

<b>PRINCE WILLIAM COUNTY POLICE DEPARTMENT MANUAL OF GENERAL ORDERS</b>		
<b>General Order: 45.01</b>	<b>Effective: DRAFT</b>	<b>Number of Pages: 4</b>
<b>LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION : GENERAL GUIDELINES</b>		

- A. The purpose of this General Order is to establish a policy for the local participation of the enforcement of immigration laws. It is not intended to limit the Police Department’s authority under the United States or Virginia Constitutions or under any other laws.
- B. Although immigration enforcement is vested in the Federal government, local law enforcement has an increasing role in identifying, investigating, and apprehending persons who may be in violation of federal immigration law, particularly those who commit other violations of law. **Within the guidance provided by this General Order and the law, immigration inquiries shall encompass all who, through the normal course of business, are arrested for a violation of state or county ordinance where a physical custodial arrest is conducted.** The primary focus of police investigative efforts will be those who may be in violation of federal immigration law **who are illegal aliens who commit crimes** as defined in Section F.
- C. An officer may inquire into immigration status prior to **a physical custodial arrest** if he has reasonable articulable suspicion as part of initial identification inquiry to acquire an understanding of the facts. This may lead to the discovery of additional facts that would lawfully support an extension of the initial detention for further investigation. However, **subsequent and incident to any lawful arrest for a violation of state law or County ordinance, where a physical custodial arrest occurs, officers shall inquire** into the citizenship or immigration status by following the procedures set out in this General Order. As previously stated, this General Order is not intended to limit the Police Department’s authority under the Fourth Amendment of the United States Constitution.
- D. Racial profiling, the practice of stopping, detaining, or searching a person based solely on factors such as their race, color, or ethnicity, is prohibited and in fact, illegal. Race, color, ethnicity, or other non-criminal traits are not, in and of themselves, sufficient to constitute reasonable suspicion or probable cause to justify stopping, detaining, or searching a person (see General Order 2.01, C- 56). **No person shall be subject to a physical custodial arrest in order to inquire into their citizenship or immigration status.**
- E. Public Safety is enhanced when victims **and witnesses report** incidents to the police. Therefore, **absent a physical custodial arrest**, victims and essential witnesses will not be subject to immigration inquiries as a matter of routine.
- F. Description of Frequently Used Terms;
1. **Alien** – A person who is not a citizen of the United States.
  2. **Alien Absconders** - A fugitive remaining in the United States after an immigration judge has ordered them deported.

3. **Foreign National** – A person who is not a permanent United States resident.
4. **Illegal Alien** - A person who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).
5. **Illegal Aliens Who Commit Crimes** – Aliens who have committed crimes that make them eligible to be removed from the United States.
6. **Undocumented Immigrant** – Any person of another country who has entered or remained in the United States without permission and without legal status.
7. **ICE** - U.S. Department of Homeland Security’s Bureau of Immigration and Customs Enforcement.
8. **LESC** - the ICE Law Enforcement Support Center.
9. **National Crime Information Center (NCIC) Wanted Status (Hits)** – At this time there are two types of Hits:
  - a) **“OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”** – This NCIC hit pertains to an ICE Federal *civil process*. This language in NCIC means that the individual has been ordered to leave the Country but has not complied with the order.
  - b) **“PREVIOUSLY DEPORTED FELON”** – A type of NCIC Hit that pertains to an ICE Federal Criminal Felony.
10. **Permanent Resident Alien** – Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.
- 11 **Legal presence** - A person who is legally present is either a U.S. citizen or is legally authorized to be in the United States. Legal presence can be proved using a U.S. birth certificate or U.S. passport. It also can be proved using a variety of other government issued documents such as a Certificate of Citizenship or Naturalization, Resident Alien Card or a valid foreign passport with a visa, I-94 or an I-94W with a participating country. Documents presented as proof of legal presence must show the full legal name and date of birth. Virginia’s legal presence law took effect on January 1, 2004. A list of accepted documents under that law is available at:

**<http://www.dmv.state.va.us/webdoc/pdf/dmv141.pdf>**

#### G. Verification of Legal Presence

For purposes of this policy, the Department shall be guided by §46.2-328.1 *Code of Virginia* in determining what forms of identification are sufficient to establish legal presence.

Generally, a **valid Virginia** Driver’s License or Special Identification card (Adult ID card, Child ID card, or Hearing Impaired Photo ID Card – commonly referred to as a “Walker’s ID”), with an **ORIGINAL issued date of January 1, 2004 or later**,

shall serve as proof of legal presence, as noted in § 46.2-328.1 *Code of Virginia* (Virginia's legal presence law took effect on January 1, 2004).

Legal presence may be determined by checking nationwide databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC).

H. Legal Authority for Enforcement of Immigration Laws (see General Order 45.02).

Warrants and detainers issued by ICE may be criminal or civil. Whether ICE is proceeding criminally or civilly against the subject controls the response of local law enforcement.

POLICE **MAY ARREST** under any of the following conditions:

- 1) The requirements of §19.2-81.6 *Code of Virginia* are satisfied.

*§19.2-81.6 Code of Virginia - All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.*

- 2) An NCIC **Immigration Violator File (IVF)** hit reads “**PREVIOUSLY DEPORTED FELON,**” a hit confirmation is received, **AND** a Criminal Immigration Detainer from ICE is received and/or issued.
- 3) An NCIC IVF hit reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL**” (such NCIC warrants are considered civil in nature), **AND** the officer has charged a person for a separate Class 1 or Class 2 misdemeanor or a traffic infraction, for which the law requires the person be released on a summons in accordance with §19.2-74 *Code of Virginia* or §46.2-940 *Code of Virginia*, the NCIC IVF hit, absent extenuating circumstances, shall be considered as a strong factor to proceed under §19.2-82 *Code of Virginia* (Arrest without warrant), in determining whether the person is likely to disregard the summons.

POLICE **MAY NOT ARREST** under the following conditions:

1. Solely because a person is an illegal alien. This is because the Police Department has no legal authority to independently enforce Federal Immigration Law. When probable cause exists to believe a person may be an illegal alien a Field Interview Card shall be completed whenever possible and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESL.

2. Solely based upon an NCIC IVF hit which reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.**” These are considered civil in nature. Officers have no authority to arrest based solely on **CIVIL** administrative warrants or detainers for immigration issues. A Field Interview Card shall be completed whenever possible and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESC.

<b>PRINCE WILLIAM COUNTY POLICE DEPARTMENT MANUAL OF GENERAL ORDERS</b>		
<b>General Order: 45.02</b>	<b>Effective: DRAFT</b>	<b>Number of Pages: 4</b>
<b>LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION: MEMBER RESPONSIBILITIES</b>		

A. Officer Response:

1. Officers **shall** investigate the citizenship or immigration status of **all persons who are arrested for a violation of a state law or county ordinance when such arrest results in a physical custodial arrest being conducted.**
2. There **may** be circumstances under which the Fourth Amendment authorizes an earlier inquiry and officers may use their discretion in accordance with their **experience** and training to inquire as to the immigration status at an earlier stage.

Officers must remain cognizant at all times of the legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

Officers are reminded there is no law compelling a person to identify himself or herself to a law enforcement officer in all instances. However, presenting false identification to a law enforcement officer is a violation of State law under §19.2-82.1 *Code of Virginia*.

3. **If the officer has conducted a physical custodial arrest**, the officer **shall** inquire as to the legal presence of the person. **Officers shall initially screen every physical custodial arrestee by requesting the mandatory information found on the Field Interview Card.** Officers **shall** conduct a **Query Wanted (QW)** through NCIC. This QW automatically searches the **Immigration Violator File (IVF)** contained in NCIC. ICE is the only agency authorized to enter and maintain records in the IVF. The inquiry may also include checking nationwide databases maintained by the U.S. Department of Homeland Security’s Bureau of Immigration and Custom Enforcement (ICE) or by contacting the ICE Law Enforcement Support Center (LESC).
4. **When the arrestee is brought before the magistrate, if the officer has probable cause to believe the arrestee is an illegal alien that information shall be provided to the magistrate. If the arrestee is committed to the Adult Detention Center, the illegal alien immigration status shall be relayed to the ADC booking personnel, which has established policies and practices in place to coordinate with ICE. In all cases, the arresting officer shall be responsible to convey this information to the ADC staff. If the arrestee is likely to be transported to the ADC by another officer the arresting officer shall telephone the ADC and inform the staff of the suspected illegal immigration status of the arrestee. The arresting officer shall in all cases complete the Field Interview Card with the required contact notification information.**
5. Generally, a person may prove legal presence by producing a **valid Virginia** Operator’s License or Special Identification Card (Adult ID card, Child ID card, or Hearing Impaired Photo ID Card – commonly referred to as a “Walker’s ID”), with an **ORIGINAL** issued date

of January 1, 2004 or later, as noted in § 46.2-328.1 *Code of Virginia* (Virginia's legal presence law took effect on January 1, 2004). A birth certificate from any U.S. State or Territory, or any of the documents identified by the Virginia Department of Motor Vehicles, as referenced in General Order 45.01, F-11, will also serve as proof of legal presence. If a person produces a document that establishes legal presence, members will not routinely inquire further about the person's legal presence.

6. Whenever an officer runs a wanted check on an individual through NCIC, the IVF database is automatically checked and a "hit" may be received. It has long been the policy of the Department to serve criminal warrants originating from NCIC wanted queries. Similar to other law enforcement agencies, criminal warrants obtained by ICE agents are entered into the NCIC wanted persons' file. However, ICE hits for deported felons and alien absconders are based on administrative warrants and are entered in the NCIC IVF file.

NCIC entries contain both civil and criminal immigration violations. Officers should be careful to determine the nature of the underlying offense resulting in the NCIC entry. An entry into NCIC does not guarantee the officer has actual authority to take the person into custody.

7. Officers who receive an NCIC "hit" on an Immigration Violator File shall carefully read the IVF hit received through NCIC. There are only two (2) possible responses that will appear. Several lines from the top of the response will be the words "**PREVIOUSLY DEPORTED FELON**" or "**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.**"

- a. "**PREVIOUSLY DEPORTED FELON**"

- i. The officer shall request a hit confirmation and Criminal Immigration Detainer, as outlined below in B-3.
- ii. If a hit confirmation **and** a Criminal Immigration Detainer from ICE is received and/or issued, absent other charges which require the subject be taken before the magistrate, the suspect will be brought forthwith to the Adult Detention Center (ADC) which has established policies in place with ICE. An Incident Report titled "Criminal Immigration Arrest" shall be completed.
- iii. If the officer has reasonable suspicion to believe a person has committed or is committing a crime, absent probable cause to arrest for that crime, if a hit confirmation is received from ICE, the officer shall take the individual forthwith before a magistrate and obtain an arrest warrant for a violation of § 19.2-81.6 *Code of Virginia*. Recurrent applications for a warrant under this subsection are not permitted within a six-month period, as enumerated in § 19.2-82 *Code of Virginia*.

If reasonable suspicion does not exist that the arrested person has committed or is committing a separate offense, officers may act solely on the confirmation and detainer issued by the LESC for a "Previously Deported Felon" and the arrested person shall be transported to the ADC as outlined in section ii above.

- iv. The Police Department's Criminal Alien Unit is comprised of detectives who are specially trained in ICE's 287(g) program. In certain cases these detectives may be requested to respond and further investigate the matter, if circumstances warrant.
- v. Absent independent lawful authority to detain, such as other charges that justify detention or physical arrest, if an NCIC hit is made and confirmation of a Criminal Immigration Detainer is **not** received or issued within a reasonable period of time, the person must be released. Officers will document the detained person's identification information on a Field Interview Card and forward it to the Crime Analysis Unit.

b. **“OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”**

- i. The majority of these ICE warrants represents civil administrative procedures and this hit typically refers to persons who have failed to appear for a hearing or failed to leave the United States after having been ordered to do so.
- ii. Officers shall **not** confirm and shall not request automatic issuance of a detaining order from the database because such detaining order will be invalid on this type of IVF hit and shall **not** take the individual into custody, unless such person is lawfully detained for another violation of the law. Officers will document the detained person's identification information on a Field Interview Card and forward it to the Crime Analysis Unit. The subject must be released.
- iii. While officers may not automatically arrest a person based solely on this hit, officers shall, absent extenuating circumstances, consider this type of NCIC IVF hit as a strong factor in deciding whether or not to release on a summons for a separate violation of the law. This section only applies when an individual is being arrested for another offense for which the law indicates the person be released on a summons unless certain factors are present.

Officers may proceed under §19.2-82 *Code of Virginia* (Arrest without warrant), **only** if the provisions of §19.2-74 *Code of Virginia* or §46.2-940 *Code of Virginia*, are satisfied and the NCIC IVF hit is confirmed.

If the officer takes the suspect before a magistrate, the officer shall request a copy of the hit confirmation. A copy of the NCIC IVF Hit confirmation shall be presented to the magistrate. The illegal immigration status shall be relayed to ADC booking personnel, which has established policies and practices in place with ICE. If the Magistrate orders the suspect to be released officers shall document the suspect's identification information on a Field Interview Card and forward it to the Crime Analysis Unit.

- c. NCIC hits are factors which may provide legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

- 6. Any time **an officer has probable cause to believe** a person is in violation of federal immigration laws, a Field Interview Card shall be completed with as much information as

possible and forwarded to the Crime Analysis Unit who in turn shall forward the information to the ICE LESC. However, whenever a police offense report (PD 211) is written either for a “Criminal Immigration Arrest” or for any other offense, if there is probable cause to believe a subject identified in the police report is in violation of federal immigration laws, in lieu of completing the entire Field Interview Card, the officer need only complete the back of the Field Interview Card pertaining to illegal immigration and attach the Field Interview Card to the submitted PD 211 as a supplement.

7. Officers shall cooperate with federal immigration authorities and provide or receive information about the immigration status of any person as permitted or required by law.

B. Office of Public Safety Communications (OPSC) Response:

1. When a QW (Query Wanted) transaction is conducted through NCIC, the Immigration Violator File (IVF) is automatically searched for records on criminal illegal aliens who have been deported for serious crimes. It also contains records of civil immigration violations or persons who have violated some section of the Immigration and Nationality Act.
2. OPSC shall, as requested, perform initial inquiries between the Department and the ICE LESC. Upon request, OPSC will perform an IAQ (Illegal Alien Query) through NLETS.
3. OPSC will assist members in the confirmation of criminal alien arrest warrants, in accordance with General Order 26.01, E (NCIC Hits). Once the identity of the person and the warrant or detainer is confirmed, the ICE LESC will be contacted for acceptance of a criminal hold on the suspect.
4. Requests for confirmation of active Prince William County warrants shall follow established policy, regardless of immigration status. Any suspected illegal immigration status shall be relayed to the arresting officer.
5. Citizens wishing to make a routine complaint of the illegal immigration status of an individual will be referred to the ICE public tip line. The Police Department will not routinely document or follow-up on such information.

C. Prince William County Criminal Justice Academy (Academy) Responsibility:

1. The Academy’s role with regard to this General Order is to provide training to members in the Department’s Enforcement of Immigration Laws policy.
2. New recruits will receive initial training as a component of local training.
3. All sworn members will receive mandatory initial training. In-service training will be provided to members as deemed necessary.