

**MONROE COUNTY CORRECTIONAL CENTER
OPERATIONS DIRECTIVE**

STANDARD OPERATIONS PROCEDURE

**EFFECTIVE: 03/11/2014
REVIEWED: 12/14/2018**

SUBJECT:

ICE IMMIGRATION DETAINERS

Source: 8 C.R.F. §287.7

The policy and directives set forth herein are intended to establish guidelines for staff, offenders and those entities that are contractually bound to adhere to them. It is not intended to establish State created liberty or property interests for staff members or inmates, or an independent duty owed by the Monroe County Sheriff to staff members, inmates, or third parties. This policy and directive is intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Indiana. This policy and directive is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

I. RATIONAL:

The rational for this policy includes but is not limited to:

- A. Local law enforcement agencies can make their own decision about whether to fulfil an individual ICE immigration detainer. Under principles of federalism, neither Congress nor the federal executive branch can require state or local officials to carry out federal programs at their own expense. If such detainees were mandatory, forced compliance would constitute the type of commandeering of local state resources forbidden by the Tenth Amendment.
- B. 8 C.R.F. §287.7 does not compel state or local LEAs to detain suspected aliens subject to removal pending release to immigration officials. Section 287.7 merely authorizes the issuance of detainees as requests to local LEAs
- C. The Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs. *Printz v.*

United States, 521 U.S. 898 (1997).

- D. The constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress's instructions. *New York v. United States*, 505 U.S. 144 (1992)

II. POLICY:

The Monroe County Sheriff has the discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration detainer after that individual becomes eligible for release under certain conditions.

DEFINITIONS

Eligible for release from custody – means the individual may be released from custody because one of the following conditions has occurred:

All criminal charges against the individual have been dropped or dismissed.

The individual has been acquitted of all criminal charges filed against him or her.

The individual has served all the time required for his or her sentence.

The individual has posted a bond.

The individual is otherwise eligible for release under state or local law.

Immigration detainer – an immigration detainer, DHS Form I-247A (10/11), issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the code of Federal Regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed forty-eight (48) hours, without any exception for Saturdays, Sundays, and Federal holidays, and to advise the authorized immigration officer prior to the release of that individual.

DIRECTIVE

The Monroe County Sheriff has the discretion TO COOPERATE WITH THE United States Immigration and Customs Enforcement (ICE) by detaining an individual through the use of DHS Form I-247A (10/11), after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, local law, or any local policy, under any of the following circumstances:

The individual has been charged with or has been previously

convicted of a serious or violent felony defined in IC 35-50-1-2
(a):

Murder (IC 35-42-1-1).
Attempted murder (IC 35-41-5-1).
Voluntary manslaughter (IC 35-42-1-3).
Involuntary manslaughter (IC 35-42-1-4).
Reckless homicide (IC 35-42-1-5).
Aggravated battery (IC 35-42-2-1.5).
Kidnapping (IC 35-42-3-2).
Rape (IC 35-42-4-1).
Child molesting (IC 35-42-4-3).
Sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).
Robbery as a Level 3 or Level 2 felony (IC 35-42-5-1).
Burglary as a Level 3, Level 2 or Level 1 felony (IC 35-43-2-1).
Operating a vehicle while intoxicated causing death (IC 9-30-5-5).
Operating a vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).
Resisting law enforcement as a felony (IC 35-44.1-3-1(b)).

Serious violent felon possession of a firearm (IC 35-47-4-5)
Possession of a firearm by domestic batterer (IC 35-47-4-6).
Possessing, manufacturing, placing, disseminating or detonating
weapon of mass destruction with intent to carry out terrorism as a
Level 2 or Level 3 felony (IC 35-47-12-1).
Possessing, manufacturing, placing, disseminating or detonating
weapon of mass destruction with intent to commit agricultural
terrorism (IC 35-47-12-2).
Dealing or possession of cocaine or narcotic drug (IC 35-48-4-1 and
IC 35-48-4-6).
Dealing or possession of methamphetamine (IC 35-48-4-1.1 or IC
35-48-4-6.1).
Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
Dealing in a schedule IV controlled substance (IC 35-48-4-3).
Dealing in a schedule V controlled substance (IC 35-48-4-4).
Possession of a controlled substance (IC 35-48-4-7).
The individual is a current registrant on the Indiana Sex Registry.
Any individual the sheriff or designee perceives necessary to hold for
any "legitimate law enforcement purpose."

If none of the conditions listed above is satisfied, an individual shall not be detained on the basis of an immigration detainer after the individual becomes eligible for release from custody.

No staff member shall facilitate an “Immigration Detainer” for any qualifying individual until Probable Cause has been determined by a Judicial Authority.

Once an individual is served with an “Immigration Detainer”, the individual may only be detained for a period not to exceed forty-eight (48) hours, excluding weekends and federal holidays. In the event ICE officials have not taken custody of the individual, within forty-eight (48) hours, excluding weekends and federal holidays, the individual shall be released from custody.

Because there is no legal authority upon which the United States may compel an expenditure of county resources to cooperate and enforce its immigration laws, there shall be no expenditure of county resources or efforts by staff for this purpose except as expressly provided herein.