LOCAL OPTIONS FOR PROTECTING IMMIGRANTS

A COLLECTION OF CITY & COUNTY POLICIES TO PROTECT IMMIGRANTS FROM DISCRIMINATION AND DEPORTATION

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CHAPTER

01

INTRODUCTION



LOCAL OPTIONS FOR PROTECTING IMMIGRANTS

In response to President-elect Donald Trump’s promise to deport two to three million immigrants when he takes office, many cities and counties across the United States are seeking to enact local policies (often referred to as “sanctuary” or “welcoming”) to protect their immigrant residents.

These policies seek to keep immigrant communities safe, ensure that all individuals are treated equally (regardless of immigration status) devote local resources to local priorities, and uphold the Constitution.

At the forefront of this battle is when the local criminal legal system cooperates with Immigration & Customs Enforcement (ICE). Many local law enforcement agencies voluntarily offer assistance to ICE at their own expense.

Cities and counties have no legal obligation to help enforce federal immigration laws. In ceasing this voluntary cooperation, cities and counties can take important steps today to ensure that they do not serve as a pipeline to deportation.

This resource identifies and explains some key provisions that cities and counties can enact in order to protect immigrants from discrimination and deportation.

CHAPTER

02

COUNTY & JAIL PROVISIONS



COUNTY & JAIL PROVISIONS

In the majority of states in America, police departments take primary responsibility for patrolling cities and towns, while sheriffs manage and operate county jails. When police arrest a person, unless they are released very quickly, they will be brought to the county jail, run by the sheriff. Most people are turned over to ICE for deportation from these jails.

Therefore, the county jail's policies regarding assistance to ICE is where a local policy can have the greatest impact on deportation.

The following items are elements that advocates should consider in seeking to build a local policy that will prevent a simple police stop from being the gateway to deportation.

1. No 287(g) program

The 287(g) program is an agreement between Department of Homeland Security (DHS) and certain law enforcement agencies to allow local or state law enforcement officers to have some authority to enforce civil immigration laws. Under 287(g), local law enforcement are indistinguishable from federal immigration authorities, and immigrants may risk deportation proceedings as a result of any contact with law enforcement agents. Currently only about 32 agencies in the country participate in 287(g). Ending or preventing a 287(g) program is necessary to enacting any local sanctuary-type policy.

2. No Intergovernmental Service Agreement (IGSA)

An IGSA is a contract between a local jail and ICE to detain immigrants in deportation proceedings. Many counties make money off immigration detention, although in some cases, the counties actually lose money and are subsidizing ICE. When a local jail has an IGSA, immigrants may get transferred directly to ICE detention without due process. Individuals are often held in immigration detention for months without any guarantee of a lawyer or other basic rights. There is no legal obligation for localities to enter into immigration detention contracts.

For a list of immigration detention centers, see:
www.endisolation.org/resources/immigration-detention/

COUNTY & JAIL PROVISIONS

3. No detention on ICE holds to facilitate transfer to ICE

No jail should prolong the detention of an immigrant who is otherwise due for release under state law on the basis of an ICE hold or ICE detainer. This practice has been found unconstitutional or illegal by several federal courts.

See a summary of the court decisions here: https://www.ilrc.org/immigration-detainers-legal-update-october-2016

See a legal memo with further analysis here: https://www.ilrc.org/legal-analysis-immigration-detainers

Real Policies in Practice

i. "Effective Thursday, June 12, the Hennepin County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority"

ii. It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals that are accompanied by a criminal warrant issued by a U.S. District Court judge or magistrate.

iii. Effective immediately, we will no longer detain individuals based solely on a federal immigration detainer (Form I-247). A recent federal court ruling in Oregon makes it clear that these forms are not mandatory, but merely requests. Accordingly, we have no lawful reason to detain individuals who are otherwise releasable based on the issuance of an ICE detainer. Individuals having a valid arrest warrant issued by another jurisdiction or federal agency may still be detained according to our current protocol.

4. General prohibitions on assistance or joint patrols with ICE

Local and state law enforcement have no authority to stop or arrest individuals based on immigration status or suspected civil immigration violations. Nor is there any obligation for officers to assist ICE in immigration enforcement, whether that involves providing ICE with information or conducting joint arrests or raids.

Real Policies in Practice

i. No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

ii. Officers shall not contact ICE or CBP for assistance on the basis of a suspect's or arrestee's race, ethnicity, national origin, or actual or suspected immigration status.

iii. Officers shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.

COUNTY & JAIL PROVISIONS

5. No ICE agents or officers in jails

Although local law enforcement agencies have no obligation to assist ICE, ICE agents often have unfettered access to detainees, databases, and in some jails even have desks and offices of their own within the local jail. In others, they visit daily or multiple times per week. ICE agents may get access to the booking information of individuals (which includes foreign birth and address), and sometimes are able to log in directly to the jail's databases.

Given this broad access to jail data and people in custody, ICE is able to interrogate people who are detained about their immigration status or place of birth, often doing so in a threatening and coercive way, and then uses this information to deport them. Often due to abusive, deceptive ICE practices, jurisdictions have determined that they will not let ICE into the secure area of the jail to interrogate inmates. Others have established procedures for individuals to give knowing consent before agreeing to such ICE interviews.

Real Policies in Practice

i. The District shall not provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates or permit an ICE agent to conduct an individualized interview of an inmate without giving the inmate an opportunity to have counsel present.

ii. In advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present.

The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The written consent form shall also be available in any additional languages that meet the county threshold as defined in subdivision(d) of Section 128552 of the Health and Safety Code if certified translations in those languages are made available to the local law enforcement agency at no cost.

6. Don't ask about immigration status or place of birth

Immigration status is irrelevant to criminality and to regular enforcement of criminal laws or protection of public safety. Many jurisdictions prohibit inquiring into immigration status by local law enforcement or other agencies, particularly in order to mitigate potential racial or ethnic profiling.

Real Policies in Practice

i. Do not ask the detainee about his/her immigration status or place of birth.

ii. [Officers] may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that personal characteristics are not a reason to ask about civil immigration status.

iii. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to driver's licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. [Officers] may utilize federal databases in attempts to establish an individual's identity. [Officers] shall utilize federal databases in attempts to establish an individual's identity only when all other attempts to identify the person have failed. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.

COUNTY & JAIL PROVISIONS

7. No notifications of release dates

In some places that will not agree to detain immigrants for an ICE arrest, ICE sends a request for notice of release date, so that they can arrive in time to seize the person exactly when they would be leaving the jail. This practice has the exact same effect as the other ICE detainer request -- it turns the jail into a pipeline to deportation and undermines local law enforcement's ability to engage with immigrant communities. Stopping this practice is, therefore, important for any sanctuary-type policy.

Real Policies in Practice

i. Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty.

ii. 1. The department [shall not honor a civil immigration detainer by: (i) holding a person beyond the time when such person would otherwise be released from the department's custody, except for such reasonable time as is necessary to conduct the search specified in paragraph two of this subdivision, or (ii) notifying federal immigration authorities of such person's release.

iii. No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding the immigration or release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision.

CHAPTER

03

CRIMINAL LEGAL PROVISIONS



CRIMINAL LEGAL PROVISIONS

1. Provisions to Protect Equal Rights for Immigrants in Criminal Courts

Because of perceived lack of immigration status, immigrants are often discriminated against within the criminal legal system. To the right are some provisions related to ensuring that immigrants have equal access to bail, jail alternatives treatment programs, and other protections in the criminal legal process so that they can have fair and just outcomes of their criminal case. This in turn may mitigate the risk of deportation.

These examples are not exhaustive of issues affecting immigrants within the criminal legal process.

Real Policies in Practice

i. Any inmate who has bondable charges upon admission shall be allowed to post bond to secure his or her release. An immigration detainer request or an administrative warrant shall not inhibit an inmate's ability to post bond.

ii. Inmates with an ICE detainer will be sent to court for their commitment charge(s) as a straight/out court appearance. In the event all local charges are disposed of, the inmate will not be returned to the Correctional facilities.

iii. Neither the Illinois Department of Corrections nor any other State of Illinois law enforcement agency may consider an immigration detainer or administrative immigration warrant in determining an individual's eligibility or placement in any educational, rehabilitative, or diversionary program described in Chapter 730 of the Illinois Compiled Statutes or any other educational, rehabilitative or diversionary program administered by a law enforcement agency.

2. Criminal Courts

Criminal courts have a duty to administer justice fairly and impartially. To the right are some provisions to ensure that criminal courts do not discriminate against immigrants and afford them due process.

Real Policies in Practice

It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk.

Procedural protections: Stop courts from inquiring into immigration status and to provide warnings about possible immigration consequences of a plea, e.g. CA Penal Code 1016.5

See also: http://immdefense.org/wp-content/uploads/2011/11/IDP_Judicial_Inquiry_Into_Status_Jan20111.pdf

See also: http://www.immdefense.org/wp-content/uploads/2011/11/postpadillaFINALNov2011.pdf

CRIMINAL LEGAL PROVISIONS

3. Criminal Defenders

Criminal defenders have a constitutional duty under the Sixth Amendment of the U.S. Constitution to affirmatively and competently advise of the immigration consequences of criminal offenses. Because even misdemeanor offenses can have devastating immigration consequences, it is crucial that defenders be armed with the resources to comply with this duty.

Real Policies in Practice

Sample Policy Language: Defense counsel shall provide accurate and affirmative advice about the immigration consequences and when consistent with the goals of the defendant shall defend against those consequences.

Sample model: www.ilrc.org/sites/default/files/resources/protocols_for_ensuring_effective_defense_of_noncitizen_defendants_in_ca_oct_2015.pdf

4. Prosecutors

Similarly, prosecutors should adopt written local policies and/or practices where they consider the immigration consequences to the defendant and their family during plea negotiations. This can help result in a criminal case outcome that will mitigate or prevent deportation or other immigration consequences. Even the U.S. Supreme Court has stated that such consideration can only be beneficial for both parties. Prosecutors may also voluntarily share information with ICE or report people to ICE and these practices should be prohibited.

Real Policies in Practice

Sample Language: The prosecution, in the interests of justice, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.

5. U Visa Policies

One simple thing that local and state law enforcement, prosecutors, judges, and certain other agencies can do, is establish policies and protocols for signing U visa certifications.

A U Visa is immigration relief for victims of certain crimes who have been, or are likely to be, helpful to law enforcement in the investigation or prosecution of a crime that can lead to a green card.

The first step in applying for a U visa is to obtain a U Visa certification from one of the aforementioned agencies.

Real Policies in Practice

Sample guidance can be found here: https://www.ilrc.org/sites/default/files/resources/u_visa_basics_for_law_enforcement.pdf

When advocating with law enforcement, this guidance from DHS may be helpful: https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf

CHAPTER

04

CITY PROVISIONS



CITY PROVISIONS

In addition to interactions with ICE at the county level, individuals may come in contact with ICE through local police. Although ICE accesses most people from the county jail/sheriff's department (see Part I above), there are still policies that police and cities can adopt to mitigate ICE's presence and immigration consequences. If your city runs a jail, see the various jail policy advice above.

1. General prohibitions on assistance or joint patrols with ICE

Local and state law enforcement have no authority to stop or arrest individuals based on immigration status or suspected civil immigration violations. Nor is there any obligation for officers to assist ICE in immigration enforcement, whether that involves providing ICE with information or conducting joint arrests or raids.

Real Policies in Practice

i. No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law

ii. No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

2. Don't ask Policies

Cities interact with individuals in a number of ways on a regular basis. It is important that during those interactions immigration status is not requested or investigated since it is a civil immigration matter outside the city's jurisdiction. Policies can make clear that city agencies and departments, including local police, should not solicit information about immigration status.

Real Policies in Practice

i. No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision.

ii. Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or guardian.

3. Prohibition on NCIC Immigration Arrests

Police use the national NCIC database to check whether individuals in their custody have outstanding warrants. ICE also puts administrative immigration warrants for civil violations into NCIC, which confuses law enforcement officers, who generally do not have legal authority to make arrests on the basis of civil immigration violations.

Real Policies in Practice

i. Hartford police officers shall not make arrests or detain individuals based on administrative warrants for removal entered by ICE into the National Crime Information Center database.

CITY PROVISIONS

4. Prohibition on joint operations with ICE

In addition to 287(g) agreements with counties discussed above, ICE will also rely on local law enforcement for resources and assistance with their immigration efforts. Police are not required to divert their resources to federal law enforcement for the investigation of civil immigration matters.

Real Policies in Practice

i. Members are not permitted to accept requests by ICE or other agencies to support or assist in immigration enforcement operations, including but not limited to requests to establish traffic perimeters related to immigration enforcement. In the event a member receives a request to support or assist in a civil immigration enforcement action he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the Superintendent through the chain of command.

ii. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted. Staff will not participate in ICE organized sweeps to locate and detain undocumented residents.

5. No holds and no notifications of release dates

As previously discussed under counties above, police generally take individuals to jail, which are operated by the county sheriff's department. While it's through the sheriff that ICE is able to pick up individuals, police departments do hold individuals and may receive hold or notification (also called detainer) requests. As a result, it is important that local police have policies against holds and notifications.

Real Policies in Practice

i. If a CCPD arrestee receives an ICE detainer request, it should be attached to the booking forms indicating that the detainer was received. The jailer/booking officer shall write the word "REJECTED" at the top of the detainer. The ICE detainer will not be honored without documentation indicating a Federal Probable Cause hearing has occurred.

ii. Unless an agency or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall...while on duty, expend their time responding to ICE inquiries or communicating with ICE regarding a person's custody status or release date.

CITY PROVISIONS

5. Statement of Support

While a statement of support does not provide any benefits or protections, it does signal the city's commitment to inclusiveness and protecting the rights of all residents, including immigrants. These statements can take many forms and are an important vehicle for easing fears within the immigrant community, as well as holding officials accountable or laying the groundwork for an enforceable policy later on.

Real Policies in Practice

i. It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

ii. The vitality of the City of Chicago (the "City"), one of the most ethnically, racially and religiously diverse cities in the world, where one-out-of-five of the City's residents is an immigrant, has been built on the strength of its immigrant communities. The City Council finds that the cooperation of all persons, both documented citizens and those without documentation status, is essential to achieve the City's goals of protecting life and property, preventing crime and resolving problems. The City Council further finds that assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents. The cooperation of the City's immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City. One of the City's most important goals is to enhance the City's relationship with the immigrant communities.

CHAPTER

05

OTHER THINGS CITIES & COUNTIES CAN DO



OTHER THINGS CITIES AND COUNTIES CAN DO

In addition to the policies listed above, cities can take a number of additional actions:

• Ensure city benefits and services are available without regard to immigration status.

City employees will serve all residents and city services will be accessible to all residents, regardless of immigration status. Seattle Resolution 30672 passed in 2004 reaffirms Ordinance 121063 and states that City agencies and law enforcement cannot withhold services based on several identities, including ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion.

• Issue municipal IDs that can also serve as a form of identification when working with local police.

IDNYC is the new, free identification card for all New York City residents, which gives all of us the opportunity to show who we are—New Yorkers.

• Provide language services so that foreign language speakers are able to access services.

All City agencies that provide direct public services shall ensure meaningful access to such services by taking reasonable steps to develop and implement agency-specific language assistance plans regarding LEP persons.

• Establish an office dedicated to Civic Engagement and Immigrant Affairs to enact city or county-wide programs such as the integration of immigrant services (e.g. citizenship outreach), language access, and other programs.

See: www.sfgov.org/oceia

• Establish a fund for appointed representation of individuals in deportation proceedings.

Chicago Legal Protection Fund

• Enact safety policies within the school districts.

See: https://www.nilc.org/wp-content/uploads/2016/12/Model-Campus-Safe-Zones-Language-K12-countrywide-2016-12.pdf

CHAPTER

06

MAPPING LOCAL AUTHORITIES



MAPPING LOCAL AUTHORITIES

Who has the power to make policy about ICE collaboration at the local level?

Law enforcement reports to local government. Sheriffs or county law enforcement often report to county-level government, such as a county executive, or a county commission or board of supervisors. Power over the sheriff's budget can be an important avenue for establishing new rules about collaboration with ICE, if an independent rule is hard to obtain. This chart examines common figures in county-level governance and law enforcement.

COUNTY AUTHORITIES			
	Sheriff	**County Executive**	**County Council or Board**
Type of Power	• Sheriff often manages county or regional jails • May have custody of both pre-trial inmates and those serving fairly short sentences • Most Sheriffs and Sheriff Deputies have arrest and enforcement powers, but some only run jails and don't have patrols	• Could have many names • Doesn't exist in many states • Likely controls county budget or oversees county-wide agencies	• A legislative body with power to write county-wide laws • Can call meetings and oversight hearings or demand information from law enforcement • Some states have County Boards, which are a similar law-making body of elected officials • May also be called County Commission
Jurisdiction	• Sheriffs are usually the county-wide law enforcement and jail authority • Usually have power to make arrests and detain people throughout the county	• Governs the whole county • May be the primary local executive authority for small towns without their own council or mayor	• A County Commission/Board/ Council passes county budgets and other county laws and regulations • Generally a county law cannot be overruled by a city-level law
Elected or appointed	• Sheriffs are often elected by the people of the county, but not always.	• May be elected or appointed	• Usually elected by all the residents of the county

MAPPING LOCAL AUTHORITIES

Who has the power to make policy about ICE collaboration at the local level?

Most towns have a municipal police department that is accountable to a governing body or authority, a mayor or city council, for example. It is often these governing bodies that create the rules that law enforcement must follow. In addition, the city government will also control the police budget, which can be an important wedge.

CITY AUTHORITIES			
	Police Chief or Commissioner	**Mayor or City Manager**	**City Council**
Type of Power	• Police can make arrests, search, and detain people • Chief is the head of city police • Authority over police practices, training, and protocol • Police usually manage the city jail or hold rooms, where people would be held during temporary detention after arrest	• Mayor is generally in charge of running a town or city • Usually manages local budgets and oversees city agencies • May have managerial authority to tell police or jails what to do • Some towns have a City Manager, which is similar to a Mayor	• City Council is a group of officials with power to pass local laws, often called ordinances • May also conduct oversight hearings of the jail or police • Likely has a subcommittee with specific focus on police, public safety, or immigration issues • In some cities has power to appoint the mayor or city manager
Jurisdiction	• Highest authority for the local (city) police department • No jurisdiction over neighboring towns • May detain people after arrest or before trial	• Mayor is the chief executive of a town or city, like the President, but on a local level • Usually has power to pass executive orders • Does not have authority over other towns	• City Council is usually the legislative branch of city government • Does not have power to override county or state laws
Elected or - appointed	• Police Chiefs are usually an appointed position or reached by promotion	• Usually elected by residents of the city, but may be appointed by a city council	• Council Members may be elected at large or based on wards or districts

But remember, every jurisdiction's structure is different!
These charts describe common authorities and powers of city government and law enforcement.

CHAPTER

07

MORE RESOURCES + CONTACT THE AUTHORS



ADDITIONAL RESOURCES

For more detailed explanation of ICE enforcement programs in local jails, see these other ILRC resources:

- Guide to the Criminal Alien Program
- Guide to the Priority Enforcement Program (PEP-Comm)
- A comprehensive guide to separating local law enforcement from ICE

CONTACT

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This resource can be downloaded directly from: https://www.ilrc.org/local-options

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Nikki Marquez (nmarquez@ilrc.org) with **"[Local Options Resource]"** included in the subject line of your request.