

Keep Washington Working Act

432.1 PURPOSE AND SCOPE

In 2019, the Washington State Legislature passed the Keep Washington Working Act (KWW) to ensure "the state of Washington remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working." The KWW makes numerous changes to state law restricting the extent to which state and local agencies may participate in the enforcement of federal immigration laws. Most of the policy below is taken directly from the Attorney General's model policy on the Keep Washington Working Act.

432.1.1 DEFINITIONS

"Civil immigration warrant"- means any warrant for a violation of federal civil immigration law issued by a federal immigration authority. A "civil immigration warrant" includes, but is not limited to, administrative warrants entered in the national crime information center database, warrants issued on ICE Form I-200 (Warrant for Arrest of Alien), (Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.(

"Court order" and "judicial warrant"- mean a directive issued by a judge or magistrate under the authority of Article III of the United States Constitution or Article IV of the Washington Constitution. A "court order" includes, but is not limited to, judicially authorized warrants and judicially enforced subpoenas. Such orders and warrants do not include civil immigration warrants, or other administrative orders, warrants or subpoenas that are not signed or enforced by a judge or magistrate as defined in this section.

"De-identified"- means information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

"Federal immigration authority"- means any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement. "Federal immigration authority" includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

"Hold request"- or "immigration detainer request" means a request from a federal immigration authority, without a court order, that a state or local law enforcement agency maintain custody of an individual beyond the time the individual would otherwise be eligible for release in order to facilitate transfer to a federal immigration authority. A "hold request" or "immigration detainer request" includes, but is not limited to, DHS Form I-247A (Immigration Detainer–Notice of Action)

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

or prior or subsequent versions of form I-247.(Detainers issued on ICE Form I-247 are not court orders.

"Immigration detention agreement" or "IGSA"- means any contract, agreement, intergovernmental service agreement, or memorandum of understanding that permits a state or local law enforcement agency or officer to house or detain individuals for federal civil immigration violations.

"Immigration or citizenship status"- means such status as has been established to such individual under the Immigration and Nationality Act.

"Language services"- includes but is not limited to translation, interpretation, training, or classes. "Translation" means written communication from one language to another while preserving the intent and essential meaning of the original text. "Interpretation" means transfer of an oral communication from one language to another.

"Law enforcement agency" or "LEA" means any agency of the state of Washington (state) or any agency of a city, county, special district, or other political subdivision of the state (local) that is a "general authority Washington law enforcement agency," as defined by RCW 10.93.020, or that is authorized to operate jails or maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

"Local government"- means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to, cities, counties, school districts, and special purpose districts. It does not include sovereign tribal governments.

"Necessary to perform duties"- means that, after following appropriate procedures to verify a course of action, no reasonably effective alternative appears to exist that would enable the performance of one's legal duties and obligations.

"Notification request"- means a federal immigration authority's request for affirmative notification from a state or local law enforcement agency of an individual's release from the LEA's custody. "Notification request" includes, but is not limited to, oral or written requests, including DHS Form I-247A, Form I-247N, or prior or subsequent versions of those forms.

"Personal information"- means names, date of birth, addresses, GPS [global positioning system] coordinates or location, telephone numbers, email addresses, social media handles or screen names, social security numbers, driver's license numbers, parents' or affiliates' names, biometric data, or other personally identifiable information. "Personal information" does not include immigration or citizenship status.

"Physical custody of the department of corrections"- means only those individuals detained in a state correctional facility but does not include minors detained pursuant to chapter 13.40 RCW, or individuals in community custody as defined in RCW 9.94A.030 including those serving a term of detention at a local LEA due to a community custody violation.

Keep Washington Working Act

"School resource officer" or "SRO"- means a commissioned law enforcement officer in the state of Washington who has sworn authority to uphold the law and who is assigned by the employing police department or sheriff 's office to work in schools to ensure school safety. • "State agency" has the same meaning as provided in RCW 42.56.010.

"T visa"- is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(T), as further defined in RCW 7.98.010(1), that enables victims of a severe form of human trafficking and certain qualifying family members to remain in the United States for four years or longer if they have assisted law enforcement in an investigation or prosecution of human trafficking.

"U visa"- is a temporary immigration benefit under 8 U.S.C. § 1101 (a)(15)(U), as further defined in RCW 7.98.010(1), that enables victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity, and certain qualifying family members, to remain in the United States for four years or longer.

432.2 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS AND POLICIES PROHIBITED

The following is intended to give Officers guidance as to prohibited practices under Washington State Law.

432.2.1 ENFORCEMENT PROHIBITED

The federal government, not the Cle Elum Police Department, has primary jurisdiction over the enforcement of federal immigration law. The Cle Elum Police Department recognizes that removal from the United States, including investigations and arrests made as part of that process, is a civil matter overseen by federal immigration authorities. The Cle Elum Police Department recognizes that unauthorized presence in the United States, standing alone, is not a violation of state or local law. The immigration or citizenship status of an individual or an individual's presence in, entry or reentry to, or employment in the United States alone is not subject to enforcement by the Cle Elum Police Department or its personnel. The Cle Elum Police Department shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.

1. Cle Elum Police Department personnel shall not engage or assist in civil immigration enforcement.
2. Cle Elum Police Department resources, including any individuals' personal information ascertained by the Cle Elum Police Department or its officers, shall not be used or shared to assist in civil immigration enforcement.
3. The Cle Elum Police Department shall review all methods and forms used to communicate with persons engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, or data fields for immigration or citizenship status existing prior to May 21, 2020, and modify them as necessary to be consistent with these policies.
4. Cle Elum Police Department personnel shall complete the Cle Elum Police Department's mandatory training regarding immigration enforcement policies and procedures and compliance with all other requirements of RCW 10.93.160.

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

5. Cle Elum Police Department personnel shall not initiate or participate in any law enforcement action based solely on an individual's immigration or citizenship status, or place of birth, or in any other way attempt to enforce or assist in the enforcement of federal civil immigration laws or policies.
6. Cle Elum Police Department personnel shall not inquire about any person's immigration or citizenship status, or place of birth, unless the information is directly connected to the [Law Enforcement Agency Officer]'s investigation into a violation of state or local law.
7. Cle Elum Police Department's policies prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against all persons, including Cle Elum Police Department personnel.
8. Cle Elum Police Department personnel shall not conduct investigations, interviews, questioning, take statements, or otherwise engage in similar contact with any individual in the presence, including within hearing distance, of any person engaged, or intending to engage, in immigration enforcement, including a known federal immigration authority, unless the person's presence is directly connected to the Cle Elum Police Department's investigation into a violation of state or local criminal law and necessary to perform the Cle Elum Police Department's duties.
9. Cle Elum Police Department personnel shall not arrest, detain, take into custody, or otherwise hold any person solely to determine their citizenship or immigration status unless the information is directly connected to the Cle Elum Police Officer's investigation into a violation of state or local law.
10. Civil immigration warrants, hold requests, and immigration detainer requests do not establish probable cause and shall not be the basis for any officer to arrest, detain, or otherwise hold any person in custody.
11. If an officer receives a court order or judicial warrant authorizing any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to assume custody of an in-custody individual, the officer shall immediately contact the Chief of Police or Patrol Sergeant to determine the appropriate course of action.
12. Before authorizing any arrest, detention, or hold, the Chief of Police or their designee shall confirm that the federal criminal arrest warrant is issued and signed by a U.S. District Court Judge or Magistrate Judge authorizing the holding or detention of the individual by:
 - (a) Obtaining a copy of the warrant;
 - (b) Identifying the criminal charge and citation to the federal law violation for which the warrant was issued;
 - (c) Identifying which U.S. District Court issued the warrant;
 - (d) Verifying that the warrant includes the correct date and location for detention; and
 - (e) Confirming that a U.S. District Court Judge or Magistrate's signature is on the warrant

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

13. All requests for assistance by any person engaged, or intending to engage, in immigration enforcement, including federal immigration authority, whether oral or written, shall be directed to the Chief of Police to determine an appropriate course of action.
14. Cle Elum Police Department personnel shall not assist or participate in any joint operations, task forces, or any other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from the Chief of Police.

432.2.2 DATA COLLECTION PROHIBITED

1. Cle Elum Police Department personnel shall not inquire about or request any documents or information from a person for the purpose of determining the person's immigration or citizenship status, or place of birth, unless the information is directly connected to the officer's investigation into a violation of state or local law.
2. Cle Elum Police Department personnel processing fingerprint card or Automated Biometric Identification System (ABIS) submissions shall enter "unknown" for these fields addressing immigration or citizenship status unless the information is otherwise known.
3. Cle Elum Police Department personnel shall not take enforcement action or otherwise use immigration or citizenship status, or place of birth information, against crime victims or witnesses.
4. Cle Elum Police Department personnel shall use the "Language Line" or other approved resources for any language services necessary to perform duties for the Cle Elum Police Department. Cle Elum Police Department personnel shall not utilize or accept language services from any person engaged in, or intending to engage, in immigration enforcement, including federal immigration authorities. Cle Elum Police Department personnel shall presume that federal immigration authorities are engaged in immigration enforcement.

432.2.3 CONSULAR NOTIFICATION REQUIREMENTS

1. Within 72 hours of detention, the Cle Elum Police Department shall inform, verbally and in writing, all persons taken into custody or otherwise detained, regardless of their known or perceived nationality, citizenship, or immigration status, that:
 - (a) The person has the right to refuse to disclose information about their nationality, citizenship, or immigration status; and
 - (b) Disclosure of such information may result in civil or criminal immigration enforcement against them, including removal from the United States.
 - (c) Cle Elum Police Department Personnel must not ask detained nationality or immigration status as it pertains to Federal immigration activity.
2. If Cle Elum Police Department personnel become aware that a person in custody is a foreign national, the officer shall immediately contact the Chief of Police or Commander to determine the appropriate course of action.

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

- (a) If the person's country is a signatory to the Vienna Convention on Consular Relations or other bilateral agreement regarding consular notifications, the Chief of Police or their designee, shall provide the person the appropriate consular notification advisement recommended by the U.S. State Department—that the person has the right to request that their foreign consul be notified of their detention and to communication with their foreign consul, or that the LEA is required to notify the person's consular officers, if they are a member of a mandatory notification country.
- (b) The Chief of Police or their designee shall notify the person's foreign consul of their detention without delay if the person is a national of one of the 56 mandatory notification countries or if the person requests their foreign consul be notified.
- (c) The Chief of Police or their designee shall permit the foreign consul access to the person and forward any communication from the foreign national to the person's consular officers without delay.

432.2.4 RESPONDING TO REQUESTS FOR INFORMATION

- 1. Cle Elum Police Department personnel shall not share, provide, or disclose personal information about any person to anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without a court order or judicial warrant requiring the information's disclosure, except that the Cle Elum Police Department shall provide all records as required under the Public Records Act, chapter 42.56 RCW. Public records requests shall be processed pursuant to the Cle Elum Police Department procedures. Cle Elum Police Department personnel receiving a public records request shall forward the request to the Records Supervisor and notify the Chief of Police.
- 2. Cle Elum Police Department personnel shall not provide or disclose information in response to any notification request or other immigration enforcement related request for information regarding a person's release date from custody without a court order or judicial warrant, except that the Cle Elum Police Department shall provide all records as required by the Public Records Act, chapter 42.56 RCW, in response to any qualifying request.
- 3. If Cle Elum Police Department personnel receive a court order or judicial warrant that mandates the sharing of information regarding a person's immigration or citizenship status, the Cle Elum Police Department shall provide the information as required by the court order or judicial warrant. Cle Elum Police Department personnel who share or disclose a person's immigration or citizenship status to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, shall immediately notify the Chief of Police of the information provided, reason for sharing said information, and identity of the person and agency to whom the information was shared.
- 4. The Records Supervisor shall log all instances of the Cle Elum Police Department personnel sharing any person's immigration or citizenship status with a person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, with the basis for sharing the information. The log shall be a public record and shall be made publicly available except that information may be redacted or withheld as permitted by the Public Records Act.

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

432.2.5 ACCESS TO PERSONS DETAINED IN CUSTODY

1. Cle Elum Police Department personnel shall not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in the Cle Elum Police Department custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented.

- (a) To obtain written consent from a person held, detained, or in custody, prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, the officer shall provide the person with an oral explanation and a written consent form that explains:
 - i. The purpose of the interview;
 - ii. That the interview is voluntary;
 - iii. That the person may decline to be interviewed and will not be punished or suffer retaliation for doing so; and
 - iv. That the person may choose to be interviewed only with the person's attorney present.
- (b) Cle Elum Police Officers shall provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands. the Cle Elum Police Department shall maintain copies of the consent form in English, Spanish, and any other language that the Cle Elum Police Department deems appropriate.
- (c) If a person chooses to be interviewed with their attorney present, Cle Elum Police Officers shall promptly contact the attorney. Cle Elum Police Officers shall not proceed with permitting any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has chosen to proceed pro se.

432.2.6 EQUAL TREATMENT FOR PERSONS HELD, DETAINED, OR IN CUSTODY

1. Persons held, detained, or otherwise in the custody of the Cle Elum Police Department are entitled to, and shall be provided, the same services, benefits, privileges, rights, opportunities, and resources regardless of their nationality, or immigration or citizenship status.
2. Cle Elum Police Department personnel shall not deny or otherwise limit any person held, detained, or otherwise in the Cle Elum Police Department custody such services, benefits, privileges, rights, opportunities, or resources based on any civil immigration warrant, hold request, immigration detainer request, notification request, administrative subpoena or similar request by a person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, or indication of the person's nationality, immigration or citizenship status.
3. Cle Elum Police Officers shall not transfer custody of any person held, detained, or otherwise in the custody of the Cle Elum Police Department to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

authority, without court order or judicial warrant. If presented with such an order by a person engaged, or intending to engage, in immigration enforcement, including by a federal immigration authority, to take custody of a person in the Cle Elum Police Department custody, Cle Elum Police Officers shall immediately contact the Chief of Police, or their designee, to determine an appropriate course of action.

- (a) Before authorizing any transfer of custody, the Chief of Police, or their designee, shall confirm that the court order is issued and signed by a U.S. District Court Judge or Magistrate Judge and authorizes the holding or detention of the individual by:
 - i. Obtaining a copy of the court order;
 - ii. Confirming that a U.S. District Court Judge or Magistrate signed the court order;
 - iii. Confirming that the court order identifies the individual for whom the transfer of custody is sought by name; and iv. Verifying that the court order has a valid date or is not otherwise expired or previously executed.
 - (b) The Chief of Police, or their designee, shall not disclose the location of the individual to any person engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, before or during the process of confirming the court order.
4. The Cle Elum Police Department shall not deny or otherwise limit any person's social visitation solely on the basis of the person's inability to effectively communicate through video-visitation technology. The Cle Elum Police Department shall not collect immigration or citizenship status information of persons visiting an individual in the Cle Elum Police Department custody and shall minimize collection of visitors' personal information to the extent necessary to perform duties of the Cle Elum Police Department. Cle Elum Police Department personnel shall not disclose or otherwise share visitors' personal information with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, absent a court order or judicial warrant for the information or approval by the Chief or their designee.

432.2.7 CONTRACTS INVOLVING IMMIGRATION ENFORCEMENT

1. Cle Elum Police Department personnel shall not enter into any contract, agreement, or other arrangement, whether written or oral, that would grant federal immigration enforcement authority or powers to the officer, including but not limited to agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements under the Immigration and Naturalization Act.
2. Cle Elum Police Department agreements to assist or participate in any joint operations, task forces, or other multi-jurisdictional activities shall include legally binding assurances that all other parties to those agreements shall not use or share the Cle Elum Police Department resources, including any individuals' personal information ascertained by the Cle Elum Police Department or its personnel, with any third parties or to support or engage in immigration enforcement activities.

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

3. Cle Elum Police Department shall not be a party to any agreement, joint operation, task force, or other multi-jurisdictional activity with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without legally binding assurances, in writing and pre-approved by the Chief of Police, that Cle Elum Police Department resources, including any individuals' personal information ascertained by the Cle Elum Police Department or its personnel, shall be used to support or assist with civil immigration enforcement in any way.
4. Cle Elum Police Officers shall not assist or participate in any joint operations, task forces, or other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from the Chief of Police, or their designee.
5. The Cle Elum Police Department shall not be a party to any immigration detention agreement, IGSA, or other arrangement with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, providing for detention of any person by Cle Elum Police Officers or using the Cle Elum Police Department resources for immigration enforcement purposes.
6. Cle Elum Police Department personnel shall not be a party to any agreement or contract for language services, including translation, interpretation, training or classes, from any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, nor shall any language services be accepted by the Cle Elum Police Department personnel from any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, for free or otherwise. Cle Elum Police Department personnel shall presume federal immigration authorities are engaged in immigration enforcement.
7. Cle Elum Police Department agreements permitting access to the Cle Elum Police Department databases or information shall include legally binding assurances that all other parties to those agreements shall not use or share the Cle Elum Police Department information or database access with any third parties supporting or engaged in immigration enforcement activities.

432.2.8 U & T VISA CERTIFICATIONS

1. Cle Elum Police Officers shall forward U and T Visa certification requests under the Washington Safety and Access for Immigrant Victims Act, RCW 7.98.020, without delay to the Records Supervisor.
 - (a) The fact of any request for U or T Visa certification and any personal information submitted with such request shall not be disclosed or shared outside of the Cle Elum Police Department, the City Attorney, or the County Prosecuting Attorney without a court order or judicial warrant, or approval by the Police Chief unless expressly authorized, in writing, by the subject of the request or the subject's guardian, or as otherwise required by law.
 - (b) The Chief of Police, or their designee, shall review any U or T Visa certification request submitted to the Cle Elum Police Department in full, and verify all information submitted in support of the certification request using existing

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

Cle Elum Police Department records, personal knowledge, or other available evidence. The Chief of Police, or their designee, may confer with the city attorney and/or the County Prosecuting Attorney to determine whether certification by the Cle Elum Police Department is proper.

- (c) Cle Elum Police Officers shall not leverage U or T Visa certifications as a means to compel any victim or witness to cooperate with their investigations.
2. Cle Elum Police Department Officers shall forward u & T Visas certifications to the Chief of Police or their designee without delay.
 - (a) The Records Supervisor shall process U and T Visa certification requests within 90 days of receipt by the Cle Elum Police Department, except under circumstances requiring a shorter timeframe.
 - (b) Any U or T Visa certification request for a person in federal removal proceedings shall be immediately processed by the Records Supervisor, such that the certification, if approved, is executed within 14 days of the Cle Elum Police Department receiving the request.
 - (c) U or T Visa certifications shall be expedited upon request for any person who will, or whose child(ren) will, reach age 21 before the 90-day processing deadline date and thus will otherwise lose their benefits. In any such instance, the Chief of Police shall execute the certification, if approved, no later than 14 days before the person or child turns 21 years old.
3. All Cle Elum Police Officers shall complete required training on U and T Visa certifications. Records staff shall complete required training on U and T Visa certifications and review the full instructions for completing U and T Visa certification forms on the Washington State Department of Commerce, Safety and Access for Immigrant Victims Program website.

432.2.9 MANDATORY TRAINING

The Training Sergeant will ensure that all officers receive training on policy 432. This training should include a basic overview of the law, the specific prohibitions on inquiring into or collecting information about a person's immigration or citizenship status, and the restrictions on contracts that would implicate our agency in immigration enforcement, including contracts with federal immigration authorities or others engaged in, or intending to engage in, immigration enforcement. The KWW-specific training curriculum should further include the following topics:

- (a) Arrest and detention protocols;
- (b) Identification and recognition of documents used for immigration enforcement;
- (c) How to work with federal law enforcement agencies;
- (d) Consular notification requirements;
- (e) Requirements established in federal immigration law;
- (f) Processing U & T Visa certifications; and
- (g) Information-Sharing and Records management.

Cle Elum Police Department

Policy Manual

Keep Washington Working Act

432.2.10 COMPLIANCE MONITORING AND PUBLIC COMMUNICATION

1. The Chief of police or their designee should monitor our compliance with KWW and adopted policies to evaluate successful practices and areas needing improvement.

2. The Chief of Police or their designee should conduct audits to document and track instances and outcomes of:

- (a) Requests for immigration and citizenship information;
- (b) Requests for assistance with immigration enforcement;
- (c) Requests from persons engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, for access to individuals in the LEA's custody;
- (d) Requests for and contacts with foreign consuls; and
- (e) Any additional information the LEA deems appropriate.