenas that are not signed or enforced by a judge or magistrate as defined in this section.
- “Domestic violence” has the same meaning as set forth in RCW 70.123.020(4), which is the infliction or threat of physical harm against an intimate partner, and includes physical, sexual, and psychological abuse against the partner, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner.
- “Dwelling” means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- “Emergency shelter” means a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven-day per week basis.
- “Federal immigration authority” means any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE),

9 RCW 43.17.420

10 Example of Form I-200 is in Appendix B.

11 Example of Form I-205 is in Appendix C.

Customs and Border Protection (CBP), United States Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement. “Federal immigration authority” includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

- “Immigration or citizenship status” means as such status has been established to such individual under the Immigration and Nationality Act.
- “Language services” includes but is not limited to translation, interpretation, training, or classes. “Translation” means written communication from one language to another while preserving the intent and essential meaning of the original text. “Interpretation” means transfer of an oral communication from one language to another.
- “Law enforcement agency” or “LEA” means any agency of the state of Washington (state) or any agency of a city, county, special district, or other political subdivision of the state (local) that is a general authority Washington law enforcement agency, as defined by RCW 10.93.020, or that is authorized to operate jails or maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.
- “Local government” means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to, cities, counties, school districts, and special purpose districts. It does not include sovereign tribal governments.
- “Notification request” means a federal immigration authority’s request for affirmative notification from a state or local law enforcement agency of an individual’s release from the LEA’s custody. “Notification request” includes, but is not limited to, oral or written requests, including DHS Form I-247A, Form I-247N, or prior or subsequent versions of those forms.¹²
- “Personal information” means names, date of birth, addresses, Global Positioning System (GPS) coordinates or location, telephone numbers, email addresses, social media handles or screen names, social security numbers, driver’s license numbers, parents’ or affiliates’ names, biometric data, or other personally identifying information. “Personal Identifying Information” does not include immigration or citizenship status.
- “Sensitive location” refers to the 2011 ICE and 2013 CBP policies which categorize certain locations as sensitive locations that should generally be avoided for immigration enforcement purposes.¹³ Accordingly, “sensitive location” includes health facilities, places of worship, and schools.

12 An example of the currently used Form I-247A, as well as the Guidance ICE uses to complete the form are in Appendix D.

13 See Morton, ICE, Enforcement Actions at or Focused on Sensitive Locations, Oct. 24, 2011, available on line at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (last visited May 18, 2020) and in Appendix E; ICE, FAQs on Sensitive Locations and Courthouse Arrests, available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited May 18, 2020); CBP, U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations, Jan. 18, 2013, available online at https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf (last visited May 18, 2020) and in Appendix F.

- “Shelter” means a place offering temporary lodging and or supportive services, including for domestic violence survivors. For purposes of this document, “emergency shelter” (a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven-day per week basis) and associated services are included under the term “shelter.”
- “State agency” has the same meaning as provided in RCW 42.56.010.
- “T visa” is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(T), as further defined in RCW 7.98.010(1), that enables victims of a severe form of human trafficking and certain qualifying family members to remain in the United States for four years or longer if they have assisted law enforcement in an investigation or prosecution of human trafficking.
- “U visa” is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(U), as further defined in RCW 7.98.010(1), that enables victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity and certain qualifying family members to remain in the United States for four years or longer.

Part III: Model Policies

Pursuant to RCW 43.10.310, all entities providing or operating shelters, in whole or in part, are encouraged to adopt the model policies or notify the AGO that they are not adopting the model policies and guidance, state the reasons why, and provide the AGO with a copy of their policies that ensure the goals of the Keep Washington Working Act, chapter 440, Laws of 2019, are achieved. Prior to adoption, shelter operators should consult with their respective legal counsel to ensure that their policies are in compliance with state and federal law.

The applicable definitions set forth in Part II to this publication should be adopted in conjunction with the adoption of the model policies.

A. Access to [Shelter] and Nondiscrimination of Services

1. Washington State recognizes the humanity of all people and adheres to the Washington Law Against Discrimination, RCW 49.60, which prohibits discrimination on the basis of race, color, national origin, or citizenship or immigration status, sex, sexual orientation, disability, veteran or military status, use of a trained dog guide or service animal by a person with a disability, or creed.¹⁴ Accordingly, [Shelter] shall welcome all people who seek access to shelter and are within the facility's ability to serve.
2. [Shelter] shall not exclude or refuse services to persons eligible for its services because of their race, color, national origin, age, sex, disability, gender identity, immigration or citizenship status, place of birth, sexual orientation, veteran or military status, use of a trained dog guide or service animal by a person with a disability, creed or on any other basis prohibited by federal, state, or local law.
3. [Shelter] shall designate premises as public or private according to the physical characteristics and operational needs associated with facility space. Areas designated as private spaces, including [sleeping quarters, medical examination rooms, or wash rooms in the facility] are only accessible to staff, persons receiving services and authorized guests, and individuals with approved access.
4. [Shelter] does not grant permission for immigration enforcement to be conducted on its premises or within the shelter facilities or their immediate vicinity. [Shelter] does not grant permission to any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access the private spaces of the facility without permission from [designated facility administrator] or without a court order or judicial warrant requiring such access. [Shelter] personnel shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.

14 RCW 49.60.030.

B. Gathering Information Related to Immigration or Citizenship Status

1. [Shelter] has no general obligation to collect, inquire about, request, or collect from any person information about the immigration or citizenship status, or place of birth of any person accessing services.
2. [Shelter] personnel shall not inquire into, request, or collect information regarding the immigration or citizenship status, or place of birth of any person accessing services provided by [Shelter], unless pre-authorized by [Shelter designated administrator] to do so because it is (1) necessary to properly provide services to the person, (2) necessary to determine eligibility for state or federal programs or comply with reporting requirements, or (3) otherwise required by law. Unless necessary, [Shelter] personnel shall not take custody of any records displaying a person's immigration or citizenship status, or place of birth.
3. [Designated administrator] shall review program and funding requirements and identify alternative means to determine an individual's eligibility where permissible other than immigration or citizenship status, or place of birth. [Shelter] personnel shall accept the alternative identification records approved by the [Shelter designated administrator].

C. Responding to Requests for Information

1. [Designated administrator] shall be [Shelter's] lead point of contact on all immigration related issues, which shall include requests for information, access to the facility, arrests or detention of persons receiving services or their guests, or any related issues for immigration enforcement purposes. All [Shelter] personnel shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.
2. The [designated administrator] shall be responsible for ensuring that [Shelter] personnel and volunteers are properly trained and in compliance with the requirements set forth in the policies herein.
3. All [Shelter] personnel shall contact the [designated administrator] immediately upon receipt of any request (including subpoenas, petitions, complaints, warrants, court orders, notification request or other administrative notifications) by a person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, regarding access to the facility, access to a person, request for review of [Shelter] documents or program records, or any other type of immigration enforcement request or activity, to determine the appropriate course of action.
4. [Shelter] personnel shall not share, provide, or disclose personal information about any person for immigration enforcement purposes without a court order or judicial warrant requiring the information's disclosure or approval by [designated administrator], except as required by law.
5. The [designated administrator] shall collect and maintain records regarding all such immigration enforcement requests or activity, including requests to access non-public areas within the [Shelter] or access to persons at the facility. At a minimum, the [designated administrator] shall record the

name, badge number or other identifying information of the requestor, agency, date, time, specific law enforcement purpose, and the proposed law enforcement action to be taken.

6. If a law enforcement officer orders [Shelter] personnel to provide immediate access to facilities and presents lawful authority to do so, personnel shall comply with the officer's orders and not attempt to interfere. Personnel shall immediately contact [Shelter security or designated administrator].

D. Immigration Enforcement at [Shelter]

1. [Shelter] shall not participate in, assist, or in any other way support immigration enforcement activities at or near its facility, except to comply with a valid court order or judicial warrant, or where circumstances otherwise permit warrantless arrest pursuant to RCW 10.31.100. Any [Shelter] personnel presented with a valid court order or judicial warrant, or other circumstances that permit a warrantless arrest pursuant to RCW 10.31.100, shall immediately notify [Shelter designated administrator] to determine an appropriate course of action.
2. [Shelter] personnel shall request that any person desiring access to a person at the facility first produce a valid court order or judicial warrant requiring that such access be allowed or unless [Shelter] obtains the person's written permission. [Shelter] personnel who receive any such requests for access by persons engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, shall immediately contact [designated administrator] to determine an appropriate course of action.
3. Before authorizing any access to persons or facilities, the [designated administrator] shall confirm that the court order is issued and signed by a U.S. District Court Judge or Magistrate Judge and requires access by the specific individual by:
 - a. Obtaining a copy of the court order;
 - b. Confirming that a U.S. District Court Judge or Magistrate signed the court order;
 - c. Confirming that the court order identifies the name of the person for whom the access is sought; and
 - d. Verifying that the court order has a current date that is not otherwise expired or has not previously been executed.

PART IV: OVERVIEW OF KWW AND RELEVANT STATE AND FEDERAL LAWS

While the Keep Washington Working Act, chapter 440, Laws of 2019, encourages shelters to adopt the model policies in order to promote safe and secure access to their services by limiting participation in immigration enforcement, exceptions apply where federal, state, or local laws require otherwise. This section provides an overview of KWW and other laws that shelters and their operating entities should consider when adopting the model policies. Shelter operators should also consult with their legal counsel to ensure that their policies are in compliance with state and federal law before adopting or implementing their policies.

A. Federal Law Relating to Sharing Immigration Status Information

KWW prohibits state agencies from collecting, using, or disclosing information for immigration enforcement purposes except as required by state or federal law or as a necessary condition of federal funding to the state. Under 8 U.S.C. § 1373, which governs “Communication between government agencies and the Immigration and Naturalization Service,” state and local governments may not bar their officials from sharing information regarding “citizenship or immigration status” with federal immigration authorities or “maintaining” information regarding “immigration status.” Section 1373 limits state and local agencies as follows:

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

In short, Section 1373 prohibits state and local governments from barring staff from sending immigration or citizenship status information to, or receiving that information from, federal immigration authorities, or

“maintaining” such information. However, by Section 1373’s own language, these restrictions apply only to information regarding an individual’s “citizenship or immigration status.”¹⁵ Washington law defines “immigration or citizenship status” as “such status has been established to such individual under the Immigration and Nationality Act.”¹⁶ Therefore, speculation about a person’s citizenship or immigration status and information that supports such speculation would not constitute “information regarding the citizenship or immigration status” covered under Section 1373.

State and local policies limiting use of local law enforcement and other resources to enforce federal law are supported by the Tenth Amendment to the U.S. Constitution. The Tenth Amendment provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”¹⁷

Specifically, the Tenth Amendment’s “anti-commandeering doctrine” limits the federal government’s ability to mandate particular action by states and localities, including in the area of federal immigration law enforcement and investigations.¹⁸ Under this doctrine, the federal government cannot “compel the States to enact or administer a federal regulatory program,”¹⁹ or compel state employees to participate in the administration of a federally enacted regulatory scheme.²⁰

Especially relevant here, in *United States v. California*, the United States Court of Appeals for the Ninth Circuit held that where federal law provides state and localities the option, rather than a mandate, to assist with federal immigration law, a state’s decision to enact a policy to refrain from providing such assistance is permissible under the anti-commandeering doctrine.²¹ The Ninth Circuit held “the federal government was free to expect” cooperation between state and federal immigration authorities, but it could “not require California’s cooperation without running afoul of the Tenth Amendment.”²²

As *California* illustrates, state and local agencies adopting the model policies are protected under the Tenth Amendment’s anti-commandeering doctrine. Indeed, *California* clarified that federal law cannot mandate that states and local agencies assist with federal immigration enforcement efforts, and KWW’s provisions affirming Washington’s choice to refrain from such participation are protected by the Tenth Amendment.²³ Additionally, Section 1373 only restricts agencies from prohibiting their staff to share or

15 Similarly, 8 U.S.C. § 1644 (Section 1644) provides that “no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

16 RCW 43.17.420(7); Laws of 2020 ch. 37 § 2(7).

17 U.S. Const., amend. X.

18 *United States v. California*, 921 F.3d 865, 889 (9th Cir. 2019), *petition for cert. filed*, 2019 WL 5448580 (U.S. Oct. 22, 2019) (No. 19-532) (stating under the Tenth Amendment anti-commandeering rule that “Congress cannot issue direct orders to state legislatures” or put into its service the police of all 50 states, and that states are permitted to refuse to adopt preferred federal policies) (internal quotations omitted).

19 *New York v. United States*, 505 U.S. 144, 188 (1992) (federal statutory requirement that States enact legislation providing for the disposal of their radioactive waste invalid).

20 *Printz v. United States*, 521 U.S. 898, 935 (1997) (Brady Handgun Violence Prevention Act’s requirement that state and local law enforcement officers perform background checks on prospective firearm purchasers invalid). *See also New York*, 505 U.S. at 903-04.

21 *California*, 921 F.3d at 891.

22 *Id.*

23 *Id.* at 890.

receive information about what a person's citizenship or immigration status is with federal immigration authorities,²⁴ and KWW does not conflict with that prohibition. Rather, KWW's provisions are expressly subject to requirements under federal law.²⁵

B. Federal Immigration Authority "Sensitive Location" Policies

In 2011 and 2013, respectively, ICE and CBP each issued policies (DHS policies) limiting immigration enforcement activity at or around "sensitive locations," including places of worship, schools, and health facilities.²⁶ While shelter facilities are not identified as sensitive locations under these policies, shelters that are located within religious facilities, substance abuse treatment facilities, or schools, are generally considered sensitive locations. Under these DHS policies, ICE and CBP must avoid enforcement activities at sensitive locations unless a specific set of prerequisites are met. Thus, immigration enforcement activities by ICE and CBP may only take place when (1) an officer has received prior approval from an appropriate level supervisory director or (2) "exigent circumstances" exist such that immediate action is required. Exigent circumstances exist when:

- the enforcement action involves a national security or terrorism matter;
- there is imminent risk of death, violence, or physical harm to a person or property;
- enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or other individual posing an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.²⁷

Given these DHS policies, enforcement actions by ICE and CBP at Washington shelters should be limited. However, shelter operators should be mindful that these DHS policies can be amended or revoked at any time. Additionally, the DHS policies only cover immigration enforcement actions, including arrests, interviews, searches, and surveillance of individuals for immigration enforcement purposes by ICE and CBP. They expressly do not include efforts by these agencies to obtain records, documents, or similar materials; providing notice to officials or employees; serving subpoenas; or participating in official functions or community meetings.²⁸ Therefore, the AGO's model policies may be more protective than these DHS policies.

C. Protections from Law Enforcement Searches at Shelters

Persons using shelter services, like all people, also have protections from unreasonable searches and seizures by law enforcement agencies. In considering whether governmental search of a private space is reasonable, court orders and judicial warrants should be presented to demonstrate that determination has been made by a judge.²⁹

²⁴ *Id.* at 892.

²⁵ Construction—2019 c 440, Conflict with federal requirements—2019 c 440 in RCW 43.17.425.

²⁶ See Morton, ICE, Enforcement Actions at or Focused on Sensitive Locations, Oct. 24, 2011, available online at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (last visited May 18, 2020); ICE, FAQs on Sensitive Locations and Courthouse Arrests, available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited May 18, 2020); CBP, U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations, Jan. 18, 2013, available online at https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf (last visited May 18, 2020)

²⁷ The ICE guidance further provides that when officers proceed with an enforcement action under exigent circumstances, they "must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location."

²⁸ In addition, CBP's policy does not apply to agency operations conducted at or near the international border or that bear a "nexus" to the border.

²⁹ See *Johnson v. United States*, 333 U.S. 10, 14 (1948) ("When the right of privacy must reasonably yield to the right

The Fourth Amendment to the U.S. Constitution protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” For many years, courts generally held that a Fourth Amendment violation occurred when law enforcement violated a person’s “reasonable expectation of privacy.”³⁰ However, that framework was clarified with the U.S. Supreme Court’s decision in *United States v. Jones*, which explained that the reasonable-expectation-of-privacy test had been added to, not substituted for, the common-law test for trespass.³¹ The government thus conducts a search within the meaning of the Fourth Amendment when it “physically occupie[s] private property for the purpose of obtaining information.”³² Government intrusion onto public spaces, however, “is of no Fourth Amendment significance.”³³

The extent of protections afforded to people staying in a shelter or utilizing its services therefore depends on the specific factual circumstances within the shelter facility. The law provides strict privacy protections where a person’s home is involved.³⁴ A private room within a facility, for example, may thus ensure greater privacy rights than shared or open spaces.³⁵

D. Federal Fair Housing Act and Washington Law Against Discrimination

The federal Fair Housing Act³⁶ (FHA) and Washington Law Against Discrimination³⁷ (WLAD) provide additional protections for those staying in most Washington shelter facilities. The FHA, as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on the person’s race, color, national origin, religion, sex, familial status, and disability.³⁸ The WLAD provides similar protections, explicitly guaranteeing the right to be free from discrimination on the basis of “citizenship or immigration status.”³⁹ Accordingly, it is generally unlawful for an owner or manager of a housing accommodation to expel, discriminate, or harass any person due to any of those bases.⁴⁰

In determining whether a shelter facility and other types of transitional housing services are protected under the FHA, the key consideration is whether the facility qualifies as a “dwelling.” Under both the FHA and WLAD, a “dwelling” includes “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”⁴¹ The FHA also generally

of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.”).

30 See *Katz v. United States*, 389 U.S. 347 (1967).

31 See generally, *United States v. Jones*, 565 U.S. 400 (2012).

32 *Id.* at 404-405.

33 *d.* at 411.

34 *Jones v. United States*, 357 U.S. 493, 498-499 (1958).

35 Like private homes, a hotel guest’s reasonable expectation of privacy in their room during the duration of his or her tenancy is the same as an owner or renter’s in their house. *Stoner v. California*, 376 U.S. 483, 490 (1964).

36 42 U.S.C. §§ 3601-3631.

37 RCW 49.60.030.

38 42 U.S.C. § 3604. Non-profits run by religious organizations are allowed to give preferences to persons of the same religion, “unless membership in such religion is restricted on account of race, color, or national origin.” 42 U.S.C. § 3607(a).

39 Laws of 2020, ch. 52, § 4 (to be codified at RCW 49.60.030(1)).

40 RCW 49.60.030(1), RCW 49.60.040(2) (defining public accommodations protections to include those for “housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest”), RCW 49.60.215, RCW 49.60.222.

41 42 U.S.C. § 3602(b); RCW 49.60.040(9).

applies to emergency shelters facilities.⁴² Thus, Washington shelter facilities that provide both short-term and transitional housing for individuals and families should fall within the ambit of the FHA and WLAD.

E. The “Public Charge” Rule

“Public charge” is a term in immigration law referring to a person who has or is likely to use certain government benefits or assistance programs for a certain amount of time.⁴³ If immigration officials deem a person a public charge, they may deny an immigration application or re-entry petition or designate the person for deportation.⁴⁴ While immigration officials consider whether a person is a public charge to evaluate applications for lawful permanent residency (green cards) or admission to the United States, they do not consider public charge to evaluate green card renewals or citizenship or naturalization applications.⁴⁵ Nor do they consider public charge for individuals applying for or who have already applied for Temporary Protected Status (TPS) (for those who cannot return to their country of origin due to ongoing armed conflict, natural disaster or other extraordinary reason), including U or T visas (for certain survivors of crime or human trafficking), asylum or refugee status, or Special Immigrant Juvenile Status (SIJS) (for minors who have been abused, abandoned, or neglected).⁴⁶ The public charge considerations include the “totality of circumstances,” including a person’s income, age, education or skills (including English language skills), health, affidavits of support or contracts from a person’s sponsor in addition to whether they have used public programs.⁴⁷

In August of 2019, DHS published a new rule expanding the definition of public charge.⁴⁸ Under this expanded definition, immigration officials will now consider if a person has used Federal Public Housing and Section 8 Assistance, Apple Health/Medicaid (except for emergency services, Apple Health for kids under 21, and services for pregnant women and new mothers), Supplemental Nutritional Assistance Programs (SNAP) including Electronic Benefits Transfer (EBT) or Food Stamps, Cash Assistance Programs (such as Supplemental Security Income [SSI], Temporary

42 See, e.g., *Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1048 n.2 (9th Cir. 2007) (applying Fair Housing Act to a transitional overnight housing facility).

43 8 C.F.R. § 212.21 (a)-(c).

44 8 C.F.R. § 212.22.

45 See Public Charge Fact Sheet, USCIS, available online at <https://www.uscis.gov/news/public-charge-fact-sheet> (last visited May 18, 2020); Form I-90, USCIS available online at <https://www.uscis.gov/sites/default/files/files/form/i-90.pdf> (last visited May 18, 2020) (not inquiring about income or use of benefit programs); see also “The Public-Charge Rule: Broad Impacts, But Few Will be Denied Green Cards Based on Actual Benefits Use, Migration Policy Institute, available online at <https://www.migrationpolicy.org/news/public-charge-denial-green-cards-benefits-use> (last visited May 18, 2020); How Does the New “Public Charge” Rule Impact Children and Youth?, Immigrant Legal Resource Center, available online at https://www.ilrc.org/sites/default/files/resources/2020.04_pc_youth-final.pdf (last visited May 18, 2020). A green card holder who leaves the U.S. for more than 180 consecutive days (6 months), however, may be subject to an admissibility evaluation, including a public charge assessment, when seeking to re-enter the U.S. *Id.*

46 8 U.S.C. § 1182 (a)(4)(E).

47 8 C.F.R. § 212.22; see *In re Perez*, 15 I. & N. Dec. 136, 137 (B.I.A. 1974) (citing Foreign Affairs Manual, Part III, Vol. 9, Note 1 to 22 CFR § 42.91(a)(15)); see also Adjustment of Status for Certain Aliens, 53 Fed. Reg. 43986-01, 43996 (1988) (in making public charge determination, financial responsibility of immigrant based on “totality of the alien’s circumstances” at the time of application), *codified at* 8 C.F.R. § 245a.3(g)(4)(i); U.S. Dep’t of Justice, Final Rule: Adjustment of Status for Certain Aliens, 54 Fed. Reg. 29442-01 (July 12, 1989), *codified in relevant part at* 8 C.F.R. §§ 245a.2(k)(4), 245a.3(g)(4)(iii), 245a.4(b)(1)(iv)(C) (financial responsibility determined based on “totality of the alien’s circumstances” at the time of application).

48 84 Fed. Reg. 41292 (Oct. 15, 2019).

Assistance for Needy Families [TANF], or other general assistance), or long-term care in facilities like nursing homes at government expense.⁴⁹ Despite the expansion to the new rule to include certain housing assistance programs, the public charge rule does not include consideration of the use of shelter facilities.⁵⁰ Other services, like the nutrition program for Women, Infants and Children (WIC), Children’s Health Insurance Program (CHIP), school lunches, food banks, and state or local health care programs are also not considered as part of the public charge evaluation.⁵¹

F. Protecting Shelter Clients’ Personal Information

Shelter facilities generally do not have a legal obligation to inquire into or collect information regarding a person’s immigration or citizenship status, or place of birth. However, such information may be used to determine eligibility for certain public health benefits utilized by shelter clients. Additionally, while every individual has a privacy interest in retaining the confidentiality of his or her social security number,⁵² shelters may need to collect such information to assist clients in receiving public benefits or services. Some housing providers may also request information like rental or shelter history, or past employment information for screening criteria, but should accept alternative documents to determine an individual’s eligibility for services. Finally, federal reporting requirements may implicate this information from state or local jurisdictions or individual shelters.

1. Compliance with the Health Insurance Portability and Accountability Act and Washington State Health Care Laws

If a shelter facility provides certain medical services to its clients, including mental health care or dental services, it is required to protect the use and disclosure of “protected health information” (PHI) from disclosure.⁵³ Under the federal Health Insurance Portability and Accountability Act (HIPAA), in order for PHI to be disclosed to law enforcement agencies, including federal immigration authorities, either a patient or a patient’s representative must authorize disclosure of the information or the disclosure must fit a specific exception.⁵⁴

Washington state laws also protect PHI from disclosure. Initially, the Washington Constitution includes a right not to be disturbed in one’s “private affairs”⁵⁵ and several state statutes specifically govern release

49 8 C.F.R. § 212.21(b).

50 *See id.* with 84 Fed. Reg. at 41378 (“DHS will consider public benefits as listed in the rule. DSHS notes that other housing programs not listed in the rule . . . will not be considered in the public charge inadmissibility determination.”). *See also* USCIS, *Public Charge* (updated Mar. 27, 2020), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last visited May 18, 2020) (“The rule does not include consideration of emergency medical assistance, disaster relief, . . . food pantries and **homeless shelters**”) (emphasis added).

51 *See* Public Charge Fact Sheet, *supra* n. 39; Changes to Public Charge, Protecting Immigrant Families, available online at https://docs.google.com/document/d/1zHLRaciDqIZfkl_icRGVJWKWcinP6cAwvkuAeae8eog/edit (last visited May 18, 2020).

52 *See In re Crawford*, 194 F.3d 954, 958 (9th Cir. 1999) (“[I]ndiscriminate public disclosure of SSNs, especially when accompanied by names and addresses, may implicate the constitutional right of informational privacy.”).

53 42 U.S.C. §§ 1395x(u), 1395x(s).

54 “Protected Health Information” is individually identifiable health information transmitted or maintained by a covered entity or its business associates in any form or medium. 45 CFR 160.103. The definition exempts a small number of categories of individually identifiable health information, such as individually identifiable health information found in employment records held by a covered entity in its role as an employer. 45 C.F.R. § 164.502.

55 45 C.F.R. § 164.502.

of patient information.⁵⁶ The Washington State Uniform Health Care Information Act (HCIA),⁵⁷ the primary state law protecting PHI, directs health care providers, facilities, patients, insurance providers, and others regarding access to medical records.⁵⁸ Like HIPAA, the HCIA applies to health care providers, insurers, and third-parties they contract with that have access to patient information.⁵⁹ In short, Washington privacy laws like the HCIA protect the rights of immigrants, just like all people, to the confidentiality of their patient information.⁶⁰

G. Legal Protections for Crime Survivors Using Shelters

1. Violence Against Women Act

Federal law provides a number of legal protections against domestic violence that extend to undocumented persons. The Immigration Reform Act of 1990 initially created the “battered spouse waiver” to allow survivors of domestic violence with conditional residency status to remove that conditionality without the assistance of their spouse.⁶¹ Then in 1994, Congress enacted the Violence Against Women Act (VAWA), which provides additional legal protections for survivors of domestic violence, including undocumented persons, through a process called “self-petitioning.”⁶² This process allows undocumented immigrant survivors of domestic violence (including spouses, children, and parents) to file their own petitions for lawful permanent residency and certain public benefits for themselves, without their abuser’s knowledge.⁶³

Both VAWA and Washington law provide additional protections for domestic violence survivors by prohibiting disclosure of certain personal information without their consent.⁶⁴ Under VAWA, personal information that would identify an individual or that is “likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected” is protected from disclosure.⁶⁵ VAWA also prohibits federal immigration officials from using information provided by the abusing family member as the sole basis for arresting and charging an undocumented immigrant with removability, unless the person has been convicted of certain crimes.⁶⁶ When personal information

⁵⁶ Wash. Const., art. I, § 7.

⁵⁷ Where state law related to privacy of health information is stricter than HIPAA, health facilities must adhere to state law. *Youngs v. Peacehealth*, 179 Wn.2d 645, 665 n.9 (2014) (stating while HIPAA generally supersedes contrary state law, it does not do so where the state law relates to privacy of individually identifiable health information) (citing 42 U.S.C. § 1320d–7(a)(2)(B)).

⁵⁸ 70.02 RCW.

⁵⁹ The HCIA applies to “health care information,” defined as “any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient’s health care, including a patient’s deoxyribonucleic acid and identified sequence of chemical base pairs.” RCW 70.02.010(17).

⁶⁰ RCW 70.02.170.

⁶¹ Several other laws also set forth terms and conditions regarding maintenance and disclosure of medical information. *See, e.g.*, RCW 13.50 (governing juvenile justice); RCW 70.24 (governing sexually transmitted diseases); RCW 70.96A (governing drug and alcohol abuse treatment); RCW 71.05 (governing mental illness and treatment); and RCW 71.34 (governing behavioral health services for minors).

⁶² 8 C.F.R. §216.5(e) (setting forth conditions to seek the waiver).

⁶³ VAWA was originally passed as part of the Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40701-03 (Sept. 13, 1994). VAWA has been reenacted and expanded multiple times.

⁶⁴ 8 U.S.C. § 1154(a)(1)(A).

⁶⁵ 34 U.S.C. § 12291(b)(2); RCW 5.60.060(8); RCW 70.123.075, .076.

⁶⁶ 34 U.S.C. § 12291(a)(20).

must be disclosed in order to comply with a statute or court order, shelter facilities that have received grants under VAWA must provide notice to the survivors affected by the disclosure of information, and take reasonable steps to protect the persons affected by the release of the information.⁶⁷

2. [Victims of Crime Act and Family Violence Prevention and Services Act](#)

In addition to VAWA, the federal government’s response to domestic violence includes the Victims of Crime Act (VOCA) and the Family Violence Prevention and Services Act (FVPSA). FVPSA dedicates federal funding to address the shelter and other emergency assistance needs of domestic violence survivors and their children.⁶⁸ FVPSA contains privacy and confidentiality protections for those accessing such federally-funded programs and services.⁶⁹ Service providers granted federal funds under FVPSA cannot disclose personally identifying information collected to provide services without the informed, written, and reasonably time-limited consent of the person seeking services.⁷⁰ VOCA also requires client confidentiality to ensure federal funding and service providers can be penalized for breaking such confidentiality.⁷¹ Under VOCA’s implementing regulations, any information that identifies or refers to a person cannot be shared or used in any court proceeding without the individual’s written consent.⁷²

3. [The Washington Safety and Access for Immigrant Victims Act: U & T Visa Certification Requirements](#)

Federal law provides specific immigration status for certain people who are victims of certain crimes or human trafficking.⁷³ Washington’s Safety and Access for Immigrant Victims Act (SAIVA) ensures that all Washingtonians who may be eligible for U or T nonimmigrant status have access to these protections by supporting greater consistency across agencies with certification authority, including law enforcement agencies, prosecutors, and Washington courts.⁷⁴

To ensure that all crime survivors are able to access the protections available to them and to prevent fear of immigration enforcement from making crime survivors reluctant to report crimes or to contact or cooperate with law enforcement agencies, the SAIVA requires the development and implementation of training to courthouse personnel, law enforcement, prosecutors, victim advocates, state agencies, and others on U and T nonimmigrant visas; provides additional legal protections for immigrant survivors of crime; and provides promising practices for certifying agencies to work with the people for whom they may be signing certification forms.⁷⁵ The SAIVA also requires affirmative outreach, education, and information be provided by certifying agencies to all people for whom they may be signing certification forms such that they are made aware of the protections available to them.⁷⁶

67 See 8 U.S.C. § 1367(a)(1).

68 34 U.S.C. § 12291(b)(2)(C).

69 42 U.S.C. § 10406.

70 42 U.S.C. §10406(c)(5).

71 42 U.S.C. §10406(c)(5)(B)(ii).

72 28 C.F.R. § 94.115.

73 28 C.F.R §§ 22.2, .28.

74 8 U.S.C. § 1101(a)(15)(T), (U).

75 Chapter 7.98 RCW.

76 RCW 7.98.020.

The SAIVA requires certifying agencies in Washington to process all requests under specific timeframes and sets out the procedures and factors to consider in doing so. In addition, all certifying agencies must report to the Washington Department of Commerce Office of Crime Victim Advocacy by August 15 of each year the number of:

- i. Certification forms requested;
- ii. Certification forms signed;
- iii. Certification forms denied; and
- iv. Certification forms withdrawn.

The Act also requires outreach, education, and information for immigrant crime survivors about the protections available to them.⁷⁷ Shelter operators should therefore become familiar with the SAIVA requirements and follow any recommendations or guidance from the Crime Victim Certification Steering Committee and provide feedback to the Office of Crime Victim Advocacy.⁷⁸

⁷⁷ *Id.*

⁷⁸ See <https://www.commerce.wa.gov/serving-communities/crime-victims-public-safety/office-of-crime-victims-advocacy/safety-and-access-for-immigrant-victims/> (last visited May 18, 2020) for feedback and reporting instructions, forms, and Steering Committee meeting minutes.

PART V: TRAINING RECOMMENDATIONS & BEST PRACTICE GUIDANCE

Under Washington law, shelters have a responsibility to provide safe and secure access to the services they provide, regardless of immigration status. In addition to the definitions and model policies mandated by KWW set forth in Sections II and III of this publication, this section provides recommendations for proactive approaches shelters may use (or in some cases, are already using), to increase access for all members of the community.

To the extent that any local government authority or shelter has developed and/or adopted measures equal to or more expansive than presented below, this section is not intended to displace those efforts. Instead, these recommendations reflect a baseline of information that designated personnel should have in order to adequately implement the model policies within this publication. Each facility may wish to include additional topics.

The AGO offers these recommendations with the understanding that shelters will employ them as they are able under their individual circumstances. However, the AGO recognizes that economic hardships will prevent universal adoption of the training and best practices. Where possible, local governmental entities should assist with providing the resources identified in these recommendations.

A. Training for Shelter Personnel

The AGO recommends that Washington shelter personnel are fully trained to understand and carry out the model policies and practices adopted by their respective facilities. At a minimum, training should be required for senior administrators, program operators, security personnel, facility managers, and those responsible for maintaining client records or protected health information.

1. [Responding to Immigration Enforcement Activities](#)

Shelter personnel must be prepared to respond to an immigration enforcement incident, including the ability to communicate with the appropriate supervisor or program lead as is necessary. Having a clear channel of communication will help determine the appropriate response, where deliberation in response or time may be limited. Shelter personnel should also develop working knowledge of the different types of documents that may be presented for the purpose of immigration enforcement. Given the limited resources shelters often operate with, local government authorities are encouraged to assist shelters in developing resources and training. In particular, these training programs should include:

- a. The ability to determine the appropriate response for any potential request for information, including personnel's ability to communicate with the appropriate [shelter designee, team, counsel] authority as emerging incidents occur and as assistance is needed;

- b. The ability to identify all nonpublic, restricted locations within the shelter, as well as who may access those restricted locations;
- c. The ability to differentiate between administrative warrants and judicial warrants signed by a judge or magistrate judge;
- d. The ability to differentiate between administrative and judicial subpoenas;
- e. The procedure for responding to any warrant, subpoena, or order issued in connection with immigration enforcement activities; and
- f. The procedure for documenting any immigration enforcement activity, inquiry, or incident within the shelter.

2. Identification of Federal Documents

Without expressing consent, shelter personnel should respond to requests for personal information according to the requirements set forth in the presented documentation. If the presented document is:

- a. Civil immigration warrant: Personnel should refer the official and provide the document to their designated facility administrator as soon as possible.
- b. Administrative request: An administrative request is issued by a federal or state agency or law enforcement official, rather than a court of law. Such requests include administrative subpoenas or summons signed by someone other than a judge or magistrate. Personnel should forward these requests to their designated shelter administrator.
- c. A judicial warrant or court order: Immediate compliance is usually required, but, where feasible, personnel should consult with their security personnel and designated facility administrator.
- d. A subpoena for production of records or other items: Personnel should refer the requestor and provide the document to their designated facility administrator as soon as possible.
- e. A notice to appear: This document is likely not directed at the shelter. Shelter personnel are under no obligation to deliver or facilitate service of this document to those receiving services at the facility. Personnel should provide a copy of the notice to the designated facility administrator as soon as possible.

B. Increasing Access to Shelters and Services

Shelters offer critical, often life-saving services to vulnerable populations. The reasons why each individual and/or family need to access the services provided by shelters vary, and reflect the multitude of organizations and personnel involved leading a person to particular services. Given the array of services and service providers, there are multiple opportunities to uplift clients with adequate information, including privacy protections.

To help shelter clients or potential clients feel confident that they will receive the services they seek, regardless of their citizenship or immigration status, it is critical for shelters to create a welcoming environment. Many shelters provide clients with information regarding their privacy policies. Shelters should include protocols regarding privacy protections in their policy explanations. Shelters and local governmental officials are also encouraged to develop written materials and post signage within the property that welcomes shelter clients or potential clients and informs them of the range of the facility's services. Such materials could include:

- “All are Welcome” signs to remind patients that the facility is open to everyone in the community, regardless of immigration or citizenship status;
- Educational information, such as “Know Your Rights” pamphlets and related materials, including the right to access health care and public benefit programs, without fear of immigration enforcement activity; and
- Documents outlining the facility's information-sharing policies.

Meeting Washington residents' diverse languages needs is also critical to ensure equal access to the services shelters provide. To the extent possible, facilities should provide access to services, translated materials, and policies, in multiple languages. Shelters and local government authorities may collaborate to identify the most commonly spoken languages within their area. Finally, shelters should be prepared with interpreter resources in order to communicate with their clients. Since KWW specifically discourages the use of federal immigration authorities for language services, shelter personnel should know what resources are available to them should it become necessary on short notice.

C. Service Coordination Teams and Partner Programs

Many shelters create maps or guides of related services and programs within the shelter's area of service. These guides can help a shelter collaborate with other service providers and build a larger network for client referrals. Program administrators in shelters should encourage representatives of service providers within their network to adopt comparable model policies, best practices, and training programs. Adopting these practices could help identify personnel throughout the network that are available to respond as incidents arise, as well as streamline the process for those accessing services. Shelters could then refer clients to service providers within the network where operating procedures and protections will be compatible. Local government authorities are encouraged to assist shelters in these efforts.

D. Client Preparedness Formalized as Service

It is not unusual for shelters to provide workforce training, fiscal literacy, and various other programs among its services. To the extent possible, shelters should include “Know Your Rights” trainings that prepare clients for potential encounters with immigration enforcement authorities. These trainings can include privacy protections, referral information for free or low-cost legal assistance, and assistance completing family preparedness plans in the event of a client or client's loved one unexpected detention.

Given the limited capacity many shelters operate within, organizations may need to rely on partners within their networks to provide additional trainings or services. Local government authorities are encouraged to assist shelters in these efforts. In order to increase capacity and services available for vulnerable populations, shelters are encouraged to seek out partnerships with immigrant legal services or advocacy organizations. These organizations should also be listed on outreach and resource materials distributed by the shelter.

**PART VI:
APPENDIX**

Appendixes begin on next page.

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5497

Chapter 440, Laws of 2019

66th Legislature
2019 Regular Session

IMMIGRANTS--STATEWIDE POLICY

EFFECTIVE DATE: May 21, 2019

Passed by the Senate April 24, 2019
Yeas 27 Nays 21

CYRUS HABIB

President of the Senate

Passed by the House April 12, 2019
Yeas 57 Nays 38

FRANK CHOPP

Speaker of the House of Representatives

Approved May 21, 2019 1:39 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5497** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 21, 2019

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5497

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Wellman, Nguyen, Hasegawa, Kuderer, Frockt, Das, Keiser, Saldaña, Mullet, McCoy, Randall, Cleveland, Hunt, Lias, Conway, and Darneille)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to establishing a statewide policy supporting
2 Washington state's economy and immigrants' role in the workplace;
3 adding new sections to chapter 43.17 RCW; adding a new section to
4 chapter 43.330 RCW; adding a new section to chapter 43.10 RCW; adding
5 a new section to chapter 10.93 RCW; creating new sections; repealing
6 RCW 10.70.140 and 10.70.150; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington
9 state has a thriving economy that spans both east and west, and
10 encompasses agriculture, food processing, timber, construction,
11 health care, technology, and the hospitality industries.

12 (2) The legislature also finds that Washington employers rely on
13 a diverse workforce to ensure the economic vitality of the state.
14 Nearly one million Washingtonians are immigrants, which is one out of
15 every seven people in the state. Immigrants make up over sixteen
16 percent of the workforce. In addition, fifteen percent of all
17 business owners in the state were born outside the country, and these
18 business owners have a large impact on the economy through innovation
19 and the creation of jobs. Immigrants make a significant contribution
20 to the economic vitality of this state, and it is essential that the

1 state have policies that recognize their importance to Washington's
2 economy.

3 (3) In recognition of this significant contribution to the
4 overall prosperity and strength of Washington state, the legislature,
5 therefore, has a substantial and compelling interest in ensuring the
6 state of Washington remains a place where the rights and dignity of
7 all residents are maintained and protected in order to keep
8 Washington working.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.17
10 RCW to read as follows:

11 The definitions in this section apply throughout this section and
12 sections 3 through 9 of this act unless the context clearly requires
13 otherwise.

14 (1) "Civil immigration warrant" means any warrant for a violation
15 of federal civil immigration law issued by a federal immigration
16 authority. A "civil immigration warrant" includes, but is not limited
17 to, administrative warrants issued on forms I-200 or I-203, or their
18 successors, and civil immigration warrants entered in the national
19 crime information center database.

20 (2) "Court order" means a directive issued by a judge or
21 magistrate under the authority of Article III of the United States
22 Constitution or Article IV of the Washington Constitution. A "court
23 order" includes but is not limited to warrants and subpoenas.

24 (3) "Federal immigration authority" means any officer, employee,
25 or person otherwise paid by or acting as an agent of the United
26 States department of homeland security including but not limited to
27 its subagencies, immigration and customs enforcement and customs and
28 border protection, and any present or future divisions thereof,
29 charged with immigration enforcement.

30 (4) "Health facility" has the same meaning as the term "health
31 care facility" provided in RCW 70.175.020, and includes substance
32 abuse treatment facilities.

33 (5) "Hold request" or "immigration detainer request" means a
34 request from a federal immigration authority, without a court order,
35 that a state or local law enforcement agency maintain custody of an
36 individual currently in its custody beyond the time he or she would
37 otherwise be eligible for release in order to facilitate transfer to
38 a federal immigration authority. A "hold request" or "immigration
39 detainer request" includes, but is not limited to, department of

1 homeland security form I-247A or prior or subsequent versions of form
2 I-247.

3 (6) "Immigration detention agreement" means any contract,
4 agreement, intergovernmental service agreement, or memorandum of
5 understanding that permits a state or local law enforcement agency to
6 house or detain individuals for federal civil immigration violations.

7 (7) "Immigration or citizenship status" means as such status has
8 been established to such individual under the immigration and
9 nationality act.

10 (8) "Language services" includes but is not limited to
11 translation, interpretation, training, or classes. Translation means
12 written communication from one language to another while preserving
13 the intent and essential meaning of the original text. Interpretation
14 means transfer of an oral communication from one language to another.

15 (9) "Local government" means any governmental entity other than
16 the state, federal agencies, or an operating system established under
17 chapter 43.52 RCW. It includes, but is not limited to, cities,
18 counties, school districts, and special purpose districts.

19 (10) "Local law enforcement agency" means any agency of a city,
20 county, special district, or other political subdivision of the state
21 that is a general authority Washington law enforcement agency, as
22 defined by RCW 10.93.020, or that is authorized to operate jails or
23 to maintain custody of individuals in jails; or to operate juvenile
24 detention facilities or to maintain custody of individuals in
25 juvenile detention facilities; or to monitor compliance with
26 probation or parole conditions.

27 (11) "Notification request" means a request from a federal
28 immigration authority that a state or local law enforcement agency
29 inform a federal immigration authority of the release date and time
30 in advance of the release of an individual in its custody.
31 "Notification request" includes, but is not limited to, the
32 department of homeland security's form I-247A, form I-247N, or prior
33 or subsequent versions of such forms.

34 (12) "Physical custody of the department of corrections" means
35 only those individuals detained in a state correctional facility but
36 does not include minors detained pursuant to chapter 13.40 RCW, or
37 individuals in community custody as defined in RCW 9.94A.030.

38 (13) "Public schools" means all public elementary and secondary
39 schools under the jurisdiction of local governing boards or a charter

1 school board and all institutions of higher education as defined in
2 RCW 28B.10.016.

3 (14) "School resource officer" means a commissioned law
4 enforcement officer in the state of Washington with sworn authority
5 to uphold the law and assigned by the employing police department or
6 sheriff's office to work in schools to ensure school safety. By
7 building relationships with students, school resource officers work
8 alongside school administrators and staff to help students make good
9 choices. School resource officers are encouraged to focus on keeping
10 students out of the criminal justice system when possible and not
11 impose criminal sanctions in matters that are more appropriately
12 handled within the educational system.

13 (15) "State agency" has the same meaning as provided in RCW
14 42.56.010.

15 (16) "State law enforcement agency" means any agency of the state
16 of Washington that:

17 (a) Is a general authority Washington law enforcement agency as
18 defined by RCW 10.93.020;

19 (b) Is authorized to operate prisons or to maintain custody of
20 individuals in prisons; or

21 (c) Is authorized to operate juvenile detention facilities or to
22 maintain custody of individuals in juvenile detention facilities.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.330
24 RCW to read as follows:

25 (1) A keep Washington working statewide work group is established
26 within the department. The work group must:

27 (a) Develop strategies with private sector businesses, labor, and
28 immigrant advocacy organizations to support current and future
29 industries across the state;

30 (b) Conduct research on methods to strengthen career pathways for
31 immigrants and create and enhance partnerships with projected growth
32 industries;

33 (c) Support business and agriculture leadership, civic groups,
34 government, and immigrant advocacy organizations in a statewide
35 effort to provide predictability and stability to the workforce in
36 the agriculture industry; and

37 (d) Recommend approaches to improve Washington's ability to
38 attract and retain immigrant business owners that provide new
39 business and trade opportunities.

1 (2) The work group must consist of eleven representatives, each
 2 serving a term of three years, representing members from
 3 geographically diverse immigrant advocacy groups, professional
 4 associations representing business, labor organizations with a
 5 statewide presence, agriculture and immigrant legal interests, faith-
 6 based community nonprofit organizations, legal advocacy groups
 7 focusing on immigration and criminal justice, academic institutions,
 8 and law enforcement. The terms of the members must be staggered.
 9 Members of the work group must select a chair from among the
 10 membership. The work group must meet at least four times a year and
 11 hold meetings in various locations throughout the state. Following
 12 each meeting, the work group must report on its status, including
 13 meeting minutes and a meeting summary to the department. The
 14 department must provide a report to the legislature annually.

15 (3) In addition to the duties and powers described in RCW
 16 43.330.040, it is the director's duty to provide support to the work
 17 group.

18 (4) The definitions in section 2 of this act apply to this
 19 section.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10
 21 RCW to read as follows:

22 (1) The attorney general, in consultation with appropriate
 23 stakeholders, must publish model policies within twelve months after
 24 the effective date of this section for limiting immigration
 25 enforcement to the fullest extent possible consistent with federal
 26 and state law at public schools, health facilities operated by the
 27 state or a political subdivision of the state, courthouses, and
 28 shelters, to ensure they remain safe and accessible to all Washington
 29 residents, regardless of immigration or citizenship status.

30 (2) All public schools, health facilities either operated by the
 31 state or a political subdivision of the state, and courthouses must:

32 (a) Adopt necessary changes to policies consistent with the model
 33 policy; or

34 (b) Notify the attorney general that the agency is not adopting
 35 the changes to its policies consistent with the model policy, state
 36 the reasons that the agency is not adopting the changes, and provide
 37 the attorney general with a copy of the agency's policies.

1 (3) All other organizations and entities that provide services
 2 related to physical or mental health and wellness, education, or
 3 access to justice, are encouraged to adopt the model policy.

4 (4) Implementation of any policy under this section must be in
 5 accordance with state and federal law; policies, grants, waivers, or
 6 other requirements necessary to maintain funding; or other agreements
 7 related to the operation and functions of the organization, including
 8 databases within the organization.

9 (5) The definitions in section 2 of this act apply to this
 10 section.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.17
 12 RCW to read as follows:

13 (1) Except as provided in subsection (3) of this section, no
 14 state agency, including law enforcement, may use agency funds,
 15 facilities, property, equipment, or personnel to investigate,
 16 enforce, cooperate with, or assist in the investigation or
 17 enforcement of any federal registration or surveillance programs or
 18 any other laws, rules, or policies that target Washington residents
 19 solely on the basis of race, religion, immigration, or citizenship
 20 status, or national or ethnic origin. This subsection does not apply
 21 to any program with the primary purpose of providing persons with
 22 services or benefits, or to RCW 9.94A.685.

23 (2) Except as provided in subsection (3) of this section, the
 24 state agencies listed in subsections (5) and (6) of this section
 25 shall review their policies and identify and make any changes
 26 necessary to ensure that:

27 (a) Information collected from individuals is limited to the
 28 minimum necessary to comply with subsection (3) of this section;

29 (b) Information collected from individuals is not disclosed
 30 except as necessary to comply with subsection (3) of this section or
 31 as permitted by state or federal law;

32 (c) Agency employees may not condition services or request
 33 information or proof regarding a person's immigration status,
 34 citizenship status, or place of birth; and

35 (d) Public services are available to, and agency employees shall
 36 serve, all Washington residents without regard to immigration or
 37 citizenship status.

38 (3) Nothing in subsection (1) or (2) of this section prohibits
 39 the collection, use, or disclosure of information that is:

- 1 (a) Required to comply with state or federal law;
 2 (b) In response to a lawfully issued court order;
 3 (c) Necessary to perform agency duties, functions, or other
 4 business, as permitted by statute or rule, conducted by the agency
 5 that is not related to immigration enforcement;
 6 (d) Required to comply with policies, grants, waivers, or other
 7 requirements necessary to maintain funding; or
 8 (e) In the form of deidentified or aggregated data, including
 9 census data.

10 (4) Any changes to agency policies required by this section must
 11 be made as expeditiously as possible, consistent with agency
 12 procedures. Final policies must be published.

13 (5) The following state agencies shall begin implementation of
 14 this section within twelve months after the effective date of this
 15 section and demonstrate full compliance by December 1, 2021:

- 16 (a) Department of licensing;
 17 (b) Department of labor and industries;
 18 (c) Employment security department;
 19 (d) Department of revenue;
 20 (e) Department of health;
 21 (f) Health care authority;
 22 (g) Department of social and health services;
 23 (h) Department of children, youth, and families;
 24 (i) Office of the superintendent of public instruction;
 25 (j) State patrol.

26 (6) The following state agencies may begin implementation of this
 27 section by December 1, 2021, and must demonstrate full compliance by
 28 December 1, 2023:

- 29 (a) Department of agriculture;
 30 (b) Department of financial institutions;
 31 (c) Department of fish and wildlife;
 32 (d) Department of natural resources;
 33 (e) Department of retirement systems;
 34 (f) Department of services for the blind;
 35 (g) Department of transportation.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.93
 37 RCW to read as follows:

38 (1) The definitions contained in section 2 of this act apply to
 39 this section.

1 (2) The legislature finds that it is not the primary purpose of
2 state and local law enforcement agencies or school resource officers
3 to enforce civil federal immigration law. The legislature further
4 finds that the immigration status of an individual or an individual's
5 presence in, entry, or reentry to, or employment in the United States
6 alone, is not a matter for police action, and that United States
7 federal immigration authority has primary jurisdiction for
8 enforcement of the provisions of Title 8 U.S.C. dealing with illegal
9 entry.

10 (3) School resource officers, when acting in their official
11 capacity as a school resource officer, may not:

12 (a) Inquire into or collect information about an individual's
13 immigration or citizenship status, or place of birth; or

14 (b) Provide information pursuant to notification requests from
15 federal immigration authorities for the purposes of civil immigration
16 enforcement, except as required by law.

17 (4) State and local law enforcement agencies may not:

18 (a) Inquire into or collect information about an individual's
19 immigration or citizenship status, or place of birth unless there is
20 a connection between such information and an investigation into a
21 violation of state or local criminal law; or

22 (b) Provide information pursuant to notification requests from
23 federal immigration authorities for the purposes of civil immigration
24 enforcement, except as required by law.

25 (5) State and local law enforcement agencies may not provide
26 nonpublicly available personal information about an individual,
27 including individuals subject to community custody pursuant to RCW
28 9.94A.701 and 9.94A.702, to federal immigration authorities in a
29 noncriminal matter, except as required by state or federal law.

30 (6)(a) State and local law enforcement agencies may not give
31 federal immigration authorities access to interview individuals about
32 a noncriminal matter while they are in custody, except as required by
33 state or federal law, a court order, or by (b) of this subsection.

34 (b) Permission may be granted to a federal immigration authority
35 to conduct an interview regarding federal immigration violations with
36 a person who is in the custody of a state or local law enforcement
37 agency if the person consents in writing to be interviewed. In order
38 to obtain consent, agency staff shall provide the person with an oral
39 explanation and a written consent form that explains the purpose of
40 the interview, that the interview is voluntary, and that the person

1 may decline to be interviewed or may choose to be interviewed only
2 with the person's attorney present. The form must state explicitly
3 that the person will not be punished or suffer retaliation for
4 declining to be interviewed. The form must be available at least in
5 English and Spanish and explained orally to a person who is unable to
6 read the form, using, when necessary, an interpreter from the
7 district communications center "language line" or other district
8 resources.

9 (7) An individual may not be detained solely for the purpose of
10 determining immigration status.

11 (8) An individual must not be taken into custody, or held in
12 custody, solely for the purposes of determining immigration status or
13 based solely on a civil immigration warrant, or an immigration hold
14 request.

15 (9) (a) To ensure compliance with all treaty obligations,
16 including consular notification, and state and federal laws, on the
17 commitment or detainment of any individual, state and local law
18 enforcement agencies must explain in writing:

19 (i) The individual's right to refuse to disclose their
20 nationality, citizenship, or immigration status; and

21 (ii) That disclosure of their nationality, citizenship, or
22 immigration status may result in civil or criminal immigration
23 enforcement, including removal from the United States.

24 (b) Nothing in this subsection allows for any violation of
25 subsection (4) of this section.

26 (10) A state and local government or law enforcement agency may
27 not deny services, benefits, privileges, or opportunities to
28 individuals in custody, or under community custody pursuant to RCW
29 9.94A.701 and 9.94A.702, or in probation status, on the basis of the
30 presence of an immigration detainer, hold, notification request, or
31 civil immigration warrant, except as required by law or as necessary
32 for classification or placement purposes for individuals in the
33 physical custody of the department of corrections.

34 (11) No state or local law enforcement officer may enter into any
35 contract, agreement, or arrangement, whether written or oral, that
36 would grant federal civil immigration enforcement authority or powers
37 to state and local law enforcement officers, including but not
38 limited to agreements created under 8 U.S.C. Sec. 1357(g), also known
39 as 287(g) agreements.

1 (12) (a) No state agency or local government or law enforcement
2 officer may enter into an immigration detention agreement. All
3 immigration detention agreements must be terminated no later than one
4 hundred eighty days after the effective date of this section, except
5 as provided in (b) of this subsection.

6 (b) Any immigration detention agreement in effect prior to
7 January 1, 2019, and under which a payment was made between July 1,
8 2017, and December 31, 2018, may remain in effect until the date of
9 completion or December 31, 2021, whichever is earlier.

10 (13) No state or local law enforcement agency or school resource
11 officer may enter into or renew a contract for the provision of
12 language services from federal immigration authorities, nor may any
13 language services be accepted from such for free or otherwise.

14 (14) The department of corrections may not give federal
15 immigration authorities access to interview individuals about federal
16 immigration violations while they are in custody, except as required
17 by state or federal law or by court order, unless such individuals
18 consent to be interviewed in writing. Before agreeing to be
19 interviewed, individuals must be advised that they will not be
20 punished or suffer retaliation for declining to be interviewed.

21 (15) Subsections (3) through (6) of this section do not apply to
22 individuals who are in the physical custody of the department of
23 corrections.

24 (16) Nothing in this section prohibits the collection, use, or
25 disclosure of information that is:

26 (a) Required to comply with state or federal law; or

27 (b) In response to a lawfully issued court order.

28 NEW SECTION. **Sec. 7.** To ensure state and law enforcement
29 agencies are able to foster the community trust necessary to maintain
30 public safety, within twelve months of the effective date of this
31 section, the attorney general must, in consultation with appropriate
32 stakeholders, publish model policies, guidance, and training
33 recommendations consistent with this act and state and local law,
34 aimed at ensuring that state and local law enforcement duties are
35 carried out in a manner that limits, to the fullest extent
36 practicable and consistent with federal and state law, engagement
37 with federal immigration authorities for the purpose of immigration
38 enforcement. All state and local law enforcement agencies must
39 either:

- 1 (1) Adopt policies consistent with that guidance; or
 2 (2) Notify the attorney general that the agency is not adopting
 3 the guidance and model policies, state the reasons that the agency is
 4 not adopting the model policies and guidance, and provide the
 5 attorney general with a copy of the agency's policies to ensure
 6 compliance with this act.

7 NEW SECTION. **Sec. 8.** No section of this act is intended to
 8 limit or prohibit any state or local agency or officer from:

- 9 (1) Sending to, or receiving from, federal immigration
 10 authorities the citizenship or immigration status of a person, or
 11 maintaining such information, or exchanging the citizenship or
 12 immigration status of an individual with any other federal, state, or
 13 local government agency, in accordance with 8 U.S.C. Sec. 1373; or
 14 (2) Complying with any other state or federal law.

15 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
 16 conflict with federal requirements that are a prescribed condition to
 17 the allocation of federal funds to the state, the conflicting part of
 18 this act is inoperative solely to the extent of the conflict and with
 19 respect to the agencies directly affected, and this finding does not
 20 affect the operation of the remainder of this act in its application
 21 to the agencies concerned. Rules adopted under this act must meet
 22 federal requirements that are a necessary condition to the receipt of
 23 federal funds by the state.

24 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
 25 each repealed:

- 26 (1) RCW 10.70.140 (Aliens committed—Notice to immigration
 27 authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1; and
 28 (2) RCW 10.70.150 (Aliens committed—Copies of clerk's records)
 29 and 1925 ex.s. c 169 s 2.

30 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
 31 this act, referencing this act by bill or chapter number, is not
 32 provided by June 30, 2019, in the omnibus appropriations act, this
 33 act is null and void.

34 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
 35 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

Passed by the Senate April 24, 2019.

Passed by the House April 12, 2019.

Approved by the Governor May 21, 2019.

Filed in Office of Secretary of State May 21, 2019.

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U.S. DEPARTMENT OF HOMELAND SECURITY

Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
 a designated official
 the Board of Immigration Appeals
 a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

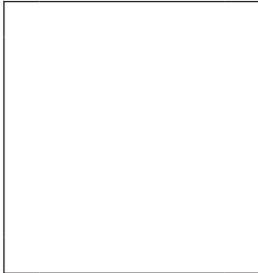
(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed:

Port, date, and manner of removal: _____



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

Departure witnessed by: _____
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by: _____
(Signature and title of immigration officer)

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
- has a prior a felony conviction or has been charged with a felony offense;
 - has three or more prior misdemeanor convictions;
 - has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
 - has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
 - has illegally re-entered the country after a previous removal or return;
 - has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
 - otherwise poses a significant risk to national security, border security, or public safety; and/or
 - other (specify): _____.
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).
- Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel the detainer previously placed by this Office on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención migratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto migratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (现在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

OCT 24 2011

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton 
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "Exceptions to the General Rule" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

¹ Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

Enforcement Actions at or Focused on Sensitive Locations

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- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

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- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

Deputy Commissioner

JAN 18 2013

MEMORANDUM FOR: See Distribution

FROM: David V. Aguilar 
Deputy Commissioner

SUBJECT: U.S. Customs and Border Protection Enforcement Actions at or
Near Certain Community Locations

The presence of U.S. Customs and Border Protection (CBP) Officers and Agents conducting enforcement activities at or near schools, places of worship, and certain other community locations has been a sensitive issue. Accordingly, careful consideration and planning must be undertaken, as outlined herein, in relation to enforcement actions conducted at or near these establishments.

The following establishments should be considered to be within the context of this policy:

- schools, including pre-schools, primary schools, secondary schools, post-secondary schools, vocational or trade schools, and colleges and universities;
- places of worship, including places where funerals, weddings, or other public religious ceremonies are taking place;
- community centers; and
- hospitals.

CBP personnel should consult their supervisors for guidance when an enforcement action is being contemplated or planned at or near a location not specifically listed above but that may be similar in nature, description, or function. In assessing the appropriateness of a proposed action, supervisors should consider alternative measures that could achieve the enforcement objective without causing significant disruption to the normal activities or operations at the identified location, including the importance of the enforcement objective in furthering CBP's mission.

When CBP enforcement actions or investigative activities are likely to lead to an apprehension at or near such locations, written approval by the Chief Patrol Agent, Director of Field Operations, Director of Air and Marine Operations or the Internal Affairs Special Agent in Charge is required. The Deputy to these offices may approve the inspection of records, preliminary investigative activities, and similar activities at these locations where apprehensions are not likely to be made.

This policy does not summarily preclude enforcement actions at the listed locations. When situations arise that call for enforcement actions at or near the above-mentioned establishments without prior written approval, Agents and Officers are expected to exercise sound judgment and

U.S. Customs and Border Protection Enforcement Action at or
Near Certain Community Locations

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common sense while taking appropriate action. Exigent circumstances, including matters related to national security, terrorism, or public safety, requiring an Agent or Officer to enter these establishments, must be reported immediately through the respective chain of command, as applicable.

This policy does not limit or otherwise apply to CBP operations that are conducted at or near the international border (including the functional equivalent of the border), or CBP operations that bear nexus to the border including, for example, but not limited to smuggling interdiction efforts that result in transportation to a hospital, custodial monitoring of injured aliens in CBP custody that require hospitalization, or a controlled delivery from the border that concludes in close proximity of one of the aforementioned locations.

This CBP policy guidance memorandum, which may be modified, superseded, or rescinded by CBP at any time without notice, is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, for any party.

Distribution: Assistant Commissioner, Office of Air and Marine
Assistant Commissioner, Office of Field Operations
Assistant Commissioner, Office of Internal Affairs
Chief, Office of Border Patrol
Chief Counsel

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