

EXHIBIT H

PRINCE WILLIAM COUNTY POLICE DEPARTMENT MANUAL OF GENERAL ORDERS (PROPOSED)		
General Order: 45.01	Effective:	Number of Pages: 4
LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION : GENERAL GUIDELINES		

- A. The purpose of this General Order is to establish a policy for the local participation of the enforcement of immigration laws. It is not intended to limit the Police Department's authority under the United States or Virginia Constitutions or under any other laws.
- B. Although immigration enforcement is vested in the Federal government, local law enforcement has an increasing role in identifying, investigating, and apprehending persons who may be in violation of federal immigration law, particularly those who commit other violations of law. Preliminary investigations shall encompass all who are lawfully detained within the guidance provided by this General Order and the law. The primary focus of police investigative efforts will be those who may be in violation of federal immigration law who are criminal aliens, as defined in Section F.
- C. If there is probable cause to believe a person is in violation of federal immigration law and when such inquiry will not unlawfully expand the duration of the detention, it is the policy of this Department that officers *shall* investigate the citizenship or immigration status of a person who is lawfully detained for a violation of a state law or county ordinance by following the procedures set out in this General Order. An officer may inquire into immigration status prior to the establishment of probable cause if he has reasonable articulable suspicion as part of initial identification inquiry to acquire an understanding of the facts which may lead to the discovery of additional facts that would lawfully support an extension of the initial detention for further investigation into immigration matters. As previously stated, this General Order is not intended to limit the Police Department's authority under the Fourth Amendment of the United States Constitution.
- D. Racial profiling, the practice of stopping, detaining, or searching a person based solely on factors such as their race, color, or ethnicity, is prohibited and in fact, illegal. Race, color, ethnicity, or other non-criminal traits are not, in and of themselves, sufficient to constitute reasonable suspicion or probable cause to justify stopping, detaining, or searching a person (see General Order 2.01, C- 56).
- E. Public Safety is enhanced when victim's file police incident reports. Therefore, victims and essential witnesses will not be subject to immigration inquiries as a matter of routine.
- F. Description of Frequently Used Terms;
1. **Alien** – A person who is not a citizen of the United States.
 2. **Alien Absconders** - A fugitive remaining in the United States after an immigration judge has ordered them deported.

3. **Criminal Alien** – Aliens who have committed crimes that make them eligible to be removed from the United States.
4. **Foreign National** – A person who is not a permanent United States resident.
5. **Illegal Alien** - A person who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).
6. **Undocumented Immigrant** – Any person of another country who has entered or remained in the United States without permission and without legal status.
7. **ICE** - U.S. Department of Homeland Security’s Bureau of Immigration and Customs Enforcement
8. **LESC** - the ICE Law Enforcement Support Center
9. **National Crime Information Center (NCIC) Wanted Status (Hits)** – At this time there are two types of Hits:
 - a) **“OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”** – This NCIC hit pertains to an ICE Federal *civil process*. This language in NCIC means that the individual has been ordered to leave the Country but has not complied with the order.
 - b) **“PREVIOUSLY DEPORTED FELON”** – A type of NCIC Hit that pertains to an ICE Federal Criminal Felony.
10. **Permanent Resident Alien** – Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.
11. **Legal presence** - A person who is legally present is either a U.S. citizen or is legally authorized to be in the United States. Legal presence can be proved using a U.S. birth certificate or U.S. passport. It also can be proved using a variety of other government issued documents such as a Certificate of Citizenship or Naturalization, Resident Alien Card or a valid foreign passport with a visa, I-94 or an I-94W with a participating country. Documents presented as proof of legal presence must show the full legal name and date of birth. Virginia’s legal presence law took effect on January 1, 2004. A list of accepted documents under that law is available at:

<http://www.dmv.state.va.us/webdoc/pdf/dmv141.pdf>

12. **Probable Cause** – The legal standard of probable cause, as the term suggests, relates to probabilities that are based upon the factual and practical considerations in everyday life as perceived by reasonable and prudent persons. The presence or absence of probable cause is not to be examined from the perspective of a legal technician. Rather, probable cause exists when the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, alone are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed. *Draper v. United States*, 358 U.S. 307, 313 (1959); *Schaum v. Commonwealth*, 215 Va. 498, 500, 211 S.E.2d 73, 75 (1975). In order to ascertain whether

probable cause exists, courts will focus upon “what the totality of the circumstances meant to police officers [Page 821] trained in analyzing the observed conduct for purposes of crime control.” *Hollis v. Commonwealth*, 216 Va. 874, 877, 223 S.E.2d 887, 889 (1976).

Taylor v. Commonwealth, 222 Va. 816, 820-821, 284 S.E.2d 833 (1981), cert denied, 456 U.S. 906 (1982)

“An apparent state of facts found to exist upon reasonable inquiry, (that is, such inquiry as the given case renders convenient and proper,) which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or in a civil case that a cause of action existed.” (Black’s Law Dictionary)

G. Verification of Legal Presence

For purposes of this policy, the Department shall be guided by §46.2-328.1 *Code of Virginia* in determining what forms of identification are sufficient to establish legal presence.

Generally, a **valid Virginia** Driver’s License or Special Identification card (Adult ID card, Child ID card, or Hearing Impaired Photo ID Card – commonly referred to as a “Walker’s ID”), with an **ORIGINAL issued date of January 1, 2004 or later**, shall serve as proof of legal presence, as noted in § 46.2-328.1 *Code of Virginia* (Virginia’s legal presence law took effect on January 1, 2004).

Legal presence may be determined by checking nationwide databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC).

H. Legal Authority for Enforcement of Immigration Laws (see General Order 45.02).

Warrants and detainers issued by ICE may be criminal or civil. Whether ICE is proceeding criminally or civilly against the subject controls the response of local law enforcement.

POLICE **MAY ARREST** under any of the following conditions:

- 1). The requirements of §19.2-81.6 *Code of Virginia* are satisfied.

§19.2-81.6 Code of Virginia - All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual

forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.

- 2) An NCIC **Immigration Violator File (IVF)** hit reads “**PREVIOUSLY DEPORTED FELON,**” a hit confirmation is received, **AND** a Criminal Immigration Detainer from ICE is received and/or issued.
- 3) An NCIC IVF hit reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL**” (such NCIC warrants are considered civil in nature), **AND** the officer has charged a person for a separate Class 1 or Class 2 misdemeanor or a traffic infraction, for which the law requires the person be released on a summons in accordance with §19.2-74 *Code of Virginia* or §46.2-940 *Code of Virginia*, the NCIC IVF hit, absent extenuating circumstances, shall be considered as a **factor** to proceed under §19.2-82 *Code of Virginia* (Arrest without warrant), in determining whether the person is likely to disregard the summons. *NOTE; When there is probable cause to believe someone is an illegal alien but NO NCIC IVF Hit is received/returned on the person, the law is unclear as to whether the absence of such a hit is to be considered a factor in determining whether the person should be brought before the magistrate on the local charge. In such cases where there is no NCIC IVF Hit, officers shall make a determination based on all available information as to whether the person is likely to disregard the summons and shall act accordingly.*

POLICE MAY NOT ARREST under the following conditions:

1. Solely because a person is an illegal alien. This is because the Police Department has no legal authority to independently enforce Federal Immigration Law. When probable cause exists to believe a person may be an illegal alien a Field Interview Card shall be completed and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESC.
2. Solely based upon an NCIC IVF hit which reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.**” These are considered civil in nature. Officers have no authority to arrest based solely on **CIVIL** administrative warrants or detainers for immigration issues. A Field Interview Card shall be completed and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESC.