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| **AVALON POLICE DEPARTMENT** |  |
| **Standard Operating Procedure #:****105** | **EFFECTIVE DATE:****03/15/2019** | **NUMBER OF PAGES:****7** |
| **SUBJECT: IMMIGRATION** |
| **BY THE ORDER OF:****Chief Jeffrey Christopher** | **SUPERSEDES ORDER:** | **REVISION DATE** | **PAGE #** |
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| ACCREDITATION STANDARDS |   |  |  |  |  |  |

**PURPOSE**:

To establish a procedure to guide the actions of members when they encounter individuals whose immigration status is unknown or in question and to provide guidance on the investigation and enforcement of Federal Immigration Laws.

**POLICY**:

The New Jersey Attorney General Directive No. 2018-6 provides guidance for local law enforcement when dealing with an individual(s) whose immigration status is unknown or in question. Accordingly, department members shall endeavor to treat everyone they encounter fairly and refrain from engaging in racially-influenced policing practice. Members shall be guided by established law in making decisions with regard to the investigation or enforcement of Federal Immigration Laws. Members shall strive to build positive relations and trust with all members of the community regardless of immigration status.

**PROCEDURE:**

**I. Racially-Influenced Policing**

A. No member of this agency shall, at any time, engage in conduct constituting

racially-influenced policing as defined in Attorney General Law Enforcement Directive no. 2005-1 or Avalon PD SOP 63 Biased Based Profiling

**II. Enforcement of Federal Civil Immigration Law**

A. Use of immigration status in law enforcement activities. Except pursuant to Sections II.C and III below, NO member of this agency, as a state, county, or local law enforcement agency or official shall:

1. Stop, question, arrest, search, or detain any individual based solely on:

1. Actual or suspected citizenship or immigration status; or
2. Actual or suspected violations of federal civil immigration law.

2. Inquire about the immigration status of any individual, unless doing so is:

1. Necessary to the ongoing investigation of an indictable offense by that individual; and
2. Relevant to the offense under investigation.

B. Limitations on assisting federal immigration authorities in enforcing federal civil immigration law. Except pursuant to Sections II.C and III below, NO member of this agency, as a state, county, or local law enforcement agency or official, shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

1. Participating in civil immigration enforcement operations.

2. Providing any non-public personally identifying information regarding any individual.

1. Non-public personally identifying information includes a social security number, credit card number, unlisted telephone number, driver’s license number, vehicle plate number, insurance policy number, and active financial account number of any person. See N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a). It may also include the address, telephone number, or email address for an individual’s home, work, or school, if that information is not readily available to the public.

3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.

4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:

1. The purpose of the interview;
2. That the interview is voluntary;
3. That the individual may decline to be interviewed; and
4. That the individual may choose to be interviewed only with his or her legal counsel present.

5. Providing notice of a detained individual’s upcoming release from custody, unless the detainee:

1. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
2. In the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
3. Is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:

1. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
2. In the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
3. Is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
4. Any such detention may last only until 11:59 pm on the calendar day on which the person would otherwise have been eligible for release.

C. Exceptions and exclusions. Nothing in Sections II.A or II.B shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from:

1. Enforcing the criminal laws of this state.

2. Complying with all applicable federal, state, and local laws.

3. Complying with a valid judicial warrant or other court order, or responding to any request authorized by a valid judicial warrant or other court order.

* 1. A “judicial warrant” is one issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.

4. Participating with federal authorities in a joint law enforcement taskforce the primary purpose of which is unrelated to federal civil immigration enforcement.

5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.

6. Asking an arrested individual for information necessary to complete the required fields of the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee’s place of birth and country of citizenship.

7. Inquiring about a person’s place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities.

8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it.

9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.

 10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. See 8 U.S.C. §§ 1373, 1644.

**III. Agreements with the Federal Government**

A. Section 287(g) agreements. NO member of the agency, as a state, county, or local law enforcement authority shall enter into, modify, renew, or extend any agreement to exercise federal immigration authority pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), unless:

1. The Attorney General grants written approval; or

2. The agreement is necessary to address threats to the public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.

* 1. No member of this agency as a state, county, or local law enforcement officer shall otherwise exercise federal civil immigration authority outside the context of Section 287(g). Nothing in Section II of this Directive shall apply to law enforcement agencies that are party to an agreement to exercise federal immigration authority pursuant to Section 287(g) when they are acting pursuant to such agreement.

B. Intergovernmental Service Agreements. Nothing in Section II of this Directive shall apply to law enforcement agencies that are currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

**IV. Requests for T and U Nonimmigrant Status Certifications**

1. Establishing certification procedures. For any and all T and U non-immigrant status certifications, all requests will be forwarded to the Cape May County Prosecutors Office for review. A determination shall be made by the assistant prosecutor on duty.

B. T-visa certifications. For T-visa certification requests, this agency’s certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:

1. Is or has been a victim of a severe form of trafficking in persons; and

2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.

C. U-visa certifications. For U-visa certification requests, each agency’s procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:

1. Is a victim of a qualifying criminal activity; and

2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.

D. Inquiry into and disclosure of immigration status. Notwithstanding any provision in Section II, No member of this agency, as a state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification. They may generally not disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. See 8 U.S.C. §§ 1373, 1644.

**V. Notifications and Recordkeeping**

A. Notifications to detained individuals. Members of this agency, as state, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:

1. To interview the detainee. (See § II.B.4.)

2. To be notified of the detainee’s upcoming release from custody. (See § II.B.5.)

3. To continue detaining the detainee past the time he or she would otherwise be eligible for release. (See § II.B.6.)

* 1. When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.

B. Annual reporting by law enforcement agencies. On an annual basis, this agency shall report, in a manner to be prescribed by the Attorney General, any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections II.B.1 to II.B.6. Each year:

1. That agency shall report all incident where they provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year, the report shall be submitted to the County Prosecutor detailing such assistance. The County Prosecutor’s Office will be responsible to submitted at consolidated report to the Attorney General detailing the agencies’ in the county who provided assistance.

**VI. Training**

1. Development of training. All Sworn Members of this agency shall take the Immigration Training provided by The Division of Criminal Justice, made available through the NJ Learn System or by other electronic means. All newly hired members of the agency will receive the training during their agency training instruction.

 **VIII. Other Provisions**

A. Community relations and outreach programs. This agency will work with the County Prosecutor on efforts to educate the public about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and immigrant communities.

**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6**

**APPENDIX A**

(Issued November 29, 2018)

For the purposes of Sections II.B.5 and II.B.6, the term “violent or serious offense” is defined as follows:

1. Any first or second degree offense, as defined in N.J.S.A 2C:43-1;

2. Any indictable domestic violence offense defined in N.J.S.A. 2C:25-19;

3. Any other indictable offense listed in the chart below; or

4. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in paragraphs 1-3 above.

Chart of Additional Violent & Serious Offenses
(Referenced in Paragraph 3 Above)

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| **Statute** | **Description** |
| 2C:12-1  | Assault  |
| 2C:12-1.1  | Knowingly Leaving Scene of Motor Vehicle Accident Involving Serious Bodily Injury  |
| 2C:12-10  | Stalking  |
| 2C:12-13  | Throwing Bodily Fluid at Officers  |
| 2C:14-3  | Criminal Sexual Contact  |
| 2C:16-1  | Bias Intimidation  |
| 2C:17-1  | Arson  |
| 2C:17-2  | Causing Widespread Injury or Damage  |
| 2C:18-2  | Burglary of a Dwelling  |
| 2C:24-4  | Endangering the Welfare of Children  |
| 2C:28-5  | Witness Tampering and Retaliation  |
| 2C:29-2B  | Eluding a Law Enforcement Officer  |
| 2C:29-3A(5)  | Hindering Apprehension of Another Using Force or Intimidation  |
| 2C:29-3B(2)  | Hindering Apprehension of Oneself Using Force or Intimidation  |
| 2C:29-9  | Criminal Contempt (Violation of Restraining Orders, Domestic Violence Orders, Etc.)  |
| 2C:40-3B | Aggravated Hazing |
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