

**OTERO COUNTY SHERIFF'S DEPARTMENT
OPERATIONAL PROCEDURE
REGARDING INQUIRY INTO IMMIGRATION STATUS**

- A. Otero County Sheriff's deputies shall not stop, investigate, detain or question a person solely for the purpose of determining whether such person is in the United States without authorization and proper documentation.
- B. A person's presence in the United States without proper documentation or authority, standing alone, is not a criminal violation. Therefore, a deputy may not initiate a criminal investigation based solely on information or suspicion that an individual is in the United States without proper authorization. The use of an otherwise valid criminal investigation or arrest as pretext to ascertain information about an individual's civil immigration status is prohibited.
- C. Otero County Sheriff's deputies shall not inquire into a person's immigration status when conducting a criminal investigation of a petty misdemeanor. With regard to investigations involving other suspected crimes, a deputy may inquire into a person's immigration status only in the following circumstances:
 - 1. When conducting a criminal investigation of a suspect based on reasonable suspicion that the suspect has engaged in criminal activity and the immigration status of the suspect is relevant to the investigation of that criminal activity, provided that the investigation is initiated for a reason or reasons *independent of* any information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law; or
 - 2. After a suspect has been arrested and placed into custody for a criminal violation pursuant to a valid warrant or established

probable cause and the officer has probable cause to believe that the suspect has also engaged in a criminal offense, provided that the arrest is initiated for a reason or reasons *independent of* any information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law.

Nothing herein shall be construed to prohibit otherwise lawful investigations of criminal activity that are initiated for a reason or reasons independent of an individual's immigration status, including investigations of a more serious criminal offense that follows from the initial investigation of a petty misdemeanor.

- D. If, under one of the circumstances listed in Section C, above, or if a deputy obtains information voluntarily, inadvertently or through a collateral source, that calls into question whether the suspect is present in the United States without proper documentation during any other criminal investigation or arrest of a suspect, the Deputy may contact the appropriate federal law enforcement officials.
- E. If a suspect is not being arrested, Otero County Sheriffs deputies shall not detain the suspect for any period of time longer than is necessary to complete the deputies' criminal investigation and to take any appropriate enforcement action for any criminal violations by the suspect, including traffic violations. Deputies do not have the authority to "hold" an individual for the purpose of having the individual questioned by federal immigration officers unless an authorized federal agency places a detainer or other legal hold on the suspect for violations of law and presents evidence of such detainer or hold to the Deputy. In such a case, the suspect shall be held only so long as allowed by federal law.
- F. If a suspect is arrested, the suspect shall be processed in the normal manner for all suspects committing similar offenses, without regard to the suspect's immigration status. If the arrested suspect is otherwise subject to release, the suspect may only be held if an authorized federal agency provides Otero County with information that the

suspect has committed a violation under federal law and the authorized federal agency places a detainer or other legal hold on the suspect for violations of law and presents evidence of such detainer or hold to the County. In such a case, the suspect shall be held only so long as allowed by federal law.

- G. If a reporting party provides information to an Otero County Sheriff's deputy concerning the alleged immigration status of another person, but does not otherwise offer any reliable, trustworthy information that the such person has committed or is committing any criminal offenses, the deputy shall not take any further investigative steps. Instead, the reporting party shall be referred to the United States Border Patrol. The Deputy may also contact the United States Border Patrol with such information.
- H. Traffic stops, saturation patrols, criminal warrant enforcement, "knock and talks" and traffic roadblocks shall be used solely for the purpose of enforcing criminal laws and ordinances. Such enforcement and investigative techniques shall not be used for the purpose of determining any person's immigration status. If during the course of any such activity a deputy has reason to question a person's immigration status, all subsequent actions by the deputy shall be in accordance with this policy.
- I. The policy of the Otero County Sheriff's Department is to encourage victims and witnesses of crime to come forward and to fully report criminal activity without fear of retribution. Consequently, a deputy shall not inquire into the immigration status of a witness or a victim of crime, including witnesses or victims of domestic violence, or witnesses or victims who are being treated by medical personnel.
- J. All children residing in the United States have a right to attend churches and public schools in the United States regardless of their immigration status. Deputies shall not engage in stopping, questioning, detaining, investigating or arresting minor children (under 18 years of age) on any immigration related matter while at, in or on a church, church property, or a public school ground or property,

including adjacent parking lots or open fields. Nothing herein shall prohibit inquiry into an individual's immigration status if an individual is taken to a detention facility pursuant to a valid criminal arrest, that is unrelated to immigration status.

- K. This policy is not intended to nor does it change the Otero County Sheriff's Department's cooperation and coordination with Federal, State, County and City agencies and departments to enhance border security by increasing law enforcement presence and enforcing criminal laws. The Otero County Sheriff's Department shall continue to utilize State and Federal grants to fund overtime, purchase equipment, conduct training and otherwise provide for increased law enforcement presence and the enforcement of criminal laws in cooperation with other law enforcement agencies and departments in accordance with existing agreements and operational plans, and in compliance with this Operational Procedure.