

KEEP WASHINGTON WORKING ACT GUIDANCE, MODEL POLICIES, AND BEST PRACTICES FOR PUBLIC SCHOOLS



Washington State Office
of the Attorney General
BOB FERGUSON

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Vision: The Office of the Attorney General will be the best public law office in the United States.

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- We will deliver high quality legal services and remember that we serve the people of Washington.
- 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 is not meant to 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) 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, or place of birth.

KWW also directed the Office of the Attorney General to develop and publish model policies “for limiting immigration enforcement to the fullest extent possible consistent with federal and state law” at public schools, courthouses, publicly operated health facilities, and shelters, “to ensure they remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.” Under this legislative directive, the Office of the Attorney General engaged with state and local stakeholders to develop the required model policies.

This publication is specific to Washington public schools. Its guidance includes model policies, and training and best practices recommendations intended to assist school districts, educators, school administrators, students, and families in understanding and implementing policies consistent with the new law to ensure that all residents have access to a high quality education.

Washington’s public schools are recognized as special institutions—and with good reason. Public schools have a legal and moral obligation to ensure that no one is denied the opportunity to succeed because of where they were born. Effective implementation of the guidance set forth in this publication will protect the rights of all Washingtonians. I thank the educational officers and local governmental leaders responsible for operating Washington’s schools and 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 at the end.

Bob Ferguson
Washington State Attorney General
May 21st, 2020

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PART I: HOW TO USE THIS PUBLICATION

A. The Keep Washington Working Act & Obligation of the Attorney General

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 addressing the extent to which state and local agencies may participate in the enforcement of federal immigration laws.³ The Legislature further declared passage of KWW as an emergency, expeditiously establishing a statewide policy supporting Washington state’s economy and immigrants’ role therein.⁴

The Legislature also mandated that the Office of the Attorney General (AGO) publish model policies to assist local and state entities in the implementation of KWW. Specifically, KWW requires the AGO publish model policies for a number of public entities, including Washington public school, for “limiting immigration enforcement to the fullest extent possible consistent with federal and state law . . . to ensure [public schools] remain accessible to all Washington residents, regardless of immigration or citizenship status.”⁵ Under this legislative directive, Attorney General Bob Ferguson created a Keep Washington Working Team of staff to receive input from Office of the Superintendent of Public Instruction (OSPI), local governments, and community stakeholders across the state.

The model policies and guidelines in this publication represent policy adaptations from these conversations, along with research of the best national practices. They are aligned with the State’s commitment to tolerance, diversity, and inclusiveness,⁶ and are intended to assist the Washington public school personnel and local governmental officials responsible with the management of educational facilities in complying with KWW’s requirements. Adoption of these policies will best allow Washington public schools to focus their resources on their distinct mission of ensuring educational opportunities for all individuals, while leaving immigration enforcement efforts to the federal government.

B. Adoption of Model Policy & Guidance

The model policies in this publication address access to educational facilities, data collection and use, incident reporting, and training. Effective implementation of the model policies set forth in this guidance can help foster a relationship of trust between local agencies and the communities they serve and help promote public safety for all Washingtonians.

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 as a note following RCW 43.17.425).

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

4 Effective Date—2019 c 440 (3) *in* RCW 43.17.425.

5 RCW 43.10.310.

6 Executive Order 17-01. A copy of this order is in Appendix B.

Consistent with the requirements set forth in the law, KWW requires all Washington public schools 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 public school jurisdiction to insert its title or specific jurisdiction information, including “[school]” for the specific school name. These placeholders should be filled with the proper terms or titles of the specific school personnel who will be responsible for those provisions of the policy. This publication also includes definitions that should accompany adoption of any of the guidance herein.

Finally, each public school jurisdiction should implement an expeditious review process of this publication such that adoption of the model policies and guidance may be initiated immediately. The Legislature declared an emergency when passing KWW, putting the law into immediate effect.⁸ 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 and adoption of the included guidance and 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 public schools with implementing the model policies. Appropriate training is essential for compliance with KWW's requirements. The AGO considered evidence-based practices that promote access to educational opportunities, emerging programs with promising results, and existing programs to develop the best practices. Given the imperative for Washington schools to provide access to education to all students in Washington,⁹ recommendations that aim to support those goals are included as best practices within the guide.

D. Appendix

This publication contains references to several official forms and documents, including types of court orders, warrants, and permission forms. Documents referenced appear in the appendix of this publication.

⁷ RCW 43.10.310(2)(b).

⁸ Effective date—2019 c 440 in RCW 43.17.425.

⁹ Wash. Const. art. IX § 1; *see also McCleary v. State*, 173 Wn.2d 477, 520 (2012) (under the State constitution, the State must make ample provision for education of all children and “[n]o child is excluded”).

PART II: APPLICABLE DEFINITIONS

The following definitions should be adopted with the model policies herein. These definitions are based on the definitions provided in KWW¹⁰ and other relevant statutory provisions.¹¹

- “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), Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.¹²
- “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 or otherwise authorized under the Revised Code of Washington. A “court order” includes, but is not limited to, judicially authorized warrants and judicially enforced subpoenas. Such orders, warrants, and subpoenas 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.
- “F-1 Visa” is a United States (U.S.) visa for foreign national students who wish to attend educational institutions in the U.S., of these levels:
 - Private elementary school (non-U.S. citizens are not allowed to attend U.S. public elementary schools on an F-1 visa);
 - High school;
 - Seminary;
 - Conservatory;
 - University and college; and
 - Other institutions, such as a language training program.

10 RCW 43.17.420.

11 *See, e.g.*, Laws of 2020 ch. 37 § 2; RCW 7.98.010; RCW 19.255.005; RCW 19.270.010; RCW 19.375.010; RCW 42.56.230, .640; RCW 70.02.010; RCW 70.175.020; 45 CFR 160.103.

12 Examples of Form I-200 and Form I-205 are in Appendix C.

- “Federal immigration authority” means any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), United States Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement. “Federal immigration authority” includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.
- “Immigration or citizenship status” means as such status as has been established to such individual under the Immigration and Nationality Act.
- “J-1 Visa” is the visa designated for students and exchange program participants who belong to: Au Pairs, Camp Counselor, Government Visitors, Interns, International Visitors, Interns, International Visitors, Physicians, Professors and Research Scholars, Short-term scholars, specialists in different areas, university students, secondary school students, teachers, trainees, work and travel participants. Those who come to the U.S. under this visa program cannot bring dependents to the U.S.¹³
- “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.
- “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.¹⁴

13 See Visa Guide, available online at <https://visaguide.world/us-visa/nonimmigrant/study-exchange-visas/> (last visited May 17, 2020).

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

- “M-1 Visa” is designed for students enrolled in vocational and non-academic education, excluding language courses. This includes, but is not limited to, technical courses, cooking classes, flight school, cosmetology, etc.
- “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.
- “Public schools” or “Local education agency” means any and all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board and all institutions of higher education as defined in RCW 28B.10.016.
- “Sensitive location” refers to the 2011 U.S. Immigration and Customs Enforcement (ICE) and 2013 Customs and Border Enforcement (CBP) policies which categorize certain locations as sensitive locations that should generally be avoided for immigration enforcement purposes. Accordingly, “sensitive location” includes health facilities, places of worship, and schools.
- “School resource officer” means a commissioned law enforcement officer in the state of Washington with sworn authority to uphold the law and assigned by the employing police department or sheriff’s office to work in schools to ensure school safety. By building relationships with students, school resource officers work alongside public school administrators and staff to help students make good choices. School resource officers are encouraged to focus on keeping students out of the criminal justice system when possible and not impose criminal sanctions in matters that are more appropriately handled within the educational system.
- “State agency” has the same meaning as provided in RCW 42.56.010.

Part III: Model Policies for K-12 Public Schools

Pursuant to RCW 43.10.310(2), all Washington state public schools shall (a) adopt the necessary changes to policies consistent with the following model policies, or (b) notify the AGO that they are not adopting the changes, state the reasons that they are not adopting the changes, and provide the AGO with a copy of their policies that ensure compliance with KWW.. Prior to adoption, public schools 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 to this publication should be adopted in conjunction with the adoption of the model policies.

A. Applicability of Policies Related to Immigration Enforcement

1. [Public school district] adheres to all requirements of federal and state law.
2. The provisions of this policy shall apply to [public school] and all school facilities, which include (but are not limited to) adjacent sidewalks, parking areas, sports facilities, playgrounds, and entrances and exits from said building spaces.
3. [Public school district]’s policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against students and their families, staff, and volunteers.
4. [Public school district] personnel shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.

B. Access to Schools

1. [Public school district] has a responsibility to ensure that all students who reside within their boundaries can safely access a free public K-12 education.
2. [Public school district] does not exclude students from receiving an education or unlawfully discriminate against anyone because of their race, color, national origin, age, disability, gender identity, immigration or citizenship status, sex, creed, use of a trained dog guide or service animal by a person with a disability, sexual orientation, or on any other basis prohibited by federal, state, or local law.
3. [Public school district] will uphold its responsibility to all students and ensure that all staff and volunteers are aware of the rights of immigrant students to an education.

C. Immigration Enforcement on School Campus

1. [Public school district] does not grant permission for any person engaging in, or intending to engage in, immigration enforcement, including surveillance, to access the nonpublic areas of [Public school] facilities, property, equipment, databases, or otherwise on school grounds or their immediate vicinity. [Public school district] staff shall direct anyone engaging in, or intending to engage in, immigration enforcement, including federal immigration authorities with official business that must be conducted on [public school] property, to the [school principal or authorized designee] prior to permitting entrance to school grounds. [Public school] staff shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.
2. If anyone attempts to engage in immigration enforcement on or near [Public school] grounds, including requesting access to a student, employee, or school property:
 - a. [Public school] staff shall immediately alert and direct the person to the [school principal or authorized designee], who shall: verify and record the person's credentials (at least, name, agency, and badge number), record the names of all persons they intend to contact, collect the nature of the person's business at the school, request a copy of the court order or judicial warrant, log the date and time, and forward the request to the Superintendent and/or legal counsel for review.
 - b. [Public school] staff shall request that any person desiring to communicate with a student, enter school grounds, or conduct an arrest first produce a valid court order or judicial warrant.
 - c. The District Superintendent [or authorized designee and/or legal counsel] shall review the court order or judicial warrant for signature by a judge and validity. For [public school district] to consider it valid, any court order or judicial warrant must state the purpose of the enforcement activity, identify the specific search location, name the specific person to whom access must be granted, include a current date, and be signed by a judge.
 - d. The District Superintendent [or authorized designee and/or legal counsel] shall review written authority signed by an appropriate level director of an officer's agency that permits them to enter [public school district] property, for a specific purpose. If no written authority exists, the District Superintendent [or authorized designee and/or legal counsel] shall contact the appropriate level director for the officer's agency to confirm permission has been granted to enter [public school district] property for the specific purpose identified.
 - e. Upon receipt and examination of the required information, the District Superintendent [or authorized designee and/or legal counsel] will determine whether [public school] shall allow access to contact or question the identified individual and will communicate that decision to the [school principal or authorized designee].
 - f. The District Superintendent [or authorized designee and/or legal counsel] shall make a reasonable effort, to the extent allowed by the Family Educational Rights and Privacy Act (FERPA), to notify the parent/guardian of any immigration enforcement concerning their student, including contact or interview.

- g. The District Superintendent [and/or legal counsel or authorized designee] shall request the presence of a [public school district] representative to be present during any interview. [Public school] shall not permit access to information, records, or areas beyond that specified in the court order, judicial warrant, or other legal requirement.

D. Gathering Immigration Related Information

1. [Public school district] staff may review, but shall not inquire about, request, or collect any information about the immigration or citizenship status or place of birth of any person. [Public school] staff shall not seek or require, to the exclusion of other sufficient and permissible information, information regarding a student's or his/her parent or guardian's citizenship or immigration status.
2. [Public school district] policies and procedures for gathering and handling student information during enrollment or other relevant periods shall be delineated in writing and made available to students and their parent or guardian(s) at least once per school year in a manner for households with individuals that have limited English proficiency (LEP) to understand.
3. If [public school district] is required to collect information related to a student's national origin (e.g., information regarding a student's birthplace, or date of first enrollment in a U.S. school) to satisfy certain federal reporting requirements for special programs, [public school district] staff shall:
 - a. If feasible, consult with legal counsel to seek alternatives, including alternatives to the specific program or documents accepted as adequate proof for the program;
 - b. Explain to the student and student's parent(s) and/or guardian(s), in their requested language, the reporting requirements, including possible immigration enforcement impact;
 - c. Provide notice to the student's parent(s) and/or guardian(s); and
 - d. Mitigate deterring school enrollment of immigrants or their children by collecting this information separately from the school enrollment process.

E. Responding to Requests for Information

1. [Public school district] staff shall not share, provide, or disclose personal information about any person for immigration enforcement purposes without a court order or judicial warrant requiring the information's disclosure or approval by [school principal or authorized designee]. Requests by federal immigration authorities shall be presumed to be for immigration enforcement purposes.
2. [Public school district] staff shall immediately report receipt of any information request relating to immigration enforcement to [school principal or authorized designee] who shall document the request and refer the request to the [Superintendent and/or legal counsel or authorized designee]. The [Superintendent and/or legal counsel or authorized designee] shall review the request to ensure compliance with FERPA, KWW, the Public Records Act (PRA), and other relevant federal and state laws. This review shall be conducted expeditiously, but before any production of information is granted to the requesting party.

3. [Public school district] shall, to the extent allowed by FERPA, notify an affected student's parent(s) and/or guardian(s) immediately of any request for information relating to immigration enforcement unless advised otherwise by [public school legal counsel].

F. Use of School Resources

1. [Public school district]'s resources shall not be used for immigration enforcement.
2. [Public school district]'s resources and policies regarding immigration enforcement shall be published and distributed to parent(s) and/or guardian(s) on an annual basis. These resources shall include, at minimum:
 - a. The right of immigrant students to receive an education, including accommodations for limited English proficiency and special education programs;
 - b. General information policies including the types of records maintained by the [public school district and/or public school] and a list of the circumstances or conditions under which the [public school district and/or public school] might release student information to third parties, including limitations under FERPA and other relevant law;
 - c. Policies regarding the retention and destruction of personal information;
 - d. The process of establishing notice and/or consent from parent(s) and/or guardian(s), as permitted under federal and state law, prior to releasing a student's personal information for immigration enforcement purposes;
 - e. Name and contact information for [public school district and/or public school]'s designated point of contact on immigration related matters; and
 - f. "Know Your Rights" resources and emergency preparedness forms to have completed in the event of a family separation.

PART IV:

MODEL POLICIES FOR INSTITUTIONS OF HIGHER EDUCATION

Pursuant to RCW 43.10.310(2), all Washington state public schools shall (a) adopt the necessary changes to policies consistent with the following model policies, or (b) notify the AGO that they are not adopting the changes, state the reasons that they are not adopting the changes, and provide the AGO with a copy of their policies that ensure compliance with KWW. Prior to adoption, public schools 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 Section II of this publication should be adopted in conjunction with the adoption of the model policies.

A. Applicability of Policies Related to Immigration Enforcement

1. [Higher education institution] adheres to all requirements of federal and state law.
2. The provisions of this policy shall apply to [higher education institution] and all school facilities, which include (but are not limited to) adjacent sidewalks, parking areas, sports facilities, and entrances and exits from said building spaces.
3. [Higher education institution]’s policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against students and their families, staff, and volunteers.
4. [Higher education institution] personnel shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.

B. Access to Schools

1. [Higher education institution] does not exclude students from receiving an education or unlawfully discriminate against anyone because of their race, color, national origin, age, disability, gender identity, immigration or citizenship status, sex, creed, use of a trained dog guide or service animal by a person with a disability, sexual orientation, or on any other basis prohibited by federal, state, or local law.
2. [Higher education institution] shall ensure that all school staff and volunteers are aware of the rights of immigrant students to an education.
3. [Higher education institution] shall ensure that information reviewed to determine eligibility for in-state tuition or other benefits and any reporting requirements is limited only to the information necessary for residency determinations and in compliance with KWW and any other applicable state or federal laws.
4. [Higher education institution] shall separate all information on individuals with foreign student visa status (F, J and M visas) retained for the purpose of reporting to the Student Exchange and Visitor Information System (SEVIS)¹⁵ as part of the Student and Exchange Visitor Program from general enrollment platforms or other directory information.

¹⁵ For information about SEVIS, please refer to Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, available online at <https://www.ice.gov/sevis> (last visited May 17, 2020).

C. Immigration Enforcement on School Grounds

1. [Higher education institution] does not grant permission for any person engaged, or intending to engage, in immigration enforcement, including surveillance, access to school grounds or their immediate vicinity. [Higher education institution] staff shall direct anyone engaging, or intending to engage, in immigration enforcement, including federal immigration authorities with official business that must be conducted on school grounds, to the [public school President, authorized designee, or legal counsel] prior to permitting entrance. [Higher education institution staff shall presume that activities by federal immigration authorities, including surveillance, constitute immigration enforcement.
2. If anyone attempts to engage in immigration enforcement on or near [higher education institution] grounds, including requesting access to a student, employee, or school grounds:
 - a. Staff shall immediately alert and direct the person to the [authorized school designee] who shall verify and record the person's credentials (at least, badge number and name), record the names of all persons they intend to contact, collect the nature of their business at the school, request a copy of the court order or judicial warrant, and log the date and time and forward the request to the [public school President, authorized designee, or legal counsel] for review.
 - b. Staff shall request that any person desiring to communicate with a student, enter school grounds, or conduct an arrest first produce a valid court order or judicial warrant.
 - c. [Public school President, authorized designee, or legal counsel] shall review the court order or judicial warrant for signature by a judge and validity. For [higher education institution] to consider it valid, any court order or judicial warrant must state the purpose of the enforcement activity, identify the specific search location, name the specific person to whom access must be granted, include a current date, and be signed by a judge.
 - d. [Public school President, authorized designee, or legal counsel] shall review written authority signed by an appropriate level director of an officer's agency that permits them to enter [higher education institution] property, for a specific purpose. If no written authority exists, [public school President, authorized designee, or legal counsel] shall contact the appropriate level director for the officer's agency to confirm permission has been granted to enter [higher education institution] property for the specific purpose identified.
 - e. Upon receipt and examination of the required information, the [public school President, authorized designee, or legal counsel] will determine whether access shall be allowed to contact or question the identified individual and shall communicate that decision to the [public school President, authorized designee, or legal counsel].
 - f. If the requestor is seeking access or information regarding a student under 18 years old, the [School President, authorized designee, or legal counsel] shall make a reasonable effort, to the extent allowed by FERPA, to notify the parent/guardian of any immigration enforcement concerning their student, including contact or interview.

- g. The [School President, authorized designee, or legal counsel] shall request the presence of a [higher education institution] representative to be present during any interview. Access to information, records, or areas beyond that specified in the court order or judicial warrant shall be denied.

D. Gathering Immigration Related Information

1. [Higher education institution] staff shall not inquire about, request, or collect any information about the immigration or citizenship status or place of birth of any person accessing services provided by, or in connection with the school. [Higher education institution] staff shall not seek or require information regarding or probative of any person's citizenship or immigration status where other information may be sufficient for the [higher education institution]'s purposes. This does not prohibit residency officers or related staff from reviewing information from students or others on a voluntary basis in order to determine that a student is qualified for in-state tuition rates.
2. [Higher education institution] policies and procedures for gathering and handling student information during enrollment or other relevant periods shall be made available in writing to students and their guardian(s) at least once per school year in a manner that Limited English Proficient (LEP) individuals will understand.
3. If [higher education institution] is required to collect and provide information related to a student's national origin (e.g., information regarding a student's birthplace, or date of first enrollment in a U.S. school) to satisfy certain federal reporting requirements for special programs, prior to collecting any such information or reporting it, [higher education institution] shall (except with respect to reporting requirements necessary for compliance with the Student and Exchange Visitor Program):
 - a. If feasible, consult with legal counsel regarding its options, including alternatives to the specific program or documents accepted as adequate proof for the program;
 - b. Explain reporting requirements to the student and student's parent(s) and/or guardian(s), in their requested language, including possible immigration enforcement impact;
 - c. If moving forward with collection of information, receive and collect written consent from the student, if over the age of 18, or the student's parent(s) and/or guardian(s); and
 - d. Collect and maintain this information separately from the school/class enrollment process and student's records in order to avoid deterring enrollment of immigrants or their children.
4. When [higher education institution] reviews information related to immigration status in order to make residency determinations, the residency officer's written confirmation that a student meets any applicable immigration status requirement shall be considered sufficient written evidence that a student meets the requirements of RCW 28B.15.012. All other documents used to prove student or other individual immigration status, aside from those independently required by law to be kept, shall be designated as transitory and disposed of in accordance with the [higher education institution] records retention policy. Any [higher education institution] staff maintaining said information in any other way shall report their retention procedure and basis to [School President, authorized designee, or legal counsel] prior to collecting the information.

E. Responding to Requests for Information

1. [Higher education institution] staff shall not share, provide, or disclose personal information about any person for immigration enforcement purposes without a court order or judicial warrant requiring the information's disclosure or approval by [public school President, authorized designee, or legal counsel], except as required by law. Requests by federal immigration authorities shall be presumed to be for immigration enforcement purposes.
2. [Higher education institution] staff shall immediately report receipt of any information request relating to immigration enforcement to [public school President, authorized designee, or legal counsel] who shall document the request.
3. [Higher education institution] shall, to the extent allowed by FERPA or as otherwise advised by legal counsel, notify the student's parent(s) and/or guardian(s) of the request for information at the earliest extent possible.

F. Use of School Resources

1. [Higher education institution]'s resources shall not be used to engage in, aid, or in any way assist with immigration enforcement.
2. [Higher education institution]'s resources and policies regarding immigration enforcement shall be published and distributed to students and their parent(s) or guardian(s) on an annual basis. These resources shall include, at minimum;
 - a. Information about accommodations for limited English proficiency, disability accommodations, special education programs (if applicable), and tuition assistance grant or loan programs that may be available regardless of immigration or citizenship status;
 - b. General information policies including the types of records maintained by the [higher education institution], a list of the circumstances or conditions under which the [higher education institution] might release student information to outside people or entities, including limitations under FERPA and other relevant law;
 - c. Policies regarding the retention and destruction of personal information;
 - d. The process of establishing consent from students and their parent(s) or guardian(s), as permitted under federal and state law, prior to releasing a student's personal information for immigration enforcement purposes;
 - e. Name and contact information for [higher education institution]'s designated point of contact on immigration related matters; and
 - f. "Know Your Rights" resources and emergency preparedness forms to have completed in the event of a family separation.

PART V: LEGAL OVERVIEW OF RELEVANT STATE & FEDERAL LAWS

While the Keep Washington Working Act, chapter 440, Laws of 2019, requires schools to adopt policies consistent with the AGO's model policies¹⁶ to ensure that they remain safe and accessible 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 schools should consider when adopting the model policies. School administrators 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. Federal Law Relating to Sharing Immigration Status Information

KWW prohibits state agencies from collecting, using, or disclosing information for immigration enforcement purposes except as required by state or federal law or as a necessary condition of federal funding to the state. Under 8 U.S.C. § 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." Section 1373 limits state and local agencies as follows:

(a) In General

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional Authority of Government Entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

In short, Section 1373 prohibits state and local governments from barring staff from sending immigration or citizenship status information to, or receiving that information from, federal immigration authorities, or "maintaining" such information. However, by Section 1373's own language, these restrictions apply only to information regarding an individual's "citizenship or immigration status."¹⁷ Washington law defines

¹⁶ Alternatively, a school must notify the AGO that it is not adopting changes to its policies consistent with the model policy, state the reasons that it is not, and provide the AGO with a copy of the school's policy.

¹⁷ 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."

“immigration or citizenship status” as “such status has been established to such individual under the Immigration and Nationality Act.”¹⁸ 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.

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.”¹⁹

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.²⁰ Under this doctrine, the federal government cannot “compel the States to enact or administer a federal regulatory program,”²¹ or compel state employees to participate in the administration of a federally enacted regulatory scheme.²²

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.²³ 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.”²⁴

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.²⁵ 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,²⁶ and KWW does not conflict with that prohibition. Rather, KWW’s provisions are expressly subject to requirements under federal law.²⁷

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

19 U.S. Const., amend. X.

20 *United States v. California*, 921 F.3d 865, 889 (9th Cir. 2019), petition for cert. filed, No. 19-532, 2019 WL 5448580 (U.S. Oct. 22, 2019) (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).

21 *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).

22 *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). See also *New York*, 505 U.S. at 903-04.

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

24 *Id.*

25 *Id.* at 890.

26 *Id.* at 892.

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

B. Federal Immigration Authority “Sensitive Location” Policies

In 2011 and 2013, respectively, ICE and CBP each issued policies (DHS policies) limiting immigration enforcement activity at or around “sensitive” locations,” including schools.²⁸ Under these DHS policies, ICE and CBP must avoid enforcement activities at schools and other “sensitive locations” unless a specific set of prerequisites are met. Thus, enforcement activities by ICE and CBP may only take place when (1) an officer has received prior approval from an appropriate level supervisory director or (2) “exigent circumstances” exist such that immediate action is required. “Exigent circumstances” exist when:

- The enforcement action involves a national security or terrorism matter;
- There is an imminent risk of death, violence, or physical harm to a person or property;
- Enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or other individual posing an imminent danger to public safety; or
- There is an imminent risk of destruction of evidence material to an ongoing criminal case.²⁹

Given these DHS policies, enforcement actions by federal immigration authorities at Washington schools should generally be limited. However, school officials should be mindful that these policies can be amended or revoked at any time. Additionally, the ICE and CBP policies only cover immigration enforcement actions, including arrests, interviews, searches, and surveillance of individuals for immigration enforcement purposes by ICE and CBP. They expressly do not include efforts by these agencies to obtain records, documents, or similar materials; providing notice to officials or employees; serving subpoenas; or participating in official functions or community meetings.³⁰

C. Rights of Immigrant Students in K-12

The U.S. Supreme Court ruled in *Plyer v. Doe* that undocumented children in the U.S. have the right to attend the nation’s public schools.³¹ Washington law similarly affirms the equal educational rights

28 See Morton, ICE, Enforcement Actions at or Focused on Sensitive Locations, Oct. 24, 2011, available on line at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (last visited April 7, 2020) and in Appendix E; ICE, FAQs on Sensitive Locations and Courthouse Arrests, available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited May 15, 2020); CBP, U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations, Jan. 18, 2013, available online at https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf (last visited May 15, 2020) and Appendix F.

29 The ICE policy further provides that when officers proceed with an enforcement action under exigent circumstances, they “must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.”

30 In addition, CBP’s policy does not apply to agency operations conducted at or near the international border or that bear a “nexus” to the border.

31 457 U.S. 202 (1982). Under *Plyler*, public schools may not: 1. Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status. 2. Treat a student differently to determine residency. 3. Engage in any practices to “chill” the right of access to school. 4. Require students or parents to disclose or document their immigration status. 5. Make inquiries of students or parents that may expose their undocumented status. 6. Require social security numbers from all students, as this may expose undocumented status.

of immigrant students. Under the Washington Constitution, the State must provide education for all children residing within the borders of the state in a non-discriminatory manner.³² Like all children, undocumented students between the ages of 8 and 18 years must be enrolled in school.³³

In addition, the U.S. Supreme Court ruled in *Lau v. Nichols* that in order to comply with the legal obligations under Title VI of the Civil Rights Act of 1964, school districts must take affirmative steps to ensure that LEP students can meaningfully participate in their educational programs and services.³⁴

D. Collection of Personal Information

Washington law requires that public school districts consider certain information about a student during the enrollment process, such as a student’s age and residency.³⁵ While specific documentation to establish the student’s residency in the district is not required, many public schools will accept a purchase or lease agreement for the primary residence, a utility bill of some kind from the last two months, government mail (including vehicle registration, a letter regarding unemployment, an election ballot, or tax documents).³⁶ Additionally, public school districts cannot require proof of residency or any other information regarding an address for any child who is otherwise eligible for the services of the school district if the child does not have a legal residence.³⁷ Instead, the district must enroll a child without legal residence at the request of the child, parent or guardian.³⁸

Federal and Washington law also prohibit schools from discriminating on the basis of race, color, creed, or national origin. Washington law specifically prohibits discrimination on these bases for any program or activity conducted by an educational institution that either receives or benefits from state financial assistance, or that enrolls students who receive state financial aid.³⁹ In addition, state law requires allowing access to any program or activity conducted by or on behalf of a school district or public charter school including, but not limited to, recreational and athletic activities, extracurricular activities, preschool, adult education, community education, and vocational-technical program activities, regardless of students’ citizenship or immigration status.⁴⁰ Under the Washington Law Against Discrimination (WLAD), the right to be free from discrimination is expressly protected on the bases of “citizenship or immigration status.”⁴¹

32 Wash. Const. art. IX § 1; *see also McCleary*, 173 Wn.2d at 520.

33 RCW 28A.225.010(1).

34 414 U.S. 563 (1974). Additional guidance can be found in the U.S Department of Justice’s “Dear Colleague”

2015 letter, published here: <https://www.k12.wa.us/sites/default/files/public/migrantbilingual/pubdocs/ADA-may8th2014colleagueletter.pdf> (last visited May 17, 2020).

35 RCW 28A.225.160.

36 *See, e.g.*, Establish Residency Bellevue School District, available online at <https://bsd405.org/schools/registration/establish-residency-step/> (last visited May 13, 2020);

Issaquah School District, available online at <https://www.issaquah.wednet.edu/schools/enrollment> (last visited May 13, 2020).

37 RCW 28A.225.215.

38 *Id.*

39 RCW 28A.642.010; WAC 392-190-005.

40 *Id.*

41 Laws of 2020, ch. 52, § 4 (to be codified at RCW 49.60.030(1)).

E. Collection of Social Security Numbers in K-12 Schools

Washington students and their families have a privacy interest in protecting the confidentiality of their personal information, including their Social Security numbers.⁴² Washington law, however, does not specifically prohibit school districts and schools from collecting such information from students or their parents or guardians. Therefore, OSPI directs that school districts “may not request a student’s or parent’s social security number unless it (1) informs the individual that disclosure is voluntary, (2) provides the statutory or other legal basis for why the district is requesting the number, and (3) explains how the district will use the number.”⁴³ Additionally OSPI strongly discourages districts from requesting social security numbers to avoid any chilling effect that this request may have on the enrollment of students because of their race, color, national origin, citizenship, or immigration status.⁴⁴ In order to now comply with KWW, public schools and districts should refrain from collecting social security numbers from students, parents, or guardians unless required to comply with a federal law or to obtain federal funding in support of public instruction.⁴⁵

F. Rights of Immigrant Students in Institutions of Higher Education

There is no federal or state law that prevents admission of undocumented students to U.S. colleges, public or private. Additionally, neither federal law nor laws governing the State of Washington require students to prove citizenship in order to enter U.S. institutions of higher education. The WLAD prohibits discrimination based on race and national origin in Washington’s public schools and many private schools. In addition, federal civil rights laws apply to schools that receive federal funding.

In Washington, students may pay in-state tuition rates for public institutions of higher education if they have lived in Washington for at least three years prior to graduating from a Washington state high school or earning a high school diploma equivalent, such as a GED.⁴⁶ Students who qualify for in-state tuition also qualify to apply for state financial aid, such as the Washington College Grant (formerly called the State Need Grant), which is administered by the Washington Student Achievement Council.⁴⁷

For students who cannot satisfy these resident student requirements and those who attend private institutions, they might be charged out-of-state tuition fees. Further, with some exceptions, undocumented students are not eligible for federally funded student financial aid, including loans, grants, scholarships, or work-study endowments.⁴⁸ This negatively impacts students that cannot

42 See *In re Crawford*, 194 F.3d 954, 958 (9th Cir. 1999) (“[I]ndiscriminate public disclosure of SSNs, especially when accompanied by names and addresses, may implicate the constitutional right of informational privacy”).

43 Washington Office of Superintendent of Public Instruction, “Immigrant Student’s Rights to Attend Public Schools, available at <https://www.k12.wa.us/student-success/access-opportunity-education/migrant-and-bilingual-education/immigrant-student%E2%80%99s-rights-attend-public-schools> (last visited May 17, 2020).

44 *Id.*

45 For additional information visit Washington’s Office of Superintendent of Public Instruction here: <https://www.k12.wa.us/student-success/access-opportunity-education/migrant-and-bilingual-education/immigrant-student%E2%80%99s-rights-attend-public-schools>.

46 RCW 28B.15.012(e).

47 Washington Student Achievement Council, Washington College Grant Eligibility and Awards, available online at <https://wsac.wa.gov/wcg-awards> (last visited May 13, 2020).

48 See Federal Student Aid, Eligibility for Non-U.S. Citizens, available online at <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens> (last visited May 13, 2020); College Board, Advising Undocumented Students, available online at <https://professionals.collegeboard.org/guidance/financial-aid/undocumented-students> (last visited May 13, 2020).

afford the cost of tuition. To aid students who are otherwise limited from financial aid and in-state tuition based on their immigration or citizenship status, the Legislature has enacted the Undocumented Student Support Loan Program.⁴⁹ The data collected from students as part of this program is private and must stay confidential except for limited permissible uses.⁵⁰

49 Laws of 2020, ch. 326.

50 *Id.* at § 3(8).

PART VI: TRAINING RECOMMENDATIONS & BEST PRACTICE GUIDANCE

A. Training for Public School Staff

K-12 and higher education institutions' staff must be adequately trained to understand and carry out the model policies and practices adopted by their respective leadership. The following recommendations for training metrics are intended to create working knowledge across school staff. Some K-12 and/or higher education institutions may have already adopted training curriculum equivalent to or exceeding those provided in this guidance. To the extent that an institution has developed and/or adopted curricula equal to or greater than those outlined below, this guidance is not intended to displace those efforts. Instead, these training areas reflect a baseline of information that designated staff should have in order to adequately implement the model policies within this guide. Institutions may wish to include additional topics.

1. Responding to Immigration Enforcement Action

Public school staff need to be prepared in the event of an immigration enforcement activity, inquiry, or related incident at or near school facilities. Public school staff must also be prepared to determine the appropriate response for any potential disclosures of information, including staff's ability to communicate with the appropriate authority as incidents occur and/or assistance is needed. As such, public schools should adopt training protocols for immigration incident response and ensure their designated trained staff are identified and available to respond as incidents or questions arise.

Public schools should adopt a restricted location policy with nonpublic, restricted locations within the school grounds with requirements—such as a judicial warrant—for who may access those restricted locations. Restricted locations include spaces where public schools have legitimate privacy interests, such as dormitories and other living spaces.

Designated school staff need working knowledge in the different types of documents that may be presented for the purpose of immigration enforcement. They will need to be able to review warrants for:

- Judge's signature;
- Identity of the agency;
- Search location;
- Dates and expirations, and
- Persons named.

The training should educate staff on the following:

- The ability to differentiate between administrative warrants and judicial warrants signed by a judge or magistrate;
- The ability to differentiate between administrative and judicial subpoenas; and
- The procedure for responding to any warrant, subpoena, or order issued in connection with immigration enforcement activities.

Designated public school staff should also be trained on procedure for documenting any immigration enforcement activity, inquiry, or other incident at or near the school grounds including the name, badge number (or identifying information from other credentials), date, time, agency, and other relevant notes of the incident. Public school staff should be trained on the appropriate timeline for creation and delivery of this documentation.

B. Eliminating Barriers to Access or Enrollment

In order to foster a welcoming environment for all students, public schools should publish requirements for enrollment along with descriptions of how the information collected will be protected. Where alternative documents can be collected as proof of residency or to meet other minimum requirements for enrollment, those should be published as well.

Public schools should ensure staff presence in public pick up/drop off areas during high traffic times and whenever federal immigration authority presence is known. These staff members need to know their school's procedures for responding to immigration enforcement activity or surveillance at or near school property.

Higher education facilities and K-12 public schools may participate in the Student and Exchange Visitor Program (SEVP), managed by the DHS. This program allows foreign students to attend university or college, high school, seminary, conservatory, or another academic or vocational nonacademic institution in the U.S. (and K-12 schools in limited circumstances).⁵¹ While requirements for international students attending academic or vocational programs through SEVP such as a valid F-1 or M-1 visa may not apply to undocumented students, higher education institutions should be mindful of limiting data collection to the baseline required.

C. Financial Assistance

Where possible, public schools should provide information on financial assistance resources and/or scholarships that do not require proof of citizenship or immigration status. These should be updated annually or as new resources become available and shared on any platforms where prospective students can enroll. Public schools should be mindful of data collection and privacy concerns and ensure any resource pages published avoid creating a database for inquiries.

D. Emergency Preparedness

Public schools should designate a staff member or team to help students navigate requirements for enrollment as well as concerns that emerge as part of their educational experience. The designated staff member or team should be trained to assist students who face additional barriers to learning due to

⁵¹ See, Study in the States, Homeland Security, available online at <https://studyinthestates.dhs.gov/kindergarten-to-grade-12-students> (last visited May 17, 2020).

fears of immigration enforcement or retaliation to them or their families. This can include creating and maintaining counseling resources, as well as encouraging students and their loved ones to prepare emergency documents in case of a family separation.

Public schools should encourage families to plan for unexpected detention of a student or child's parents or caregivers. Without collecting unnecessary information, public schools should distribute and make available emergency planning kits such as the Immigrant Safety Plan for Youth and Children packet⁵² to families who might be impacted, which is available at: <http://www.washingtonlawhelp.org/resource/immigrant-safety-plan-for-youth-and-children?ref=Pv9zQ>. The Immigrant Safety Plan for Youth and Children packet contains a temporary parental consent agreement, along with other documents. Public schools can assist students and their families in filling out these forms, or connect them to community or legal resources as needed.

Public schools should designate a staff member who is trained in what to do in the event that a student's parents or guardians are detained. The staff member should work with resource providers in the local community to develop a plan for caring for students whose caregivers are detained while the child is at school. The student's emergency contact information should be kept up to date and include alternative adults who can pick up the child so that the public school knows who to call should such an emergency occur. Public schools should check for a completed parental consent agreement that designates the student's alternate caregiver(s). Some students will be carrying this document in their backpacks. Unless circumstances of abuse or neglect exist, public schools should reach out to all of the student's emergency contacts before turning to Child Protective Services or local law enforcement.

While it is important to provide information and resources to families who might be impacted by increased immigration enforcement, public schools should avoid gathering potentially impacted families in one place at an announced date and time. In addition, other than emergency contact information, public schools should avoid holding copies of families' safety plans without legal assurances that the information will be protected from access as part of future immigration enforcement actions. Public schools should provide written information to families on websites or handouts, in multiple languages depending on the community, and/or in one-on-one meetings. Public schools should also disseminate information verbally by recorded messages that families can call to listen to key information in their spoken language or other means.

E. Data and Consent Culture

Public schools should limit information collected from students to only that required to comply with state or federal law, or as necessary to perform their duties as permitted by statute or rule. In cases where information is collected, students and their families should be notified why that information is being collected, and what safeguards exist for it once it is collected. If the school learns that personal information is requested of one of their students, the school should make every effort to notify the student and emergency contact/family/guardian unless restricted by a lawfully issued court order or subpoena.

Public schools may determine what information, if any, is considered public directory information within the limits of 34 C.F.R. In order to prioritize the privacy of student information and records, public schools

52 Immigrant Safety Plan Packet for Youth and Children is available online at <https://static1.squarespace.com/static/533dcf7ce4b0f92a7a64292e/t/5acf713e2b6a28b2996df75b/1523544386493/Immigrant+Safety+Plan+March+2018.pdf> (last visited May 18, 2020).

should notify students and parents what information, if any, is subject to release as directory information. Public schools should use opt-in models for directory information so that students and their parent(s) and/or guardian(s) may control whether their data is included in the public school's directory. Any public schools with automatic directories should ensure families know how to easily opt-out from their inclusion. Public schools must notify students and parents of what information, if any, is subject to release as directory information prior to collecting the information and before making their directory information available.

In order to foster greater transparency of data collection practices, public schools should create protocols for data collection and sharing, including affirmative consent from students and their parent(s) and/or guardian(s) prior to any data collection. These practices should also carry into the classroom setting and any digital learning spaces where data collection may occur, such as projects requiring social media accounts.

F. Ethnic Studies Curriculum

Schools are vital instruments in the development and education of all Washingtonians. In an increasingly multicultural world, understanding the complexities of identity and the history weaving through various cultural dimensions not only enriches education and a welcoming environment for the diversity of students in the classroom, but also enhances the ability for students to thrive in a quickly changing world. Washington state has created measures advancing equity and cultural competency across various sectors, including training and professional development for school staff.⁵³

In addition to standards created for staff,⁵⁴ the Legislature also made changes to instruction requirements for K-12, directing the OSPI to adopt state learning standards, addressing knowledge and skills all public school students need to “be global citizens in a global society with an appreciation for the contributions of diverse cultures.”⁵⁵ OSPI was further directed to establish an Ethnic Studies Advisory Committee to advise and make recommendations regarding identification of materials and resources for instruction, as well as developing a framework to support teaching ethnic studies. Subject to the availability of funds, findings must be published by September 1, 2021.

Public schools are encouraged to work with OSPI's Ethnic Studies Advisory Committee, the Social-Emotional Learning Committee, the Office of Native Education, and other subject matter experts so resources and curriculum changes are applied as consistently as possible across the state. This could include adopting a shared definition for “ethnic studies” along with benchmarks for ethnic studies' literacy appropriate for each grade level.⁵⁶

53 In 2009, the Legislature tasked the Professional Educator Standards Board, the Education Opportunity Gap Oversight and Accountability Committee, and various other subject matter experts to identify model standards for professional development and training in cultural competency for school staff. *See* RCW. 28A.415.420.

54 Cultural Competency Standards, 2018, may be viewed here: <https://drive.google.com/file/d/1PYplzDlaxPxrVaZALRzfXk8bH9agBIBp/view>.

55 SB 5023, enacted in C 279, Laws 2019, tasked OSPI to create an Ethnic Studies Advisory Committee to aid in researching and publishing EALRs, including ethnic studies materials and resources for use in grades 7-12. These requirements were expanded to K-12 the following year, through SB 6066, amending RCW 28A.655.300, 28A.300.112, and C 279, Laws 2019, S4.

56 In 2019, the Washington State Legislature created a hate crimes workgroup tasked with developing strategies to prevent and strengthen the response to bias-motivated crimes and incidents, including those taking place in schools. RCW 43.10.300.

G. Public Communication & Feedback to the State

Public schools should involve community members in developing and updating their KWW-specific policies. Once their policies are adopted, public schools should present them to the public in a forum that allows for community members to ask questions. Public schools should also post their policies on their public-facing websites and have personal knowledgeable about their KWW policies available to answer questions from the public.

Public schools should communicate with OSPI and the Governor's Office regarding their ongoing needs and the impacts of their KWW policies. Public schools should also coordinate with the Washington Education Association, the Washington State School Directors' Association, and other professional organizations to share feedback, recommendations, and ideas regarding their KWW policies, procedures, and training. Communication between public schools and organizations supporting immigrants should be established to promote feedback on school policies and practices related to KWW, identification of new or emerging issues, and collaboration.

**PART VII:
APPENDIX**

Appendixes begin on 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 Senate

Passed 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

JAY INSLEE

Governor of the State of Washington

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

**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, Lias, 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.

1 (2) The work group must consist of eleven representatives, each
2 serving a term of three years, representing members from
3 geographically diverse immigrant advocacy groups, professional
4 associations representing business, labor organizations with a
5 statewide presence, agriculture and immigrant legal interests, faith-
6 based community nonprofit organizations, legal advocacy groups
7 focusing on immigration and criminal justice, academic institutions,
8 and law enforcement. The terms of the members must be staggered.
9 Members of the work group must select a chair from among the
10 membership. The work group must meet at least four times a year and
11 hold meetings in various locations throughout the state. Following
12 each meeting, the work group must report on its status, including
13 meeting minutes and a meeting summary to the department. The
14 department must provide a report to the legislature annually.

15 (3) In addition to the duties and powers described in RCW
16 43.330.040, it is the director's duty to provide support to the work
17 group.

18 (4) The definitions in section 2 of this act apply to this
19 section.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10
21 RCW to read as follows:

22 (1) The attorney general, in consultation with appropriate
23 stakeholders, must publish model policies within twelve months after
24 the effective date of this section for limiting immigration
25 enforcement to the fullest extent possible consistent with federal
26 and state law at public schools, health facilities operated by the
27 state or a political subdivision of the state, courthouses, and
28 shelters, to ensure they remain safe and accessible to all Washington
29 residents, regardless of immigration or citizenship status.

30 (2) All public schools, health facilities either operated by the
31 state or a political subdivision of the state, and courthouses must:

32 (a) Adopt necessary changes to policies consistent with the model
33 policy; or

34 (b) Notify the attorney general that the agency is not adopting
35 the changes to its policies consistent with the model policy, state
36 the reasons that the agency is not adopting the changes, and provide
37 the attorney general with a copy of the agency's policies.

1 (3) All other organizations and entities that provide services
 2 related to physical or mental health and wellness, education, or
 3 access to justice, are encouraged to adopt the model policy.

4 (4) Implementation of any policy under this section must be in
 5 accordance with state and federal law; policies, grants, waivers, or
 6 other requirements necessary to maintain funding; or other agreements
 7 related to the operation and functions of the organization, including
 8 databases within the organization.

9 (5) The definitions in section 2 of this act apply to this
 10 section.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.17
 12 RCW to read as follows:

13 (1) Except as provided in subsection (3) of this section, no
 14 state agency, including law enforcement, may use agency funds,
 15 facilities, property, equipment, or personnel to investigate,
 16 enforce, cooperate with, or assist in the investigation or
 17 enforcement of any federal registration or surveillance programs or
 18 any other laws, rules, or policies that target Washington residents
 19 solely on the basis of race, religion, immigration, or citizenship
 20 status, or national or ethnic origin. This subsection does not apply
 21 to any program with the primary purpose of providing persons with
 22 services or benefits, or to RCW 9.94A.685.

23 (2) Except as provided in subsection (3) of this section, the
 24 state agencies listed in subsections (5) and (6) of this section
 25 shall review their policies and identify and make any changes
 26 necessary to ensure that:

27 (a) Information collected from individuals is limited to the
 28 minimum necessary to comply with subsection (3) of this section;

29 (b) Information collected from individuals is not disclosed
 30 except as necessary to comply with subsection (3) of this section or
 31 as permitted by state or federal law;

32 (c) Agency employees may not condition services or request
 33 information or proof regarding a person's immigration status,
 34 citizenship status, or place of birth; and

35 (d) Public services are available to, and agency employees shall
 36 serve, all Washington residents without regard to immigration or
 37 citizenship status.

38 (3) Nothing in subsection (1) or (2) of this section prohibits
 39 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.

1 (12) (a) No state agency or local government or law enforcement
2 officer may enter into an immigration detention agreement. All
3 immigration detention agreements must be terminated no later than one
4 hundred eighty days after the effective date of this section, except
5 as provided in (b) of this subsection.

6 (b) Any immigration detention agreement in effect prior to
7 January 1, 2019, and under which a payment was made between July 1,
8 2017, and December 31, 2018, may remain in effect until the date of
9 completion or December 31, 2021, whichever is earlier.

10 (13) No state or local law enforcement agency or school resource
11 officer may enter into or renew a contract for the provision of
12 language services from federal immigration authorities, nor may any
13 language services be accepted from such for free or otherwise.

14 (14) The department of corrections may not give federal
15 immigration authorities access to interview individuals about federal
16 immigration violations while they are in custody, except as required
17 by state or federal law or by court order, unless such individuals
18 consent to be interviewed in writing. Before agreeing to be
19 interviewed, individuals must be advised that they will not be
20 punished or suffer retaliation for declining to be interviewed.

21 (15) Subsections (3) through (6) of this section do not apply to
22 individuals who are in the physical custody of the department of
23 corrections.

24 (16) Nothing in this section prohibits the collection, use, or
25 disclosure of information that is:

26 (a) Required to comply with state or federal law; or

27 (b) In response to a lawfully issued court order.

28 NEW SECTION. **Sec. 7.** To ensure state and law enforcement
29 agencies are able to foster the community trust necessary to maintain
30 public safety, within twelve months of the effective date of this
31 section, the attorney general must, in consultation with appropriate
32 stakeholders, publish model policies, guidance, and training
33 recommendations consistent with this act and state and local law,
34 aimed at ensuring that state and local law enforcement duties are
35 carried out in a manner that limits, to the fullest extent
36 practicable and consistent with federal and state law, engagement
37 with federal immigration authorities for the purpose of immigration
38 enforcement. All state and local law enforcement agencies must
39 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 ---

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

EXECUTIVE ORDER 17-01

**REAFFIRMING WASHINGTON'S COMMITMENT
TO TOLERANCE, DIVERSITY, AND INCLUSIVENESS**

WHEREAS, Washington has a proud history of inclusivity, tolerance, and compassion for all residents. The diversity of our people and cultures is a critical part of who we are as a state;

WHEREAS, our state values the unique differences in our residents and protects diversity. Washington law establishes “the right to be free from discrimination because of race, creed, color, national origin,” the right to engage in commerce free from discrimination, including discrimination based on religion, and declares these to be civil rights. RCW 49.60.030;

WHEREAS, nearly one million Washingtonians – one in every seven people in this state – are immigrants. These Washingtonians are an integral part of our communities and workforce;

WHEREAS, Washington’s diverse and vibrant economy spans both the east and west sides of our state and encompasses agriculture, aerospace, food processing, timber, construction, health care, technology, tourism, hospitality industries, and the defense sector. As of 2014, immigrants comprised almost 17 percent of Washington’s workforce and contributed over \$2.4 billion in state and local taxes. Sixty percent of the Fortune 500 companies based in Washington were founded by immigrants or their children. The contributions of these individuals to our businesses, economy, and community are critical to our success as a state;

WHEREAS, undocumented immigrants comprised approximately 4.9 percent of the state’s workforce in 2012 and paid \$301.9 million in state and local taxes. If all undocumented immigrants were removed from the state, the state would lose \$14.5 billion in economic activity, \$6.4 billion in gross revenue, and approximately 71,197 jobs;

WHEREAS, as of 2016, Washington is home to over 17,000 Deferred Action of Childhood Arrival (DACA) recipients. These are young people who came to this country as children and have been here for a significant period of time. DACA recipients are required to be students or in the workforce, and must have no prior felonies or significant misdemeanors. They are contributing members of our community and to our economy. Almost 15,000 DACA young people are employed in this state. If these individuals were removed from our state, our communities would suffer a significant economic loss, estimated at \$1 billion;

WHEREAS, currently 65,000 immigrants serve in our nation’s armed forces and since 2002 greater than 100,000 immigrants have become naturalized citizens following honorable service to our nation. Many of these immigrants are Washingtonians. Their personal sacrifice and contribution to our nation’s security should be recognized by all Americans.

WHEREAS, Washington State has outstanding higher education institutions and foreign-born students contribute significantly to these institutions through their cultural diversity and economic contributions. In the 2013-2014 academic year, roughly 21,000 international college students made up 6.2 percent of all college students in the state and contributed \$737 million in to our state's economy in tuition, fees, and living expenses.

WHEREAS, Washington immigrants are an important part of the fabric of our state. Immigrants contribute to Washington's rich culture by bringing their arts, heritage, cuisines, rituals, and festivals to share and celebrate. The cultural influences and creative talents of immigrants can be found in every aspect of our society, from the performing arts and education to the innovation and entrepreneurial spirit of our burgeoning industries; and

WHEREAS, we have long tradition of welcoming and supporting those who are the most vulnerable. In 1975, for example, Governor Dan Evans launched a program to settle hundreds of Vietnamese refugees in Washington State. To this day, Washington continues to provide state services to assist those qualified individuals who are most in need of these services, while adhering to state and federal laws and regulations.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, reaffirm my commitment to vigorously support and protect the rights of Washingtonians and to respect diversity and inclusion in our state practices. It is therefore directed that:

1. The state of Washington shall remain a welcoming jurisdiction that embraces diversity with compassion and tolerance and recognizes the value of immigrants;
2. Executive and small cabinet agencies shall continue to provide assistance and services to Washingtonians, regardless of citizenship or legal status, to the extent allowed by law;
3. No executive or small cabinet agency may discriminate against a person based on the person's national origin in violation of RCW 49.60.030;
4. No executive or small cabinet agency may condition provision of services or benefits upon a resident's immigration status, except as required by international, federal or state law;
5. Executive and small cabinet agencies shall ensure their policies comply with Executive Order 16-01, *Privacy Protection and Transparency in State Government*, and that information collected from clients is limited to that necessary to perform agency duties. Policies must ensure that information regarding a person's immigration or citizenship status or place of birth shall not be collected, except as required by federal or state law or state agency policy;
6. No executive or small cabinet agency may inquire into, or request specific documents, in order to ascertain a person's immigration status for the sole purpose of identifying if a person has complied with federal civil immigration laws, including passports, alien registration, or work permits, except as required by federal or state law;
7. No executive or small cabinet agency may use agency or department monies, facilities, property, equipment, or personnel to enforce, or assist in the enforcement or creation of any federal program requiring registration of individuals on the basis of religious affiliation, except as required by federal or state law;

8. No executive or small cabinet agency may use agency or department monies, facilities, property, equipment, or personnel for the purpose of targeting or apprehending persons for violation of federal civil immigration laws, except as required by federal or state law or otherwise authorized by the Governor; and
9. The Washington State Patrol or Department of Corrections, or other executive or small cabinet agency with arrest powers, will act consistently with current federal law and shall not arrest solely for violation of federal civil immigration laws, except as otherwise required by federal or state law or authorized by the Governor. Specifically, no agency may enter into any agreements with the federal government authorizing such authority under the Immigration and Nationality Act (8 U.S.C. §1357).

This Executive Order is not intended to, and does not, create any right or entitlement for any person, nor does it create a cause of action against the state of Washington;

This Executive Order is intended to be consistent with 8 U.S.C. §1373. Should federal or state law change so as to give rise to a conflict with this Executive Order, such provision of this Executive Order shall be inoperative to the sole extent of the conflict.

This order is effective immediately.

Signed and sealed with the official seal of the state of Washington, on this 23rd day of February, 2017, at Olympia, Washington.

By:

/s/

Jay Inslee
Governor

BY THE GOVERNOR:

/s/

Secretary of State

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:

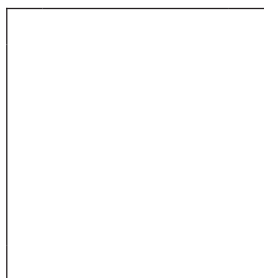
(Signature of immigration officer)

(Title of immigration officer)

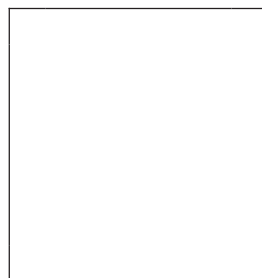
(Date and office location)

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。

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director


U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

OCT 24 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton 
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "Exceptions to the General Rule" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

¹ Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

Enforcement Actions at or Focused on Sensitive Locations

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- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

Enforcement Actions at or Focused on Sensitive Locations

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- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

1300 Pennsylvania Avenue, NW
Washington, DC 20229




**U.S. Customs and
Border Protection**

Deputy Commissioner

JAN 18 2013

MEMORANDUM FOR: See Distribution

FROM: David V. Aguilar 
Deputy Commissioner

SUBJECT: U.S. Customs and Border Protection Enforcement Actions at or
Near Certain Community Locations

The presence of U.S. Customs and Border Protection (CBP) Officers and Agents conducting enforcement activities at or near schools, places of worship, and certain other community locations has been a sensitive issue. Accordingly, careful consideration and planning must be undertaken, as outlined herein, in relation to enforcement actions conducted at or near these establishments.

The following establishments should be considered to be within the context of this policy:

- schools, including pre-schools, primary schools, secondary schools, post-secondary schools, vocational or trade schools, and colleges and universities;
- places of worship, including places where funerals, weddings, or other public religious ceremonies are taking place;
- community centers; and
- hospitals.

CBP personnel should consult their supervisors for guidance when an enforcement action is being contemplated or planned at or near a location not specifically listed above but that may be similar in nature, description, or function. In assessing the appropriateness of a proposed action, supervisors should consider alternative measures that could achieve the enforcement objective without causing significant disruption to the normal activities or operations at the identified location, including the importance of the enforcement objective in furthering CBP's mission.

When CBP enforcement actions or investigative activities are likely to lead to an apprehension at or near such locations, written approval by the Chief Patrol Agent, Director of Field Operations, Director of Air and Marine Operations or the Internal Affairs Special Agent in Charge is required. The Deputy to these offices may approve the inspection of records, preliminary investigative activities, and similar activities at these locations where apprehensions are not likely to be made.

This policy does not summarily preclude enforcement actions at the listed locations. When situations arise that call for enforcement actions at or near the above-mentioned establishments without prior written approval, Agents and Officers are expected to exercise sound judgment and

U.S. Customs and Border Protection Enforcement Action at or
Near Certain Community Locations

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common sense while taking appropriate action. Exigent circumstances, including matters related to national security, terrorism, or public safety, requiring an Agent or Officer to enter these establishments, must be reported immediately through the respective chain of command, as applicable.

This policy does not limit or otherwise apply to CBP operations that are conducted at or near the international border (including the functional equivalent of the border), or CBP operations that bear nexus to the border including, for example, but not limited to smuggling interdiction efforts that result in transportation to a hospital, custodial monitoring of injured aliens in CBP custody that require hospitalization, or a controlled delivery from the border that concludes in close proximity of one of the aforementioned locations.

This CBP policy guidance memorandum, which may be modified, superseded, or rescinded by CBP at any time without notice, is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, for any party.

Distribution: Assistant Commissioner, Office of Air and Marine
Assistant Commissioner, Office of Field Operations
Assistant Commissioner, Office of Internal Affairs
Chief, Office of Border Patrol
Chief Counsel

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