

# IMMIGRATION

## 1206.1 IMMIGRATION/DEFINITIONS

Although enforcing immigration law is a federal government responsibility and not shared by members of OCSD, OCSD may allow members of Immigration and Customs Enforcement (ICE) into our custodial facilities for the purpose of interviewing inmates for immigration violations, provided the requirements of Government Code section 7283, et seq (the "Truth Act") are met. Members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or that individual has been convicted of the crimes, or otherwise has met the criteria set forth in Government Code sections 7282 and 7282.5 (the "Trust Act" as amended by Senate Bill 54 (the "California Values Act")).

- (a) **Hold Request** - A federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D.
- (b) **Notification Request** - An Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N.
- (c) **Transfer Request** - An Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X.
- (d) **Judicial Probable Cause Determination** - A determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.
- (e) **Judicial Warrant** - A warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

## 1206.2 IMMIGRATION INTERVIEW PROCEDURE

- (a) The Facility Watch Commander shall be notified of an ICE Agent's arrival and request to interview inmates for immigration violations.
- (b) Prior to being interviewed, a Classification Deputy will provide the inmate with a written consent form (Truth Act Interview Consent Form) which is available in one of eight languages as follows:
  - 1. English

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2. Chinese
  3. Farsi
  4. Korean
  5. Spanish
  6. Tagalog
  7. Vietnamese
  8. Arabic
- (c) The form will explain the purpose of the interview, the voluntary nature of the interview, and that the inmate may decline to be interviewed or may choose to be interviewed only with his or her attorney present.
  - (d) If the inmate chooses to have his or her attorney present, the interview will be postponed until the attorney can be present.
  - (e) Upon completion of the written consent form, the inmate will be provided with a duplicate copy and the original will be placed in the inmate's record jacket.
  - (f) If the inmate agrees to be interviewed, a Classification Deputy will be assigned to escort the inmate to the ICE Agent's location.

#### **1206.3 RECEIVING A NOTIFICATION/TRANSFER REQUEST**

- (a) Upon receiving a Notification/Transfer Request, Inmate Records shall provide a copy of the Notification/Transfer Request for the referenced inmate to Classification.
- (a) This includes a Notification/Transfer Request placed by persons outside of OCSD, or already lodged on an inmate prior to their intake or after intake when the OCSD becomes aware of such Notification/Transfer Requests.
- (b) The on-duty Classification Sergeant, or in their absence, the on-duty Operations Sergeant will designate an on-duty Classification Deputy to provide a copy of the Notification/Transfer Request to the inmate and inform the inmate that OCSD intends to comply with the Notification/Transfer Request if the inmate qualifies in accordance with Government Code section 7282, et seq. (the "Trust Act," as amended by Senate Bill 54 (the "California Values Act")).
- (c) The on-duty Classification Sergeant, or in their absence, the on-duty Operations Sergeant will designate an on-duty Classification Deputy to provide the Truth Act Notification form to the inmate to complete the name and address of the inmate's attorney or other person whom the inmate may designate for the purpose of OCSD providing notice to that attorney or other person if ICE is notified of the inmate's release date.
- (d) Upon completion of the top portion of the Truth Act Notification form, the Classification Deputy will provide a copy of the Truth Act Notification form to the inmate and return the original form to Inmate Records to be placed in the inmate's Inmate Record Jacket.

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**1206.4 SCREENING INMATES IN ACCORDANCE WITH THE TRUST ACT AND THE CALIFORNIA VALUES ACT**

- (a) All inmates who have a Notification/Transfer Request will be evaluated in accordance with Government Code sections 7282 and 7282.5, which criteria are set forth in CCOM Section 1206.6 - Criteria for Responding to a Notification/Transfer Request. The evaluation will be conducted by an on-duty Classification Deputy designated by the on-duty Intake Release Center Classification Sergeant, or in their absence, the on-duty Intake Release Center Operations Sergeant.
- (b) OCSD will comply with Notification/Transfer Requests by notifying ICE and releasing the inmate to ICE custody when the referenced inmate qualifies in accordance with Government Code sections 7282 and 7282.5.
  - 1. Inmates who qualify under Government Code sections 7282 and 7282.5 may be processed for release at Sentence Ending Date (SE Date) or Pre-trial release and released in-custody to ICE.
    - i. These inmates will not be held past their release date.
    - ii. No inmate will be detained or held on the basis of an ICE Hold Request.
  - 2. ICE will be notified in a timely manner for all inmates who qualify under Government Code sections 7282 and 7282.5 to afford ICE the opportunity to pick up the inmate. ICE will not be notified if the inmate does not qualify under Government Code Sections 7282 and 7282.5.

**1206.5 RELEASE OF INMATES WITH A NOTIFICATION/TRANSFER REQUEST**

- (a) Records Supervisors will notify the on-duty Intake Release Center Classification Sergeant, or in their absence, the on-duty Intake Release Center Operations Sergeant when an inmate with a Notification/Transfer Request is preparing for release.
- (b) The on-duty Intake Release Center Classification Sergeant, or in their absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification Deputy to screen the inmate per CCOM Section 1206.4 above.
- (c) When ICE is notified that an inmate is being, or will be released, on a certain date, the on-duty Intake Release Center Classification Sergeant, or in their absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification Deputy to promptly complete the bottom portion of the Truth Act Notification form and provide a copy of the original to the inmate, mail a copy of the original to the inmate's attorney or other person designated if such person was designated by the inmate and return the original to the inmate's Inmate Record Jacket.
- (d) Members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or that individual has been convicted of the crimes or otherwise has met the criteria set forth in Government Code Sections 7282 and 7282.5. Refer to CCOM Section 1206.6 below.

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**1206.6 CRITERIA FOR RESPONDING TO A NOTIFICATION/TRANSFER REQUEST**

- (a) OCSD personnel may provide information in response to a Notification Request, or may transfer an inmate to immigration authorities only under the following circumstances:
  - 1. Pursuant to a judicial warrant or probable cause determination as defined in Penal Code Section 7284.4(h) or 7284.4(i).
  - 2. The individual has been convicted at any time of a serious or violent felony, as defined in Penal Code Section 1192.7(c) or Penal Code Section 667.5(c).
  - 3. The individual has been convicted at any time of a felony that is presently punishable by imprisonment in the state prison
  - 4. The individual has been convicted within the past fifteen (15) years of a felony listed in Government Code Section 7282.5, subdivision (a)(3), or within the past five years of a wobbler (i.e., a crime punishable as either a felony or a misdemeanor) listed in Government Code Section 7282.5, subdivision (a)(3).
  - 5. The individual is a current registrant on the California Sex and Arson Registry.
  - 6. The individual has been convicted of certain specified federal aggravated felonies identified in the Immigration and Nationality Act Section 101(a)(43)(A)-(P).
  - 7. The United States Department of Homeland Security's Immigration and Customs Enforcement (ICE) identifies the person as the subject of an outstanding federal felony arrest warrant for any federal crime.
- (b) A conviction of a crime that is presently punishable only as a misdemeanor is not a valid justification for honoring a transfer or notification request. Additionally, misdemeanor convictions for crimes affected by California Proposition 47 (2014), including felony convictions that were reduced to misdemeanors or re-designated as misdemeanors by a court as a result of Proposition 47, cannot serve as the basis for transfer or providing release date information to immigration authorities (Government Code Section 7285.5(a)(6)). However, misdemeanor crimes that were reclassified as felonies under Proposition 36, are subject to the transfer provisions of Government Code Section 7285.5(a)(2).
- (c) Pursuant to Government Code Section 7284.6(c)(2), OCSD personnel must report to the California Department of Justice (CA DOJ) the number of transfers it makes in a calendar year, as well as the offense that allowed for the transfer. For further information, refer to CA DOJ - California Values Act's Statistical Reporting Requirements.

**1206.7 PUBLIC ACCESS TO RECORDS**

- (a) Upon receiving any request pursuant to the California Public Records Act, GOVT. CODE §§ 7920.000 – 7931.000, for information related to ICE's access to individuals, responsive records shall be produced consistent with the Act's requirements.