

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: 10/22/2008
NUMBER: 6.18 - PATROL
SUBJECT: ADULT UNDOCUMENTED PERSONS
RELATED POLICY: 6.18, 9.16
ORIGINATING DIVISION: OPERATIONAL SUPPORT
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 6.18 – 10/20/2005

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.

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 U.S. Citizenship and Immigration Service and the U.S. Customs and Border Protection Service, which fall under the jurisdiction of the Department of Homeland Security (DHS/Border Patrol). Although state and local peace officers have the authority to assist in enforcing immigration laws, it is the policy of the San Diego Police Department that officers shall not make an effort to look for violations of immigration laws.

San Diego Police personnel will focus on detecting and apprehending individuals involved in criminal activity.

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IV. PROCEDURES

- A. San Diego Police officers are responsible for the enforcement of all laws, Federal, State, and local, and for the safety and protection of all persons. Therefore, officers have a duty to contact 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.
- B. If, upon investigation, probable cause to arrest exists, unrelated to the person's immigration status, officers may arrest for the offense.

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If the subject is booked into the County jail and determined to be illegally in the United States, a hold for DHS/Border Patrol shall be placed on the prisoner.

1. Immigration documents identified as evidence in a criminal investigation will be impounded per Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.
2. Health and Safety Code Section 11369 provides notification requirements when the arrest is drug-related and the person is suspected to be undocumented.

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- C. Officers are authorized to release subjects to DHS/Border Patrol if there is no "probable cause" to arrest but there is "reasonable suspicion" as defined in Department Procedure 4.01, Stop/Detention and Pat-Down Procedures, that criminal activity unrelated to immigration status still exists. If the investigation determines the detainee(s) is/are in violation of Title 8 United States Code, Section 1304(e), officers are authorized to notify DHS/Border Patrol and release the detainee(s) at the scene of contact within a reasonable time.

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1. The duration of the stop or detention prior to the detainee's release to DHS/Border Patrol shall be in accordance with Department Procedure 4.01, Stop/Detention and Pat-Down Procedures. Such factors as remoteness and safety considerations for the person(s) detained may extend the reasonable time of detention prior to DHS/Border Patrol release. However, such detentions should ordinarily be no longer than twenty minutes.
2. Officers are generally prohibited from transporting detained undocumented persons to a police facility for the sole purpose of releasing them to DHS/Border Patrol.
3. Undocumented persons may be transported if they voluntarily consent in order to complete or further an investigation.

- D. If, after investigation, it is determined the person(s) is/are not involved in criminal activity unrelated to immigration status, the person should be released, regardless of immigration status.

V. SITUATIONS WHERE DHS/BORDER PATROL INVOLVEMENT IS PROHIBITED

- A. Officers are prohibited from releasing undocumented persons to ICE/Border Patrol under the following conditions:
1. When they are victims or witnesses of a crime, unless a determination has been made by investigators to hold them as material witnesses.
 2. When contacted during family disturbances.
 3. During the enforcement of minor traffic offenses (infractions and non-bookable misdemeanors including 12500(a) CVC).
 4. When the person(s) is seeking medical treatment.

VI. EXCEPTIONS

- A. Certain criminal situations, because of their inherent danger to citizens of the United States and undocumented persons as well, require immediate action by police officers. Officers are authorized to detain and release undocumented persons to DHS/Border Patrol when contacted under the following conditions:

1. Drop House – a house or building being utilized as a transfer/ holding facility for persons engaged in smuggling undocumented persons.
2. Load Vehicles – vehicles engaged in smuggling undocumented persons.
3. Drug House – house or building being used to facilitate narcotics trafficking.

VII. MIGRANT CAMPS

Officers are generally prohibited from detaining undocumented persons in a migrant camp setting for DHS/Border Patrol unless there is probable cause to arrest for a crime not related to immigration violations. If probable cause to arrest exists, officers will follow the procedures in this policy.

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VIII. DOCUMENTATION OF DETENTIONS

All officers who arrest or detain undocumented persons will complete all appropriate reports. Field supervisors must ensure compliance with the report requirements.

1. Detention reports involving undocumented persons must list, in detail, the reasons for the detention, including all facts that led to the "reasonable suspicion" that the subject was involved in criminal activity unrelated to immigration status.
2. 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 ARJIS-8 on each subject and an ARJIS-9 detailing the circumstances of the detention.
3. The name(s) and identification number(s) of the agent(s) who take custody of the detainees will be included in the appropriate (ARJIS-8/ARJIS-9) report(s).

IX. ASSISTANCE TO LAW ENFORCEMENT AGENCIES

- A. Officers will provide emergency assistance to all law enforcement agencies including the U.S. Citizenship and Immigration Service and the U.S. Customs and Border Protection (DHS/Border Patrol) Service when requested to do so. The Chief of Police or his designee must approve any other service requests.
- B. California Government Code Section 53069.75 guarantees continued Federal support for local law enforcement activities. It provides as follows:

"...no local law shall prohibit a peace officer or custodial officer from identifying and reporting to the United States Citizenship and Immigration Service any person, pursuant to federal law or regulation, to whom both of the following apply:

- (a) The person was arrested and booked, based upon the arresting officer's probable cause to believe that the person arrested had committed a felony.
- (b) After the arrest and booking in subdivision (a), the officer reasonably suspects that the person arrested has violated the civil provisions of the Federal immigration laws."

X. UNDOCUMENTED JUVENILES

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