
Immigration Violations

414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Kalamazoo Department of Public Safety for investigating and enforcing immigration laws.

414.2 POLICY

It is the policy of the Kalamazoo Department of Public Safety that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

414.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or Michigan Constitutions.

414.4 ENFORCEMENT

- Kalamazoo Public Safety Officers lack jurisdiction in the enforcement of Federal immigration and naturalization laws.
- KDPS officers **shall not** arrest or detain anyone solely suspected of being an illegal alien.
- KDPS officers are **prohibited** from soliciting immigration status information from persons who are seeking police services or were a victim or witness to a crime.
- KDPS officers who have arrested an individual for a violation of State law or City Ordinance and subsequently develop reasonable suspicion that the arrested individual entered the United States in violation of a federal criminal law should contact federal authorities as soon as possible to determine if they would desire a detainer be placed on the individual. If the federal authorities do not want the person held and the person has posted bond or been arraigned, the individual should be released as soon as reasonably possible.

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414.4.1 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who enters into the United States illegally has committed a misdemeanor (8 USC § 1325(a)). Generally, an alien who initially made a legal entry into the United States but has remained beyond what is a legal period has committed a federal civil offense. A public safety officer should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize any person, except to the extent permitted by the United States or Michigan Constitutions. Instead, the totality of circumstances shall be used to determine reasonable suspicion, and shall include factors weighing for and against reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal immigration violation has occurred may include, but are not limited to:

- (a) An admission that the person entered the United States illegally.
- (b) Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- (c) Other factors based upon training and experience.

414.4.2 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer)
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

A public safety officer shall verify from a 287(g) certified officer, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

If the public safety officer has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, the public safety officer should notify a supervisor as soon as practicable. No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

A public safety officer is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety,

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communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

414.4.3 SUPERVISOR RESPONSIBILITIES

When notified that a public safety officer has detained a person and established probable cause to believe the person has violated a criminal immigration offense, the supervisor should:

- (a) Confirm that the detained person's immigration status was properly verified.
- (b) Ensure that the detained person is taken into custody when appropriate. Take any additional steps necessary that may include, but are not limited to:
 1. Transfer to federal authorities.
 2. Lawful arrest for a criminal offense or warrant.

414.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, a public safety officer will not need to notify ICE when booking arrestees at the County jail (MCL 404.31). Immigration officials routinely interview suspected undocumented aliens who are booked into the County jail on criminal charges. Notification will be handled according to the Kalamazoo County jail operation procedures. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of notification.

414.6 ICE REQUEST FOR ASSISTANCE

Requests by ICE, or any other federal agency, for assistance from this department should be directed to the Shift Commander. The Department may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies. The Operations Captain and the Chief of Public Safety shall be notified of all requests for assistance from Federal agencies enforcing Federal immigration laws as soon as feasible.

414.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):

- (a) Sending information to, or requesting or receiving such information from ICE
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state or local government entity

414.7.1 IMMIGRATION HOLDS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

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414.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a U visa must be completed by a public safety officer in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa must be completed by a public safety officer in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Criminal Investigations Division supervisor assigned to oversee the handling of any related case. The Criminal Investigations Division supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

414.9 TRAINING

The Training Division Commander shall ensure that all appropriate members receive immigration training.