

Immigration Violations

412.1 PURPOSE AND SCOPE

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

412.2 POLICY

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

412.3 VICTIMS AND WITNESSES

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

412.4 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department should be directed to a supervisor. The Department may provide available support services, such as traffic control or peacekeeping efforts.

412.5 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; RCW 2.28.310):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

412.6 U VISA AND T VISA NONIMMIGRANT STATUS

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

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

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Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigation Unit supervisor assigned to oversee the handling of any related case. The Investigation Unit supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner (RCW 7.98.020).
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

412.6.1 TIME FRAME FOR COMPLETION

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

412.6.2 U VISA AND T VISA DOCUMENTATION AND REPORTING

The Investigation Unit supervisor shall keep written documentation regarding the number of certification forms that are (RCW 7.98.020):

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

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

412.6.3 RELEASE OF INFORMATION

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

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412.7 TRAINING

The Chief of Police should ensure that officers receive training on this policy.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed.
- (c) Statutory limitations on immigration enforcement.
- (d) U visa and T visa certification training.
- (e) Appropriate information sharing pursuant to 8 USC § 1373.

412.8 WASHINGTON STATE IMMIGRATION RESTRICTIONS

Members shall not (RCW 10.93.160):

- (a) Inquire into or collect information about an individual's immigration or citizenship status, or place of birth unless there is a connection between such information and an investigation into a violation of state or local criminal law.
- (b) Provide information pursuant to notification requests from federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.
- (c) Provide nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by state or federal law.
- (d) Give federal immigration authorities access to interview individuals about a noncriminal matter while they are in custody, except as required by state or federal law, a court order, or written consent of the individual.
- (e) Allow a federal immigration authority to conduct an interview regarding federal immigration violations with a person who is in custody if the person has not consented in writing to be interviewed. In order to obtain consent, the person shall be provided with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present.
- (f) Detain individuals solely for the purpose of determining their immigration status.
- (g) Take a person into custody or hold a person in custody:
 - 1. Solely for the purposes of determining immigration status
 - 2. Based solely on a civil immigration warrant issued by a federal immigration authority
 - 3. On an immigration hold request

[See attachment: Keep Washington Working.pdf](#)

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412.8.1 SCHOOL RESOURCE OFFICERS

Members who are school resource officers shall not (RCW 10.93.160):

- (a) Inquire or collect information about an individual's immigration or citizenship status, or place of birth.
- (b) Provide information pursuant to notification requests from federal immigration officials for the purposes of civil immigration enforcement, except as required by law.

Attachments

Keep Washington Working.pdf

KWW

A. Enforcement of Federal Immigration Law and Policies Prohibited

1. The federal government, not the Tenino Police Department, has primary jurisdiction over the enforcement of federal immigration law. The Tenino Police Department recognizes that removal from the United States, including investigations and arrests made as part of that process, is a civil matter overseen by federal immigration authorities. The Tenino Police Department recognizes that unauthorized presence in the United States, standing alone, is not a violation of state or local law. The immigration or citizenship status of an individual or an individual's presence in, entry or reentry to, or employment in the United States alone is not subject to enforcement by the Tenino Police Department or its personnel. The Tenino Police Department shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.

a. Tenino Police Department personnel shall not engage or assist in civil immigration enforcement.

b. Tenino Police Department resources, including any individuals' personal information ascertained by the Tenino Police Department or its officers, shall not be used or shared to assist in civil immigration enforcement.

c. The Tenino Police Department shall review all methods and forms used to communicate with persons engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, or data fields for immigration or citizenship status existing prior to May 21, 2020, and modify them as necessary to be consistent with these policies.

d. All Tenino Police Department personnel shall complete the Tenino Police Department's mandatory training regarding immigration enforcement policies and procedures and compliance with all other requirements of RCW 10.93.160.

2. Tenino Police Department personnel shall not initiate or participate in any law enforcement action based solely on an individual's immigration or citizenship status, or place of birth, or in any other way attempt to enforce or assist in the enforcement of federal civil immigration laws or policies.

3. Tenino Police Department personnel shall not inquire about any person's immigration or citizenship status, or place of birth, unless the information is directly connected to the Tenino Police Department Officer's investigation into a violation of state or local law.

4. Tenino Police Department's policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against all persons, including Tenino Police Department personnel.

5. Tenino Police Department personnel shall not conduct investigations, interviews, questioning, take statements, or otherwise engage in similar contact with any individual in the presence, including within hearing distance, of any person engaged, or intending to engage, in immigration enforcement, including a known federal immigration authority, unless the person's presence is directly connected to the Tenino Police Department's investigation into a violation of state or local criminal law and necessary to perform the Tenino Police Department's duties.

6 Tenino Police Department personnel shall not arrest, detain, take into custody, or otherwise hold any person solely to determine their citizenship or immigration status unless the information is directly connected to the Tenino Police Department's investigation into a violation of state or local law.

7. Civil immigration warrants, hold requests, and immigration detainer requests do not establish probable cause and shall not be the basis for any Tenino Police Department Officer to arrest, detain, or otherwise hold any person in custody.

8. If Tenino Police Department personnel receive a court order or judicial warrant authorizing any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to assume custody of an in-custody individual, the Tenino Police Department Officer shall immediately contact Tenino Police Department Sheriff or Chief of Police or authorized designee to determine the appropriate course of action.

a. Before authorizing any arrest, detention, or hold, the Tenino Police Department Sheriff or Chief of Police or authorized designee shall confirm that the federal criminal arrest warrant is issued and signed by a U.S. District Court Judge or Magistrate Judge authorizing the holding or detention of the individual by: i. Obtaining a copy of the warrant; ii. Identifying the criminal charge and citation to the federal law violation for which the warrant was issued; iii. Identifying which U.S. District Court issued the warrant; iv. Verifying that the warrant includes the correct date and location for detention; and v. Confirming that a U.S. District Court Judge or Magistrate's signature is on the warrant.

b. Tenino Police Department Sheriff or Chief of Police or authorized designee shall not disclose the location of the [Law Enforcement Agency Officer] or individual to any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, before or during the warrant confirmation process.

9. All requests for assistance by any person engaged, or intending to engage, in immigration enforcement, including federal immigration authority, whether oral or written, shall be directed to Tenino Police Department Sheriff or Chief of Police or authorized designee to determine an appropriate course of action.

10. Tenino Police Department personnel shall not assist or participate in any joint operations, task forces, or any other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from Tenino Police Department Sheriff or Chief of Police or authorized designee.

B. Data Collection Prohibited

1. Tenino Police Department personnel shall not inquire about or request any documents or information from a person for the purpose of determining the person's immigration or citizenship status, or place of birth, unless the information is directly connected to the Tenino Police Department's investigation into a violation of state or local law.

2. Tenino Police Department personnel processing fingerprint card or Automated Biometric Identification System (ABIS) submissions shall enter "Unknown" for these fields addressing immigration or citizenship status unless the information is otherwise known.

3. Tenino Police Department personnel shall not take enforcement action or otherwise use immigration or citizenship status, or place of birth information, against crime victims or witnesses.

4. Tenino Police Department personnel shall use an approved Communications Center "Language Line" or other approved resources for any language services necessary to perform duties for the Tenino Police Department. Tenino Police Department personnel shall not utilize or accept language services from any person engaged in, or intending to engage, in immigration enforcement, including federal immigration authorities. Tenino Police Department personnel shall presume that federal immigration authorities are engaged in immigration enforcement.

C. Consular Notification Requirements

1. Within 72 hours of detention, Tenino Police Department shall inform, verbally and in writing, all persons taken into custody or otherwise detained, regardless of their known or perceived nationality, citizenship, or immigration status, that:

a. The person has the right to refuse to disclose information about their nationality, citizenship, or immigration status; and

b. Disclosure of such information may result in civil or criminal immigration enforcement against them, including removal from the United States.

2. If any Tenino Police Department personnel becomes aware that a person in custody is a foreign national, the Tenino Police Department Officer shall immediately contact Tenino Police Department Sheriff or Chief of Police or authorized designee to determine the appropriate course of action.

a. If the person's country is a signatory to the Vienna Convention on Consular Relations or other bilateral agreement regarding consular notifications, Tenino Police Department Sheriff or Chief of Police or authorized designee shall provide the person the appropriate consular notification advisement recommended by the U.S. State Department—that the person has the right to request that their foreign consul be notified of their detention and to communication with their foreign consul, or that the LEA is required to notify the person's consular officers, if they are a member of a mandatory notification country.

b. Tenino Police Department Sheriff or Chief of Police or authorized designee] shall notify the person's foreign consul of their detention without delay if the person is a national of one of the 56 mandatory notification countries or if the person requests their foreign consul be notified.

c. Tenino Police Department Sheriff or Chief of Police or authorized designee shall permit the foreign consul access to the person and forward any communication from the foreign national to the person's consular officers without delay.

D. Responding to Requests for Information

1. Tenino Police Department personnel shall not share, provide, or disclose personal information about any person to anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without a court order or judicial warrant requiring the information's disclosure, except that Tenino Police Department shall provide all records as required under the Public Records Act, chapter 42.56 RCW. Public records requests shall be processed pursuant to Tenino Police Department procedures by the Tenino Police Department Public Records Officer or designee. Any Tenino Police Department personnel receiving a public records request shall forward the request to the Tenino Police Department Public Records Officer and notify the Tenino Police Department Sheriff or Chief of Police or authorized designee.

2. Tenino Police Department personnel shall not provide or disclose information in response to any notification request or other immigration enforcement related request for information regarding a person's release date from custody without a court order or judicial

warrant, except that Tenino Police Department shall provide all records as required by the Public Records Act, chapter 42.56 RCW, in response to any qualifying request.

3. If Tenino Police Department personnel receive a court order or judicial warrant that mandates the sharing of information regarding a person's immigration or citizenship status, Tenino Police Department personnel shall provide the information as required by the court order or judicial warrant. Any Tenino Police Department personnel who shares or discloses a person's immigration or citizenship status to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, shall immediately notify the Tenino Police Department Sheriff or Chief of Police or authorized designee of the information provided, reason for sharing said information, and identity of the person and agency to whom the information was shared.

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

E. Access to Persons Detained or in Custody

1. Tenino Police Department personnel shall not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in Tenino Police Department custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented.

a. To obtain written consent from a person held, detained, or in custody, prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, the Tenino Police Department Officer shall provide the person with an oral explanation and a written consent form that explains: i. The purpose of the interview; ii. That the interview is voluntary; iii. That the person may decline to be interviewed and will not be punished or suffer retaliation for doing so; and iv. That the person may choose to be interviewed only with the person's attorney present.

b. Tenino Police Department shall provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands. Tenino Police Department shall maintain copies of the consent form in

English, Spanish, and any other language that Tenino Police Department deems appropriate.

c. If a person chooses to be interviewed with their attorney present, Tenino Police Department Officers shall promptly contact the attorney the Tenino Police Department Officers shall not proceed with permitting any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has chosen to proceed pro se.

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

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

2. Tenino Police Department personnel shall not deny or otherwise limit any person held, detained, or otherwise in Tenino Police Department custody such services, benefits, privileges, rights, opportunities, or resources based on any civil immigration warrant, hold request, immigration detainer request, notification request, administrative subpoena or similar request by a person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, or indication of the person's nationality, immigration or citizenship status.

3. Tenino Police Department shall not transfer custody of any person held, detained, or otherwise in the custody of Tenino Police Department to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, without court order or judicial warrant. If presented with such an order by a person engaged, or intending to engage, in immigration enforcement, including by a federal immigration authority, to take custody of a person in Tenino Police Department custody, Tenino Police Department Officers shall immediately contact Tenino Police Department Sheriff or Chief of Police or authorized designee to determine an appropriate course of action.

a. Before authorizing any transfer of custody, the Tenino Police Department Sheriff or Chief of Police or authorized designee shall confirm that the court order is issued and signed by a U.S. District Court Judge or Magistrate Judge and authorizes the holding or detention of the individual by: i. Obtaining a copy of the court order; ii. Confirming that a U.S. District Court Judge or Magistrate signed the court order; iii. Confirming that the court order identifies the individual for whom the transfer of custody is sought by name; and iv. Verifying that the court order has a valid date or is not otherwise expired or previously executed.

b. Tenino Police Department Sheriff or Chief of Police or authorized designee shall not disclose the location of the individual to any person engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, before or during the process of confirming the court order.

4. Tenino Police Department shall not deny or otherwise limit any person's social visitation solely on the basis of the person's inability to effectively communicate through video-visitiation technology. Tenino Police Department shall not collect immigration or citizenship status information of persons visiting an individual in Tenino Police Department custody and shall minimize collection of visitors' personal information to the extent necessary to perform duties of Tenino Police Department. Tenino Police Department personnel shall not disclose or otherwise share visitors' personal information with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, absent a court order or judicial warrant for the information or approval by Tenino Police Department Sheriff or Chief of Police or authorized designee.

G. Contracts Involving Immigration Enforcement.

1. Tenino Police Department personnel and school resource officers shall not enter into any contract, agreement, or other arrangement, whether written or oral, that would grant federal immigration enforcement authority or powers to the [Law Enforcement Agency Officer], including but not limited to agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements under the Immigration and Naturalization Act. 2. All [Law Enforcement Agency] agreements to assist or participate in any joint operations, task forces, or other multi-jurisdictional activities shall include legally binding assurances that all other parties to those agreements shall not use or share [Law Enforcement Agency] resources, including any individuals' personal information ascertained by [Law Enforcement Agency] or its personnel, with any third parties or to support or engage in immigration enforcement activities. 3. [Law Enforcement Agency] shall not be a party to any agreement, joint operation, task force, or other multi-jurisdictional activity with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without legally binding assurances, in writing and pre-approved by [Law Enforcement Agency Sheriff or Chief of Police], that no [Law Enforcement Agency] resources, including any individuals' personal information ascertained by [Law Enforcement Agency] or its personnel, shall be used to support or assist with civil immigration enforcement in any way. 4. [Law Enforcement Agency Officers] shall not assist or participate in any joint operations, task forces, or other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without

prior approval, in writing, from [Law Enforcement Agency Sheriff or Chief of Police or authorized designee]. 5. [Law Enforcement Agency] shall not be a party to any immigration detention agreement, IGSA, or other arrangement with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, providing for detention of any person by [Law Enforcement Agency Officers] or using [Law Enforcement Agency] resources for immigration enforcement purposes. 6. [Law Enforcement Agency] personnel and school resource officers shall not be a party to any agreement or contract for language services, including translation, interpretation, training or classes, from any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, nor shall any language services be accepted by [Law Enforcement Agency] personnel from any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, for free or otherwise. [Law Enforcement Agency] personnel shall presume federal immigration authorities are engaged in immigration enforcement. 7. All [Law Enforcement Agency] agreements permitting access to [Law Enforcement Agency] databases or information shall include legally binding assurances that all other parties to those agreements shall not use or share [Law Enforcement Agency] information or database access with any third parties supporting or engaged in immigration enforcement activities.

Part III: Model Policies 12 H. U & T Visa Certifications

1. [Law Enforcement Agency Officers] shall forward U and T Visa certification requests under the Washington Safety and Access for Immigrant Victims Act, RCW 7.98.020, without delay to [Law Enforcement Agency Sheriff or Chief of Police or authorized designee].

a. The fact of any request for U or T Visa certification and any personal information submitted with such request shall not be disclosed or shared outside of [Law Enforcement Agency], [Law Enforcement Agency Legal Counsel], or the County Prosecuting Attorney without a court order or judicial warrant, or approval by [Law Enforcement Agency Sheriff or Chief of Police or authorized designee] unless expressly authorized, in writing, by the subject of the request or the subject's guardian, or as otherwise required by law.

b. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall review any U or T Visa certification request submitted to [Law Enforcement Agency] in full and verify all information submitted in support of the certification request using existing [Law Enforcement Agency] records, personal knowledge, or other available evidence. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] may confer with [Law Enforcement Agency Legal Counsel] and/or the County Prosecuting Attorney to determine whether certification by [Law Enforcement Agency] is proper.

c. [Law Enforcement Agency Officers] shall not leverage U or T Visa certifications as a means to compel any victim or witness to cooperate with their investigations.

2. [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall process U and T Visa certification requests within 90 days of receipt by [Law Enforcement Agency], except under

circumstances requiring a shorter timeframe. a. Any U or T Visa certification request for a person in federal removal proceedings shall be immediately processed by [Law Enforcement Agency Sheriff or Police Chief or authorized designee] such that the certification, if approved, is executed within 14 days of [Law Enforcement Agency] receiving the request. b. U or T Visa certifications shall be expedited upon request for any person who will, or whose child(ren) will, reach age 21 before the 90-day processing deadline date and thus will otherwise lose their benefits. In any such instance, [Law Enforcement Agency Sheriff or Police Chief or authorized designee] shall execute the certification, if approved, no later than 14 days before the person or child turns 21 years old. 3. All [Law Enforcement Agency Officers] shall complete required training on U and T Visa certifications and review the full instructions for completing U and T Visa certification forms on the Washington State Department of Commerce, Safety and Access for Immigrant Victims Program website. Part III: Model Policies 13 Part IV: Overview of KWW and Relevant State and Federal Laws While the Keep Washington Working Act, chapter 440, Laws of 2019, requires LEAs to adopt the model policies to ensure they are able to foster the community trust necessary to maintain public safety by limiting participation in immigration enforcement, exceptions apply where federal, state, or local laws require otherwise. This section provides an overview of KWW and other laws that LEAs should consider when adopting the model policies. LEAs should also consult with their legal counsel to ensure that their policies are in compliance with state and federal law before adopting or implementing their policies. A. KWW Requirements KWW establishes broad restrictions on state and local assistance in federal immigration enforcement, with the following provisions for LEAs¹⁶ and their officials (including SROs and jail staff): 1. Prohibits giving access to people in local or state custody to federal immigration authorities for