

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: NOVEMBER 19, 2020
NUMBER: 6.18 - PATROL
SUBJECT: ADULT UNDOCUMENTED PERSONS
RELATED POLICY: 6.18, 9.16
ORIGINATING DIVISION: PATROL OPERATIONS
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 6.18 – 2/14/2019

I. PURPOSE

This Department procedure establishes guidelines for the proper handling of adult undocumented persons.

II. SCOPE

This Department procedure applies to all members of the Department.

NEW

III. BACKGROUND

The San Diego Police Department recognizes and values the diversity of the community it serves. The purpose of this procedure is to ensure the safety and well-being of all persons, regardless of their immigration status. Primary responsibility for the enforcement of federal immigration laws rests with the United States Citizenship and Immigration Services and the U.S. Customs and Border Protection Service, which fall under the jurisdiction of the Department of Homeland Security (DHS/Border Patrol). It is the policy of the San Diego Police Department to maintain effective working relationships with all law enforcement agencies, including federal immigration authorities, to the extent permitted by federal and state law.

Effective January 1, 2018, Senate Bill 54, otherwise known as the California Values Act (“Act”), became state law and limited the types of communications and cooperation that are permissible between local law enforcement agencies and federal immigration

authorities. The Act defines an “immigration authority” as any “federal, state, or local officer, employee, or person performing immigration enforcement functions.” (California Government Code § 7284.4(c)). “Immigration enforcement” is defined as “efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law or any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.” (Gov. Code § 7284.4(f)).

Department members will maintain their focus on detecting and apprehending individuals involved in criminal activity, and shall not look for violations of immigration laws. This procedure provides guidance to officers on activities, permitted and prohibited, related to interactions with undocumented persons.

IV. PROCEDURES

A. **Arrests, Detentions, Consensual Encounters**

NEW

1. San Diego Police officers are responsible for enforcing all federal, state, and local laws, to the extent permitted, and for the safety and protection of all persons. Therefore, officers may detain any person(s) when there is a "reasonable suspicion" to believe they are involved in criminal activity. “Reasonable suspicion” is more than a hunch or mere speculation on the part of an officer, but less than probable cause necessary for arrest. Refer to Department Procedure 4.01, Stop/Detention and Pat-Down Procedures, for further information.

2. Officers shall not inquire into an individual’s immigration status.

NEW

3. Officers are prohibited from transporting detained undocumented persons to a police facility for the sole purpose of releasing them to immigration authorities, and shall not perform the duties of an immigration officer.

NEW

4. Undocumented persons may be transported to a police facility if they voluntarily consent in order to complete or further an investigation unrelated to immigration enforcement.

5. If, upon investigation, probable cause to arrest exists, officers may arrest for the offense, irrespective of the person’s immigration status.

6. If, after concluding the investigation, officers determine that the person is not involved in criminal activity, the person shall be released regardless of immigration status.

NEW

B. Senate Bill 54 (California Values Act)

1. Members shall not use agency or Department funds or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including (Gov. Code § 7284.6(a)):
 - (a) Inquiring into an individual's immigration status;
 - (b) Detaining an individual on the basis of a hold request;
 - (c) Providing information regarding a person's release date unless the information is available to the public or is permitted by section IV.B.3.(b) of this procedure;
 - (d) Providing personal information including social security number, home or work address, home telephone number, unless the information is available to the public;
 - (e) Making or intentionally participating in an arrest based on a civil immigration warrant;
 - (f) Assisting immigration authorities in patrolling the border to prevent illegal entry; or
 - (g) Performing the function of an immigration officer.

2. Additionally, Members shall not (Gov. Code § 7284.6(a)):
 - (a) Place officers under the supervision of federal agencies for the purpose of immigration enforcement or deputize officers as federal officers for purposes of immigration enforcement;
 - (b) Use immigration authorities as interpreters;
 - (c) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or is permitted by section IV.B.3 (a) of this procedure;
 - (d) Provide dedicated office space for immigration authorities within a Department facility; or
 - (e) Contract with the federal government to house federal detainees in a Department facility.

NEW

3. Permissible Interactions with Immigration Authorities:

- (a) Undocumented persons may be transferred to immigration authorities only under specified circumstances, with each transfer being reviewed and approved by the Field Lieutenant. An individual may be transferred to immigration authorities if:
- 1) The transfer is authorized by a judicial warrant or judicial probable cause determination. (Gov. Code § 7284.6(a)(4));
 - 2) He or she has been convicted of a serious or violent felony identified in Penal Code sections 667.5(c) or 1192.7(c) (Gov. Code § 7282.5(a)(1)), including:
 - Any burglary of the first degree
 - Any felony in which the defendant personally inflicts great bodily injury on any person (other than an accomplice)
 - Any felony in which the defendant personally used a firearm or other dangerous or deadly weapon
 - Any gang-related felony violation of Penal Code section 186.22
 - Any robbery
 - Arson
 - Assault with a firearm on a peace officer or firefighter (PC § 245(d))
 - Assault with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Penal Code sections 264.1, 288, or 289 (PC § 220)
 - Assault with intent to commit robbery
 - Assault with a deadly weapon by a state prisoner (PC §§ 4500, 4501)
 - Assault with a deadly weapon against a public transit employee, custodial officer, or school employee (PC §§ 245.2, 245.3, or 245.5).

- Carjacking (PC § 215)
- Continuous sexual abuse of a child, in violation of PC § 288.5
- Criminal threats in violation of Penal Code section 422
- Discharge of a firearm at an inhabited dwelling house, inhabited housecar, inhabited camper, occupied building, occupied motor vehicle, or occupied aircraft (PC § 246)
- Discharge of a firearm from a vehicle (PC § 26100(c) or (d))
- Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem (PC §§ 18750 and 18755)
- Exploding, or attempting to explode, a destructive device or any explosive with intent to injure or murder (PC § 18745)
- Gang-related extortion or threats to victims or witnesses (PC §§ 186.22, 518, 136.1)
- Grand theft involving a firearm
- Holding a hostage while confined in a state prison (PC § 4503)
- Intimidation of victims or witnesses (PC § 136.1)
- Kidnapping (PC §§ 207, 209, 209.5)
- Lewd or lascivious act on a child under 14 years of age
- Mayhem (PC §§ 203 or 205)
- Murder or voluntary manslaughter. (PC § 187)
- Oral copulation or sexual penetration committed against the victim's will by force, violence, duress,

menace, threats, or incapacity (PC §§ 288a(c) or (d) and 289(a))

- Oral copulation or sexual penetration with a person who is under 14 years of age by a person more than 10 years older (PC §§ 288a(c) and 289(j))
- Rape, spousal rape, or sexual penetration, in concert (PC §§ 261, 262, 264.1)
- Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person, or sodomy with someone under 18 years of age
- Throwing (or causing to be placed or thrown) any acid, flammable substance, or caustic chemical of any nature, at another person with the intent to injure or disfigure (PC § 244)
- Using a weapon of mass destruction (directly or through another person) in violation of Penal Code section 11418(b) or (c)
- Providing (i.e., selling, furnishing, administering, giving) or offering to provide certain controlled substances to a minor. The controlled substances are any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug (described in Health and Safety Code Section 11055(d) (2)), or any methamphetamine precursors (described in Health and Safety Code Sections 11055(f) (1) (A) or 11100(a));

3. He or she has been convicted of a felony punishable by imprisonment in state prison. (Gov. Code § 7282.5(a)(2));

4. 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 within the last 15 years of a felony for, any of the following offenses (Gov. Code § 7282.5(a)(3)):

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5,

NEW

245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code

- (B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code
- (C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code
- (D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code
- (E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code
- (F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code
- (G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony
- (H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code
- (I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code
- (J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code
- (K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8,

4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code

- (L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code)
- (M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances
- (N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code
- (O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code
- (P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section
- (Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code
- (R) Possession or use of a firearm in the commission of an offense
- (S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code
- (T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code
- (U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code

- (V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code
 - (W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code
 - (X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code
 - (Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code
 - (Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code
 - (AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code
 - (AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code
 - (AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code
 - (AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code
 - (AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code;
5. He or she is a current registrant on the California Sex and Arson Registry (Gov. Code § 7282.5(a)(4));
 6. He or she has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in 8

U.S.C. Sec. 1101 (a) (43) (A) - (P) (Gov. Code § 7282.5(a)(5)); or

7. He or she has been identified by Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant (Gov. Code § 7282.5(a)(5)).
 8. Cooperation with immigration authorities is not permitted for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of Proposition 47 (the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code). (Gov. Code § 7282.5(a)(6)).
- (b) Providing information to immigration authorities regarding a person's release date from custody or responding to requests for notifications by providing release dates or other information about an undocumented person requires review and approval by the Field Lieutenant and is only permitted when:
- 1) The information provided is available to the public. (Gov. Code § 7284.6(a)(1)(C));
 - 2) The notification request is made under one of the circumstances listed above in section IV.B.3. (Gov. Code § 7284.6(a)(1)(C)); or
 - 3) In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code. (Gov. Code § 7282.5(b)).
- (c) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through CLETS, is permitted if authorized by state law and CLETS policies. (Gov. Code 7284.6(b)(2)). Department Procedure 1.26 specifies personnel authorized to release criminal history record information.

V. SITUATIONS WHERE COOPERATION WITH IMMIGRATION AUTHORITIES IS PROHIBITED

Officers are prohibited from releasing undocumented persons to immigration authorities under the following conditions:

- A. When they are victims or witnesses of a crime, unless a determination has been made by Department investigators to hold them as material witnesses;
- B. When contacted during domestic disturbances not resulting in a felony arrest(s);
- C. During the enforcement of minor traffic offenses (infractions and non-bookable misdemeanors, including 12500(a) CVC); or,
- D. When the person(s) is seeking medical treatment.

VI. MIGRANT CAMPS

Officers are prohibited from detaining undocumented persons in a migrant camp setting for immigration authorities. If probable cause exists to arrest for a crime not related to immigration violations, officers will follow the procedures in this policy.

VII. DOCUMENTATION OF DETENTIONS

Field supervisors shall ensure compliance with the reporting requirements for all detentions as required by Department Procedure 4.01.

- A. In accordance with Department Policy 9.31, officers shall not stop, question, or detain any individual solely because of the individual's national origin, foreign appearance, inability to speak English, or immigration status.
- B. In the event officers locate a drop house, load car, or drug house containing multiple undocumented persons, they will document the event by preparing an Case Report on each subject detailing the circumstances of the detention.
- C. If a Field Lieutenant approves a transfer of a detainee to immigration authorities, the name(s) and identification number(s) of the agent(s) who take custody of the detainees will be included in the appropriate Case Report(s).

D. Case Report or Officer's Report

When completing the Case Report or Officer's Report, Officers shall not question anyone detained or arrested about their immigration status solely for the purpose of checking the "Undocumented Person" box.

VIII. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application will be available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

IX. ASSISTANCE TO LAW ENFORCEMENT AGENCIES

- A. Officers will provide emergency assistance to all law enforcement agencies including the United States Citizenship and Immigration Services and the U.S. Customs and Border Protection (DHS/Border Patrol) Service to the same extent members would respond to emergency assistance to any other law enforcement agency. The Chief of Police or his designee must approve any other service requests.

B. Joint Criminal Operations

Members may continue to collaborate with other law enforcement agencies, with approval of the member's Assistant Chief, to protect public safety and participate in joint criminal investigations that are permitted under Department policy or applicable City or State Law. When a member becomes aware that an investigation is not solely criminal, but involves the enforcement of immigration laws, the member shall:

- 1) Notify a Supervisor;
- 2) Cease operations if doing so would not pose a risk to the officers or the public;
- 3) Suspend Interagency Operations.

C. Operations by a Joint Law Enforcement Task Force require annual reporting of specific information to the California Department of Justice. (Gov. Code § 7284.6(c)). These reports are public records and subject to disclosure under the California Public Records Act. If more than one state or local law enforcement agency is participating in a joint task force, the task force shall designate a particular agency to complete the reporting requirement. The Captain assigned to Investigations I shall ensure the annual reporting requirements described in this section are completed.

X. **UNDOCUMENTED JUVENILES**

When dealing with undocumented juveniles refer to Department Procedure 3.08, Juvenile Procedures.