

TITLE: IMMIGRATION STATUS
SECTION: 1513.00
VERSION: 03.03.14
REFERENCE: AB 4 (Trust Act), Government Code 7282, 7282.5, 8 CFR 287.7

1513.01 **POLICY:**

California state law restricts when local law enforcement agencies may detain a person on the basis of an immigration hold (also known as an “immigration detainer” or “ICE hold”). No person shall be held solely on the basis of their immigration status except as specifically set forth in this policy. The immigration status of a person, and the lack of immigration documentation, should have no bearing on the manner in which Sheriff’s Office personnel execute their duties.

1513.02 **DEFINITIONS:**

Immigration and Customs Enforcement (ICE): The U.S. Department of Homeland Security’s Immigration and Customs Enforcement Agency (ICE) has primary responsibility to investigate and enforce federal immigration laws. Sheriff’s Office personnel may assist ICE in the enforcement of federal immigration laws upon its specific request and in those situations where ICE-initiated investigations have led to the discovery of criminal violations of California law.

Immigration Detainer (ICE Hold): An immigration detainer, Form I-247, issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, that requests the Sheriff’s Office to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual.

Immigration Detainer Eligibility Form: An in-custody form used to determine whether an inmate may be detained on an immigration hold.

1513.03 **GENERAL INFORMATION:**

- A. An Immigration Detainer, Form I-247 (ICE Hold) requests the Sheriff’s Office to notify ICE, prior to releasing the individual, in order for ICE to make arrangements to assume custody. These detainer requests will be honored only within the guidelines established in this policy.
- B. The existence of an ICE Hold does not affect a person’s ability to post bail or bond or to be released on their own recognizance. If the necessary

conditions are met, the Trust Act permits the Sheriff's Office to detain a person on the basis of an immigration hold for 48 hours, excluding weekends and holidays, after he or she would otherwise be released.

- C. Classification, using the *Immigration Detainer Eligibility* form, will review all immigration detainees to determine if the Sheriff's Office will honor or deny the hold. In the absence of the Classification Unit, the on-duty Correctional Sergeant will review immigration detainer requests.
- D. ICE Holds will not be entered into the computer system until they have been reviewed and approved, per section "C" above.
- E. Inmates arrested for a criminal offense and held in our custody pursuant to an ICE Hold will have equal access to custody programs if otherwise program eligible.

1513.04

PROCEDURES:

A. ICE Hold Requests

- 1. When an ICE Hold is received by Booking, a copy will be delivered to the Classification Deputy for review and determination of whether the Sheriff's Office will comply with the request.
- 2. Using the Immigration Detainer Eligibility form the Classification Deputy will determine if the necessary criteria exists to detain the inmate on the basis of the immigration hold. Once the form is completed, the form will be given back to the Correctional Technician.
 - a. If the inmate meets the eligibility requirements the Correctional Technician will place an ICE Hold.
 - b. If the factors justifying the detainer do not exist for the ICE Hold, the detainer request will not be honored.
 - c. All Immigration Detainer Eligibility forms will be faxed to ICE and the original form will be filed in the inmates Booking Jacket.
 - d. If new evidence is developed meeting the requirements for honoring the detainer request, original charge is changed or an additional charge/court case is added, a prior determination not to honor the detainer request will be reevaluated pursuant to the provisions of the Trust Act. Refer to Section B, 2, f.

3. The existence of an ICE Hold does not affect the inmate's ability to post bail or be released. If the inmate becomes release eligible (posts bail, court ordered release, time served, etc) **the Sheriff's Office will not detain the inmate on the basis of the ICE hold for longer than 48 hours, excluding weekends and holidays, for ICE to pick up on their detainer.**

B. Detaining Inmates on the Basis of an ICE Hold

1. **TRUST ACT.** The Trust Act (AB 4) provides that a person may not be held in custody solely on the basis of an immigration detainer if they are otherwise eligible to be released from custody, unless at the time the individual becomes eligible for release from custody certain conditions are met. "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- a. All criminal charges against the individual have been dropped or dismissed; or
- b. The individual has been acquitted of all criminal charges filed against them; or
- c. The individual has served all the time required for their sentence; or
- d. The individual has posted bond; or
- e. The individual is otherwise eligible for release under state or local law, or local policy.

2. Criteria for Placement of an ICE Hold

Under the Trust Act, the Sheriff's Office can only respond to immigration hold requests where one of the conditions listed in a-f apply.

- a. The inmate has been **convicted** of a **serious felony**, PC 1192.7(c), or **violent felony**, PC 667.5(c). Refer to Addendum A & B.
- b. The inmate has been **convicted** of a felony punishable by imprisonment in the state prison. After AB109, many felonies are no longer punishable by state prison. Refer to Addendum C.
- c. The inmate has been **convicted** within the last five years of a misdemeanor for a crime that is punishable as either a misdemeanor or felony (i.e., "wobblers"), or has been

convicted of a felony for, any of the following offenses listed in Addendum D.

- d. The inmate is a current registrant on the California Sex and Arson Registry.
 - e. The inmate has been **convicted** of any federal crime that meets the definition of an aggravated felony as set forth in the Immigration and Nationality Act (8 U.S.C. Sec. 1101 at Section 1101(a)(43)(A) to (P), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. Refer to Addendum E.
 - f. The inmate is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in PC 21192.7 (c) or PC 667.5, a felony punishable by imprisonment in state prison, other than *domestic violence*; **and** a magistrate has made a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code.
 - 1) If an inmate is remanded, arrested on a felony warrant or a probable cause declaration is received, **and** the charge is categorized as a serious or violent felony (Addendum A and B), or any felony punishable by imprisonment in state prison (Addendum C), or any felony listed in Addendum D, other than domestic violence, or is identified by ICE as the subject of an outstanding federal felony arrest warrant, the ICE Hold shall be added.
3. Inmates Held on ICE Holds Eligible for Release
- a. A Correctional Technician in Booking will fax a *Foreign Born Inmates* report to ICE every day. This form notes the release date of all inmates with an ICE hold and satisfies the release notification to ICE.
 - b. When an inmate with an ICE Hold is eligible for immediate release, the Correctional Technician updating the booking for release will place a comment in the finalize screen of the booking indicating the 48 hour date and time from eligibility of release and fax a copy of the booking to ICE. If ICE does not contact Booking to either release the hold or with arrangements to pick up the inmate within the 48 hours, the hold will be released and the inmate released from custody at the end of the 48 hour period.

SAN LUIS OBISPO SHERIFF'S OFFICE

Assembly Bill 4 (Trust Act)

Immigration Detainer Eligibility

An ICE Hold has been placed on the following person and at least one of the following conditions has been met.

Name: _____ ID # _____ DOB: _____

- The individual has been **convicted** of a **serious** or **violent** felony identified in subdivision (c) of **Section 1192.7** of, or subdivision (c) of **Section 667.5** of, the Penal Code. GC 7282.5(a)(1)- Refer to Addendum A & B.
- The individual has been **convicted** of a felony punishable by imprisonment in the state prison. GC 7282.5(a)(2)- Refer to Addendum C.
- The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted at any time of a felony for, any offenses outlined in the **Trust Act**. Refer to Addendum D

Conviction Date: _____ Charges: _____

- The individual is a current registrant on the California Sex (290 PC) and Arson Registry (457.1 PC).
- The individual has been **convicted** of a federal crime that meets the definition of an aggravated felony as outlined in the **Trust Act**, or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. GC7282(a)(6)- Refer to Addendum E

Conviction Date: _____ Charges: _____

- The inmate has not been taken before a magistrate on a charge involving a serious or violent felony (Addendum A & B) or any felony listed in Addendum D. Determination of probable cause pursuant to Section 872 of the penal code is still required. Hold needs to be re-evaluated at time of release.**

Re-evaluated by: _____ Body # _____ Date: _____

Hold placed: Yes / No Case #'s _____

- If none of the above conditions are satisfied, an individual shall NOT be detained on the basis of an ICE Hold after the individual becomes eligible for release from custody.**

Reviewing Deputy: _____ Body # _____ Date _____

DISTRIBUTION: INMATE BOOKING JACKET – Original / CLASSIFICATION – Copy / ICE - FAX Copy