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August 8, 2023

VIA U.S. MAIL AND E-MAIL

Tammy White
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RE: City of Kent's Compliance with the Keep Washington Working Act

Dear Counsel:

The Attorney General's Office (AGO) is committed to protecting the civil rights of everyone in the State of Washington. This includes ensuring that units of local government comply with state law designed to protect vulnerable individuals from being targeted by law enforcement based on their status as members of a protected class, such as national origin, citizenship, or immigration status. *See* RCW 49.60.030(1). We write to advise you of concerns that the AGO has regarding the City of Kent's compliance with the Keep Washington Working Act (KWW), RCW 10.93.160.

We understand that since approximately December 2022, the City has been corresponding with the Northwest Immigrant Rights Project and American Civil Liberties Union of Washington concerning the City's compliance with KWW. We also understand that the City has agreed to clarify or revise some of its policies at the Kent City Jail to align with the requirements of KWW, and we appreciate the City's willingness to make those changes.

However, it has come to our attention that the City has asserted that the 1963 Vienna Convention on Consular Relations requires Kent City Jail staff to collect place of birth and citizenship information of arrestees during the booking process. As you know, the Legislature directed the Attorney General to publish model policies, guidance, and training recommendations for law enforcement agencies on how they can comply with KWW. Indeed, the AGO's KWW Guidance for State and Local Law Enforcement Agencies specifically addresses the consular notification

ATTORNEY GENERAL OF WASHINGTON

August 8, 2023

Page 2

requirements under the Vienna Convention and other international treaties and how to comply with such requirements while also complying with KWW. *See* AGO Model Policy III.C. I have enclosed a copy of our office's KWW Guidance for your review.

Under KWW, the City is required to adopt policies consistent with the AGO's guidance or notify our office that it is not doing so, state the reasons why, and provide the AGO with a copy of its policies that ensure compliance with KWW. RCW 43.10.315. The City's policies are not consistent with the AGO's guidance and the City has not satisfied the requirements of RCW 43.10.315. Further, the City's policies are insufficient to ensure the City's compliance with KWW, as required under RCW 43.10.315.

RCW 10.93.160(4)(a) provides that the Kent Police Department "may not . . . [i]nquire into 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." We understand the City's position to be that complying with this requirement of KWW would run afoul of the Vienna Convention and, consequently, our country's compliance with the treaty. That is an incorrect understanding of the law and provides no basis to disregard KWW's constraints.

There is no conflict between KWW's prohibition on the inquiry into, and collection of, immigration or citizenship status, and the Vienna Convention. That is because nothing in the Vienna Convention requires that law enforcement agencies affirmatively inquire as to the nationality, or immigration status, of an arrestee, and KWW specifically prohibits such an inquiry. This prohibition under KWW on affirmative inquiries about immigration status in no way prevents the City from fulfilling its duties under the Vienna Convention in circumstances where a detained person volunteers their citizenship or immigration status or makes a request that a foreign consul be notified of their detention.

What is more, KWW requires state and local law enforcement agencies to notify persons detained, in writing, of (1) the individual's right to refuse to disclose their nationality, citizenship, or immigration status; and (2) the fact that disclosure of their nationality, citizenship, or immigration status may result in civil or criminal immigration enforcement, including removal from the United States. RCW 10.93.160(9)(a).

To ensure compliance with KWW, we recommend that the City update its policies to include the following:

- Require that City of Kent law enforcement members inform every person taken into detention, verbally and in writing within 72 hours, of their rights to refuse to disclose information regarding their nationality, citizenship, or immigration status and that such

ATTORNEY GENERAL OF WASHINGTON

August 8, 2023

Page 3

information could lead to civil or criminal immigration enforcement. *See* AGO Policy Section C(1); Legal Section (B).

- Prohibit City of Kent law enforcement members from asking questions regarding a person's immigration or citizenship status, or place of birth, unless the information is related to an investigation into a state or local criminal matter. *See* AGO Policy Section A(3); RCW 10.93.160(4)(a), (9)(b).
- Require City of Kent law enforcement members to immediately contact a specified designee upon becoming aware that a person in custody is a foreign national. *See* AGO Policy Section C(2).
- Provide direction to City of Kent law enforcement members for (1) determining when consular notification is required and how to provide consular notification; (2) notifying a foreign consul without delay if an individual is a national of one of 56 mandatory notification countries or if the person requests their consul be notified; and (3) permitting the consul to access the person and forward any communication from the foreign national to the person's consular officers without delay. *See* AGO Policy Section C(2)(a)-(c).

We appreciate the City's interest in complying with its obligations under the Vienna Convention, and the City can do so while also complying with KWW. Accordingly, we request that the City end its practice of law enforcement members collecting places of birth and citizenship information of arrestees during the booking process. Please let us know by September 1, 2023, if the City will agree to modify its booking processes as we request. We would be happy to discuss this issue if you wish to meet to address the AGO's concerns.

We look forward to hearing from you and appreciate your attention to this matter.

Sincerely,



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KEEP WASHINGTON WORKING ACT

GUIDANCE, MODEL POLICIES, AND TRAINING RECOMMENDATIONS FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES



Washington State Office
of the Attorney General
BOB FERGUSON

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- We will conduct ourselves with integrity, professionalism, civility, and transparency.
- We will promote a collegial, diverse, and inclusive workplace that values, respects and supports our employees.

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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) with bipartisan support to establish statewide practices regarding the enforcement of federal immigration laws by state and local agencies and provide improved support of economic opportunities for all Washingtonians, regardless of their immigration or citizenship status.

KWW further directed the Attorney General to publish model policies, guidance, and training recommendations “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.” KWW also directed the Attorney General to develop and publish similar guidance for public schools, publicly operated health facilities, courthouses, and shelters. Under this legislative directive, the Office of the Attorney General engaged with state and local stakeholders to develop the required model policies and recommendations.

This publication is specific to Washington law enforcement agencies. Its guidance includes model policies, and training and best practices recommendations intended to assist law enforcement agencies and their officers with understanding the new law, and help to ensure that all members of the community, regardless of immigration or citizenship status, have full access to public safety and protection.

We know that trust is critical for law enforcement to be able to protect the public safety. Effective implementation of the information in this publication will foster community trust and improve community safety by ensuring that state and local law enforcement remains independent from federal immigration enforcement initiatives. I thank the law enforcement officers, local entities, and local governmental leaders responsible for operating Washington’s law enforcement agencies leading this effort.

Sincerely,

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

Bob Ferguson
Washington State Attorney General
May 21st, 2020

CONTENTS

I. How to Use this Publication	1
A. Understanding the Keep Washington Working Act and Development of the Attorney General’s Guidance	1
B. Adoption of Model Policies and Guidance	1
C. Legal Overview & Recommendations for Training & Best Practices	2
D. Appendix	2
II. Applicable Definitions	3
III. Model Policies	6
A. Enforcement of Federal Immigration Law and Policies Prohibited	6
B. Data Collection Prohibited	8
C. Consular Notification Requirements	8
D. Responding to Requests for Information	9
E. Access to Persons Detained or in Custody	10
F. Equal Treatment for Persons Held, Detained, or in Custody	10
G. Contracts Involving Immigration Enforcement	12
H. U & T Visa Certifications	13
IV. Overview of KWW and Relevant State and Federal Laws	14
A. KWW Requirements	14
B. Consular Notification Requirements	15
C. Federal Laws Related to Federal Immigration Enforcement	17
D. The Washington Safety and Access for Immigrant Victims Act: U & T Visa Certification Requirements	18
V. Training Recommendations & Best Practices Guidance	20
A. Consistent Training Statewide	20
B. Compliance Monitoring	22
C. Public Communication & Feedback to the State	23
VI. Appendix	24
A. The Keep Washington Working Act	25
B. Sample Form of ICE Form I-200	38
C. Sample Form of ICE Form I-205	39
D. Sample Form of ICE Form I-247A	41
E. U.S. Department of State Bureau of Consular Affairs Mandatory Consular Notification Countries	44

PART I:

How To Use This Publication

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

The Washington State Legislature passed the Keep Washington Working Act (KWW) during the 2019 Legislative Session¹ to ensure “the state of Washington remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working.”² In furtherance of this goal, KWW makes numerous changes to state law restricting the extent to which state and local agencies may participate in the enforcement of federal immigration laws.³

The Legislature determined that it is neither state nor local law enforcement's primary purpose to enforce civil federal immigration law, and further, that a person's immigration status, presence in the country, or employment alone “is not a matter for police action”—reinforcing that the federal government bears the responsibility to enforce its immigration laws and policies.⁴ KWW was thus adopted by the Legislature with express provisions for law enforcement agencies (LEAs) and directed that the Attorney General must publish “model policies, guidance, and training recommendations . . . 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.”⁵ The Legislature further declared an emergency, expeditiously establishing a statewide policy supporting Washington State's economy and immigrants' role therein.⁶

Under this legislative directive, Attorney General Bob Ferguson created a Keep Washington Working Team of staff that received input from state and local law enforcement officers, prosecutors, government officials, and community stakeholders across the state. The guidance in this publication, including the model policies, training and best practices recommendations, is based on these conversations and the KWW Team's research of best practices and policies across the country. Adoption and effective implementation of these model policies can help foster a relationship of trust between LEAs and the communities they serve and promote public safety for all Washingtonians.

B. Adoption of Model Policies and Guidance

The model policies in this publication address arrest authority, data collection and transmission, access and services for persons detained or in custody, and contracting with federal immigration officials. KWW

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 at Findings—2019 c 440 (3) in RCW 43.17.425).

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

4 Laws of 2019, ch. 440 § 6(2) (codified at RCW 10.93.160).

5 *Id.*, RCW 43.10.315.

6 Laws of 2019, ch. 440 § 12 (codified at Effective Date—2019 c 440 (3) in RCW 43.17.425).

requires all Washington LEAs, including those in each local jurisdiction, to (1) adopt policies consistent with those published here, or (2) notify the AGO that they are not adopting the necessary changes, state the reasons why they are not doing so, and provide the AGO with a copy of the agency's policies that ensure compliance with KWW.⁷ To submit copies of an agency's policies, please visit www.atg.wa.gov/publications.

The model policies include placeholders for each LEA to insert its title or specific jurisdiction information, including "[Law Enforcement Agency]" for the LEA's name. The placeholders "[Law Enforcement Agency Officers]" and "[officer]" should be filled with the proper terms or titles of the specific LEA's personnel who will be responsible for those provisions of the policy. Within the model policies, footnotes are used to include model policies that do not have general application among LEAs. For those LEAs whose circumstances fall within those identified in any model policy footnote, the LEAs shall consider the model policy to include the footnote for purposes of review and adoption. This publication also includes definitions that should accompany adoption of any of the guidance herein.

Finally, LEAs should implement an expeditious review process of this publication such that adoption of the model policies, training and best practices recommendations may be initiated immediately.⁸ 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, prompt review of the included guidance and adoption of the model policies will help ensure the requirements established in the law are met.

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

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 LEAs with implementing the model policies. Appropriate training is essential for compliance with the model policies, KWW's provisions, and other laws governing LEAs. 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 references to several 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.

⁷ RCW 43.10.315.

⁸ Review and adoption of policies related to immigration enforcement should also include consultation with each LEA's legal counsel to ensure their policies comply with KWW. LEA policies adopted prior to passage of KWW, or prepared by third parties, may not be fully compliant with state and federal law.

⁹ Effective date—2019 c 440 in RCW 43.17.425.

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 the Courts Open to All Act (COTA),¹¹ other relevant statutory provisions,¹² and Washington State Court Rules.

- “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.¹⁴
- “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.
- “De-identified” means information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.
- “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.

10 RCW 43.17.420.

11 SHB 2567, Laws of 2020 ch. 37 § 2.

12 See, e.g., RCW 7.98.010; RCW 19.255.005, 19.270.010, 19.375.010; RCW 42.56.230, .640.

13 Sample Form I-200 is in Appendix B.

14 Sample Form I-205 is in Appendix C.

- “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-247.¹⁵ 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.
- “Language services” includes but is not limited to translation, interpretation, training, or classes. “Translation” means written communication from one language to another while preserving the intent and essential meaning of the original text. “Interpretation” means transfer of an oral communication from one language to another.
- “Law enforcement agency” or “LEA” means any agency of the state of Washington (state) or any agency of a city, county, special district, or other political subdivision of the state (local) that is a “general authority Washington law enforcement agency,” as defined by RCW 10.93.020, or that is authorized to operate jails or maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.
- “Local government” means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to, cities, counties, school districts, and special purpose districts. It does not include sovereign tribal governments.
- “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.
- “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.

¹⁵ An example of the currently used Form I-247A, as well as the Guidance ICE uses to complete the form, are in Appendix D.

- “Personal information” means names, date 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 identifiable information. “Personal information” does not include immigration or citizenship status.
- “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 including those serving a term of detention at a local LEA due to a community custody violation.
- “School resource officer” or “SRO” means a commissioned law enforcement officer in the state of Washington who has sworn authority to uphold the law and who is assigned by the employing police department or sheriff’s office to work in schools to ensure school safety.
- “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 43.10.315, every Washington law enforcement agency must either (a) adopt policies consistent with the following guidance and model policies, or (b) notify the AGO that the LEA is not adopting the model policies and guidance, state the reasons why it is not adopting them, and provide the AGO with a copy of its policies that ensure compliance with KWW. Prior to adoption, law enforcement agencies 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 the adoption of the model policies.

A. Enforcement of Federal Immigration Law and Policies Prohibited

1. The federal government, not [Law Enforcement Agency], has primary jurisdiction over the enforcement of federal immigration law. [Law Enforcement Agency] recognizes that removal from the United States, including investigations and arrests made as part of that process, is a civil matter overseen by federal immigration authorities. [Law Enforcement Agency] recognizes that unauthorized presence in the United States, standing alone, is not a violation of state or local law. The immigration or citizenship status of an individual or an individual's presence in, entry or reentry to, or employment in the United States alone is not subject to enforcement by [Law Enforcement Agency] or its personnel. [Law Enforcement Agency] shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.
 - a. [Law Enforcement Agency] personnel shall not engage or assist in civil immigration enforcement.
 - b. [Law Enforcement Agency] resources, including any individuals' personal information ascertained by [Law Enforcement Agency] or its officers, shall not be used or shared to assist in civil immigration enforcement.
 - c. [Law Enforcement Agency] shall review all methods and forms used to communicate with persons engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, or data fields for immigration or citizenship status existing prior to May 21, 2020, and modify them as necessary to be consistent with these policies.
 - d. All [Law Enforcement Agency] personnel shall complete [Law Enforcement Agency]'s mandatory training regarding immigration enforcement policies and procedures and compliance with all other requirements of RCW 10.93.160.
2. [Law Enforcement Agency] personnel shall not initiate or participate in any law enforcement action based solely on an individual's immigration or citizenship status, or place of birth, or in any other way attempt to enforce or assist in the enforcement of federal civil immigration laws or policies.

3. [Law Enforcement Agency] personnel shall not inquire about any person's immigration or citizenship status, or place of birth, unless the information is directly connected to the [Law Enforcement Agency Officer]'s investigation into a violation of state or local law.
4. [Law Enforcement Agency]'s policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against all persons, including [Law Enforcement Agency] personnel.
5. [Law Enforcement Agency] personnel shall not conduct investigations, interviews, questioning, take statements, or otherwise engage in similar contact with any individual in the presence, including within hearing distance, of any person engaged, or intending to engage, in immigration enforcement, including a known federal immigration authority, unless the person's presence is directly connected to the [Law Enforcement Agency]'s investigation into a violation of state or local criminal law and necessary to perform the [Law Enforcement Agency Officer]'s duties.
6. [Law Enforcement Agency] personnel shall not arrest, detain, take into custody, or otherwise hold any person solely to determine their citizenship or immigration status unless the information is directly connected to the [Law Enforcement Agency Officers]'s investigation into a violation of state or local law.
7. Civil immigration warrants, hold requests, and immigration detainer requests do not establish probable cause and shall not be the basis for any [Law Enforcement Agency Officer] to arrest, detain, or otherwise hold any person in custody.
8. If [Law Enforcement Agency] personnel receive a court order or judicial warrant authorizing any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to assume custody of an in-custody individual, [the Law Enforcement Agency Officer] shall immediately contact [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] to determine the appropriate course of action.
 - a. Before authorizing any arrest, detention, or hold, the [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall confirm that the federal criminal arrest warrant is issued and signed by a U.S. District Court Judge or Magistrate Judge authorizing the holding or detention of the individual by:
 - i. Obtaining a copy of the warrant;
 - ii. Identifying the criminal charge and citation to the federal law violation for which the warrant was issued;
 - iii. Identifying which U.S. District Court issued the warrant;
 - iv. Verifying that the warrant includes the correct date and location for detention; and
 - v. Confirming that a U.S. District Court Judge or Magistrate's signature is on the warrant.
 - b. [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall not disclose the location of the [Law Enforcement Agency Officer] or individual to any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, before or during the warrant confirmation process.

9. All requests for assistance by any person engaged, or intending to engage, in immigration enforcement, including federal immigration authority, whether oral or written, shall be directed to [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] to determine an appropriate course of action.
10. [Law Enforcement Agency] personnel shall not assist or participate in any joint operations, task forces, or any other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].

B. Data Collection Prohibited

1. [Law Enforcement Agency] personnel shall not inquire about or request any documents or information from a person for the purpose of determining the person's immigration or citizenship status, or place of birth, unless the information is directly connected to the [Law Enforcement Agency Officer]'s investigation into a violation of state or local law.
2. [Law Enforcement Agency] 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.
3. [Law Enforcement Agency] personnel shall not take enforcement action or otherwise use immigration or citizenship status, or place of birth information, against crime victims or witnesses.
4. [Law Enforcement Agency] personnel shall use the [district Communications Center "Language Line"] or other approved resources for any language services necessary to perform duties for [Law Enforcement Agency]. [Law Enforcement Agency] personnel shall not utilize or accept language services from any person engaged in, or intending to engage, in immigration enforcement, including federal immigration authorities. [Law Enforcement Agency] personnel shall presume that federal immigration authorities are engaged in immigration enforcement.

C. Consular Notification Requirements

1. Within 72 hours of detention, [Law Enforcement Agency] shall inform, verbally and in writing, all persons taken into custody or otherwise detained, regardless of their known or perceived nationality, citizenship, or immigration status, that:
 - a. The person has the right to refuse to disclose information about their nationality, citizenship, or immigration status; and
 - b. Disclosure of such information may result in civil or criminal immigration enforcement against them, including removal from the United States.

2. If any [Law Enforcement Agency] personnel becomes aware that a person in custody is a foreign national, the [Law Enforcement Agency Officer] shall immediately contact [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] to determine the appropriate course of action.
 - a. If the person's country is a signatory to the Vienna Convention on Consular Relations or other bilateral agreement regarding consular notifications, [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall provide the person the appropriate consular notification advisement recommended by the U.S. State Department—that the person has the right to request that their foreign consul be notified of their detention and to communication with their foreign consul, or that the LEA is required to notify the person's consular officers, if they are a member of a mandatory notification country.
 - b. [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall notify the person's foreign consul of their detention without delay if the person is a national of one of the 56 mandatory notification countries or if the person requests their foreign consul be notified.
 - c. [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall permit the foreign consul access to the person and forward any communication from the foreign national to the person's consular officers without delay.

D. Responding to Requests for Information

1. [Law Enforcement Agency] personnel shall not share, provide, or disclose personal information about any person to anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without a court order or judicial warrant requiring the information's disclosure, except that [Law Enforcement Agency] shall provide all records as required under the Public Records Act, chapter 42.56 RCW. Public records requests shall be processed pursuant to [Law Enforcement Agency] procedures by the [Law Enforcement Agency Public Records Officer or designee]. Any [Law Enforcement Agency] personnel receiving a public records request shall forward the request to the [Law Enforcement Agency Public Records Officer] and notify [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].
2. [Law Enforcement Agency] personnel shall not provide or disclose information in response to any notification request or other immigration enforcement related request for information regarding a person's release date from custody without a court order or judicial warrant, except that [Law Enforcement Agency] shall provide all records as required by the Public Records Act, chapter 42.56 RCW, in response to any qualifying request.
3. If [Law Enforcement Agency] personnel receive a court order or judicial warrant that mandates the sharing of information regarding a person's immigration or citizenship status, [Law Enforcement Agency] personnel shall provide the information as required by the court order or judicial warrant. Any [Law Enforcement Agency] personnel who shares or discloses a person's immigration or citizenship status to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, shall immediately notify [Law

Enforcement Agency Sheriff or Chief of Police or authorized designee] of the information provided, reason for sharing said information, and identity of the person and agency to whom the information was shared.

- a. [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall log all instances of [Law Enforcement Agency] personnel sharing any person's immigration or citizenship status with a person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, with the basis for sharing the information. The log shall be a public record and shall be made publicly available except that information may be redacted or withheld as permitted by the Public Records Act.

E. Access to Persons Detained or in Custody

1. [Law Enforcement Agency] personnel shall not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in [Law Enforcement Agency] custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented.
 - a. To obtain written consent from a person held, detained, or in custody, prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, the [Law Enforcement Agency Officer] shall provide the person with an oral explanation and a written consent form that explains:
 - i. The purpose of the interview;
 - ii. That the interview is voluntary;
 - iii. That the person may decline to be interviewed and will not be punished or suffer retaliation for doing so; and
 - iv. That the person may choose to be interviewed only with the person's attorney present.
 - b. [Law Enforcement Agency Officers] shall provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands. [Law Enforcement Agency] shall maintain copies of the consent form in English, Spanish, and any other language that [Law Enforcement Agency] deems appropriate.
 - c. If a person chooses to be interviewed with their attorney present, [Law Enforcement Agency Officers] shall promptly contact the attorney. [Law Enforcement Agency Officers] shall not proceed with permitting any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has chosen to proceed pro se.

F. Equal Treatment for Persons Held, Detained, or in Custody

1. Persons held, detained, or otherwise in the custody of [Law Enforcement Agency] are entitled to, and shall be provided, the same services, benefits, privileges, rights, opportunities, and resources regardless of their nationality, or immigration or citizenship status.

2. [Law Enforcement Agency] personnel shall not deny or otherwise limit any person held, detained, or otherwise in [Law Enforcement Agency] custody such services, benefits, privileges, rights, opportunities, or resources based on any civil immigration warrant, hold request, immigration detainer request, notification request, administrative subpoena or similar request by a person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, or indication of the person's nationality, immigration or citizenship status.
3. [Law Enforcement Agency Officers] shall not transfer custody of any person held, detained, or otherwise in the custody of [Law Enforcement Agency] to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, without court order or judicial warrant. If presented with such an order by a person engaged, or intending to engage, in immigration enforcement, including by a federal immigration authority, to take custody of a person in [Law Enforcement Agency] custody, [Law Enforcement Agency Officers] shall immediately contact [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] to determine an appropriate course of action.
 - a. Before authorizing any transfer of custody, the [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall confirm that the court order is issued and signed by a U.S. District Court Judge or Magistrate Judge and authorizes the holding or detention of the individual by:
 - i. Obtaining a copy of the court order;
 - ii. Confirming that a U.S. District Court Judge or Magistrate signed the court order;
 - iii. Confirming that the court order identifies the individual for whom the transfer of custody is sought by name; and
 - iv. Verifying that the court order has a valid date or is not otherwise expired or previously executed.
 - b. [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] shall not disclose the location of the individual to any person engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, before or during the process of confirming the court order.
4. [Law Enforcement Agency] shall not deny or otherwise limit any person's social visitation solely on the basis of the person's inability to effectively communicate through video-visitation technology. [Law Enforcement Agency] shall not collect immigration or citizenship status information of persons visiting an individual in [Law Enforcement Agency] custody and shall minimize collection of visitors' personal information to the extent necessary to perform duties of [Law Enforcement Agency]. [Law Enforcement Agency] personnel shall not disclose or otherwise share visitors' personal information with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, absent a court order or judicial warrant for the information or approval by [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].

G. Contracts Involving Immigration Enforcement

1. [Law Enforcement Agency] personnel and school resource officers shall not enter into any contract, agreement, or other arrangement, whether written or oral, that would grant federal immigration enforcement authority or powers to the [Law Enforcement Agency Officer], including but not limited to agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements under the Immigration and Naturalization Act.
2. All [Law Enforcement Agency] agreements to assist or participate in any joint operations, task forces, or other multi-jurisdictional activities shall include legally binding assurances that all other parties to those agreements shall not use or share [Law Enforcement Agency] resources, including any individuals' personal information ascertained by [Law Enforcement Agency] or its personnel, with any third parties or to support or engage in immigration enforcement activities.
3. [Law Enforcement Agency] shall not be a party to any agreement, joint operation, task force, or other multi-jurisdictional activity with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without legally binding assurances, in writing and pre-approved by [Law Enforcement Agency Sheriff or Chief of Police], that no [Law Enforcement Agency] resources, including any individuals' personal information ascertained by [Law Enforcement Agency] or its personnel, shall be used to support or assist with civil immigration enforcement in any way.
4. [Law Enforcement Agency Officers] shall not assist or participate in any joint operations, task forces, or other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].
5. [Law Enforcement Agency] shall not be a party to any immigration detention agreement, IGSA, or other arrangement with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, providing for detention of any person by [Law Enforcement Agency Officers] or using [Law Enforcement Agency] resources for immigration enforcement purposes.
6. [Law Enforcement Agency] personnel and school resource officers shall not be a party to any agreement or contract for language services, including translation, interpretation, training or classes, from any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, nor shall any language services be accepted by [Law Enforcement Agency] personnel from any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, for free or otherwise. [Law Enforcement Agency] personnel shall presume federal immigration authorities are engaged in immigration enforcement.
7. All [Law Enforcement Agency] agreements permitting access to [Law Enforcement Agency] databases or information shall include legally binding assurances that all other parties to those agreements shall not use or share [Law Enforcement Agency] information or database access with any third parties supporting or engaged in immigration enforcement activities.

H. U & T Visa Certifications

1. [Law Enforcement Agency Officers] shall forward U and T Visa certification requests under the Washington Safety and Access for Immigrant Victims Act, RCW 7.98.020, without delay to [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].
 - a. The fact of any request for U or T Visa certification and any personal information submitted with such request shall not be disclosed or shared outside of [Law Enforcement Agency], [Law Enforcement Agency Legal Counsel], or the County Prosecuting Attorney without a court order or judicial warrant, or approval by [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] unless expressly authorized, in writing, by the subject of the request or the subject's guardian, or as otherwise required by law.
 - b. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall review any U or T Visa certification request submitted to [Law Enforcement Agency] in full and verify all information submitted in support of the certification request using existing [Law Enforcement Agency] records, personal knowledge, or other available evidence. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] may confer with [Law Enforcement Agency Legal Counsel] and/or the County Prosecuting Attorney to determine whether certification by [Law Enforcement Agency] is proper.
 - c. [Law Enforcement Agency Officers] shall not leverage U or T Visa certifications as a means to compel any victim or witness to cooperate with their investigations.
2. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall process U and T Visa certification requests within 90 days of receipt by [Law Enforcement Agency], except under circumstances requiring a shorter timeframe.
 - a. Any U or T Visa certification request for a person in federal removal proceedings shall be immediately processed by [Law Enforcement Agency Sheriff or Police Chief or authorized designee] such that the certification, if approved, is executed within 14 days of [Law Enforcement Agency] receiving the request.
 - b. U or T Visa certifications shall be expedited upon request for any person who will, or whose child(ren) will, reach age 21 before the 90-day processing deadline date and thus will otherwise lose their benefits. In any such instance, [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall execute the certification, if approved, no later than 14 days before the person or child turns 21 years old.
3. All [Law Enforcement Agency Officers] shall complete required training on U and T Visa certifications and review the full instructions for completing U and T Visa certification forms on the Washington State Department of Commerce, Safety and Access for Immigrant Victims Program website.

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

While the Keep Washington Working Act, chapter 440, Laws of 2019, requires LEAs to adopt the model policies to ensure they are able to foster the community trust necessary to maintain public safety by limiting participation in immigration enforcement, exceptions apply where federal, state, or local laws require otherwise. This section provides an overview of KWW and other laws that LEAs should consider when adopting the model policies. LEAs 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. KWW Requirements

KWW establishes broad restrictions on state and local assistance in federal immigration enforcement, with the following provisions for LEAs¹⁶ and their officials (including SROs and jail staff):

1. Prohibits giving access to people in local or state custody to federal immigration authorities for noncriminal matters, except with court order or as required by state or federal law, and requires law enforcement officials to obtain a person's consent in writing¹⁷ before the person may be interviewed about any noncriminal or immigration violation matters.
2. Prohibits inquiries into and collection of immigration or citizenship status, or a person's place of birth, unless the information is connected to an investigation into a state or local criminal violation.¹⁸
3. Prohibits providing information in response to notification requests from federal immigration authorities for civil immigration enforcement, except as required by law.¹⁹
4. Prohibits disclosure of nonpublic personal information to federal immigration authorities in any noncriminal matter, except as required by state or federal law.²⁰

16 KWW includes specific exceptions and differing requirements for the Washington Department of Corrections (DOC). *See* RCW 10.93.160 (14)-(15).

17 To obtain written consent, the state or local official must "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." RCW 10.93.160(6). The form must be in English and Spanish and explained orally to a person who is unable to read the form, using an interpreter when necessary. *Id.*

18 With regard to fingerprint card and Automated Biometric Identification System (ABIS) submissions, agencies should not ask for a person's citizenship (CTZ) or place of birth (POB) unless the information is connected to an investigation into a state or local criminal law violation. *See* RCW 10.93.160(4). "Unknown" responses to these fields should be used unless the information is known by the officer.

19 RCW 10.93.160(7), (8).

20 RCW 10.93.160(5).

5. Prohibits detentions, taking a person into custody, or holding anyone solely to determine their immigration or citizenship status or based solely on a civil immigration warrant or hold request.²¹
6. Prohibits denial of services, benefits, privileges, or opportunities to a person in custody because of an immigration detainer, hold, notification request, or civil warrant.²²
7. Prohibits entry into, or renewal of, any contract, agreement, or arrangement, that would grant a state or local officer authority for federal civil immigration enforcement, including any 8 U.S.C. §1357(g) agreement.²³
8. Prohibits entry into, or renewal of, any immigration detention agreement, including any intergovernmental service agreements (IGSAs).²⁴
9. Prohibits entry into, or renewal of, any contract for language services, including interpreter services, from federal immigration authorities, nor may any language services be accepted from such agencies for free or otherwise.²⁵

In addition to these restrictions, KWW repealed RCW 10.70.140 (which required public correctional facilities and jails to inquire into peoples' nationalities and notify federal immigration authorities under certain circumstances) and RCW 10.70.150 (which required court clerks to give certain court records to federal immigration authorities). Therefore, neither of these former statutes may form the basis for state or local law enforcement to engage in any of the above-restricted activities.

As set forth above, in order to limit LEAs' engagement in immigration enforcement, KWW limits the ability of local LEAs to participate in contracts or agreements with federal immigration authorities. While prescribed conditions of federal funding to the state may nullify certain provisions of KWW, no such exception exists within KWW for federal funding to local LEAs. Therefore, local LEAs should review grant conditions for any conflicts with KWW and consult with their respective legal counsel for assistance with modifying or terminating any grants or contracts that conflict with KWW.

B. 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:

- 21 Civil detainer requests issued by federal immigration authorities are voluntary and local governments are not required to honor them. *See* 8 C.F.R. § 287.7(a); *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) (“[S]ettled constitutional law clearly establishes that [immigration detainees] must be deemed requests” because any other interpretation would render them unconstitutional under the Tenth Amendment).
- 22 KWW provides an exception for DOC, if necessary for classification or placement purposes for individuals in custody. RCW 10.93.160(10).
- 23 RCW 10.93.160(11).
- 24 Any existing immigration detention agreements must be terminated no later than November 17, 2019, with limited exception. RCW 10.93.160(12)(b).
- 25 RCW 10.93.160(13).

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.²⁶

The Vienna Convention on Consular Relations (Convention) sets notification requirements for detained or arrested foreign nationals and consular officers' access to detained foreign nationals.²⁷

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.²⁸ 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.²⁹

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.³⁰ 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.

Thus, state and local law enforcement officials must:

1. Advise all arrestees and detainees of the rights established under the Convention.
2. Inform foreign consuls when a national of their state has been arrested or detained if the arrestee or detainee so requests.
3. Automatically inform foreign consuls of an arrest or detention of a person that the officer knows to be a national of one of the 56 mandatory notification countries and advise the person that the notification of the consul will occur.
4. Comply with the Convention in a way that also conforms to local, state, and federal law.

Because the Convention does not mandate inquiries into immigration or citizenship status or place of birth, and such inquiries are expressly prohibited under KWW, state and local law enforcement officials must not ask for that information on the basis of consular notification.

26 RCW 10.93.160(9)(a).

27 Vienna Convention on Consular Relations, *ratified* Nov. 12, 1969, 21 U.S.T. 77.

28 *Id.* art. 36(1)(a).

29 *Id.* art. 36(1)(b).

30 A list of the mandatory notification countries from the U.S. Department of State Bureau of Consular Affairs is in Appendix E.

C. Federal Laws Related to Federal Immigration Enforcement

KWW prohibits state and local law enforcement agencies from “collection, use, or disclosure of information,” except if required by state or federal law, including “[i]n response to a lawfully issued court order.”³¹ And KWW’s provisions are expressly subject to requirements under federal law.³² Under 8 U.S.C. § 1373 (Section 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.”³³ Therefore, KWW limits collection of this information that could be shared with federal immigration authorities. KWW also protects all other types of information outside of these two specific types of information.

Section 1373 does not:

1. Require law enforcement to collect citizenship or immigration information.
2. Require law enforcement to share citizenship or immigration information.
3. Apply to birthdate, family, address, location, release date, or other personal information.

KWW policies and training adopted by LEAs should thus affirm that state and local officials are not required to share information regarding immigration and citizenship status, except under limited circumstances.

This is supported by federal law. 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.”³⁴

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.³⁵ Under this doctrine, the federal government cannot “compel the States to enact or administer a federal regulatory program,”³⁶ or compel state employees to participate in the administration of a federally enacted regulatory scheme.³⁷

31 RCW 10.93.160(16).

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

33 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.”

34 U.S. Const., amend. X.

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

36 *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).

37 *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).

Especially relevant here, in *United States v. California*, 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.³⁸ 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." *Id.*

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.³⁹ Additionally, Section 1373 only restricts agencies from prohibiting their staff to share or receive information about what a person's citizenship or immigration status is with federal immigration authorities,⁴⁰ and KWW does not conflict with that prohibition. Washington law defines "immigration or citizenship status" as "such status has been established to such individual under the Immigration and Nationality Act."⁴¹ 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.

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

Federal law provides specific immigration status for certain people who are victims of certain crimes or human trafficking.⁴² Washington's Safety and Access for Immigrant Victims Act (SAIVA) ensures that all Washingtonians who may be eligible for U or T nonimmigrant status have access to these protections by supporting greater consistency across agencies with certification authority, including LEAs, prosecutors, and the courts.⁴³

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 LEAs, the SAIVA requires the development and implementation of training to law enforcement, prosecutors, victim advocates, courts, 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.⁴⁴ 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.⁴⁵

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

39 *Id.* at 890.

40 *Id.* at 892.

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

42 8 U.S.C. § 1101(a)(15)(T), (U).

43 Chapter 7.98 RCW.

44 RCW 7.98.020.

45 *Id.*

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, including LEAs, must report to the Washington Department of Commerce Office of Crime Victim Advocacy by August 15 of each year the number of:

1. Certification forms requested;
2. Certification forms signed;
3. Certification forms denied; and
4. Certification forms withdrawn.

Therefore, LEAs should read and become familiar with the SAIVA requirements and follow any recommendations or guidance from the Crime Victim Certification Steering Committee and provide feedback to the Office of Crime Victim Advocacy.⁴⁶

⁴⁶ See <https://www.commerce.wa.gov/serving-communities/crime-victims-public-safety/office-of-crime-victims-advocacy/safety-and-access-for-immigrant-victims/> (last visited May 18, 2020) for feedback and reporting instructions, forms, and Steering Committee meeting minutes.

PART V:

TRAINING RECOMMENDATIONS & BEST PRACTICES GUIDANCE

Washington LEAs are often faced with navigating complex immigration issues involving subjects, witnesses, victims, and other government agencies. KWW aims to ensure that state and local law enforcement duties are carried out in a manner that limits engagement in federal immigration enforcement. By developing and implementing comprehensive training programs, LEAs can ensure that the requirements established in KWW are properly followed. The guidance and recommendations in this section provide proactive approaches for LEAs to implement the model policies, comply with federal, state, and local law, and foster the community trust necessary to maintain public safety.⁴⁷

A. Consistent Training Statewide

The AGO recommends development of a KWW-specific training curriculum that can be adopted by all Washington LEAs to ensure consistent guidance for officers and law enforcement personnel statewide on the distinction between their duties and those of federal immigration authorities. This training should include a basic overview of the law, the specific prohibitions on inquiring into or collecting information about a person's immigration or citizenship status, and the restrictions on contracts that would implicate LEAs in immigration enforcement, including contracts with federal immigration authorities or others engaged in, or intending to engage in, immigration enforcement.

The KWW-specific training curriculum should further include the following topics:

- Arrest and detention protocols;
- Identification and recognition of documents used for immigration enforcement;
- How to work with federal law enforcement agencies;
- Consular notification requirements;
- Requirements established in federal immigration law;
- Processing U & T Visa certifications; and
- Information-Sharing and Records management.

Given the unique and specialized training services of the Washington State Criminal Justice Training Commission (CJTC), including the Basic Law Enforcement Academy (BLEA) program and a variety of ongoing professional development courses, the AGO recommends that the CJTC adopt a KWW-specific training curriculum that LEAs who conduct their own training may incorporate.

Therefore, the AGO recommends that the Legislature allocate funding for the development of statewide KWW-specific training curriculum in the 2021-2023 biennium budget.

⁴⁷ The AGO previously published Keep Washington Working Act Frequently Asked Questions for Law Enforcement, which contains additional guidance for LEAs. See <https://www.atg.wa.gov/keep-washington-working-act-faq-law-enforcement> (last visited May 15, 2020).

1. Mandatory LEA Officer Training

All LEAs should make KWW-specific training mandatory for their officers. In addition to any statewide curriculum that is developed, each LEA will need individualized training for its officers based on the specific policies and procedures that the LEA adopts under KWW.

Once the training curriculum is available, LEAs should require their officers to complete the training within six months. Because federal immigration laws and policies are dynamic and federal immigration authorities modify their practices and forms routinely, LEAs should provide updated training and require officers to complete it annually.

2. School Resource Officer Training

SROs require training on all components of KWW applying to their duties and obligations. Because LEAs are each responsible for adopting their own model policies, training on KWW provisions outside of those explicit to SROs may vary depending on each LEA's application of its policies to SROs. However, SROs should receive the KWW-specific training provided to all LEA officers, particularly where SROs are included in an LEA's general KWW policies.

a. SRO Required Training

In addition to the KWW-specific training that should be mandatory for all LEAs, SROs must receive training on “[b]ias free policing and cultural competency, including best practices for interacting with students from particular backgrounds, including English learners ... and immigrants.”⁴⁸ Similar to the Legislature's findings regarding LEAs and federal immigration enforcement in KWW, the Office of Superintendent of Public Instruction (OSPI) explains that SROs should not be used to impose criminal sanctions in matters that are more appropriately handled within the educational system.”⁴⁹ OSPI is developing model policies for SROs and has identified the following twelve topic areas for mandatory SRO training:

- Constitutional and civil rights of children in schools, including state law governing search and interrogation of youth in schools;
- Child and adolescent development;
- Trauma-informed approaches to working with youth;
- Recognizing and responding to youth mental health issues;
- Educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities;
- Collateral consequences of arrest, referral for prosecution, and court involvement;
- Resources available in the community that serve as alternatives to arrest and prosecution and pathways for youth to access services without court or criminal justice involvement;
- Local and national disparities in the use of force and arrests of children;
- De-escalation techniques when working with youth or groups of youth;

⁴⁸ RCW 28A.320.124(k).

⁴⁹ <https://www.k12.wa.us/student-success/health-safety/school-safety-center/school-resource-officer-program> (last visited May 19, 2020).

- State law regarding restraint and isolation in schools, including RCW 28A.600.485;
- Bias free policing and cultural competency, including best practices for interacting with students from particular backgrounds, including English learners, LGBTQ, and immigrants; and
- The Federal Family Educational Rights and Privacy Act, FERPA.

To the extent a statewide training program is available for SROs, KWW-specific curriculum should be incorporated to ensure consistent training for all SROs and to promote efficient delivery and implementation of these complimentary training requirements.

Likewise, the CJTC currently provides basic and ongoing training to SROs working within Washington schools. Any statewide KWW-specific curriculum should be incorporated into this existing SRO training to maximize efficiency and effective implementation of both laws. The 40-hour Basic SRO training course (organized by the National Association of School Resource Officers and hosted by the Richland Police Department) should include the KWW-specific curriculum, including a basic overview of the law, the specific prohibitions on inquiring into or collecting information about a student's immigration or citizenship status, and the restrictions on contracting with persons engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, for language services.

b. SRO Training on School Protections

SROs may serve at schools with their own policies specific to KWW or immigration enforcement. Because SROs are part of Washington law enforcement, it is likely that schools rely upon them to assist or intervene in instances of immigration enforcement activity at or near school property. To the extent that a school includes its SRO in policies or procedures regarding immigration enforcement, including federal immigration authorities' presence or activity at or near school property, the SRO should be trained on such protocols and the expected role the SRO will serve. LEAs should ensure that their SROs receive this training.

B. Compliance Monitoring

LEAs should monitor their compliance with KWW and adopted policies to evaluate successful practices and areas needing improvement.

1. Internal Audits

LEAs should conduct audits to document and track instances and outcomes of:

- Requests for immigration and citizenship information;
- Requests for assistance with immigration enforcement;
- Requests from persons engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, for access to individuals in the LEA's custody;
- Requests for and contacts with foreign consuls; and
- Any additional information the LEA deems appropriate.

Based on these audits, LEAs should evaluate their policies and services for improvements and share

recommendations with the Washington Association of Sheriffs and Police Chiefs (WASPC) and the State based on their findings. LEAs should also amend their KWW policies based on the outcomes of their audits in order to satisfy KWW's directive of limiting, to the fullest extent possible, LEA engagement with federal immigration authorities for the purpose of immigration enforcement. As LEAs review and modify their policies and procedures, each should submit their amended policies to the AGO to ensure the information the AGO maintains and provides to the public is current.

2. External Audits

LEAs can also evaluate the effectiveness of their policies by auditing other parties to their data-sharing and other cooperative agreements. If an LEA discovers unauthorized use or sharing of its information or resources, injunctive measures should be taken.

C. Public Communication & Feedback to the State

LEAs should involve community members, including stakeholders who are not in law enforcement, in developing their KWW-specific policies. Once their policies are adopted, LEAs should present them to the public in a forum that allows for community members to ask questions. LEAs should also post their policies on their public-facing websites and have personnel knowledgeable about their KWW policies available to answer questions from the public.

LEAs should communicate with the State regarding their ongoing needs and the impacts of their KWW policies. LEAs should also coordinate with WASPC, Washington Association of Prosecuting Attorneys, and other professional organizations to share feedback, recommendations, and ideas regarding their KWW policies, procedures, and training. Communication between LEAs and organizations supporting immigrants should be established to promote feedback on LEA policies and practices related to KWW, identification of new or emerging issues, and collaboration.

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 SenatePassed 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

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

JAY INSLEE

Governor of the State of Washington**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, Llias, Conway, and Darneille)

READ FIRST TIME 03/01/19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 (1) Adopt policies consistent with that guidance; or

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

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

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

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

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

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

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

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

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

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

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

Passed by the Senate April 24, 2019.

Passed by the House April 12, 2019.

Approved by the Governor May 21, 2019.

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

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

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

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

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

WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

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

(Full name of alien)

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

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

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

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

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

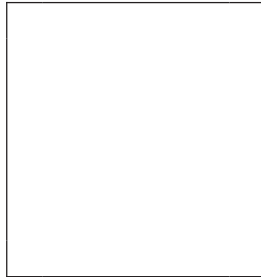
(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

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

Port, date, and manner of removal: _____



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

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

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

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

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

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

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

FROM: (Department of Homeland Security Office Address)

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

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

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

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

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

IT IS REQUESTED THAT YOU:

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

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

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

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

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

Last criminal charge/conviction: _____

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

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

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

NOTIFICACIÓN A LA PERSONA DETENIDA

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

Avis au détenu

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

AVISO AO DETENTO

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

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

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

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据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。

Countries and Jurisdictions with Mandatory Notifications

The following countries and jurisdictions require mandatory consular notification:

A	H	T
Albania	Hungary	Tajikistan
Algeria		Tanzania
Antigua and Barbuda		Tonga
Armenia	J	Trinidad and Tobago
Azerbaijan	Jamaica	Tunisia
		Turkmenistan
		Tuvalu
B	K	U
Bahamas	Kazakhstan	Ukraine
Barbados	Kiribati	United Kingdom [†]
Belarus	Kuwait	Uzbekistan
Belize	Kyrgyzstan	
Brunei		
Bulgaria		
	M	Z
C	Malaysia	Zambia
China (including Macao and Hong Kong) [*]	Malta	Zimbabwe
Costa Rica	Mauritius	
Cyprus	Moldova	
Czech Republic	N	
	Nigeria	
D	P	
Dominica	Philippines	
	Poland [‡]	
F		
Fiji	R	
	Romania	
G	Russia	
Gambia		
Georgia	S	
Ghana	Saint Kitts and Nevis	
Grenada	Saint Lucia	
Guyana	Saint Vincent and the Grenadines	
	Seychelles	
	Sierra Leone	
	Singapore	
	Slovakia	

Countries and Jurisdictions with Mandatory Notifications

* 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.

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