JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA REQUEST

TO: **Board of Commissioners**
Josh Peters, County Administrator

FROM: **Philip C. Hunsucker, Chief Civil Deputy Prosecuting Attorney**

DATE: **August 25, 2026**

RE: **Keep Washington Working Act (KWW) & the Courts Open to All Act (COTA) Workshop**

STATEMENT OF ISSUE:

The Washington State Legislature passed the Keep Washington Working Act, RCW 43.17.420 (KWW) during the 2019 legislative session. Then, in 2020, the Courts Open to All Act, RCW 2.28.310 through 2.28.330 (COTA) was enacted by the Washington Legislature during the 2020 Legislative Session.

COTA requires the county to adopt a policy addresses civil arrests at court facilities and limits state and local engagement in federal immigration matters. KWW, COTA and the AG's Guidance all are attached. Jefferson County does not have a policy to comply with COTA.

Representatives of the Superior and District Courts, including Judge Mack and Judge Walker, the Sheriff, Richard Davies of Jefferson Associated Counsel, and Philip Hunsucker from the Prosecuting Attorney's Office met on August 12, 2025 to discuss the requirements of COTA. The group decided to request a work shop with the BoCC and present a draft resolution for discussion about a joint effort to prepare a policy that complies with COTA for Jefferson County.

DEPARTMENT CONTACT:

Philip C. Hunsucker, Chief Civil Deputy Prosecuting Attorney at Extension 219

REVIEWED BY:

Josh D Peters
Josh Peters, County Administrator

8/21/25
Date

STATE OF WASHINGTON
County of Jefferson

In the Matter of Adopting a Policy Required by the Courts Open to All Act (COTA)	**RESOLUTION NO. _____**

WHEREAS, Washington State Legislature passed the Keep Washington Working Act, RCW 43.17.420 (KWW), during the 2019 legislative session; and,

WHEREAS, in 2020, the Courts Open to All Act, RCW 2.28.310 through 2.28.330 (COTA), was enacted by the Washington Legislature during the 2020 Legislative Session; and,

WHEREAS, COTA requires the county to adopt a policy addresses civil arrests at court facilities and limits state and local engagement in federal immigration matters; and,

WHEREAS, Jefferson County does not have a policy addresses civil arrests at court facilities and limits state and local engagement in federal immigration matters; and

WHEREAS, the Washington Attorney has a model policy to comply with COTA; and,

WHEREAS, representatives of the Superior and District Courts, including Judge Mack and Judge Walker, the Sheriff, Richard Davies of Jefferson Associated Counsel, and Philip Hunsucker from the Prosecuting Attorney's Office met on August 12, 2025 to discuss the requirements of COTA; and,

WHEREAS, the Board of County Commissioners held a workshop on August 25, 2025 to discuss the requirements of COTA; and,

WHEREAS, the Superior and District Courts, the Sheriff's Office, Jefferson Associated Counsel, and the Prosecuting Attorney's Office and the Board of County Commissioners agree that a policy that complies with COTA is necessary; and,

WHEREAS, Jefferson County recognizes that the Washington judicial branch is founded upon the fundamental principle that courts shall be assessible to all persons; and,

WHEREAS, Ensuring access to justice requires that all courthouses remain spaces that are open to the public and that every person be able to participate in judicial proceedings, access services, conduct business with the court, and engage as otherwise necessary for the administration of justice; and,

WHEREAS, after a hearing on [DATE] with the opportunity for public comment, the Board of County Commissioners adopts by this Resolution a policy that complies with COTA; and;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, WASHINGTON, HEREBY RESOLVE AS FOLLOWS:

Section 1. Whereas Clauses are Findings of Fact. The Jefferson County Board of Commissioners hereby adopts the above "Whereas" clauses as Findings of Fact.

Section 2. Purpose. The purpose of this resolution is to adopt a policy addresses civil arrests at court facilities and limits state and local engagement in federal immigration matters that complies with COTA.

Section 3. COTA Policy Adopted. The following policy is hereby adopted:

(a) In accordance with COTA, and in order to safeguard the public and to maintain the orderly operations of the court, the Jefferson Chief Civil Deputy Sheriff or their designee shall collect the following information from on-duty state and federal law enforcement officers entering the courthouse, including plain-clothed officers, unless such officer is present in or on courthouse facilities to participate in a case or proceedings before the court: name, badge number or other identifying information, agency, date, time, specific law enforcement purpose, and the proposed law enforcement action to be taken.

(b) The Jefferson Chief Civil Deputy Sheriff or their designee shall immediately transmit information collected pursuant to subsection (a) to the County Administrator or their designee. If the law enforcement officer's stated purpose is to conduct a civil arrest at the courthouse, the Jefferson Chief Civil Deputy Sheriff or their designee shall immediately advise the County Administrator or their designee.

(c) The County Administrator or their designee shall transmit information collected pursuant to subsection (a) to the Administrative Office of the Courts on a monthly basis.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or section of this Resolution or its application to any person or circumstance is held invalid, the remainder of this Resolution or its application to other persons or circumstances shall be fully valid and shall not be affected.

Section 5. SEPA Categorical Exemption. This Resolution is categorically exempt from the State Environmental Policy Act under WAC 197-11-800 (19).

Section 6. Effective Date. This Resolution shall take effect and be in full force immediately upon passage by the Board of County Commissioners.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

ADOPTED and APPROVED this _____ day of _____, 2024.

SEAL:

JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

_____
Heidi Eisenhour, Chair

_____
Greg Brotherton, Member

_____
Heather Nollette-Dudley, Member

ATTEST:

_____
Carolyn Gallaway, CMC Date

APPROVED AS TO FORM:

_____
Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

RCW 2.28.300

Definitions—Immigration enforcement and civil arrests.

The definitions in this section apply throughout this section and RCW 2.28.310 through 2.28.330 unless the context clearly requires otherwise.

(1) "Civil arrest" means the arrest of a person for an alleged violation of civil law. It is not an arrest for an alleged violation of criminal law, or for contempt of the court in which the court proceeding is taking place or will be taking place.

(2) "Court facility" means any building or space occupied or used by a court of this state, and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial and governmental spaces within court building property, and entrances and exits from said building or space.

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

(4) "Court security personnel" means law enforcement agencies and officers assigned to protect court facilities or to transport in-custody individuals to and from court proceedings and private agents contracted to provide security at court facilities.

(5) "Court staff" means any municipal, county, or state employees or contractors assigned to perform duties in court facilities, including but not limited to probation officers, court security personnel, court clerks, court administrators, interpreters, court facilitators, and bailiffs.

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

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

(8) "Judge" includes justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under Title 3 or 35 RCW, judges pro tempore, court commissioners, and magistrates.

(9) "Law enforcement action" includes but is not limited to observation of court proceedings, investigation, questioning, and arrests by law enforcement agents acting in their official capacity.

(10) "Nonpublicly available personal information" includes one or more of the following, when the information is linked with or is reasonably linkable, including via analytic technology, to the person's first name or first initial and last name: Location, home address, work address, place of birth, telephone number, social security number, driver's license number or Washington

identification card number, electronic mail address, social media handle or other identifying social media information, and any other means of contacting the person.

(11) "Prosecutor" means a county prosecuting attorney, a city attorney, or the attorney general.

(12)(a) "State law enforcement agency" means any agency of the state of Washington that:

(i) Is a general authority Washington law enforcement agency as defined in RCW **10.93.020**;

(ii) Is authorized to operate prisons or to maintain custody of individuals in prisons; or

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

(b) "State law enforcement agency" does not include any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state.

[**2020 c 37 s 2**.]

NOTES:

Findings—2020 c 37: "(1) The legislature finds that civil arrests in and around Washington's court facilities impede the fundamental mission of Washington's courts, which is to ensure due process and access to justice for everyone. The United States supreme court has recognized that "the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy," and that a state may therefore adopt measures necessary and appropriate to safeguarding the administration of justice by its courts. *Cox v. Louisiana*, 379 U.S. 559, 562 (1965). People access courts for many reasons, including to obtain domestic violence and sexual assault protection orders, obtain child support orders, seek back wages, pay traffic fines, apply for permits, answer and defend against criminal charges, answer and defend against eviction actions, testify in civil and criminal proceedings, and get married. The administration of justice depends upon all people having free and full access to the courts.

(2) The legislature further finds that civil arrests at Washington court facilities have created a climate of fear that is deterring and preventing Washington residents from safely interacting with the justice system. Victims cannot seek protection, families cannot enter into custody agreements, and those charged with crimes cannot mount a proper defense or be held accountable. Courts and lawyers cannot deliver the promise of equal access to justice and due process under law to community members who are precluded from accessing the courts. Therefore, it is essential that the state have policies providing safeguards protecting access to justice.

(3) The legislature further finds that it is imperative that all members of our community feel safe coming to, remaining at, and returning from Washington's courts. The United States supreme court has acknowledged that a state has "the power to preserve the property under its control for the use to which it is lawfully dedicated," and that "[t]here is little doubt that in some circumstances the Government may ban the entry on to public property that is not a 'public forum' of all persons except those who have legitimate business on the premises." United States v. Grace, 461 U.S. 171, 178 (1983). Accordingly, Washington may regulate entry and access to the courts, and activity on

courthouse premises and environs, that threatens the fair and nondiscriminatory administration of justice or the openness of courts. Additionally, the United States supreme court and the Washington supreme court have long recognized privileges against civil arrests for those attending court. In recognition of the harmful impacts of civil arrests in and around Washington courts, the legislature has a substantial and compelling interest in ensuring the courts in the state of Washington remain places where the rights and dignity of all residents are maintained and there is access to justice for all." [2020 c 37 s 1.]

Short title—2020 c 37: "This act may be known and cited as the courts open to all act." [2020 c 37 s 10.]

RCW 2.28.310

Immigration and citizenship information—Federal immigration authorities.

(1) Judges, court staff, court security personnel, prosecutors, and personnel of the prosecutor's office:

(a) Shall not inquire into or collect information about an individual's immigration or citizenship status, or place of birth, unless there is a connection between such information and an investigation into a violation of state or local criminal law; provided that a judge may make such inquiries as are necessary to adjudicate matters within their jurisdiction. The court may enter orders or conditions to maintain limited disclosure of any information regarding immigration status as it deems appropriate to protect the liberty interests of victims, the accused, civil litigants, witnesses, and those who have accompanied victims to a court facility; and

(b) Shall not otherwise provide nonpublicly available personal information about an individual, including individuals subject to community custody pursuant to RCW 9.94A.701 and 9.94A.702, to federal immigration authorities for the purpose of civil immigration enforcement, nor notify federal immigration authorities of the presence of individuals attending proceedings or accessing court services in court facilities, unless required by federal law or court order.

(2) RCW 2.28.300 through 2.28.330 do not limit or prohibit any state or local agency or officer from:

(a) Sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person, or maintaining such information, or exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency, in accordance with 8 U.S.C. Sec. 1373; or

(b) Complying with any other state or federal law.

[2020 c 37 s 3.]

NOTES:

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.320

Law enforcement actions in court facilities—Completion of information form—Notice to court staff.

(1) The governmental entity responsible for the security of a court facility, using the form described in subsection (2) of this section, shall collect the name of the law enforcement officer, agency, date, time, specific law enforcement purpose, and the proposed law enforcement action to be taken by all on-duty state and federal law enforcement officers, including plain-clothed officers, entering court facilities, unless such officer's purpose is to participate in a case or proceeding before the court. Completed forms must be immediately transmitted to the appropriate court staff. Information collected must not include personal identifying information concerning the individuals who were the target of the law enforcement action, and to the extent such individuals are identified, they must be identified by the initials of their first and last names. Completed forms must be transmitted to the administrative office of the courts on a monthly basis.

(2) The administrative office of the court [courts] shall develop a standard form to collect the information in subsection (1) of this section. The form must be developed no later than July 1, 2020. The administrative office of the courts shall publish a quarterly report of the information collected in subsection (1) of this section beginning October 1, 2020.

(3) Designated court staff must be notified without delay if a law enforcement agent covered by this section is present in the court facility with the intent of conducting a civil arrest.

[2020 c 37 s 4.]

NOTES:

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.330

Privilege from civil arrest—Court facilities.

(1) No person is subject to civil arrest while going to, remaining at, or returning from, a court facility, except:

(a) Where such arrest is pursuant to a court order authorizing the arrest;

(b) When necessary to secure the immediate safety of judges, court staff, or the public; or

(c) Where circumstances otherwise permit warrantless arrest pursuant to RCW 10.31.100.

(2) For purposes of this section, "going to" and "returning from" includes the area within one mile of the court facility.

(3) Prior to any civil arrest in or on a court facility authorized by subsection (1)(a) of this section, a designated judicial officer shall review a court order authorizing any civil arrest to confirm compliance with subsection (1)(a) of this section.

(4) Nothing in this section narrows, or in any way lessens, any common law or other right or privilege of a person privileged from arrest pursuant to RCW 2.28.300 through 2.28.320 or otherwise.

[2020 c 37 s 5.]

NOTES:

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.340

Applicability of courts open to all act.

RCW 2.28.300 through 2.28.330 apply to the following courts: The supreme court, the courts of appeal, the superior courts, and to the courts of limited jurisdiction of this state, including district and municipal courts.

[2020 c 37 s 6.]

NOTES:

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 43.17.420

Immigration and citizenship status—Definitions.

The definitions in this section apply throughout this section and RCW 43.330.510, 43.10.310, 43.17.425, 10.93.160, and 43.10.315, and sections 8 and 9, chapter 440, Laws of 2019 unless the context clearly requires otherwise.

(1) "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 issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the national crime information center database.

(2) "Court order" means 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 warrants and subpoenas.

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

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

(5) "Hold request" or "immigration detainer request" means a request from a federal immigration authority, without a court order, that a state or local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to a federal immigration authority. A "hold request" or "immigration detainer request" includes, but is not limited to, department of homeland security form I-247A or prior or subsequent versions of form I-247.

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

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

(8) "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.

(9) "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.

(10) "Local law enforcement agency" means any agency of a city, county, special district, or other political subdivision of the state that is a general authority Washington law enforcement agency, as defined by RCW 10.93.020, or that is authorized to operate jails or to 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.

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

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

(13) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board and all institutions of higher education as defined in RCW 28B.10.016.

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

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

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

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

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

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

[2019 c 440 s 2.]

NOTES:

Findings—Construction—Conflict with federal requirements—Effective date—2019 c 440: See notes following RCW 43.17.425.

RCW 43.17.425

Immigration and citizenship status—State agency restrictions.

(1) Except as provided in subsection (3) of this section, no state agency, including law enforcement, may use agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or

enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin. This subsection does not apply to any program with the primary purpose of providing persons with services or benefits, or to RCW 9.94A.685.

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

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

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

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

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

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

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

(b) In response to a lawfully issued court order;

(c) Necessary to perform agency duties, functions, or other business, as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement;

(d) Required to comply with policies, grants, waivers, or other requirements necessary to maintain funding; or

(e) In the form of deidentified or aggregated data, including census data.

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

(5) The following state agencies shall begin implementation of this section within twelve months after May 21, 2019, and demonstrate full compliance by December 1, 2021:

(a) Department of licensing;

(b) Department of labor and industries;

(c) Employment security department;

(d) Department of revenue;

(e) Department of health;

(f) Health care authority;

(g) Department of social and health services;

(h) Department of children, youth, and families;

(i) Office of the superintendent of public instruction;

(j) State patrol.

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

(a) Department of agriculture;

(b) Department of financial institutions;

(c) Department of fish and wildlife;
(d) Department of natural resources;
(e) Department of retirement systems;
(f) Department of services for the blind;
(g) Department of transportation.
[2019 c 440 s 5.]

NOTES:

Findings—2019 c 440: "(1) The legislature finds that Washington state has a thriving economy that spans both east and west, and encompasses agriculture, food processing, timber, construction, health care, technology, and the hospitality industries.

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

(3) In recognition of this significant contribution to the overall prosperity and strength of Washington state, the legislature, therefore, has a substantial and compelling interest in ensuring 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." [2019 c 440 s 1.]

Construction—2019 c 440: "No section of this act is intended to limit or prohibit any state or local agency or officer from:

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

(2) Complying with any other state or federal law." [2019 c 440 s 8.]

Conflict with federal requirements—2019 c 440: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2019 c 440 s 9.]

Effective date—2019 c 440: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 21, 2019]." [2019 c 440 s 12.]

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

Washington State Office
of the Attorney General
BOB FERGUSON

May 2020

Originally Published
May 2020

About the Washington State Office of the Attorney General

Mission: The Office of the Attorney General will provide excellent, independent, and ethical legal services to the State of Washington and protect the rights of its people.

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

Values: All staff in the Office of the Attorney General are guided by the following core values:

- 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.

Disclaimer

The information in this publication is provided as a resource for general education purposes and is not provided for the purpose of giving legal advice of any kind. This publication does not constitute a formal legal opinion of the Office of the Attorney General. Individuals should seek legal counsel or assistance before relying on the information in this publication regarding specific applications of the laws.

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) 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 courthouses. Its guidance includes model policies, and training and best practices recommendations intended to assist judicial officers, courthouse personnel, and local government officials in understanding and implementing policies consistent with the new law and to help ensure that all residents, regardless of citizenship status, have full access to the justice system.

Courthouses are critical institutions. In its mission to protect the liberties guaranteed by the Constitution and the laws of the state of Washington and the United States, the judicial branch of Washington has a particular responsibility to provide safe and secure access for all residents regardless of immigration status. When immigrants cannot openly participate in our legal system because of fear of deportation, we are all less safe. Unpunished crime threatens us all, and no one is safer when immigrant crime victims and witnesses refuse to come to the courthouse out of fear of deportation. Effective implementation of the guidance set forth in this publication will protect the rights of all Washingtonians and improve community safety by ensuring full participation in our legal system. I thank the judicial officers and local governmental leaders responsible for operating Washington's courthouses for leading this effort.

Sincerely,

Bob Ferguson
Washington State Attorney General
May 21st, 2020

Contents

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 session[1] 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 addressing the extent to which state and local agencies may participate in the enforcement of federal immigration laws.[3] The Legislature further declared passage of KWW as 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 courthouses, for "limiting immigration enforcement to the fullest extent possible consistent with federal and state law … to ensure [courthouses] 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 the judicial branch, local governments, and community stakeholders across the state.

The model policies and guidance in this publication represent policy adaptations from these conversations, along with research of the best national practices across courts. They are intended to assist Washington judicial personnel and local governmental officials responsible for the management of courthouse facilities and compliance with KWW's requirements. Adoption of these model policies will best allow Washington courthouses to focus their resources on their distinct mission of ensuring equal access to justice for all individuals, while leaving immigration enforcement efforts to the federal government.

Personnel responsible for Washington courthouses should incorporate the legal requirements established in the Courts Open to All Act (COTA),[6] enacted by the Washington Legislature during the 2020 Legislative Session, in conjunction with the KWW model policies and guidance set forth in this publication. Similar to these model policies and guidance, COTA addresses civil arrests at court facilities and limits state and local engagement in federal immigration matters. Courthouse personnel should review the obligations created in COTA and adopt or amend their policies as needed.

---

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.*, § 1(3) (codified as a note following 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.

6 SHB 2567, Laws of 2020 ch. 37.

B. Adoption of Model Policies and Guidance

The model policies in this publication address data collection and transmission, incident reporting, training, and ensuring safe access to courthouse facilities. Effective implementation of the model policies can help foster a relationship of trust between local agencies and the communities they serve and help promote public safety for all Washingtonians.

Consistent with the requirements set forth in the law, KWW requires all Washington courthouses to adopt policies consistent with those published here. If any jurisdiction decides to not adopt the required policies, it must notify the AGO that (1) it is not adopting the necessary changes, (2) state the reasons why it is not doing so, and (3) provide the AGO with a copy of its courthouse policies that ensure compliance with KWW.[7] To submit copies of a jurisdiction's policies, please visit www.atg.wa.gov/publications.

The Legislature did not define the term "courthouse" within KWW. However, with the passage of COTA, the Legislature defined "court facility" to include all of the buildings within a court campus, including those operated by other governmental entities.[8] Moreover, most local courthouses themselves are owned by the local executive authority and leased to the court for use. Courthouse judicial officers and local governmental officials thus both have obligations under the KWW to adopt the published model policies applicable for their jurisdictions. This will necessitate considerable coordination between the local judicial branch and legislative authority. Given the diversity of actors in the justice system, it is appropriate for each local jurisdiction to determine the most effective mechanism for internal review and adoption of the policies herein. However, the local legislative authority in each jurisdiction should—in collaboration with their jurisdiction's presiding judicial officer(s)—promptly convene a committee or work group to review and adopt policies so that the jurisdiction complies with KWW.

Jurisdictions should implement an expeditious review process of this publication such that adoption of the model policies and guidance may be initiated immediately. The Legislature declared an emergency when passing KWW, putting the law into immediate effect.[9] 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. However, timely review and adoption of the model policies, training and best practices recommendations will help ensure the requirements established in the law are met.

Regardless of the particular processes used to review and adopt the required model policies, each jurisdiction must provide a copy of any differing policies to the AGO as set forth above. The model policies include placeholders for each jurisdiction to insert its title or specific information, including "[Courthouse]" for its courthouse name. These placeholders should be filled in with the proper terms or titles of the specific courthouse personnel who have been designated with responsibility for those provisions of the policy. This publication also includes definitions that should accompany adoption of any of the model policies or guidance herein.

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

---

7 RCW 43.10.310(2)(b).
8 SHB 2567, Laws of 2020 ch. 37 § 2(2).
9 Effective date—2019 c 440 *in* RCW 43.17.425.

C. Legal Overview & Recommendations for Training & Best Practices

The AGO's legal overview, and recommendations for training and best practices are aids to guide and assist jurisdictions with implementing the model policies for their courthouses. The AGO considered evidence-based practices that promote public participation with the judicial branch, emerging programs with promising results, and existing programs to develop these aids. While some training on these issues currently exists, consistent training across the state will best ensure that the requirements in KWW are met.

D. Appendix

This publication contains several references to official forms and documents, including types of federal administrative requests, court orders, and warrants. These forms and documents can be found in the appendix to 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 KWW,[10] COTA,[11] 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 ICE Form I-200 (Warrant for Arrest of Alien),[12] Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.[13]

- "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.

- "Courthouse personnel" means any municipal, county, or state employees or contractors assigned to perform duties in court facilities, including but not limited to probation officers, court security personnel, court clerks, court administrators, interpreters, court facilitators, and bailiffs.

- "Courthouse security personnel" means law enforcement agencies and officers assigned to protect court facilities or to transport in custody individuals to and from court proceedings and private agents contracted to provide security at courthouse facilities.

- "Courthouse facilities" means any building or space occupied or used by a court of this state, and adjacent property, including but not limited to sidewalks, all parking areas, grassy or other natural areas, plazas, court-related offices, commercial and governmental spaces within court building property, and entrances and exits from said building or space.

---

10 RCW 43.17.420.
11 SHB 2567, Laws of 2020 ch. 37 § 2.
12 Example of Form I-200 is in Appendix B.
13 Example of Form I-205 is in Appendix C.

- "Federal immigration authority" means any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), U.S. 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.

- "Hold request" or "immigration detainer request" means a request from a federal immigration authority, without a court order, that a state or local law enforcement agency maintain custody of an individual beyond the time the individual would otherwise be eligible for release in order to facilitate transfer to a federal immigration authority. A "hold request" or "immigration detainer request" includes, but is not limited to, DHS Form I-247A (Immigration Detainer–Notice of Action) or prior or subsequent versions of form I-247.[14] Detainers issued on ICE Form I-247 are not court orders.

- "Immigration detention agreement" or "IGSA" means any contract, agreement, intergovernmental service agreement, or memorandum of understanding that permits a state or local law enforcement agency or officer to house or detain individuals for federal civil immigration violations.

- "Immigration or citizenship status" means such status as has been established to such individual under the Immigration and Nationality Act.

- "Judge" or "Judicial Officer" includes justices of the Supreme Court, judges of the court of appeals, judges of the superior courts, judges of any court organized under Title 3 or 35 RCW, judges pro tempore, court commissioners, and magistrates.

- "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.

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

- "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.

- "Necessary to perform duties" means that, after following appropriate procedures to verify a course of action, no reasonably effective alternative appears to exist that would enable the performance of one's legal duties and obligations.

- "Notice to appear" or "NTA" means the charging document issued by ICE, CBP, or the USCIS seeking to commence formal removal proceedings against an individual before a federal immigration court (reflected in DHS Form I-862).

- "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.

- "Personal information" means names, date or place of birth, addresses, GPS (global positioning system) 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 information" does not include immigration or citizenship status.

- "Sensitive location" refers to the 2011 U.S. Immigration and Customs Enforcement (ICE) and 2013 Customs and Border Enforcement (CBP) policies which categorize certain locations as sensitive locations that should generally be avoided for immigration enforcement purposes.

- "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(2), all Washington state courthouses shall either (a) adopt the necessary changes to their courthouse policies consistent with the following model policies, or (b) notify the Office of the Attorney General that they are not adopting the changes, state the reasons that they are not adopting the changes, and provide the Office of the Attorney General with a copy of its policies that ensure compliance with KWW. Prior to adoption, courthouse and local governmental officials 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 of this publication should be adopted in conjunction with adoption of the model policies.

A. Legal Authority

1. [Courthouse] adheres to all requirements of state law, including the Courts Open to All Act (COTA), SHB 2567, Laws of 2020 ch. 37. [Courthouse] further adheres to all Washington State Court Rules, including General Rule 38, Open Access to Courts.

2. The provisions of this policy apply to [Courthouse] and all court facilities, which include (but are not limited to) adjacent sidewalks, parking areas, grassy areas, plazas, court-related offices, commercial and governmental spaces within court building property, and entrances and exits from said building spaces.

3. [Courthouse]'s policies prohibiting participation or aid in immigration enforcement shall apply to enforcement activity against members of the public and staff.

4. [Courthouse] personnel shall presume that federal immigration authorities are engaged in immigration enforcement.

B. Access to [Courthouse]

1. [Courthouse] recognizes that the Washington judicial branch is founded upon the fundamental principle that courts shall be accessible to all persons. Ensuring access to justice requires that all courthouses remain spaces that are open to the public and that every person be able to participate in judicial proceedings, access services, conduct business with the court, and engage as otherwise necessary for the administration of justice.

2. In accordance with COTA, and in order to safeguard the public and to maintain the orderly operations of the court, [designated courthouse security] shall collect the following information from on-duty state and federal law enforcement officers entering courthouse facilities, including plain-clothed officers, unless such officer is present in or on courthouse

facilities to participate in a case or proceedings before the court: name, badge number or other identifying information, agency, date, time, specific law enforcement purpose, and the proposed law enforcement action to be taken.

3. [Designated courthouse security] shall immediately transmit collected information to [designated courthouse personnel]. If the law enforcement officer's stated purpose is to conduct a civil arrest at the courthouse facility, courthouse security shall immediately advise [designated courthouse personnel].

4. [Designated courthouse personnel] shall transmit collected information to the Administrative Office of the Courts on a monthly basis.

C. Civil Arrests at or Near Courthouse Facilities

1. [Courthouse] personnel shall not aid in or support any person being subject to arrest or having their freedom restricted or hindered solely for a civil immigration offense while present in, going to, or returning from [Courthouse], including within one mile of the courthouse facility, except (a) by valid court order or judicial warrant, (b) when it is necessary to secure the immediate safety of judges, courthouse personnel or the public, (c) where circumstances otherwise permit warrantless arrest pursuant to RCW 10.31.100, or (d) where the court has issued a writ or other order setting forth additional conditions to address circumstances specific to an individual or other relevant entity.

D. Gathering Information Related to Immigration or Citizenship Status

1. [Courthouse] personnel shall not inquire about, request, or collect from any person information about the immigration or citizenship status, or place of birth of any person accessing services provided at the courthouse, unless there is a connection between such information and an investigation into a violation of state or local criminal law, provided that a judge may make such inquiries as are necessary to adjudicate matters within their jurisdiction. [Courthouse] recognizes that judicial officers may enter orders or conditions to maintain limited disclosure of any information regarding immigration or citizenship status, or place of birth as they deem appropriate to protect the liberty interests of crime survivors, the accused, civil litigants, witnesses, and those accompanying crime survivors to a courthouse facility.

2. [Courthouse] records of information regarding a person's immigration or citizenship status, or place of birth, shall be aggregated or de-identified from the individual, unless otherwise required by law. [Courthouse] personnel maintaining said information in any other way shall report their retention procedure and basis to [designated courthouse personnel] prior to collecting the information.

E. Responding to Requests for Information

1. [Courthouse] personnel shall not provide personal information to any person or entity for immigration enforcement purposes, unless: (1) in the same method by which such information is available to the public; or (2) subject to a court order or otherwise required by state or federal law. [Courthouse] personnel shall complete training to become familiar with the different types of documents used for information requests and how to respond to the different types of requests, including compliance with 8 U.S.C. § 1373 (Section 1373).

F. Use of Courthouse Resources

1. [Courthouse] personnel shall not use any courthouse resources, including facilities and staff, to investigate, enforce, or assist with federal immigration enforcement absent a court order or judicial warrant or as otherwise required by state or federal law.

2. [Courthouse] does not grant permission to any person engaging, or intending to engage, in immigration enforcement to access the nonpublic areas of the courthouse facilities, property, equipment, or databases. [Courthouse] personnel shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement. If [Courthouse] personnel receive a court order or judicial warrant authorizing immigration enforcement activity to occur in any nonpublic areas of the courthouse facilities, [Courthouse] personnel shall immediately contact [designated courthouse personnel] to determine the appropriate course of action.

3. Before authorizing access to any nonpublic areas, the [designated courthouse personnel] 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. Identifying the citation to the federal law violation for which the court order was issued;
    c. Identifying which U.S. District Court issued the order;
    d. Verifying that the order includes the correct date and location for enforcement; and
    e. Confirming that a U.S. District Court Judge or Magistrate's signature is on the order.

4. All [Courthouse] contracts, partnerships, and programs between the [Courthouse] and other public or private entities, including leases, agreements, and memorandums of understanding, shall be consistent with [Courthouse] policies, including provisions protecting personnel and the public from immigration enforcement, and state law, including the Courts Open to All Act, SHB 2567, Laws of 2020 ch. 37. [Courthouse] contracts, including leases, memorandums of understanding, and agreements, shall address compliance with [Courthouse] policies and state law, including the Courts Open to All Act, SHB 2567, Laws of 2020 ch. 37, by all parties and third parties.

5. [Courthouse] data use/sharing contracts, including leases, agreements and memorandums of understanding, shall include provisions limiting permissible use of [Courthouse] data, including limits to sharing [Courthouse] data with any third parties; audit provisions; and remedies for noncompliance.

Part IV:
Overview of Relevant State & Federal Laws

While the Keep Washington Working Act, chapter 440, Laws of 2019, requires courthouses 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 courthouses and local governments should consider when adopting the model policies. Courthouses and local governmental officials 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*, 921 F.3d 865, 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*, No. 19-532, 2019 WL 5448580 (U.S. Oct. 22, 2019) (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. Open Access to Washington Courts

Providing all people, regardless of immigration or citizenship status, with open access to the courts and fair trials is a foundational principle of Washington law. Indeed, the First Amendment and Article I, Section 10 of the Washington Constitution guarantee the right of the public to openly administered justice. Additionally, the Sixth Amendment and Article I, Section 22 of the Washington Constitution guarantee all accused persons a public trial. The intent of the law is plain—all persons, including those without legal status, should feel secure entering a courthouse or filing documents in state court—even those who may be vulnerable to deportation. The judicial branch relies on people coming forward in order for it to function. Ensuring the sanctity of these principles are vital for equal justice for all. To that end, the Washington Supreme Court adopted new General Rule 38 in 2020 that directs Open Access to Courts.

C. Judicial Authority to Control Courtroom Proceedings

It is well-established that state courts and judicial officers have the power to preserve and enforce order in their presence and over the conduct of judicial proceedings.[26] Further, judges have the power to control, in furtherance of justice, the conduct of their ministerial officers and of all other persons connected with their judicial proceedings.[27] And they may punish for contempt in order to effectually exercise their power.[28] While courtroom conduct shall be controlled by the judge presiding over the courtroom proceedings, it is the responsibility of the presiding judge to "supervise the judicial business" of the court, including overseeing court security to ensure a "safe courthouse environment is fundamental to the administration of justice."[29] Thus, to the extent that any activity within the courtroom obstructs judicial proceedings, local jurisdictions and judges may use their statutory and inherent authority to enforce order. Finally, many who work within courthouses such as prosecutors, security, public defenders, and most court clerks are part of the executive branch of local government and are thus subject to their own office policies that address enforcement of federal civil immigration laws.[30] Therefore, local governments are obliged to adopt the AGO's model policies and guidance in order to ensure their courthouses are operating in compliance with KWW.

D. 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

24 *Id.* at 892.
25 Construction—2019 c 440, Conflict with federal requirements—2019 c 440 *in* RCW 43.17.425.
26 *See, e.g.*, RCW 2.28.010, .060.
27 *Id.*
28 RCW 2.28.020, .070; Chapter 7.21 RCW.
29 GR 29(a)(1), 36. Copies of GR 36 and GR 38 are in Appendix E.
30 *See, e.g.*, Wash. Exec. Order No. 17-01, ¶ 8 (2017); *see also Judges of Benton and Franklin Counties Superior Court v. Killian*, No. 96821-7, slip. op. 11-12 (Wash. Mar. 19, 2020) (county clerks follow judicial direction when performing in-court duties, but operate independently as to out-of-court duties).

facilities.[31] 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. However, despite the concerns expressed by judicial officials in Washington state[32] and elsewhere, courthouses are not identified as sensitive locations under either policy. Instead, as set forth in a January 2018 directive, ICE continues to conduct civil immigration enforcement actions within courthouses.[33] The directive states that enforcement actions within courthouses will include "actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed" when such persons are believed to be at the courthouse location.[34] The directive further states that other undocumented persons encountered during enforcement actions, including family members and friends accompanying someone targeted by the agency or persons serving as witness, will generally not be subject to enforcement actions.[35]

Given this guidance, Washington courthouses and local governmental officials should be aware that enforcement actions within their facilities are likely to continue to occur. Adoption and adherence to the model policies in this publication will help instruct personnel how to respond to such activities. Additionally, ICE and CBP policies can be amended or revoked at any time.

E. Evidentiary Rules Regarding Disclosing Immigration Status

Washington law protects against the use of information regarding a person's immigration status in court proceedings.[36] As such, in 2017 the Supreme Court adopted Evidence Rule 413, which generally makes evidence of immigration status inadmissible in criminal and civil matters.

---

31 *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) and in Appendix F; 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 G.

32 Following incidents of immigration agents' presence at Washington State courthouses, former Chief Justice of the Washington State Supreme Court Mary E. Fairhurst penned letters, one in 2017 to former Secretary of Homeland Security John Kelly, and one in 2019 to former CBP Commissioner Kevin K. McAleenan, expressing concerns that federal immigration enforcement activity at courthouses curtails the capacity of courts to function properly. The Washington Supreme Court, March 22, 2017 letter available online at https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf (last visited May 14, 2020) and in Appendix H; May 18, 2019 letter available online at https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KevinMcAleenanUSCustomsBorderProtection041519.pdf (last visited May 18, 2020) and in Appendix I. In 2008, the King County Superior Court Judges approved a policy that warrants for arrests of individuals based on immigration status shall not be executed within any King County Superior Court courtrooms unless ordered by the presiding judicial officer. A copy of the policy is in Appendix J.

33 *See* Homan, ICE Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses, Jan. 10, 2018, available online at https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf (last visited May 18, 2020). A copy of the Directive is available at Appendix K.

34 *Id.*

35 *Id.*

36 *See Salas v. Hi–Tech Erectors*, 168 Wn.2d 664, 672 (2010) ("[I]mmigration is a politically sensitive issue [and that i]ssues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder's duty to engage in reasoned deliberation.").

For criminal matters, under Evidence Rule 413, courts may only admit evidence of a party's or a witness' immigration status if that information is an essential fact to prove an element of, or a defense to, the criminal offense charged, or to show bias or prejudice of a witness.[37] Prior to any of these proposed uses, a pre-trial motion must be made and include an offer of proof of relevancy. The motion must be accompanied by one or more affidavits stating the offer of proof, and if the court finds the offer sufficient, the court must order a hearing outside the presence of the jury. The court must then find the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status, before admitting the evidence of immigration status for the stated purpose.

For civil matters, except in post-trial proceedings, evidence of a party's or a witness' immigration status "shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action."[38] For post-trial proceedings, immigration status information may be submitted through a post-trial motion where (a) a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings; or (b) a party was awarded reinstatement to employment. The court must conduct an in camera review of the evidence if a party seeks to use or introduce this evidence. The motion, related papers, and record of such review may be sealed pursuant to General Rule 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

F. Use of Pseudonyms

In Washington, under certain circumstances, parties may also use pseudonyms to avoid revealing their immigration status.[39] Courts have primarily, though not exclusively, limited this to proceedings in which parties' names and association to respective crimes are not already in the public record.[40] In some instances, witnesses may also be identified by pseudonyms in open court and in court documents.[41] Courts may restrict disclosure of the identity of individuals based upon the applicable balancing of factors for the case, and in accordance with applicable legal standards.[42]

---

37 ER 413(a).

38 ER 413(b).

39 RCW 10.52.100; RAP 3.4; General Order of Division II, 2011-1; General Order of Division III (June 18, 2012); *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 522 (2013) (adult proceeding under pseudonym in appeal); *In re Welfare of M.T.*, 69 Wn. App. 380, 381 (1993) (same).

40 *See John Doe v. Grp. Health Coop., of Puget Sound, Inc.*, 85 Wn. App. 213 (1997) (employee brought Uniform Health Care Information Act and invasion of privacy claims over health care provider's disclosure of name and consumer numbering in training exercise on processing mental health claims); *Jane Doe v. Boeing Co.*, 64 Wn. App. 235 (1992) (transgender employee sued employer for disability discrimination), *rev'd on other grounds*, 121 Wn.2d 8 (1993); *John Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106 (1989) (plaintiffs with AIDS brought class action suit against producers and distributors of blood products); *Jane Doe v. Fife Mun. Court*, 74 Wn. App. 444 (1994) (class of plaintiffs charged with alcohol-related offenses sought to recover court costs); *John Doe v. Dep't of Transp.*, 85 Wn. App. 143 (1997) (sexual harassment suit by ferry worker); *Jane Doe v. Corp. of President of Church of Jesus Christ of Latter-Day Saints*, 141 Wn. App. 407 (2007) (plaintiffs sued stepfather and church over alleged sexual abuse by stepfather).

41 *See State v. Keys*, 171 Wn. App. 1007, n.1 (2012) (using pseudonym for child witness).

42 *See, e.g., Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 200 (2018) (noting Washington courts have allowed "pseudonymous litigation" but that "in some circumstances this court has still required a showing that pseudonymity was necessary"). The Washington Constitution has also been found by courts to provide all people within the State with a right to privacy. Wa. Const. art. I, §7; *State v. Brelvis Consulting*

G. Washington Safety and Access for Immigrant Victims Act

Washington law provides additional protections for crime survivors. Washington's Safety and Access for Immigrant Victims Act (SAIVA) ensures that immigrant crime survivors can access the protections available to them under the law by supporting greater consistency across law enforcement, prosecution, and the courts.[43] As stated in the Act's findings, out of fear, immigrants are frequently reluctant to contact or cooperate with law enforcement or governmental agencies when they are crime victims.[44] Immigration law contains protections for survivors of crime and human trafficking to encourage collaboration with these agencies. However, ensuring that *all* crime survivors can access the protections available to them under the law is in the best interest of survivors, law enforcement, and community safety.

To accomplish this, the Act requires the development and implementation of training to law enforcement, prosecutors, victim advocates, courthouse personnel, state agency personnel and others on U and T nonimmigrant visas,[45] legal protections for immigrant survivors of crime, and other promising practices for working with immigrant crime survivors.[46] The Act also requires agencies to provide outreach, education, and information for immigrant crime survivors about the protections available to them.[47]

The Act further requires state and local law enforcement agencies, prosecutors, administrative judges, hearing officers, or other authorities to issue certifications in support of visas.[48] For a "U visa certification," an agency must certify the helpfulness of survivors of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918, Supplement B).[49] For a "T visa certification," the agency must certify on a USCIS form (Form I-914, Supplement B), whether the survivor is or has been a victim of trafficking and, unless the survivor is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she is a survivor.[50]

A certifying agency shall process the certification within ninety days of receiving a request, unless the survivor is in federal immigration removal proceedings or they, or their children, will reach age twenty-one within ninety days after the certifying agency receives the certification request (thereby risking lost benefits under 8 U.S.C. Sec. 1184 (o) and (p)), in which case the certifying agency shall execute the certification no later than fourteen days after receiving the request.[51] A certifying official may withdraw a previously granted certification only if the victim unreasonably refuses to provide information and assistance when reasonably requested.[52] Further, a certifying agency, such as a prosecutor or judge, is prohibited from disclosing "personal identifying information" or information regarding the immigration or citizenship status of any survivor of criminal activity or trafficking who has requested certification, unless required to do so by federal law or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian.[53]

LLC, 7 Wn. App. 2d 207, 226 (2018), *amended on reconsideration* (Mar. 12, 2019). Whether there is an intrusion into this right likely necessitates a case by case evaluation, balancing historical privacy interests and whether there is an expectation of privacy that people in the state should be entitled to hold. *See Am. Legion Post #149 v. Washington State Dep't of Health*, 164 Wn.2d 570, 598 (2008).

43 Chapter 7.98 RCW.

44 RCW 7.98.005.

45 U and T visas provide temporary legal status for persons who are victims of certain crimes and human trafficking, respectively.

46 RCW 7.98.020.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

PART V:
TRAINING RECOMMENDATIONS & BEST PRACTICES GUIDANCE

Under Washington law, Washington courthouse facilities must be safe and secure for everyone to access the courthouse, regardless of their immigration or citizenship status. KWW aims to meet that obligation by limiting engagement by courthouse personnel in federal immigration enforcement activities. The guidance and recommendations in this section provide proactive approaches courthouses may use (or in some cases, are already using), to implement the model policies, to comply with federal, state, and local law, and to increase access and participation by the public.

A. Training for Courthouse Personnel

The AGO recommends that all Washington courthouse personnel are fully trained to understand and carry out the model policies and practices adopted by their respective jurisdictions. At a minimum, training should be required for courthouse security personnel, the court clerk and clerk's office personnel, any other personnel responsible for maintaining judicial records, and all Washington state judicial officers and their staffs. To the extent that jurisdictions have already developed and/or adopted curricula equal to or greater than those outlined below, this guidance is not intended to displace those efforts. Instead, these training areas reflect a baseline of information that courthouse personnel should have in order to adequately implement the model policies within this guide. Each local jurisdiction may wish to include additional topics.

1. Responding to Immigration Enforcement Activities

Training in responding to and documenting immigration enforcement activity or inquiry at the courthouse is a priority. Courthouse personnel must also be prepared to determine the appropriate response for any potential disclosures of information, including personnel's ability to communicate with the appropriate [designee, team, presiding judge, counsel] authority as emerging incidents occur and assistance is needed. Courthouse personnel will develop working knowledge in the different types of documents that may be presented for the purpose of immigration enforcement. In particular, training programs should train personnel on the following:

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

b. The ability to identify nonpublic, restricted locations within the courthouse facilities 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 at the courthouse.

2. The Washington Safety and Access for Immigrant Victims Act: U & T Visa Certification Requirements

As discussed above, federal law provides specific immigration status for certain people who are victims of certain crimes or human trafficking.[54] The 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.[55]

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.[56] 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.[57]

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:

a. Certification forms requested;

b. Certification forms signed;

c. Certification forms denied; and

d. Certification forms withdrawn.

Courthouse personnel responsible for carrying out these functions should therefore become familiar with the SAIVA requirements and follow any recommendations or guidance from the Crime Victim

54 8 U.S.C. § 1101(a)(15)(T), (U).
55 Chapter 7.98 RCW.
56 RCW 7.98.020.
57 *Id.*

Certification Steering Committee and provide feedback to the Office of Crime Victim Advocacy.[58]

3. Anti-bias Training

Social science has produced substantial evidence that all individuals experience some form of implicit bias that can affect interactions and decisions due to a host of characteristics including race, ethnicity, gender identity or expression, sexual orientation, religion, and socio-economic status. Social science also indicates that the effects of these biases can be countered through training. Given the fundamental role of fairness in court proceedings, increasing training for all courthouse personnel is important to ensure equal justice is provided under the law.

B. Strategies to Provide Greater Access to the Courts

1. Language Access

Meeting the needs of Washington residents' diverse languages is critical to ensuring equal access to justice and to the services connected to court proceedings. Many state and local court facilities receive direct or indirect funding from the Department of Justice or other federal agency. Recipients of such federal assistance must comply with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin. In 2000, Executive Order 13166 created guidance and obligations for recipients of federal assistance to ensure meaningful access by Limited English Proficiency persons (LEP). Courthouse personnel should contact the Administrative Office of the Courts (AOC) as needed for the creation or procurement of language accessible forms or programming.[59]

Courthouses should additionally ensure all information regarding facilities and services is accessible online and updated routinely. To the extent practical and required by law, court websites should include non-English translations.

2. Remote Access Options

Physical access to courthouse facilities is a priority within these model policies and a right for the public. However, many jurisdictions in Washington and across the country are exploring alternatives to increase accessibility to services. Digital access to forms and services is becoming more prevalent across various state agencies, and technology is increasingly available that would support remote access. Given that many Washington courthouses already use this technology, these methods offer assistance with continuity of access in digital spaces across the state and can be used regardless of a person's immigration or citizenship status. While the AGO is not endorsing any specific technology, there are benefits to expanding digital access to courthouse resources and services to supplement efforts to protect physical access to facilities. In tandem with the positive effects of digital access to courts, courthouses should also be mindful of possible inequities in digital access based on

58 *See* Wash. State Dep't of Commerce, *Safety and Access for Immigrant Victims Program*, available online at *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 19, 2020) for feedback and reporting instructions, forms, and Steering Committee meeting minutes.

59 *See* Chapter 2.42 RCW.

socio-economic standing, language access, age and/or disability, or other impediments to equal participation.[60] In addition, digital access to courthouse facilities does not reduce the challenges of safeguarding privacy. Precautions must be taken by courts that choose to explore remote access to their facilities to protect data privacy and the interests of the parties appearing in their court proceedings.

3. Preventing Failures to Appear in Court

Vulnerable populations may be subject to disproportionate penalties through missed court dates, such as warrants for arrest that may become grounds for a criminal arrest and result in immigration enforcement actions. Further, adequately notifying residents of required court attendance, court deadlines, or other pending obligations allows individuals to make arrangements should they need to request accompaniment services, legal services, or language access. In addition, individuals may need additional time arranging emergency plans, such as designating an appropriate guardian for their children, should a family separation occur.

Therefore, an additional strategy to increase access to the court is the use of supplemental communication tools, such as phone, email, text message and other digital notifications of court dates,[61] to prevent failures to appear in court. Pilot programs across the country[62] show promising results for increasing court attendance using digital notifications (in addition to traditional mailed reminders) for those scheduled to appear. These techniques are helpful for all people utilizing court services, but play an especially important role for vulnerable communities, including immigrants and indigent populations.

4. Waiving Unnecessary In-Person Court Appearances

Washington courts should further consider circumstances in which waiver of personal appearance in court by a party may be permissible. Currently, Washington court rules allow for such a waiver in limited circumstances.[63] There may be additional hearings in both criminal and civil proceedings where it is unnecessary for a party to personally appear and a party has consented to representation during the proceeding through counsel.

---

60 For example, courts should consider these factors when determining whether pretrial confinement should take place in facilities that limit visitation to paid video contact.

61 Urban Labs, University of Chicago, *Using Behavioral Science to Improve Criminal Justice Outcomes*, available online at https://urbanlabs.uchicago.edu/attachments/3b31252760b28d3b44ad1a8d964d0f1e9128af34/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/I42-954_NYCSummonsPaper_Final_Mar2018.pdf (last visited May 18, 2020) (full report by the University of Chicago Crime Lab documenting the efficacy of such tools).

62 National Center for State Courts, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*, available online at https://www.ncsc.org/~/media/Microsites/Files/PJCC/PJCC%20Brief%2010%20Sept%202017%20Court%20Date%20Notification%20Systems.ashx (last visited May 18, 2020) (a 2017 brief containing pilots of pretrial notification programs, including King County's pretrial notification system).

63 *See, e.g.*, CrR 3.4; CrRLJ 3.4

C. Facilitating Access to Services

1. Navigation of Courthouse Facilities

Courthouse facilities and the various offices and/or services available within or near them may not be obvious to visitors. By implementing clear navigation maps, posting information about the procedures for accessing facilities and about services available within the property, the public can more easily arrange meeting locations or find their way to the services they are seeking. Courthouses should develop and maintain maps of premises, along with the services offered within them. They should make these available on their websites and feature them prominently near the entrances of courthouse facilities. Jurisdictions could include information relevant to the services they offer on or near these maps, such as accompaniment services, recording services, interpretation and translation services, security, the prosecutor's office, and public defense.[64]

2. Accompaniment Services

In cases of domestic violence or other sensitive proceedings, state and community organizations across the state offer accompaniment services for the injured party to feel safer accessing and/or navigating court services. Accompaniment programs are also being used for people facing any number of impediments accessing court services, such as lack of adequate transportation to a courthouse facility, disability, or safety. Some courts in Washington offer security accompaniments for people leaving the courthouse to get to their means of transportation safely. Courthouses could build upon these resources by formalizing accompaniment services. Accompaniment services could be arranged with community organizations, state and or local government actors, or courthouse personnel as possible. If accompaniment services are implemented in a jurisdiction, relevant personnel should be trained to follow existing courthouse protocols and privacy protections. At a minimum, measures should be taken to inform the public of the availability of these services and methods for requesting them.

3. Pseudonyms

As discussed above, the use of pseudonyms by parties and witnesses can also facilitate greater participation in court proceedings under appropriate circumstances.[65] Courthouses should consider additional protocols for allowing the use of pseudonyms, displaying case numbers and not names on dockets, or otherwise restricting the disclosure of the identity of individuals, where factors warrant such action and in accordance with applicable legal standards. Courthouse personnel should also be trained to ensure that individuals are afforded these privacy protections. Moreover, the public should be informed of the availability of the services and methods for requesting them, including on the court's website.

---

64 Courts could also consider making information regarding free legal services available in their clerks' offices.

65 *See* Lewis and Clark Law School, National Crime Victim Law Institute, Protective Victim's Privacy Rights: The Use of Pseudonyms in Criminal Cases (2014), available online at https://law.lclark.edu/live/files/21757-protecting-victims-privacy-rightsthe-use-of (last visited May 19, 2020); Lewis and Clark Law School, National Crime Victim Law Institute, Protective Victim's Privacy Rights: The Use of Pseudonyms in Civil Law Suits (2011) available online at https://law.lclark.edu/live/files/11778-protecting-victims-privacy-rights-the-use-of (last visited May 19, 2020).

D. Consular Notification Requirements

KWW also contains key provisions to ensure state and local compliance with federal treaty obligations and consular notification requirements. The law requires that, upon the commitment or detention of any person, state and local law enforcement agencies explain in writing:

1. The person's right to withhold their nationality, citizenship, or immigration status; and
2. That disclosure of such information may result in civil or criminal immigration enforcement, including removal from the United States.[66]

The Vienna Convention on Consular Relations (Convention) sets notification requirements for detained or arrested foreign nationals and consular officers' access to detained foreign nationals.[67] The Convention does not require inquiry into, or retention of, immigration or citizenship status. The Convention requires foreign consuls must have access to communicate with their nationals, and vice versa.[68] Further, foreign nationals have the right to request that their consuls be notified of their detention and local authorities must inform them without delay of that right.[69]

In addition, the United States has bilateral agreements with 56 other countries to automatically notify foreign consuls upon the detention of one of their nationals.[70] If a law enforcement agency becomes aware that a person in their custody is a national of one of these countries, consular notice is mandatory.

Many local jurisdictions in Washington comply with these obligations, and those established in KWW, by providing consular notification advisement to persons detained by law enforcement during and/or following their preliminary appearance in court. Judicial officers should thus ensure that all preliminary appearance hearings allow for such advice to be given. Judicial officers should also encourage law enforcement agencies, prosecutors, and defense counsel to coordinate amongst their agencies to ensure that these procedures are properly followed.

E. Coordination with other Courthouse Facilities and Programs

Designated courthouse personnel are encouraged to track completed trainings and communicate training protocols or curriculums with other state, municipal, or local jurisdictions and private entities operating within or in connection to courthouse facilities. This practice is intended to increase awareness and cohesion of available programming.

F. Compliance Monitoring

To ensure compliance with KWW and the courthouse's policies, audits are recommended to evaluate (a) instances of immigration enforcement, (b) utilization of courthouse services such as accompaniment and remote digital access, and (c) compliance of subcontractors, third parties, and

66 RCW 10.93.160(9)(a).
67 Vienna Convention on Consular Relations, *ratified* Nov. 12, 1969, 21 U.S.T. 77.
68 *Id.* art. 36(1)(a).
69 *Id.* art. 36(1)(b).
70 A list of the mandatory notification countries from the U.S. Department of State Bureau of Consular Affairs is in Appendix L.

co-located agencies with KWW. Based on these audits, jurisdictions should evaluate their courthouse policies and services for improvements and share recommendations with the State and other jurisdictions and Washington courts based on their findings.

As jurisdictions review and modify their courthouse policies based on KWW, they should submit their amended policies to the AGO to ensure that the information the AGO maintains and provides to the public is up-to-date.

G. Feedback to the State

Courthouse personnel should identify the most appropriate avenue to communicate ongoing needs and impacts of their KWW policies and procedures with their local jurisdictions and the State. In addition to informing the State on the courts' experiences and lessons learned, other courts and public agencies may be able to utilize feedback to make improvements of their own.

A formal channel for submitting feedback to the State is recommended, preferably with participation from all branches of state government, representation by local jurisdictions, and input from community stakeholders.

Part VI: Appendix

Appendixes begin on the 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, Liias, Conway, and Darneille)

READ FIRST TIME 03/01/19.

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

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

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

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

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

(3) In recognition of this significant contribution to the overall prosperity and strength of Washington state, the legislature, therefore, has a substantial and compelling interest in ensuring 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.

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

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

(1) "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 issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the national crime information center database.

(2) "Court order" means 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 warrants and subpoenas.

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

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

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

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

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

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

(8) "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.

(9) "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.

(10) "Local law enforcement agency" means any agency of a city, county, special district, or other political subdivision of the state that is a general authority Washington law enforcement agency, as defined by RCW 10.93.020, or that is authorized to operate jails or to 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In response to a lawfully issued court order;

(c) Necessary to perform agency duties, functions, or other business, as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement;

(d) Required to comply with policies, grants, waivers, or other requirements necessary to maintain funding; or

(e) In the form of deidentified or aggregated data, including census data.

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

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

(a) Department of licensing;

(b) Department of labor and industries;

(c) Employment security department;

(d) Department of revenue;

(e) Department of health;

(f) Health care authority;

(g) Department of social and health services;

(h) Department of children, youth, and families;

(i) Office of the superintendent of public instruction;

(j) State patrol.

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

(a) Department of agriculture;

(b) Department of financial institutions;

(c) Department of fish and wildlife;

(d) Department of natural resources;

(e) Department of retirement systems;

(f) Department of services for the blind;

(g) Department of transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Adopt policies consistent with that guidance; or

(2) Notify the attorney general that the agency is not adopting the guidance and model policies, state the reasons that the agency is not adopting the model policies and guidance, and provide the attorney general with a copy of the agency's policies to ensure compliance with this act.

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

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

(2) Complying with any other state or federal law.

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

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

(1) RCW 10.70.140 (Aliens committed—Notice to immigration authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1; and

(2) RCW 10.70.150 (Aliens committed—Copies of clerk's records) and 1925 ex.s. c 169 s 2.

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

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

the state government and its existing public institutions, and takes 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.

--- END ---

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 _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

_____ Name and Signature of Officer

_____ Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

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)

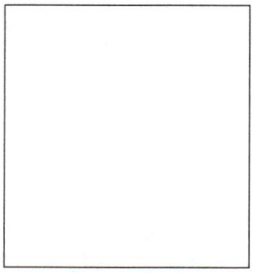
_____
(Title of immigration officer)

_____
(Date and office location)

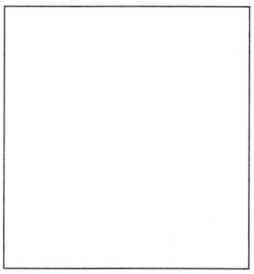
To be completed by immigration officer executing the warrant: Name of alien being removed:

_____

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 inmigratoria 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 inmigratorio 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, infórmeselo 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 encontre, 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 encontre. **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 Agencia 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，根据对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。**

GR 36
TRIAL COURT SECURITY

(a) Purpose. A safe courthouse environment is fundamental to the administration of justice. Employees, case participants, and members of the public should expect safe and secure courthouses. This rule is intended to encourage incident reporting and well-coordinated efforts to provide basic security and safety measures in Washington courts.

(b) Definition. "Incident" is defined as a threat to or assault against the court community, including court personnel, litigants, attorneys, witnesses, jurors, or others using the courthouse. It also includes any event or threatening situation that disrupts the court or compromises the safety of the court community.

(c) Incident Reports.

(1) *Reporting Method.*

(i) The court should make a record of each incident as soon as practicable, but no later than two days after the incident. The report shall be kept on file by the local court administrator.

(ii) The court shall report all incidents electronically to the Administrative Office of the Courts (AOC) on the AOC Threat/Incident Report Form within one week of the incident.

(d) Court Security Committee.

(1) *Role.* Each trial court should form a Court Security Committee to coordinate the adoption of court security policies and make recommendations regarding security protocols, policies, and procedures necessary to protect the public, court personnel and users, and court facilities. The Court Security Committee should adopt a Court Security Plan and thereafter revise the plan as may be necessary.

(2) *Committee Composition.* The Presiding Judge for each court should convene a Court Security Committee meeting and invite representatives from the following:

(i) judiciary;

(ii) court clerical staff;

(iii) prosecuting authority's office;

(iv) public defender's office;

(v) executive branch;

(vi) law enforcement;

(vii) facilities/maintenance department;

(viii) any other agency of government housed in the same building;

(ix) any other person the presiding judge deems appropriate.

(e) Court Security Plan. Each Court Security Committee should create a Court Security Plan for each courthouse location. If a Court Security Plan is adopted; the Court Administrator shall keep the Plan on file and accessible to the court community. The Court Security Plan should be in writing and should address:

(1) routine security operations, including security screening for persons entering the court facility, secure storage of weapons not permitted in the courthouse, parking, landscaping, interior and exterior lighting, interior and exterior doors, intrusion and detection alarms, window security, protocol for building access for first responders, and provision of building floor plans for first responders.

(2) written or oral threats or declarations of intent to inflict pain or injury upon anyone in the court community;

(3) physical layout of court facility and escape routes;

(4) threats--in court or by other means (telephone, e-mail, website, etc.);

(5) bomb threat;

(6) hostage situation;

(7) weapons in the court facility;

(8) active shooter

(9) escaped prisoner;

(10) high risk trial plan;

(11) routine security operations;

(12) Threat and security incident response techniques in and around the court facility, which may include how to defuse situations and remain calm during an incident;

(13) Personal safety techniques in and around the court facility;

(14) Irate and abusive individuals.

(f) Security Drills. Each court may hold security drills as determined by the Court Security Committee, as deemed necessary by the Presiding Judge in consultation with other authorities in the courthouse. Drills should include all court personnel, prosecutors, defense attorneys, law enforcement, and other regular court users.

(g) Minimum Court Security Standards. Every court shall endeavor to meet or exceed the following minimum standards. Should the court fail to meet the minimum court security standards, the court should state in the Court Security Plan why the minimum standards were not met.

(1) *Policy and Procedure Guide for all Court and Clerk Personnel.* Trial courts shall develop a Court Security Policy and Procedure Guide, using as examples the guides from Spokane County and Seattle Municipal Court, which guides are available from the AOC.

(2) *Weapons Screening by Uniformed Security Personnel at all Public Entrances.* Uniformed security personnel shall perform weapons screening at all public entrances, using, as a minimum, metal-detector wand screening and physical examination of bags, briefcases, packages, etc.

(3) *Security Audits Every Three Years.* Trial courts shall conduct a security audit at least every three years. Updates to the Court Security Policy and Procedure Guide shall be disseminated to all court and clerk personnel.

(4) *Security Cameras Recording with Loops of at Least Seven days, with Signage That Recording Is Taking Place.* Security cameras shall be placed at strategic locations as determined by the Court Security Committee, with signs posted nearby advising that recording is taking place. Security camera footage shall be retained for at least 7 days.

(5) *Duress Alarms at Multiple Strategic Locations, Such as Clerk's Office, Administration, and Courtrooms, with Broadcasting to the Nearest Law Enforcement Agency with Jurisdiction over the Court Site.* Easily accessible and discreetly placed duress alarms shall be located at multiple strategic locations as determined by the Court Security Committee. The duress alarm shall broadcast to the law enforcement agency that has jurisdiction to respond to the site and that is closest to the site.

(6) *Emergency Notification Broadcast System in Place, with Standardized Color Coding, and All Personnel Trained on the System.* An emergency notification broadcast system shall be established with standardized color coding denoting the level of emergency. All court and clerk personnel shall be trained on use of the system.

(7) *Active Shooter Training for All Court and Clerk Personnel.* Active shooter training shall be delivered to all court and clerk personnel.

[Adopted effective September 1, 2017.]

GR 38
[NEW]
OPEN ACCESS TO COURTS

(a) Prohibition on Civil Arrests.

(1) No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court.

(2) No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while traveling to a court of law of this state for the purpose of participating in any judicial proceeding, accessing services or conducting other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding, accessing services or conducting business with the court.

(b) Definitions.

(1) "Business with the court and accessing court services" includes, but is not limited to, doing business with, responding to, or seeking information, licensing, certification, notarization, or other services, from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.

(2) "Court of law" means any building or space occupied or used by a court of this state and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial spaces within buildings or spaces occupied or used by a court of this state, and entrances to and exits from said buildings or spaces.

(3) "Court order" and "judicial order" and "judicial warrant" include only those warrants and orders signed by a judge or magistrate authorized under Article I and Article III of the United States Constitution or Article IV of the Washington Constitution or otherwise authorized under the Revised Code of Washington. Such warrants and orders do not include civil immigration warrants or other administrative orders, warrants, or subpoenas that are not signed by a judge or magistrate as defined in this section. "Civil immigration warrant" means any warrant for a violation of federal civil immigration law issued by a federal immigration authority and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the National Crime Information Center database.

(4) "Participating in a judicial proceeding" includes, but is not limited to, participating as a party, witness, interpreter, attorney, or lay advocate.

(5) "Subject to civil arrest" includes, but is not limited to, stopping, detaining, holding, questioning, interrogating, arresting or delaying individuals by state or federal law enforcement officials or agents acting in their official capacity.

(c) Enforcement. Washington courts may issue writs or other court orders necessary to enforce this court rule. Unless otherwise ordered, the civil arrest prohibition extends to within one mile of a court of law. In an individual case, the court may issue a writ or other order setting forth conditions to address circumstances specific to an individual or other relevant entity.

[Adopted effective April 21, 2020.]

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).

- 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;

- 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

JAN 1 6 2013

Deputy Commissioner

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

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

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929

(360) 357-2053
E-MAIL MARY.FAIRHURST@COURTS.WA.GOV

March 22, 2017

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

As Chief Justice of the Washington State Supreme Court and co-chair of the Board for Judicial Administration, I write to express concern regarding immigration agents being in and around our local courthouses. Lawyers and judges working in our courts have advised me that agents from the Immigration and Customs Enforcement agency of the Department of Homeland Security are being present with increased frequency. These developments are deeply troubling because they impede the fundamental mission of our courts, which is to ensure due process and access to justice for everyone, regardless of their immigration status.

In many locations around our state, a courthouse is the only place where individuals are ensured of a trusted public forum where they will be treated with dignity, respect, and fairness. This includes victims in need of protection from domestic violence, criminal defendants being held accountable for their actions, witnesses summoned to testify, and families who may be in crisis.

We have worked diligently to earn and maintain the trust of communities throughout Washington State to ensure that courthouses are that public forum. The fear of apprehension by immigration officials deters individuals from accessing our courthouses and erodes this trust, even for those with lawful immigration status.

When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice. These developments risk making our communities less safe.

Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access

justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

In light of the above, I ask that you consider taking the necessary and appropriate steps to address these concerns. For example, I encourage you to designate courthouses as "sensitive locations" as described in your Policy 10029.2. Such a designation will assist us in maintaining the trust that is required for the court to be a safe and neutral public forum. It will assure our residents that they can and should appear for court hearings without fear of apprehension for civil immigration violations.

We understand that the mission of your agency is to enforce federal laws. However, we request that the manner in which these obligations and duties are carried out aligns with, and does not impede, the mission, obligations, and duties of our courts.

My request is offered with all due respect to your commitment to serve the United States, your office, and its functions. I welcome the opportunity to meet with you or your staff to explore possible resolutions.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Thomas D. Homan, Acting Director, Immigration & Customs Enforcement
Nathalie R. Asher, ICE Field Office Director, Seattle Washington
Bryan S. Wilcox, Acting Field Office Director

The Supreme Court

State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929

(360) 357-2053
E-MAIL MARY.FAIRHURST@COURTS.WA.GOV

April 15, 2019

Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Reference: #190412-001264

Dear Commissioner McAleenan:

I am Chief Justice of the Washington State Supreme Court and Co-Chair of the Washington State Board for Judicial Administration. In March 2017, I wrote then-Department of Homeland Security (DHS) Secretary John F. Kelly to express concern about Immigration and Customs Enforcement (ICE) officers and agents taking enforcement action in and around our local courthouses with increasing frequency. I explained that such enforcement action impeded the fundamental mission of our courts, which is to ensure due process and access to justice for everyone regardless of their immigration status, whether such persons were victims in need of protection from domestic violence, witnesses summoned to testify, or families who may be in crisis. I further explained that enforcement action in and around our local courts deterred individuals from accessing our courthouses and spread fear in our immigrant communities, both those lawfully present and those undocumented.

I was pleased that, following the publication of my letter, lawyers and advocacy communities regularly practicing at the affected courts observed a significant decrease in such ICE enforcement action. I was also pleased that, while not prohibiting civil immigration enforcement action in or around local courthouses, ICE's Directive Number 11072.1 (published in January 2018), directed ICE officers and agents to "minimize their impact on court operations," to "generally avoid enforcement actions in courthouses," and to "avoid unnecessarily alarming the public." I was additionally further pleased that ICE established a set of standards identifying when such enforcement action was appropriate (*e.g.*, to target undocumented immigrants with criminal convictions or who pose national security threats) and created processes to ensure supervisory review and documentation of such incidents.

I write you today to express my concern that, as has been publicly reported, U.S. Customs and Border Protection (CBP) officers and agents recently have taken up the troubling mantle of conducting enforcement operations against undocumented immigrants at or near our local

courthouses. As reported to local law enforcement, these operations impact court proceedings by deterring individuals from seeking the services of our courts which, in turn, curtails the capacity of our courts to function effectively. These operations have further unnecessarily alarmed those accessing court services, as it has been publicly reported that these operations have not been narrowly targeted to those class of dangerous individuals identified in the ICE Directive above.

I do not question the legitimate role of law enforcement or cooperative efforts with other law enforcement agencies. However, I am genuinely concerned when these enforcement actions take place at or around courthouses because of the impact upon our mission. Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings out of fear of apprehension by immigration officials, their ability to access justice is compromised, courts cannot function efficiently, and our communities become less safe.

As Chief Justice, I respectfully ask you to take the necessary and appropriate steps to mitigate, if not eliminate CBP's enforcement actions in and around our local courthouses because of the effect on our courts, and the people of Washington State who wish to access the courts. As I did in my letter to Secretary Kelly, I encourage you to designate the courthouses and their immediate vicinities as "sensitive locations." Such a clear designation will permit our Washington State Courts to be the safe and neutral public forum all Washington residents deserve.

Also as I stated to Secretary Kelly, I do not believe our organizations' respective missions are naturally in conflict, as long as the CBP ensures it does not impede the fundamental mission of our courts.

Finally, I would welcome the opportunity to meet with you or your staff, including those copied on the letter below, to discuss this matter further and to explore additional possible resolutions.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc:
Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations
Carla L. Provost, Chief, United States Border Patrol
Tim Quinn, Executive Director, Intergovernmental Public Liaison Office
Adele Fasano, CBP Director of Field Operations, Blaine Sector
Chris Bippley, Acting Chief Patrol Agent, Blaine Sector
Matthew Lacelle, CBP Port Director, Officer in Charge Moses Lake Office
Brian T. Moran, United States Attorney, Western District of Washington
Joe Harrington, United States Attorney, Eastern District of Washington

Court Policy: No Courtroom Arrests Based on Immigration Status

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.

In adopting this policy, the Superior Court recognizes that cooperation with other branches of government, including law enforcement agencies, is essential. The judges respectfully request that the county executive, in cooperation with the other branches of government, initiate a dialogue with the appropriate law enforcement agencies to develop a protocol implementing the policy which: 1) respects the dignity of the courtroom and the proceedings occurring in each of the courtrooms; and 2) discourages arrests inside of the courthouses.

Approved by the King County Superior Court Judges: April 22, 2008.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018
Effective Date: January 10, 2018
Superseded: None
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

   Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide. And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

2. **Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

   Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE's enforcement actions.[1]

[1] ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. *See* Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017).

ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

3. Definition The following definitions apply for the purposes of this Directive only.

3.1. Civil immigration enforcement action. Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.

4. Responsibilities.

4.1. The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.

4.2. ERO FODs and **HSI SACs** are responsible for:

1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and

2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

4.3. **ICE Officers and Agents** are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.[2]

5. **Procedures/Requirements.**

5.1. **Reporting Requirements.**

1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.[3]

2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.

6. **Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567-2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.

7. **Authorities/References.**

7.1. DHS Directive 034-06, *Department Reporting Requirements,* October 23, 2015.

7.2. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

8. **Attachments.** None.

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, 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. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

[2] *See also* ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses.

[3] ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.

Thomas D. Homan
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Countries and Jurisdictions with Mandatory Notifications

The following countries and jurisdictions require mandatory consular notification:

A

Albania
Algeria
Antigua and Barbuda
Armenia
Azerbaijan

B

Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria

C

China (including Macao and Hong Kong)*
Costa Rica
Cyprus
Czech Republic

D

Dominica

F

Fiji

G

Gambia
Georgia
Ghana
Grenada
Guyana

H

Hungary

J

Jamaica

K

Kazakhstan
Kiribati
Kuwait
Kyrgyzstan

M

Malaysia
Malta
Mauritius
Moldova

N

Nigeria

P

Philippines
Poland†

R

Romania
Russia

S

Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Slovakia

T

Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu

U

Ukraine
United Kingdom▲
Uzbekistan

Z

Zambia
Zimbabwe

* Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

† Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., "green card" holders). Otherwise, upon the national's request.

‡ The bilateral convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands, along with other island territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate. For advice on how to ascertain whether an arrested or detained person is a British national, as well as a complete list of the Overseas Territories, see the question "What about British nationals?" in the manual.

Last Updated May 21, 2020

Washington State Office of
the Attorney General
BOB FERGUSON

1125 Washington St. SE
PO Box 40100
Olympia, WA 98504
(360) 753-6200
www.atg.wa.gov