

Immigration Violations

411.1 PURPOSE AND SCOPE

State

The purpose of this policy is to provide guidelines to members of the Burlington Police Department relating to immigration laws and interacting with federal immigration officials (RCW 43.10.315).

411.2 POLICY

Federal

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

411.3 DEFINITIONS

Agency Content

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), 13 Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.

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.

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.

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

Personal Information - Definition includes but is not limited to:

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- Names
- Dates of Birth
- Addresses
- GPS Locations
- Telephone Numbers
- Email Addresses
- Social Media Handles
- Social Security Numbers
- Driver's License Numbers
- Parents' or Affiliates' Names
- Biometric Data
- Other Personally Identifiable Information

Court Order or Judicial Warrant - Defined as a directive issued by a judge or magistrate under Article III of the US Constitution or Article IV of the Washington Constitution. These include, but are not limited to:

- Judicially Authorized Warrants
- Judicially Enforced Subpoenas

411.4 VICTIMS AND WITNESSES

Best Practice

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or Washington constitutions.

411.5 FEDERAL REQUESTS FOR ASSISTANCE

Federal **MODIFIED**

Officers shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement. Requests by federal immigration officials for assistance from this department should be directed to a supervisor. Officers shall not engage or assist in civil immigration enforcement. The Department may provide available emergency services, such as traffic control or peacekeeping efforts.

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411.6 WASHINGTON STATE IMMIGRATION RESTRICTIONS

State **MODIFIED**

Members shall not (RCW 10.93.160):

- (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.
 - 1. Burlington Police personnel processing fingerprint card or Automated Biometric Identification System (ABIS) submissions shall enter "Unknown" for these fields addressing immigration or citizenship status unless the information is otherwise known.
- (b) Provide information pursuant to notification requests from federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.
- (c) Provide nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by state or federal law.
- (d) 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 written consent of the individual.
- (e) Allow a federal immigration authority to conduct an interview regarding federal immigration violations with a person who is in custody if the person has not consented in writing to be interviewed. In order to obtain consent, the person shall be provided 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.
 - 1. The oral or written consent shall be provided in a language understood by the person or by using an approved language service.
 - 2. If the person chooses to be interviewed only if their attorney is present, agency personnel shall not permit access by federal immigration authorities or similar until the person's first court appearance and the person has counsel or proceeds pro se.
- (f) Detain individuals solely for the purpose of determining their immigration status.
- (g) Take a person into custody or hold a person in custody:
 - 1. Solely for the purposes of determining immigration status
 - 2. Based solely on a civil immigration warrant issued by a federal immigration authority
 - 3. On an immigration hold request
 - 4. Burlington Police personnel shall not disclose the location of an officer or individual being detained on a warrant to a Federal immigration authority until the warrant is confirmed.

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- (h) Burlington Police Officers shall not engage in immigration enforcement activities without prior approval, in writing, from the Chief of Police or authorized designee.
 - 1. Civil immigration enforcement is prohibited. This policy allows for criminal immigration enforcement where appropriate.
- (i) Agency personnel shall not transfer custody of an individual to federal immigration authorities or similar without a judicial warrant or court order.
 - 1. Warrants must be confirmed valid and judicial before the officer takes action. To confirm a warrant, the officer shall:
 - (a) Obtaining a copy of the warrant
 - (b) Identify the criminal charge and federal law citation
 - (c) Identify the issuing court
 - (d) Verify that the warrant includes the correct date and time
 - (e) Confirm the warrant is signed by the correct judicial official
 - 2. Personnel shall not disclose the location of an officer or individual until the warrant is confirmed.
- (j) Agency personnel shall not share visitors' personal information with federal immigration authorities or similar without a court order, judicial warrant, or the Chief's approval.
 - 1. The agency shall minimize information collection and not collect immigration or citizenship status from persons visiting individuals in custody
 - 2. The agency shall not limit a person's access to social visitation on the basis of a person's inability to effectively communicate through video visitation.

Members shall (RCW 10.93.160):

- (a) Within 72 hours of detention, Agency personnel must inform all detained persons, verbally and in writing of:
 - 1. The right to refuse to disclose information about status and nationality; and
 - 2. That any disclosure may result in civil immigration enforcement.
- (b) Persons in agency custody shall receive the same rights, services, opportunities, etc., regardless of nationality or immigration status. Rights, etc., shall not be limited based on a request by federal immigration authorities or immigration documentation.

411.6.1 IMMIGRATION ENFORCEMENT CONTRACTS

Agency Content

- (a) Burlington Police Department personnel shall not enter into any agreement that would grant federal immigration enforcement authority or powers to the officer, including 287(g) agreements.
- (b) All Burlington Police Department agreements to participate in multi-jurisdictional activities (ex: taskforces) shall include legally binding assurances that all other

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parties shall not use or share Burlington Police Department resources, personnel, or information with any third parties or to support immigration enforcement.

- (c) Burlington Police Department personnel shall not engage in any multi-jurisdictional activity or agreement with federal immigration authorities without legally binding assurances, in writing and pre-approved by the Chief of Police, that no Burlington Police Department Law Enforcement personnel, resources, or information will be used to support civil immigration enforcement.
- (d) Burlington Police Department shall not be a party to a civil detention agreement with federal immigration authorities.
- (e) Burlington Police Department personnel shall not be a party to any agreement or accept language services from federal immigration authorities.
- (f) All Burlington Police Department agreements permitting access to Burlington Police Department databases or information shall include legally binding assurances that all other parties shall not use or share information or database access with any third parties supporting or engaged in immigration enforcement.

411.7 U VISA AND T VISA NONIMMIGRANT STATUS

Federal MODIFIED

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Burlington City Attorney who will be *responsible for processing the visa application*.

Officers shall not use U or T Visa certifications to compel any victim or witness to cooperate with their investigations.

The Sergeant assigned to oversee the handling of any related case should also be notified.

The Sergeant should consult with the assigned officer to determine the current status of any related case and whether further documentation is warranted.

Officers needing information about U & T Visa shall review the information and instructions provided by the Washington State Department of Commerce.

411.7.1 TIME FRAME FOR COMPLETION

State MODIFIED

The Burlington City Attorney should ensure that the certification for the U visa or T visa is processed within 90 days of the request, unless the victim is in federal immigration removal proceedings, in which case the certification shall be executed within 14 days after the request is received. The certification may be withdrawn only if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the Department (RCW 7.98.020).

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411.7.2 U VISA AND T VISA DOCUMENTATION AND REPORTING

State **MODIFIED**

The Burlington City Attorney shall keep written documentation regarding the number of certification forms that are (RCW 7.98.020):

- (a) Requested by a victim.
- (b) Signed.
- (c) Denied.
- (d) Withdrawn.

The Burlington City Attorney or the authorized designee should ensure that the information collected regarding certification forms is reported annually to the Office of Crime Victims Advocacy (RCW 7.98.020).

411.7.3 RELEASE OF INFORMATION

State

Personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification shall not be disclosed except when allowed by law (RCW 7.98.020). See also the Records Maintenance and Release Policy.

411.8 TRAINING

Best Practice

The Administrative Commander should ensure that officers receive immigration training on this policy.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed.
- (c) Statutory limitations on immigration enforcement.

411.9 PUBLIC TRANSPARENCY AND COMMUNITY ENGAGEMENT

Agency Content

To promote public confidence and transparency consistent with RCW 43.10.315, the Burlington Police shall:

- (a) Post this policy and any future updates on the agency's public website.
- (b) Provide a summary of annual audit findings related to immigration enforcement requests to the Washington Association of Sheriffs and Police Chiefs (WASPC) and to the Washington State Office of the Attorney General upon request.
- (c) Make reasonable efforts to engage community stakeholders in reviewing and discussing this policy to ensure continued compliance and trust.

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- (d) Submit any updated versions of this policy to the Office of the Attorney General for inclusion in the statewide record of KWW compliance.