

7

A GUIDE TO JUVENILE DETENTION REFORM

Noncitizen Youth in the Juvenile Justice System

Juvenile Detention Alternatives Initiative

A PROJECT OF THE ANNIE E. CASEY FOUNDATION

This report was written by Shannan Wilber, while executive director at Legal Services for Children, and Angie Junck, supervising attorney at the Immigrant Legal Resources Center.

The Annie E. Casey Foundation is a private philanthropy that creates a brighter future for the nation's children by developing solutions to strengthen families, build paths to economic opportunity and transform struggling communities into safer and healthier places to live, work and grow. For more information, visit www.aecf.org.

© 2014, The Annie E. Casey Foundation, Baltimore, Maryland

contents

2	INTRODUCTION	32	RESOURCES
4	CHAPTER I Profile of Noncitizen Youth in the United States	34	ACKNOWLEDGMENTS
7	CHAPTER II For What Purposes Is a Youth's Immigration Status Relevant in the Juvenile Justice System?	35	ENDNOTES
21	CHAPTER III Are Juvenile Justice Personnel Required to Assist with the Enforcement of Federal Immigration Laws?		

Introduction

Juvenile justice systems across the country report that they are serving increasing numbers of noncitizen youth.¹ Although these youth have many of the same needs as their citizen counterparts in the system, they also have unique and complex needs that juvenile justice systems are often not equipped to address. Many jurisdictions lack bilingual personnel, information about the immigration system and access to immigration advocacy services. Federal and state funding streams for which undocumented youth are explicitly ineligible further hinder efforts to serve these youth. These gaps and challenges can have devastating consequences for individual noncitizen youth, including prolonged and unnecessary detention, separation from family, deportation — sometimes to life-threatening situations — and inability to pursue immigration relief to which they are entitled under federal law.

Policies and practices in the field vary dramatically — both between and within jurisdictions. In addition to a lack of resources, there is confusion and disagreement among professionals regarding the appropriate role of the juvenile justice system with respect to enforcing civil immigration laws. On one end of the spectrum are jurisdictions that treat youth equally regardless of their immigration status. These jurisdictions generally do not interact with federal immigration officials. Many jurisdictions, however, have responded to the federal government's efforts to engage localities and states in immigration enforcement. A number of these jurisdictions routinely report youth whom they suspect are undocumented to Immigration and Customs Enforcement (ICE), the federal agency responsible for interior enforcement of federal immigration laws. Numerous jurisdictions fall somewhere in the middle of these two approaches. While they do not routinely identify and refer every undocumented minor as a matter of policy, these jurisdictions selectively report, for example, undocumented youth who are repeat offenders of serious crimes or who appear to have no ties to the United States. Finally, some jurisdictions have no policies at all, resulting in an ad-hoc approach that depends primarily on the probation officer assigned to the case.

Most juvenile justice professionals are not fully informed of the practical consequences of the policies and practices they adopt. Few, if any, are familiar with the immigration system generally, the types of immigration relief potentially available to noncitizen youth, the potential immigration consequences of delinquency findings or adjudications, or the juvenile justice system's legal obligations with respect to undocumented youth. However, many juvenile justice professionals make decisions based on commonly held misconceptions about their legal obligations and the consequences that flow from a decision to refer youth to federal immigration authorities. The politically charged nature of immigration creates a climate in which the relevant legal and policy questions are not openly discussed. Due to a lack of information and professional consensus, jurisdictions and individual employees are left to navigate these complex issues with little or no guidance. Compounding the overall lack of information, many jurisdictions do not have access to experts who understand the intersection between the immigration and juvenile justice systems.

This practice guide is not intended as a comprehensive immigration treatise, nor does it substitute for the assistance of an immigration expert in individual cases. Instead, it is intended to alert the reader to detention and juvenile court practices and policies that may unfairly prejudice noncitizen youth, and to provide a basic introduction to key immigration concepts and processes as they apply to youth involved in the juvenile justice system. Its purpose is to assist in the development of informed policies and procedures. Ideally, individual jurisdictions should partner with local immigration attorneys and other advocates to help develop policies and protocols, and assist in resolving individual cases.

The guide promotes policies and procedures that are consistent with detention and equity reform, and that:

- minimize unnecessary detention or separation of noncitizen youth from their families and communities;
- ensure that detention practices do not unfairly prejudice noncitizen youth;
- promote responses aimed at rehabilitation and reintegration;
- minimize the unnecessary and often devastating immigration consequences for noncitizen youth of their involvement in the juvenile justice system; and
- preserve the ability of noncitizen youth to pursue immigration relief to which they may be entitled under federal law.

The guide answers the following questions:

- What do we know about noncitizen children in the United States?
- For what purposes is immigration status relevant in the juvenile justice system?
- Are juvenile justice personnel required to assist with enforcement of federal immigration law?
- What are the policy and practice implications for juvenile justice agencies serving noncitizen youth?



Profile of Noncitizen Youth in the United States

The immigrant population in the United States has grown significantly in the last decade. According to data from the most recent census and the 2012 American Community Survey, the states with the highest number of foreign-born residents are California, New York, Texas and Florida.² However, the growth of the immigrant population is not limited to states with traditionally large immigrant presence.³ Between 2000 and 2009, the foreign-born population of Georgia, Washington, Virginia, Maryland, Pennsylvania, North Carolina, Nevada, Colorado and Tennessee increased by over 100,000 people. In Georgia, North Carolina, Nevada and Tennessee, the foreign-born population increased by more than 50 percent.⁴ During this same period, the number of foreign-born individuals increased in 48 of 50 states, and decreased in just two, and the total foreign-born population of the United States increased by 23.5 percent, or approximately 7.3 million people.⁵

The dramatic rise in foreign-born individuals residing in the United States is particularly evident among children. Approximately 23.2 percent children in the United States are either immigrants or the children of immigrants.⁶ Many children of immigrants are citizens, having been born in the United States, although their parents may or may not have legal immigration status. Other immigrant children are without legal status, but have grown up almost entirely in the United States and consider this country their only home. Some of these youth do not know the language spoken in their native country. Other children and youth are more recent immigrants, who may be completely unfamiliar with the legal system and customs in the United States.

While the majority of immigrant youth in the United States come from Mexico and Central America, approximately 10 percent come from East Asia and the Pacific, including China, Korea and the Philippines; 10.3 percent from Europe; 8.3 percent from Africa; 8.3 percent from the Middle East and South Asia; and 4.4 percent come from Southeast Asia.⁷ Some immigrant children may travel to the United States with parents, an adult relative or a family friend as infants or young children. Others arrive in the United States unaccompanied — without their parents or a legal guardian — making their way by foot, bus, train, cargo ship or plane. Some of these youth receive the assistance of smugglers or “coyotes.” Others are victims of illegal trafficking, and are forced to engage in drug trafficking, sex-work or to work in slave-like conditions in factories, as domestic servants, or in restaurants.⁸ The State Department’s most recent report estimates that between 14,500 and 17,500 people are trafficked into the United States every year.⁹ However, agencies disagree on this figure, and a report released by the Central Intelligence Agency’s Center for the Study of Intelligence estimates that the number is actually between 45,000 and 50,000 people.¹⁰ Researchers have identified numerous barriers to obtaining accurate numbers, including underreporting of trafficking offenses, and insufficient statistical and qualitative collection methods.¹¹ The State Department estimates in a recent report that up to half of international trafficking victims worldwide are minors.¹²

Several thousand unaccompanied children travel to the United States each year and come to the attention of immigration authorities.¹³ In October 2011 arrivals of unaccompanied minors significantly increased, overwhelming the federal system.¹⁴ The Office of Refugee Resettlement (ORR), the federal agency in charge of the care and custody of unaccompanied minors, reports that in fiscal year 2012, the program doubled its size over the previous eight years, which had averaged 6,775 referrals per year¹⁵ due to referrals from the Department of Homeland Security.¹⁶ The increase continued in fiscal year 2013, with the projection set at 23,500 unaccompanied minor referrals.¹⁷ These figures do not include the countless number of unaccompanied minors who entered the country undetected, or who were stopped at the border and returned to Mexico.¹⁸ These youth have often endured unspeakably traumatic experiences in their countries of origin. They come to the United States fleeing violence, persecution and extreme poverty in their home countries. Many make the difficult trip to escape severe abuse or homelessness due to abandonment. Their trauma is compounded by separation from their families and communities. Some assume exorbitant debt to come to the United States in order to help their impoverished families. Often, these youth endure dangerous and exploitative work conditions in order to pay off these debts.

Particularly for unaccompanied immigrant youth, the journey to the United States is often extraordinarily arduous and dangerous. Countless youth have been robbed, kidnapped, beaten or sexually assaulted along the way. Sometimes youth languish for many days without food or water as they cross the desert. Hundreds of young people have lost a limb or sustained other disabling injuries trying to jump on or off trains across Mexico.¹⁹

Once in the United States children without legal immigration status continue to be vulnerable. Although most undocumented youth are not responsible for their presence in this country, they live with the burdensome threat of deportation that drives them and their families into the shadows, marginalized by

.....

ALTHOUGH MOST UNDOCUMENTED YOUTH are not responsible for their presence in this country, they live with the burdensome threat of deportation that drives them and their families into the shadows, marginalized by the need to remain invisible.

.....

the need to remain invisible. Fear and isolation undermine their ability to meet basic needs. As a whole, undocumented youth are more likely to live in poverty,²⁰ less likely to have health insurance and more likely to encounter barriers to accessing public benefits and social services than U.S. citizen youth.

There are no reliable data on the number of noncitizen youth involved in the juvenile justice system. Most jurisdictions do not formally collect or analyze these data. Even sites actively engaged in addressing racial disparities in the justice system do not routinely collect these data, nor do they assess the extent to which these numbers contribute to racial and ethnic disparities.²¹ In addition to the overall inadequacies in data collection systems and practices, there are several distinct reasons for the lack of data on the prevalence of noncitizen youth in the system:

- Due to budget constraints, local probation agencies are reluctant to implement new data collection requirements.
- Local systems do not have the means of reliably determining immigration status.
- The immigration status of young people is not directly relevant to culpability, accountability, rehabilitation or public safety — the primary concerns of the juvenile justice system.
- Tracking immigration status invites the use of the information to imperil youth and their families for circumstances that are unrelated to alleged delinquency.
- Because immigration is so politicized, juvenile justice personnel face challenges in creating formal systems to respond to noncitizen youth, opting for a case-by-case approach that evades public scrutiny.

Despite the lack of formal data, juvenile justice professionals informally report a steep increase in the numbers of noncitizen youth involved in the delinquency system. It is impossible to verify this perception. However, it is consistent with overall population trends in the United States. Beginning in 2008 there have also been reports by the federal government of an increasing number of noncitizen youth being referred to immigration authorities by juvenile probation officers and other juvenile justice officials.²²

For What Purposes Is a Youth's Immigration Status Relevant in the Juvenile Justice System?

As local systems respond to increasing numbers of noncitizen children, they must navigate complex questions regarding the purposes for which immigration status is relevant, how and when, if ever, to determine immigration status, and the consequences for noncitizen youth of policies related to immigration status.

A. Immigration Status Determines Access to Rights, Privileges and Benefits

Immigration status refers to a person's classification under U.S. immigration laws. Immigration status determines the rights, privileges and benefits to which individual youth are entitled, and the consequences they will face when charged with a violation of law. Under U.S. immigration law, all individuals are separated into two major categories: a U.S. citizen or national and "aliens" (noncitizens).

The government cannot deport youth who are citizens, nor refuse their admission to the United States. Citizenship is generally acquired by birth in the United States, birth to a U.S. citizen parent or through the process of naturalization.²³ The vast majority of U.S. citizens acquire their citizenship because they are born on U.S. soil. Provisions in U.S. immigration law bestow citizenship by descent. These provisions may automatically transmit citizenship from one or two citizen parents to a child born abroad. Immigration law also bestows citizenship on a child who is a lawful permanent resident when at least one of the child's custodial parents becomes a citizen. U.S. citizenship, if validly acquired, may not be lost as a result of any criminal conduct or delinquency adjudication.

A person who is not a U.S. citizen is *always* subject to the possibility of deportation. The rights and benefits to which noncitizens are entitled differ depending upon their legal status. For example, a lawful permanent resident (LPR) is permitted by immigration law to live and work permanently in the United States. However, LPR status may be revoked if the holder leaves the United States for an extended period of time. Similarly, nonimmigrant visa holders, such as tourists or students, are permitted to live, study or work in the United States for a specified purpose and for a specified period of time. However, visa holders may lose their legal immigration status and become "undocumented" if they violate the terms of their visa (e.g., by dropping out of school or overstaying their visa). All noncitizens are subject to apprehension and deportation if they violate the immigration laws. Determining whether there is a violation of immigration laws and whether there is a defense to such a violation is complex and requires special expertise.

Immigration status may determine eligibility for specified public benefits and social services. Although a youth's immigration status has no bearing on culpability or accountability, it may affect his ability to access appropriate services. Generally speaking, undocumented youth are ineligible for federal benefits,

such as Medicaid and Title IV-E. Some state laws also make undocumented youth ineligible for specified public benefits and services. Thus, for the limited purpose of determining eligibility for these services, juvenile justice agencies may need to consult with immigration experts to determine a youth's immigration status. Typically, this issue would arise at the time of disposition and placement when the case plan contemplates services that may be subject to these limitations. The important distinction is the probation staff's objective. At the dispositional stage of the process, probation personnel seek to verify the youth's immigration status in order to access services as a means of supporting and facilitating the youth's rehabilitation — not as a rationale for detention or to facilitate immigration enforcement.

OVERVIEW OF IMMIGRATION STATUS: CITIZENS

- Born in the United States
- Born to a U.S. citizen parent or parents
- Naturalized (an individual immigrates to the United States, obtains lawful permanent resident status and becomes a citizen after a specified period of time)
- A person who is a lawful permanent resident under the age of 18 when one of his/her parents who has legal/physical custody of him/her automatically becomes a citizen when the parent naturalizes
- Certain persons with U.S. citizen family members (e.g., grandparents, great grandparents) may derive citizenship even if born abroad and have never lived in the United States

OVERVIEW OF IMMIGRATION STATUS: NONCITIZENS

Lawful Permanent Resident or Green Card Holder

- Permitted to live and work permanently in the United States
- Most secure immigration status, short of being a U.S. citizen
- Entitled to many benefits that U.S. citizens hold

Refugee or Asylee

- Granted refuge and status in the United States based on persecution faced (or will face) in the home country or country of origin
- Can become lawful permanent residents within a specified period of time

Nonimmigrant or Immigrant Visa Holder

- Obtained a temporary visa to enter and remain in the United States legally for a specific period of time under specific conditions
- Some visa holders can obtain lawful permanent residency, others are permitted to stay for a certain period of time
- Includes tourists, students, temporary workers, diplomats, religious workers, those who are victims of crimes and assist with an investigation or prosecution of the crime, informants and trafficking victims

Undocumented Person

- Does not have legal status under the immigration laws
- Includes persons who have crossed the border without authorization, and those with expired visas
- Always at risk of apprehension, detention and initiation of removal proceedings by immigration authorities
- Some persons are granted permission to stay in the United States even though they have no legal status and are undocumented (e.g., Deferred Action for Childhood Arrivals (DACA), created by Presidential directive)

Persons in the Process of Obtaining Legal Status

- Have an application for a visa or green card pending
- Immigration authorities are aware of their presence in the United States
- Removal proceedings deferred pending outcome of an application
- Depending on type of application, may receive a work permit/employment authorization document (EAD) to work lawfully for a specified period of time while application is pending

.....

Lack of legal immigration status, whether verified or suspected, is not an appropriate basis to detain youth.

Although intake systems differ across jurisdictions, all local juvenile justice systems have some process by which they determine whether individual youth should be released or detained pending the initial hearing. Ideally, intake staff administer a uniform risk-assessment instrument (RAI), and determine whether detention is necessary according to objective criteria related to public safety and the likelihood that the youth will appear at the detention hearing.

The question that emerges is should immigration status be included as an RAI risk factor, as it may be deemed pertinent to the likelihood that a youth will appear at a detention hearing? While there is no definitive answer to this question, consider the following: we are not aware of any validation study that

would condone or endorse using immigration status as a risk factor; using immigration status as a risk factor on an RAI would be culturally biased and there is research literature counseling against the use of inherently biased risk factors; and we are not aware of any JDAI sites that currently include immigration status as a risk factor in their RAI. Protocols or policies that require intake staff to determine or consider a youth's immigration status as part of the initial detention determination may subvert the purposes of risk assessment, and potentially subject youth to confinement unrelated to the purposes of detention. Furthermore, it is likely that adding immigration status as an RAI risk factor would ultimately result in the automatic detention of all undocumented youth and could lead to the extensive use of juvenile detention as a de facto immigration detention facility, which also would be contrary to the legitimate purposes of detention. For the reasons discussed in this section, attempts to ascertain immigration status at this stage are inappropriate and counterproductive.

Immigration status is unrelated to the purposes of detention. Absent independent facts correlated with risk, a youth's immigration status is not predictive of the likelihood that he/she will reoffend or fail to appear at the initial detention hearing.²⁴ For example, one cannot reliably assume that noncitizen youth lack ties to the community. Many undocumented youth have lived most of their lives in the United States. They and their families often have deep connections in their communities. Moreover, mere presence in the United States without legal status is not a crime; it is a civil violation under federal immigration laws and is not a basis for delinquency jurisdiction. In fact, detaining a juvenile solely because he is undocumented is expressly prohibited by the Juvenile Justice and Delinquency Prevention Act.²⁵ While most jurisdictions do not detain undocumented youth based solely on a civil immigration violation, many jurisdictions detain undocumented youth who are charged with a crime when they would not detain a U.S. citizen youth with comparable charges. There is no legitimate public safety rationale for detaining a youth when he would otherwise be released solely because he is undocumented. Noncitizen youth who are charged with committing a criminal offense should be subjected to the same risk-assessment process as their citizen counterparts.

Determining immigration status is complex and should only be undertaken by an immigration expert. Probation and detention personnel may suspect youth are undocumented based on external factors such as physical appearance, country of origin, primary language, surname or the immigration status of parents — none of which is dispositive of immigration status. Reliance on these factors reflects common misconceptions that lead to erroneous conclusions, and poses a significant risk of racial profiling.

A youth's self-report of his status is equally unreliable. Many youth are uncertain about their immigration status, particularly those who live in "mixed status" families in which some members are documented and some are not. Some youth who believe they are undocumented are actually U.S. citizens. For example, federal immigration law provides for automatic citizenship of a lawful permanent resident under the age of 18 when at least one custodial parent becomes a citizen.²⁶ Individuals may also acquire citizenship when U.S. citizenship can be traced through the lineage of their family, even if they were born abroad and lived there for most of their lives.²⁷ Some youth are unaware that they have attained legal status.

Seemingly neutral policies may result in disproportionate or unnecessary detention of noncitizen youth. Even when intake personnel or juvenile courts do not explicitly rely on a youth's immigration status as the basis for a detention decision, seemingly neutral grounds may produce the same result. For example, many jurisdictions assess flight risk, in part, by determining the youth's ties to the community, including the existence of a verifiable local address and the availability and capacity of the youth's parents or legal guardians to assume responsibility for him pending the initial court appearance. These criteria may unfairly prejudice noncitizen youth who may decline to disclose the identity or whereabouts of their parents or guardians if they believe that doing so will subject family members to risk of apprehension by immigration authorities.

THREE CASE STUDIES

Carlos, 11 years old and in the fifth grade, lives in a jurisdiction that requires probation personnel to refer suspected undocumented children to ICE upon booking for a felony. On a Friday afternoon, Carlos was arrested after he brought a camping knife to school. He had no criminal or school discipline history, and he lived with his siblings and parents. Nonetheless, he was detained in order to facilitate his transfer to ICE custody because the intake officer learned during booking that Carlos was born in Guatemala. His family's efforts to have Carlos released were unsuccessful until his father was able to produce a birth certificate on Monday morning. Carlos is a U.S. citizen.

Mario, age 16, was arrested when his mother falsely accused him of assaulting her. Mario was briefly detained, but the court found the charges baseless and dismissed the case at the adjudication hearing. In the interim, however, Mario's probation officer initiated the process of referring him to ICE based solely on the arrest, Mario's country of origin (El Salvador) and his inability to explain or prove his immigration status. Fortunately, Mario was represented by immigration counsel, who provided documentation showing that Mario had temporary legal status while his application for a U visa (based on having been the victim of a robbery and assault) was in process. But for the intervention of his attorney, Mario would have been placed in ICE custody, possibly in a distant location and certainly with no notice to his attorney or his family.

Juan is a 14-year-old primarily Spanish-speaking youth who was arrested for selling a small amount of marijuana. Upon arrest, the officer found a fixed blade knife. Juan had no identification and no record in the statewide fingerprint database. The only information available to the intake staff about his identity, home and family came directly from Juan. He reported that he was living with extended family nearby, working in the fields. According to Juan, his father was deceased and his mother was in Mexico with his three younger siblings. He reported being in the United States to earn money to send home and planning to return at the end of the season. Juan's risk-assessment score was low and he would have been released with a court date if probation officials had been able to release him to his parents. Instead, he was detained when a person saying he was Juan's uncle appeared, but had no proof of his relationship with Juan. The child welfare agency would not place him in foster care while the charges were pending because of his possession of a weapon. He was in custody for about three months (in a facility with an average length of stay of seven days) until he finally disclosed that his parents and siblings lived less than five miles from the detention facility. Juan said he did not disclose this information because he was worried they would be deported. He was released that same day.

Some jurisdictions require the parent or guardian to present a driver's license or social security number to verify his or her identity. As a practical matter, these requirements prevent undocumented parents, who may not possess these documents, from coming forward to assume custody of their children. Although these verification procedures might be based upon legitimate concerns and evenly applied to all youth, this method of screening parents adversely impacts noncitizen youth and unnecessarily separates them from their families.

Lack of culturally or linguistically competent services may lead to unnecessary or inappropriate detention of noncitizen youth. A significant number of noncitizen youth in the juvenile justice system are limited English proficient (LEP).²⁸ Meaningful communication between the youth and the intake staff is essential to making sound detention decisions. Intake personnel obtain crucial information from the minor in the initial interview, including background about the alleged offense, the youth's family, delinquency history and any emergent needs (e.g., intoxication, injury, disabilities). The reliability of the information depends, in large part, on the youth's understanding of the process and the ability of intake staff to communicate effectively with the youth. The utility and reliability of the intake interview is compromised unless it is conducted in the language with which the youth is most conversant. Communicating in the youth's native language builds trust, enhances the potential for a meaningful exchange of information and permits intake staff to obtain the information necessary to make appropriate decisions.

Failure to communicate with the youth in a language that he understands poses the risk of unnecessary detention. For example, youth may be reluctant to disclose the identity or whereabouts of their parents or caretakers unless they understand that the agency's goal is to release them, if possible, rather than subjecting them or their parents to the risk of deportation. Intake staff may be more inclined to recommend detention if language barriers make it difficult for them to assess the risk posed by the individual youth. Language and cultural barriers also enhance the risk of miscommunication and erroneous assumptions.

SIGNIFICANCE OF LANGUAGE CAPACITY

The significance of language capacity in reducing unnecessary detention was illustrated in Santa Cruz County, California. Local officials determined that a shortage of Spanish-speaking intake and case management staff hindered efforts to return Latino youth to their families. In response, the probation department adopted a goal to hire the same percentage of Latino and Spanish-speaking detention staff as the percentage of Latino and Spanish-speaking youth in the facility. Now, when Latino youth are brought to the facility, a Spanish-speaking officer calls the family. Combined with other measures to reduce racial disparities, this strategy resulted, over a 10-year period, in a 50 percent reduction of the number of Latino youth detained.

Another strategy to reduce pretrial detention is to utilize community-based alternatives, permitting youth who do not require secure detention to be supervised in the community or diverted from formal processing. Jurisdictions that have been most successful in reducing the use of detention have developed a continuum of community-based services with different degrees of supervision matched to the risks of youth awaiting adjudication.²⁹ To be effective, alternatives to detention must be “culturally competent, relevant, and accessible to the youth they serve.”³⁰ Noncitizen youth may be unnecessarily detained when there is a lack or shortage of community-based alternatives competent to serve them.

Lack of competent detention advocacy may also lead to unnecessary detention. Detained youth are separated from their families and communities, thwarted from assisting in the preparation of their cases, more likely to make negative peer connections, more likely to recidivate and at increased risk for negative health, mental health, educational and employment outcomes.³¹ Detaining noncitizen youth also makes it more likely that juvenile justice personnel will refer them to ICE, and trigger initiation of deportation proceedings. For these reasons, it is critical that juvenile courts appoint defense counsel prior to the initial detention hearing. Defense counsel should insist upon even application of the statutory criteria for detention, and oppose any rationale for detention that departs from, or expands upon, these criteria. Counsel should be particularly careful to expose differential treatment of noncitizen youth, and highlight the risk of racial or ethnic profiling.

PRACTICE RECOMMENDATIONS

- Juvenile justice systems should minimize unnecessary detention or separation of noncitizen youth from their families and communities by adopting protocols designed to engage families and to assess the suitability of parents or caregivers based solely upon their ability to provide appropriate care and supervision of the youth.
- Detention and intake personnel should not attempt to ascertain the immigration status of youth as part of the charging, booking or detention process, nor should they record or disclose this information.
- Juvenile justice systems should not detain or punish noncitizen youth based solely upon their suspected or verified lack of immigration status.
- If juvenile justice personnel need to know the immigration status of a youth for the limited purpose of establishing eligibility for specific services, they should consult with an immigration expert to assist in the determination.
- Juvenile justice agencies should collaborate with community partners to develop a continuum of services competent to meet the needs of noncitizen youth.
- Juvenile courts should appoint defense counsel prior to the detention hearing to ensure equitable application of detention criteria, and guard against any rationale for detention that departs from, or expands upon, these criteria.

B. Undocumented Youth May Be Eligible for Immigration Relief

Obtaining legal status permits young people to live and work openly in their communities, to remain with their families and in their schools and to gain access to resources and services that are essential to their well-being. In some cases, return to one's country of origin presents grave dangers and gaining immigration status can save a young person's life. Determining immigration status is the first step in identifying potential immigration relief to which youth may be entitled. Although detention and probation personnel are not generally qualified to ascertain a youth's immigration status, the youth's defense counsel or an immigration expert with whom defense counsel is working should determine the youth's status as early as possible.

Congress has created avenues for certain undocumented youth to obtain lawful immigration status in the United States. U.S. immigration law sometimes takes into account the unique status of youth. For example, a youth may be eligible for Special Immigrant Juvenile Status (SIJS) if he is under the jurisdiction of a juvenile court; the court has made a finding that the child cannot be reunited with one or both parents due to abuse, neglect or abandonment; and it is not in the youth's best interest to be returned to his home country.

In 2008, Congress expanded the protections for noncitizen youth seeking immigration status in the United States through the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA made important procedural and substantive changes to broaden eligibility for immigration legal relief available to certain vulnerable youth and provided more child-sensitive procedures for those in immigration custody and at imminent risk of removal. On June 15, 2012, the Obama administration announced the Deferred Action for Childhood Arrivals program, which provides temporary protection from deportation and work authorization for young individuals who meet criteria similar to the past DREAM Act proposals in Congress.

Juvenile court judges, probation personnel and prosecutors can play an important role in helping youth attain lawful immigration status. Some forms of immigration relief depend upon the assistance of the juvenile court or law enforcement to make specific findings and to issue orders or sign certifications. SIJS, for example, requires that the juvenile court enter an order finding that it is in the youth's best interest to remain in the United States and that the youth cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis under state law. These orders may be entered by any court with jurisdiction over a minor, including delinquency courts. Without this order, a youth cannot apply for SIJS. The U visa is available to victims of certain serious crimes, and requires a judge, prosecutor, investigator or similar official to certify that the youth or his/her parents possess information related to the criminal activity and are willing to assist in the investigation and prosecution of the criminal activity. Without this certification, the youth cannot apply for the U visa. The federal government has the final authority to determine whether the youth meets the requirements for SIJS or a U visa and whether he is entitled to the benefit.

The juvenile justice system's immigration policies and practices can also impact a youth's access to immigration relief. Youth can pursue immigration relief either affirmatively (before they are placed in deportation³² proceedings) or defensively (while they are in deportation proceedings). Youth applying for relief affirmatively have a distinct legal advantage. Most affirmative applications for adjustment of status or immigration relief are submitted to United States Citizenship and Immigration Services (USCIS). The process is administrative, and there is no opposing party or adversarial process. On the other hand, asserting eligibility for relief defensively occurs in the context of adversarial and onerous proceedings in which the noncitizen youth is accused of unlawful conduct and opposed by the federal government. The noncitizen does not have a right to government-appointed counsel and usually is not represented in these proceedings. Probation protocols that promote access to immigration attorneys make it more likely that eligible youth can obtain immigration relief. For example, in Multnomah County (Portland, Ore.), the probation department connects undocumented youth with the local Catholic Charities for immigration legal assistance. By contrast, probation policies that result in the initiation of deportation proceedings decrease the likelihood that eligible youth will achieve legal status. Policies and practices that subject non-citizen youth to more restrictive detention criteria than those applied to citizen youth may also effectively bar those youth from accessing immigration advocacy services available in the community.

COMMON FORMS OF IMMIGRATION RELIEF FOR NONCITIZEN YOUTH

<p>Special Immigrant Juvenile Status (SIJS)</p>	<p>A youth can obtain lawful permanent residence if:</p> <ul style="list-style-type: none"> • He is under the jurisdiction of a juvenile court³³ (e.g., dependency, delinquency, guardianship, custody), and • The court has made a finding that reunification with one or both parents is not viable due to abuse, neglect or abandonment or a similar basis under state law, and • Return of the child to his home country is not in his best interests. <p>The juvenile court must enter an order containing these findings.</p>
<p>Violence Against Women Act (VAWA)</p>	<p>A youth is eligible for lawful permanent residence if:</p> <ul style="list-style-type: none"> • He has been “battered or subject to extreme cruelty” (including purely emotional abuse) by a <i>U.S. citizen or permanent resident spouse, parent or step-parent</i>, or • His parent was a victim of domestic violence by a <i>U.S. citizen or lawful permanent resident</i>.

Continued on page 16

<p>T Visas for Victims of Trafficking</p>	<p>A youth can obtain a visa with a path to permanent residence if:</p> <ul style="list-style-type: none"> • He or his parent (or siblings) is a victim of severe forms of trafficking in persons³⁴ (“human trafficking”), and • He complies with reasonable requests for assistance in the investigation or prosecution of the offense (unless he is under the age of 18), and • He will suffer extreme hardship upon removal.³⁵
<p>U Visas for Victims of Violent Crimes</p>	<p>A youth can obtain a visa with a path to permanent residence if:</p> <ul style="list-style-type: none"> • He or his parent (or siblings) suffers substantial physical or mental abuse resulting from a qualifying crime, and • He possesses information concerning the activity and is helpful or likely to be helpful to the investigation or prosecution of the criminal activity.³⁶ <p>A judge, prosecutor, investigator (police) or similar official must sign a certification regarding the requirements.³⁷</p>
<p>Asylum</p>	<p>A youth can obtain asylum with a path to permanent residence if:</p> <ul style="list-style-type: none"> • He fears return to his home country because of an individualized fear of persecution on account of race, religion, political opinion, nationality or membership in a particular social group. <p>Minor applicants are subject to specialized procedures to determine whether they have a valid asylum claim.</p>
<p>Cancellation of Removal (CoR) for Non-Permanent Residents</p>	<p>A youth can obtain permanent residence if:</p> <ul style="list-style-type: none"> • He has lived in the United States for a continuous period of 10 years or more, and • He can show that he has a parent, spouse or child who is a U.S. citizen or permanent resident who would suffer exceptional and extremely unusual hardship if the youth were deported.

<p>U.S. Citizenship and Family Immigration</p>	<p>Some youth may be citizens based on U.S. citizenship of parents and in some cases, grandparents. Some youth may have U.S. citizen or lawful permanent resident family members in the United States who can help them become a lawful permanent resident.</p>
<p>Deferred Action for Childhood Arrivals (DACA)</p>	<p>A youth can obtain temporary reprieve from deportation and work authorization for two years (not legal status) if he meets all the following criteria:</p> <ul style="list-style-type: none"> • 30 years old or younger on June 15, 2012 • Entered the United States before 16 years of age • Physically present on June 15, 2012, and had continuous residence in the United States for the preceding five years (since June 15, 2007) • Currently in school, or has graduated, or has obtained a certificate of completion from high school, or has obtained a general education development (GED) certificate • Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors (excluding juvenile adjudications and expunged offenses) • Does not pose a threat to public safety or national security
<p>Voluntary Departure (VD)</p>	<p>While Voluntary Departure (VD) does not provide legal status, it allows a person to leave the United States voluntarily without placing a removal order on his record. Unlike deportation, there is no set time bar before the individual may return to the United States (if he is eligible for some type of visa). If he returns without permission, the government cannot prosecute him for the federal crime of illegal reentry to the United States.</p>

.....

Noncitizen youth who are involved in the juvenile justice system need access to experienced counsel to help them navigate the immigration and juvenile justice systems. The federal immigration laws can have harsh consequences for youth and their families. There are several forms of immigration relief permitting noncitizen youth to avoid these severe consequences. However, because of the complexity of the law, young people need immigration counsel in order to assert their eligibility for immigration relief. It is particularly important that youth have access to immigration attorneys who are familiar with the juvenile justice system. Effective advocacy requires collaboration between immigration counsel and defense counsel. Appropriate and fair resolution of delinquency charges against noncitizen youth necessarily includes analysis of the potential adverse immigration consequences. Likewise, assessing the viability of potential forms of immigration relief or avenues for attaining legal immigration status requires detailed information about the nature of delinquency charges and their resolution.

C. Delinquency May Result in Immigration Penalties

Unlike criminal convictions, many delinquency adjudications do not trigger immigration penalties.³⁸ In fact, many undocumented youth with juvenile delinquency records are still eligible to obtain legal status in the United States. Similarly, the vast majority of youth who have legal status, particularly lawful permanent residents, are not deportable merely as a result of delinquency.

There are circumstances, however, under which delinquency adjudications, or the conduct upon which they are based, may impact a noncitizen youth's ability to attain or maintain immigration relief or status. The precise immigration implications of involvement in the juvenile justice system depend upon the youth's immigration status, the conduct underlying the offense with which he or she is charged or adjudicated, and the type of immigration relief the youth is requesting.

Specific delinquency adjudications, or the conduct upon which they are based, may prevent youth from maintaining or achieving legal immigration status. Noncitizens who apply for legal immigration status must prove their entitlement as a matter of law. Immigration authorities may deny status to anyone who falls under specified bars to immigration unless the individual proves that he or she qualifies for a waiver.³⁹ For example, the government may find that a youth applicant is ineligible for lawful permanent residence because there is "reason to believe" that the applicant engaged in drug trafficking.⁴⁰ In addition to the sale of drugs, drug use, prostitution and offenses related to falsely claiming U.S. citizenship may trigger bars to obtaining legal immigration status for noncitizen youth. Similarly, federal law identifies grounds for deportation of any noncitizen who has been lawfully admitted to the United States. For example, the government can deport a lawful permanent youth resident if the court finds that the individual violated a domestic violence protective order.⁴¹

CASE STUDY

Melissa's mother died when she was 5 years old, leaving her with her physically abusive, alcoholic father. During her childhood, Melissa's father repeatedly kicked her out and threatened to kill her, forcing her to live for periods of time on the streets. To escape her father's abuse and locate family members, Melissa traveled to the United States when she was 16 years old. Unable to find her family members or secure any means of supporting herself, she joined several other undocumented teens who sold drugs on the street for an adult trafficker in exchange for food, shelter and pocket change. Melissa was quickly apprehended when she attempted to sell drugs to an undercover officer. The police arrested her for drug sales and referred her to ICE. She was placed into deportation proceedings. Her attorney sought Special Immigration Juvenile Status (SIJS), on the grounds that Melissa had suffered significant parental abuse and had no available caretakers. Although she clearly met the eligibility requirements for SIJS, immigration authorities denied her application for a green card based on her adjudication for the sale of drugs.

The government may exercise its discretion to deny a benefit to a noncitizen applicant based upon specified conduct. Obtaining immigration relief from deportation is discretionary. Thus, even though a specified offense or conduct does not automatically bar immigration or trigger deportation, immigration authorities may still consider it as a significant negative factor in an application for lawful status or other discretionary immigration relief. Individuals who have engaged in gang activity or affiliation, sex offenses or violence are often prioritized for deportation. Virtually all immigration applications require disclosure of any criminal *activity* whatsoever, even if the youth has not been formally charged.

CASE STUDY

Eduardo, a 15-year-old boy from El Salvador, entered the United States unaccompanied. He was homeless, out of school and unemployed. Although he was not a gang member, he depended upon a loosely affiliated group of youth for food, shelter and companionship. He was arrested with some of these youth for spray painting graffiti on a bus. Although the charges against him were dropped, he was referred to ICE and placed into deportation proceedings. Because he was not eligible to obtain lawful permanent residence (a green card), he requested voluntary departure, a discretionary form of relief. Voluntary departure would not allow Eduardo to stay in the United States. However, unlike a formal order of deportation, voluntary departure would have permitted him to reenter the United States and apply for immigration relief if he became eligible in the future. The Immigration Judge denied his request based on the suspicion that Eduardo was affiliated with a gang, and entered a deportation order.

Juvenile defense counsel must affirmatively and competently advise a youth regarding the potential immigration penalties associated with delinquent conduct and offenses, and strategically mitigate those penalties. This information is not only crucial to developing a case strategy that best protects the client's ability to maintain or obtain legal immigration status, but according to the U.S. Supreme Court in the decision *Padilla v. Kentucky* also is required by the Sixth Amendment of the U.S. Constitution in order to provide effective assistance of counsel.⁴² Juvenile defense counsel, or immigration experts available to consult with them, must be generally aware of the types of immigration relief potentially available, the statutory grounds for each form of relief and the bars associated with that form of relief in order to preserve the youth's ability to apply for relief. This information will affect the positions taken by counsel in plea negotiations, the types of information counsel seeks to include or exclude from the record, the defenses asserted and the disposition sought. Ideally, defense counsel should collaborate with immigration counsel to devise a strategy that best protects the youth's ability to pursue immigration relief and avoids negative immigration consequences.

PRACTICE RECOMMENDATIONS

- Juvenile court judges and defense counsel should receive training concerning the potential immigration consequences of delinquency adjudications or the conduct upon which they are based.
- In individual cases, juvenile defenders should collaborate with immigration experts to mitigate the potential immigration consequences of delinquency, screen for immigration relief for which the youth is potentially eligible and take the initial steps toward applying for such relief.



Are Juvenile Justice Personnel Required to Assist with the Enforcement of Federal Immigration Laws?

Immigration and Customs Enforcement (ICE)⁴³ increasingly relies on local law enforcement in its immigration enforcement operations. In recent years, the federal government has created several enforcement programs that rely exclusively on collaborations with local and state criminal justice systems. Until recently, federal efforts to apprehend so-called “criminal aliens” were focused almost exclusively in adult jails and prisons. Today, there is increased collaboration between ICE officials and juvenile justice personnel. Some juvenile justice personnel contact ICE and permit ICE officials to enter juvenile facilities and interview youth whom they suspect may be undocumented. Even departments and staff that would prefer to stay out of immigration enforcement often believe they are legally obligated to cooperate with federal immigration officials to facilitate apprehension of individuals suspected of violating civil immigration laws.

This section of the practice guide clarifies the federal law regarding local immigration enforcement, describes the programs and mechanisms by which local law enforcement and juvenile justice systems participate in immigration enforcement, and discusses the practical and policy implications of local immigration enforcement.

A. Federal Law Does Not Require Juvenile Justice Personnel to Enforce Federal Civil Immigration Laws

Under our Constitution, the federal government and the states have different powers and responsibilities. Although the balance of powers established by federalism is often in dispute, state and federal governments have historically been responsible for distinct areas of law. Immigration is an area delegated exclusively to the federal government by the Constitution. In contrast, responsibility for juvenile justice has been reserved for the states.

The states cannot pass laws that regulate “who should or should not be admitted into the country and on what terms those lawfully admitted can remain here.”⁴⁴ Likewise, the federal government cannot require state or local officials to enact or enforce federal laws or regulations.⁴⁵ Consistent with this structure, there is no duty under federal law for state or local law enforcement officials to ask about immigration status or report noncitizens to federal immigration agencies. State or local law enforcement officials, however, may voluntarily report noncitizens to immigration authorities, and states and local governments can pass legislation and adopt policies that require or facilitate local cooperation with federal authorities. Indeed, federal law prohibits state and local governments from passing laws or adopting policies that prevent public employees from sending to, or receiving from, ICE information about the immigration status of

any individual.⁴⁶ Notwithstanding this provision, several jurisdictions have adopted policies that limit local assistance with immigration enforcement. These policies prohibit law enforcement officials from inquiring about an individual's immigration status,⁴⁷ prohibit the use of local funds or resources for the purposes of enforcing federal immigration law,⁴⁸ and/or prohibit disclosure of specific categories of information.⁴⁹

B. The Federal Government Has Created Programs That Facilitate the Voluntary Cooperation of Local Law Enforcement in the Enforcement of Civil Immigration Laws

In 2008, ICE created the Agreements of Cooperation in Communities to Enhance Safety and Security Initiative ("ICE ACCESS"). ICE ACCESS merged 13 of ICE's immigration enforcement programs into an umbrella regime, which further introduced immigration enforcement practices into state and local criminal justice systems.

There are two primary immigration enforcement programs under ICE ACCESS with which juvenile justice personnel should be familiar. The newest and most controversial program under ICE ACCESS is Secure Communities (S-Comm). In jurisdictions complying with S-Comm, fingerprints taken after arrest by local or state law enforcement agencies are not only checked against state and federal (FBI) criminal databases, but also forwarded by the FBI to the Department of Homeland Security to be checked against civil immigration databases. Federal immigration authorities are notified of *every* arrest — whether the arrestee is a citizen or noncitizen, regardless of the booking offense, and even if criminal charges are never brought or if the individual is acquitted. Nothing in the language of S-Comm expressly exempts juveniles. However, sample data received from the Department of Homeland Security indicate that very few juveniles have been apprehended through S-Comm.

An older program upon which ICE continues to rely and which appears to operate in the juvenile justice system is the Criminal Alien Program (CAP). Through CAP, ICE agents either receive information or ask probation and detention officers to share information regarding foreign-born arrestees and gain access to youth either by phone or by entry into the detention facility. ICE officials may interview youth whom they suspect are removable, or may simply issue an immigration hold, a request to the agency holding an individual to notify immigration authorities of his or her release in order to facilitate transfer to ICE for deportation, based on information that the arrestee was born outside of the United States. While youth are typically referred to ICE through juvenile probation and detention personnel, in some jurisdictions police departments, prosecutors and courts may also alert ICE at any time in the course of juvenile proceedings.

There is no mechanism to opt out of S-Comm, meaning that local law enforcement cannot ask the Department of Homeland Security (DHS) to refrain from reviewing the fingerprints of juveniles once they are sent to the FBI for federal criminal background checks. The effects of the Criminal Alien Program, however, can be limited by local law enforcement, by declining to share information about individuals in custody and not allowing federal immigration officials to enter juvenile detention facilities.

A number of law enforcement agencies across the country limit the federal government's access to such information and facilities both for adults and juveniles.

Immigration enforcement in the juvenile justice system is generally implemented through the use of "immigration detainers," also known as "ICE holds." Regardless of the particular immigration enforcement program that operates in a given locality to identify noncitizens suspected of violating civil immigration laws, ICE generally relies upon the use of holds to apprehend suspected noncitizen youth. An ICE hold is a *request* that an agency, such as a juvenile detention facility, notify DHS prior to release of an individual so that immigration authorities can arrange to assume custody for the purpose of arresting and removing the youth.⁵⁰ Once immigration authorities learn that a juvenile in custody is foreign born or has been identified as a noncitizen through the S-Comm program, ICE may issue a hold to ensure that the youth is transferred into federal custody upon his or her release from a juvenile detention center. Thus, instead of releasing youth when the juvenile court orders the release or when the disposition is complete, detention personnel retain custody to make youth available for transfer to ICE. In order to ensure the transfer of custody to ICE, juvenile justice personnel often delay release of youth who are subject to ICE holds, subjecting them to longer periods of detention than similarly situated citizen youth.⁵¹ The transfer to ICE may occur regardless of the seriousness of the crime alleged, whether the youth arrested *in fact* committed an offense and whether the youth is actually removable from the United States.

.....

ON JANUARY 1, 2014, the TRUST Act (AB 4), a California state law went into effect. The law limits the ability of local law enforcement to hold certain individuals subject to immigration holds for federal immigration authorities.⁵² In the case of juveniles, local law enforcement may respond to an immigration hold for juveniles who are in the juvenile justice system only in two specific circumstances: 1) if the juvenile was adjudicated for an offense that was committed when the juvenile was 16 years of age or older and is listed in California Welfare & Institutions Code § 707(b); or 2) if the juvenile is currently registered on the sex or arson registry. Outside of these two situations, the TRUST Act specifically prohibits local law enforcement from detaining a juvenile in the juvenile justice system on an immigration hold past the time he or she is otherwise eligible for release from custody. Even in these types of cases, local law enforcement is never required to detain the juvenile pursuant to the immigration hold and remains free to release and not report any noncitizen youth. If a juvenile is being charged or tried as an adult or is convicted of an offense as an adult, there are a number of circumstances that allow local law enforcement to hold the juvenile for immigration authorities.

.....

Compliance with ICE holds is not mandatory. According to ICE, three federal courts, and various state and local counsel, ICE holds are merely *requests*, enforceable at the discretion of local officials.⁵³ Constitutional separation of powers prohibits the federal government from coercing any state or local agency into utilizing its own resources for the purpose of enforcing a federal regulatory scheme, such as immigration.

Some youth subject to ICE holds are not removable and some are eligible for relief from deportation. An ICE hold is not the equivalent of a criminal arrest warrant. Unlike criminal arrest warrants, ICE holds are issued by the prosecuting agency itself — not by a neutral, third-party adjudicator — and, unlike arrest warrants, in many cases they are issued without probable cause. ICE holds have been issued based solely on the civil immigration agency’s interest in investigating a person’s immigration status, even if no formal proceeding has been initiated. In fact, these individuals may have lawful status or even U.S. citizenship. The issuance of an ICE hold does not guarantee that the youth is subject to immigration laws or removable from the United States. The U.S. government does not indemnify localities who may be found liable for damages as a result of an erroneously issued ICE hold.⁵⁴

Federal regulations provide that a law enforcement agency may hold a noncitizen on an ICE hold *no more than 48 hours* past the time when he or she otherwise would have been released, excluding weekends and holidays.⁵⁵ The 48-hour period may be triggered in a number of situations: the case is still pending but the court orders release, the case is dismissed and the youth is to be released, or the youth has completed the disposition. State and local law enforcement officers may not, on their own, hold an alleged noncitizen beyond the time the individual would otherwise be released. Only ICE or designated law enforcement officers under a Memoranda of Understanding with ICE are authorized to place an ICE hold on an individual.⁵⁶

Juvenile detention facilities have no authority to detain youth past the 48-hour period, while waiting for ICE to pick up the youth. In fact, a recent court decision suggests that any detention beyond the time of release under state law may be unconstitutional, notwithstanding the federal regulations on the 48-hour period.⁵⁷ The federal District Court of Oregon, in *Miranda-Olivares v. Clackamas County*, found the County liable for violating plaintiff Miranda-Olivares’s constitutional rights by detaining her on an ICE hold, because there was no probable cause. Therefore, continuing to detain a noncitizen minor past their release date and solely on the basis of an ICE hold raises serious Fourth Amendment and due process concerns risking local liability. It further violates the federal Juvenile Justice and Delinquency Prevention Act, which prohibits the secure detention of nonoffenders. There are many cases that have been decided or are pending against local agencies for unlawfully detaining individuals on ICE holds.⁵⁸

C. State and Local Laws May Require, Permit or Limit Local Enforcement of Federal Civil Immigration Laws

Federal law neither requires nor prohibits cooperation of juvenile justice personnel with federal immigration authorities. However, in order to evaluate their legal obligations with respect to noncitizen youth,

.....

LOCAL POLICY The Los Angeles Police Department adopted a policy that prohibited its officers from initiating any police action for the sole purpose of investigating an individual's immigration status. The policy was upheld by the California Court of Appeal. The court found that the policy was not preempted by, nor did it violate, federal immigration law. *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407 (2009).

.....

juvenile justice personnel must also be familiar with state and local laws and policies governing their jurisdictions.

Local and state officials' ability to assist with enforcement of civil immigration laws may be subject to limitations by state or local laws and policies. In many states, enforcement of immigration laws against juveniles may violate provisions of state law relating to treatment of juveniles in the juvenile justice system.⁵⁹ Most states have laws strictly limiting the release of information pertaining to youth subject to juvenile court jurisdiction. Confidentiality of juvenile court records is one of the cornerstones of the juvenile justice system because it supports the central goal of rehabilitation. Probation officials who release confidential case records to federal immigration authorities may face civil or criminal liability for violation of state confidentiality laws.

Several states and local governments have also adopted "sanctuary" laws or policies, which prohibit local enforcement of civil immigration laws. These provisions typically prohibit juvenile justice and law enforcement personnel from utilizing public money to identify or apprehend individuals based solely on their suspected immigration status.

Although federal law does not require juvenile justice personnel to report noncitizen juveniles, some states and local jurisdictions have voluntarily adopted laws requiring state and local officials to enforce immigration law by reporting noncitizens in specified circumstances. In recent years, several states and localities have passed broad anti-immigrant laws. The specific provisions of the laws vary, but they have the common objective of identifying and facilitating the deportation of any individual in the jurisdiction who lacks legal immigration status. A primary strategy for achieving this objective is requiring local officials to actively engage in the enforcement of federal civil immigration laws. For example, Arizona's law (SB 1070) requires police officers to investigate the immigration status of all individuals they stop if the officers suspect that the individuals are in the country unlawfully.⁶⁰ Several other state laws contain similar provisions. While none of the laws expressly applies to juvenile justice agencies, neither are noncitizen youth explicitly exempted from their broad reach. Virtually all of these laws are the subject of ongoing litigation, and many have been challenged by the Department of Justice.

STATE LAW Oregon state law prohibits law enforcement agencies from utilizing any public resources “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.” ORS section 181.850.

D. Reporting Youth to Immigration Authorities Undermines the Fundamental Goals of the Juvenile Justice System

Immigration enforcement initiated by local juvenile justice officials punishes youth for a status over which they have no control. A youth’s undocumented immigration status is rarely a result of his decisions. More frequently it is based on decisions made by parents or other adults, or upon exigent circumstances outside the youth’s control. Reporting youth to ICE punishes them for situations they did not cause and often results in sanctions grossly disproportionate to the alleged conduct that brought them into contact with the justice system.

These inequities are exacerbated in jurisdictions that report youth to ICE at the booking stage — a practice that can result in erroneous referrals and prolonged detention both in juvenile and in immigration custody. According to a June 2009 study by the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention, only 56 percent of juvenile delinquency cases handled by probation departments nationwide during 2005 resulted in the filing of a petition against the youth. Of these, only 66 percent were sustained. Nearly 33 percent of juvenile cases (539,700 out of 1,697,900) were dismissed, and another 20 percent (344,300) resulted in minor sanctions following diversion or dismissal.⁶¹ Referring youth to ICE prior to adjudication severely punishes youth who otherwise would have been released and triggers a series of potentially harmful consequences. Similarly, ICE’s placement of “immigration holds” on youth typically results in prolonged detention in the juvenile justice system, as well as placement in a secure immigration detention facility, sometimes located hundreds or thousands of miles from their homes, families and communities.

Immigration enforcement may substantially undermine juvenile justice procedures. When youth are reported to immigration authorities, their juvenile cases are typically suspended indefinitely pending the completion of the immigration removal process. For example, when a youth is referred to and taken into custody by ICE while his juvenile proceedings are pending, the delinquency proceedings continue in the youth’s absence, often resulting in the juvenile court issuing warrants for his failure to appear, despite his inability to do so. Similarly, violations of probation, resulting in issuance of warrants, may also result when a youth

CASE STUDY

A 15-year-old girl admitted to a social services provider that she hit her sister in an argument. Reluctantly, the provider — who is a mandated reporter under the state law — made a report to Child Protective Services, which led to a referral to law enforcement. The police arrested her for felony assault, despite the fact that there were no weapons or injuries. The jurisdiction’s policies require that probation personnel report anyone who is arrested for a felony and suspected of being undocumented. ICE took custody of the girl and transported her to an immigration detention facility hundreds of miles from her home, where she awaits the resolution of deportation proceedings. A victim of significant past trauma, this young woman is devastated by the separation from her family and potential deportation to a country with which she has no ties.

is placed on probation, but fails to report because he is in federal custody. Once a youth is transferred to federal immigration authorities, the distance and the logistical complexities significantly limit the youth’s ability to contact the court and probation department in the original jurisdiction. Finally, as a result of the referral, youth are removed from a system designed to address their behaviors and placed in a system focused solely on removing them from the country.

Immigration enforcement violates the core principle of confidentiality in the juvenile justice system. Confidentiality promotes rehabilitation because it avoids attaching the stigma of criminality to youth, whose age and immaturity renders them less culpable and more amenable to change. When delinquent youth are reported to ICE, information that is purportedly obtained by juvenile justice officials to help gauge the youth’s needs and circumstances is instead used against them in the deportation process. Youth who are referred to immigration authorities suffer long-term stigma from the delinquency charge. They face the prospect of severe punishment in the immigration system through secure detention, denial of immigration relief and separation from their families.

Immigration enforcement against juvenile offenders runs directly counter to the presumption that family reunification is the main vehicle through which youth obtain the care and guidance to rehabilitate themselves. Immigration enforcement does not solidify the ties between a youth and his family, and often divides them. Referral ensures that some youth who have lived in the United States for all or most of their lives with their families will be separated from their families — often at great distances — regardless of their particular circumstances. If youth and their families know that the information pertaining to family members will be shared with immigration authorities, families are likely to abstain from participation in the juvenile justice process. Family involvement is crucial to the success and well-being of youth, and the viability of most case plans.

Policies authorizing investigation and disclosure of a juvenile's immigration status, or that of his family, erode community trust and cooperation with law enforcement and the judicial system. Where local officials enforce civil immigration laws, noncitizen youth have legitimate reason to withhold information from law enforcement or juvenile justice personnel,⁶² hindering the development of an effective case plan to promote their rehabilitation and prevent recidivism. In addition, public safety may suffer when juvenile justice systems participate in immigration enforcement, because community members may be hesitant to report juveniles who could face disproportionate immigration consequences or whose families could come under scrutiny. For this reason, both the Major Cities Chiefs (an association of the 64 largest police departments in the United States and Canada) and the 20,000-member International Association of Chiefs of Police have opposed the local policing of federal immigration laws absent direct federal order or the presence of a federal warrant.⁶³

Juvenile justice personnel charged with investigating and reporting suspected undocumented immigrant youth are not well equipped to interpret complex federal immigration law, placing them at risk of liability. Immigration law is complex and subject to frequent changes, and an individual's immigration status is not verifiable by simply checking a database. Determination of immigration status is difficult and contains many fact-based exceptions that may make undocumented youth eligible for relief. Enforcement of such complex and ever-changing laws requires weeks of training and continuing education, as well as knowledge of case histories and files in the sole possession of the Department of Homeland Security. Local officials who are required to apply federal immigration law are likely to make mistakes, sometimes with devastating consequences.

Lawsuits have been filed against counties after probation officers took action based on erroneous conclusions regarding an individual's immigration status. In *Soto-Torres v. Johnson*, for example, local and federal government officials paid \$100,000 to settle a lawsuit arising from a San Joaquin County probation officer's determination regarding the plaintiff's immigration status. This county probation officer's incorrect assessment of the plaintiff's deportability led to the plaintiff's wrongful arrest and detention by immigration authorities, ultimately exposing the county to significant liability.⁶⁴ In *Guzman v. Chertoff*, the United States, Department of Homeland Security and the Los Angeles' Sheriff's Department (LASD) settled a claim for \$350,000 for the wrongful deportation of a cognitively impaired U.S. citizen who spent three months lost in Mexico due to LASD's erroneous referral to immigration authorities.⁶⁵ The settlements in both *Soto-Torres* and *Guzman* highlight the risks involved when state and local officials work with ICE to make immigration referrals. Both *Soto-Torres* and *Guzman* involved adult plaintiffs who had been incorrectly referred, but the same injuries that yielded costly settlements in those cases could occur where youth are erroneously detained or deported.

Referring youth to immigration authorities undermines their access to immigration relief. Congress has created several means by which undocumented youth may apply to adjust their immigration status. Notifying immigration authorities before a qualified attorney or other advocate screens youth for

eligibility effectively cuts off avenues to federal immigration relief. ICE, the federal immigration agency that interfaces with the juvenile justice system at the front door, neither screens youth for potential forms of relief nor provides them with immigration attorneys. Once apprehended, ICE or the Office of Refugee Resettlement (ORR),⁶⁶ may — and often does — transfer youth to detention facilities in remote areas far from their families, making it virtually impossible to assert a viable claim for relief.

Most youth who are referred to immigration authorities eventually return to their communities. Reporting youth to ICE or other federal immigration agencies does not ensure that youth will be deported or permanently removed from the community, nor does it facilitate rehabilitation. In the majority of cases, ICE transfers custody of youth to ORR — the agency responsible for the detention of “unaccompanied youth” in deportation proceedings. Under federal law, ORR is required to reunify children with their parents or other responsible family members when possible. In approximately 90 percent of the cases ORR receives, youth are reunified with family members. This percentage is higher for juvenile justice-involved youth. Thus, youth who are referred to ICE usually return to their communities while removal proceedings are pending. Attorneys and social workers working with these youth report that they often return to the community with more setbacks than when they first came into contact with the local juvenile justice system. In particular, these youth return home traumatized by their experiences in immigration detention, having received no support or services designed to help them rehabilitate and reintegrate into their communities. They and their families emerge from these experiences mistrusting the local juvenile justice system, further undermining any local efforts to ensure that they do not reoffend.

CASE STUDY

Gregory applied for Special Immigrant Juvenile Status, a form of relief to obtain lawful permanent residency based on his status as a dependent of the juvenile court and the court’s finding of parental neglect, abuse and abandonment. His immigration attorney was in the area and he was receiving services from the local child welfare system. While the application was pending, Gregory was arrested for assaulting his father during a family dispute. His probation officer referred him to immigration authorities, and ICE transported Gregory to an out-of-state detention center. In that process he lost access to his attorney, and the medical and mental health services he had been receiving. The significant trauma he had endured was unaddressed and he experienced serious difficulties coping in a secure detention facility. Gregory decided to give up his pursuit for lawful status and agreed to be deported even though he no longer had family in his country of origin.

COMMONLY HELD MYTHS ABOUT IMMIGRATION ENFORCEMENT

MYTH: Federal law requires juvenile justice personnel and other law enforcement officials to report undocumented youth to ICE.

FACT: No federal law requires state and local law enforcement officials to affirmatively enforce federal civil immigration laws, and there is no duty under federal law for state or local law enforcement officials to identify noncitizens or to report them to federal immigration authorities.

MYTH: Noncitizen youth are automatically subject to deportation if delinquency charges against them have been sustained.

FACT: Although noncitizen youth may be deportable on the grounds that they lack legal immigration status, delinquency adjudications, in most cases, do not render noncitizen youth deportable under federal law.

MYTH: Referring undocumented youth to ICE ensures that they will not return to their communities.

FACT: Undocumented youth with juvenile records may be eligible for relief from deportation. Pending resolution of their application for immigration relief, youth may be in deportation proceedings for many months and in some cases a year or more. During that time, youth return to their communities because the Office of Refugee Resettlement (ORR), a federal agency charged with the care and custody of these youth, is obligated to reunify them with their families, whenever possible. Eighty-eight percent of children in ORR custody are in fact reunified with family members while their removal proceedings are pending. This percentage is higher for youth who are juvenile justice involved due to the presence of family in the United States. Ultimately, many youth are granted legal status in the United States.

MYTH: When ICE places an “immigration detainer” or “ICE hold” on a youth, it means that the youth is deportable from the United States.

FACT: An ICE detainer is not a court order or court-approved criminal warrant, but merely a notice or request generated by ICE. Representatives from ICE may place a detainer on anyone whom they believe is a noncitizen and whom they *suspect* of violating immigration laws. Many youth subject to detainers are NOT removable —either because they have citizenship or lawful status, or because they are eligible for relief from deportation under federal law.

MYTH: Referring youth to ICE promotes public safety.

FACT: If local officials enforce immigration laws, immigrant youth have legitimate reason to avoid reporting or providing information to the police about crimes; they are likely to withhold important information necessary to develop an effective case plan to promote their rehabilitation and prevent recidivism; their families are likely to abstain from participating in the juvenile justice process; and in the worst case, they will fail to comply with case plans or decline to appear for any meetings and hearings. Community members may also hesitate to report crime if they know local law enforcement agencies assist in immigration enforcement.

.....

PRACTICE RECOMMENDATIONS

- Juvenile justice agencies should clarify that agency resources should be focused on investigating and responding to delinquent behavior, and should not be utilized to resolve ancillary matters, like immigration status, that are more appropriately resolved by other public agencies.
- Juvenile justice agencies should adapt existing policies and curricula to identify the ways that local enforcement of federal immigration laws may undermine important objectives of the juvenile justice system.
- Juvenile justice agencies should adopt and implement policies that:
 - Establish clear direction about the limited purposes for which agency personnel may question youth regarding their immigration status, place of birth or country of origin;
 - Clarify what, if any, information agency personnel may share with federal immigration authorities, and for what purposes;
 - Explain the purpose and legal effect of immigration holds; and
 - Prohibit detention personnel from holding youth beyond the time when they would otherwise be released for the purpose of facilitating a transfer to ICE.
- Juvenile justice agencies should develop partnerships with immigration advocates to develop networks of referrals for youth who may benefit from immigration assistance.
- Juvenile justice agencies should provide ongoing training and technical assistance to agency personnel to clarify the agency's obligations and objectives related to serving noncitizen youth.

Resources

Legal Services for Children (LSC) was founded in 1975 as one of the country's first nonprofit law firms to provide free legal representation and social work services to children and youth. The organization's mission is to ensure that all children in the San Francisco Bay Area are raised in a safe environment with equal access to a meaningful education and other services that are necessary to thrive and grow. LSC believes that youth deserve positive alternatives to unnecessary placement in foster care, juvenile justice facilities and immigration detention. LSC pioneered the interdisciplinary approach that is considered best practice in juvenile law today.

Immigration law became a central part of LSC's practice in 1990, when Congress passed Special Immigrant Juvenile Status as a form of immigration relief for abused, abandoned or neglected children. LSC founded the Detained Immigrant Children Project (DICP) in 2001 to address the growing need in the San Francisco Bay Area for sensitive, appropriate and competent advocacy and services for immigrant children in removal proceedings. Today LSC is a leading practitioner-expert in Special Immigrant Juvenile Status in the Bay Area and annually provides 400 undocumented children who are detained, recently released or at-risk for removal, with legal advocacy that includes legal screening, information and referrals, and full scope case representation. In addition to direct services, LSC engages in training, technical assistance and policy advocacy related to the intersection of the juvenile justice and immigration systems.

The **Immigrant Legal Resource Center (ILRC)**, founded in 1979 and based in San Francisco, California, is a national resource center that provides training, consultations and publications on immigration law. The ILRC's mission is to work with and educate immigrants, community organizations and the legal sector to continue to build a democratic society that values diversity and the rights of all people.

ILRC is one of the lead agencies in the United States with expertise on the immigration consequences of crime and delinquency. ILRC writes the only legal treatise in the Ninth Circuit on the intersection between immigration and criminal laws entitled, *Defending Immigrants in the Ninth Circuit: Impact of Crimes under California and Other State Laws* (10th Edition ILRC). The publication is widely referenced by immigration judges, federal court judges and immigration and criminal defense attorneys. ILRC also produces resources on immigration, youth and juvenile justice issues including, *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth* (3rd Edition ILRC) and *Immigration Benchbook for Juvenile and Family Court Judges* (2010 ILRC). In 2011, the ILRC partnered with the National Council of Juvenile and Family Court Judges to write an article entitled, "Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children" for their *Juvenile & Family Court Journal, Special Issue — Immigration Issues in the Juvenile and Family Courts*. The

ILRC has provided extensive training on the intersection between the juvenile justice and immigration systems to judges, law enforcement officials, juvenile defenders and social workers. The ILRC has partnered with the Office of Refugee Resettlement, a federal agency that is responsible for the care and custody of unaccompanied minors in deportation proceedings, to provide local trainings to juvenile probation departments and other juvenile justice system stakeholders on juvenile immigration issues.

ILRC and LSC, along with the W. Haywood Burns Institute, form a collaboration called the **Immigrant Youth Justice Initiative (IYJI)**. This initiative is funded by the Public Welfare Foundation to explore the impact of local immigration enforcement on racial disparities in the juvenile justice system. At the beginning of the initiative, juvenile justice stakeholders in three California jurisdictions were surveyed to identify the extent to which local immigration enforcement impacts the detention of immigrant youth and contributes to racial and ethnic disparities. Currently IYJI provides on-site training for surveyed sites in an effort to develop a best practice model for immigrant youth in the juvenile justice system and is helping to implement the California TRUST Act through California's probation departments.

ACKNOWLEDGMENTS

The authors extend sincere appreciation to several individuals who contributed to the development of this practice guide:

Raquel Mariscal, The Annie E. Casey Foundation, Senior Consultant, JDAI Management Team

Janelle Orsi, Director, Sustainable Economies Law Center

Lisa Frydman, Managing Attorney, Center for Gender and Refugee Studies

Abigail Trillin, Executive Director, Legal Services for Children

Katie Fleet, Managing Attorney, Legal Services for Children

Ann Benson, Directing Attorney, Washington Defender Association Immigration Rights Project

Kathy Brady, Senior Staff Attorney, Immigrant Legal Resource Center

Lena Graber, Special Projects Attorney, Immigrant Legal Resource Center

Grisel Ruiz, Attorney/Law Fellow, Immigrant Legal Resource Center

Julia Mass, Staff Attorney, ACLU of Northern California

Anne Marie Mulcahy, Director, Unaccompanied Children Program, Center on Immigration and Justice, Vera Institute of Justice

Judy Cox, Former Chief Probation Officer Santa Cruz County, current consultant Juvenile Detention Alternatives Initiative, Annie E. Casey Foundation

For further information related to the subject of this practice guide, please contact:

Angie Junck, Supervising Attorney, Immigrant Legal Resource Center, 415-321-8558, ajunck@ilrc.org

Abigail Trillin, Executive Director, Legal Services for Children, 415-863-3762, abigail@lsc-sf.org

ENDNOTES

1. For the purposes of this practice guide, the term “undocumented youth” refers to youth without legal immigration status. The term “noncitizen youth” refers to youth who are not citizens, including undocumented youth, youth with temporary visas (e.g., tourist visas) and permanent resident youth.
2. Thematic Map of Foreign Born; Estimate; Total Population; Geography: by State, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S0501&prodType=table
3. Pew Hispanic Center. “A Statistical Portrait of the Foreign-Born at Mid-Decade,” Table 11: Change in Foreign-Born Population by State, 2000–2005. Retrieved from www.pewhispanic.org/2006/10/17/a-statistical-portrait-of-the-foreign-born-population-at-mid-decade/
4. Pew Hispanic Center. “A Statistical Portrait of the Foreign-Born at Mid-Decade,” Table 12: Change in the Foreign-Born Population, by State: 2000 and 2009. Retrieved from www.pewhispanic.org/2011/02/17/statistical-portrait-of-the-foreign-born-population-in-the-united-states-2009/
5. *Ibid.*
6. Pew Charitable Trusts. (2011, Spring). Demography of Immigrant Youth: Past, Present, and Future. *Immigrant Children*, 21(1). Retrieved from www.futureofchildren.org/futureofchildren/publications/docs/21_01_02.pdf
7. The Urban Institute. Data from the integrated Public Use Microdata Series datasets drawn from the 2008–2009 American Community Survey. Available at <http://datatool.urban.org/charts/datatool>
8. The U.S. Department of State estimates that each year around 800,000 people are trafficked across international borders. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons. (2008, June). *Trafficking in Persons Report, Introduction*. Retrieved from www.state.gov/g/tip/rls/tiprpt/2008/index.htm
9. U.S. Congressional Research Service. Trafficking in Persons: U.S. Policy and Issues for Congress (RL34317; Oct. 29, 2010), by Alison Siskin, Liana Sun Wyler. Accessed: Sept. 9, 2011.
10. Richard, A.O. (1999, November). *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*. Washington, D.C.: Center for the Study of Intelligence, p. iii.
11. Clawson, H.J., Layne, M., & Small, K. (2006, Sept.). *Estimating Human Trafficking into the United States: Development of a Methodology*. Retrieved from www.ncjrs.gov/pdffiles1/nij/grants/215475.pdf
12. U.S. Department of State, *Trafficking in Persons Report*.
13. Federal law defines the term “unaccompanied alien minor” as an individual under the age of 18 who has no lawful immigration status in the United States and does not have any parent or legal guardian in the United States who is willing or able to provide care and physical custody. 6 USC §279(g)(2); U.S. Department of Health and Human Services, Office of Refugee Resettlement, www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm
14. Pew Hispanic Center. “A Statistical Portrait of the Foreign-Born at Mid-Decade,” Table 11: Change in Foreign-Born Population by State, 2000–2005. Retrieved from www.pewhispanic.org/2006/10/17/a-statistical-portrait-of-the-foreign-born-population-at-mid-decade/
15. See www.acf.hhs.gov/programs/orr/programs/ucs/about. The Office of Refugee Resettlement, Division of Children Services’s Unaccompanied Alien Children (ORR) is a division of the United States. Department of Health and Human Services that is charged with the care and custody of unaccompanied youth who are in the process of being removed from the U.S. Unaccompanied under federal law means an undocumented person under the age of 18 who does not have a parent or legal guardian who is willing or able to provide care and physical custody. 6 U.S.C. § 279(g)(2). The Department of Homeland Security (DHS), which includes

Immigration Customs and Enforcement and Customs and Border Protection, apprehend all youth, but only retain custody of accompanied youth. It appears that very few youth are classified as accompanied.

16. *Ibid.*
17. *Ibid.*
18. Bhabha, J., & Schmidt, S. (2006, June), *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* Cambridge, MA: University Committee on Human Rights Studies, Harvard University. Retrieved from www.humanrights.harvard.edu/images/pdf_files/Seeking_Asylum_Alone_US_Report.pdf
19. Nazario, S. (2006). *Enrique's Journey: The Story of a Boy's Dangerous Odyssey to Reunite with his Mother.* New York: Random House.
20. "...The poverty rate of children with two immigrant parents is higher, particularly for immigrant children born abroad. In 2009, the poverty rate of U.S.-born children with two immigrant parents was 28.5 percent, while that for foreign-born children was 31.6 percent." Princeton University and Brookings Institution. (2011, Spring). Poverty and Program Participation among Immigrant Children. *Immigrant Children*, 21(1), p. 6. Retrieved from www.futureofchildren.org/futureofchildren/publications/docs/21_01_11.pdf
21. W. Haywood Burns Institute. (2009). *The Keeper and the Kept.* San Francisco, CA: W. Haywood Burns Institute, p. 9. Retrieved from www.burnsinstitute.org/downloads/BI%20Keeper%20Kept.pdf
22. Presentation by Maureen Dunn, Former Director of U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Children's Services (ORR) at the 2009 National Conference on Unaccompanied Immigrant Children in Washington, D.C. This increase has also been reported to the Immigrant Legal Resource Center by agencies serving such youth including the Lutheran Immigrant and Refugee Service, Vera Institute of Justice's Unaccompanied Children Program, immigrant youth legal service providers across the country, juvenile probation departments and juvenile defenders.
23. Immigration and Naturalization Act §§ 301–310; 8 U.S.C. §§ 1401–1421
24. For example, evidence from Cook County, Illinois (where ICE detainees or ICE holds are not honored by local law enforcement), indicates that the federal government's interest in individuals who may be removable for civil immigration violations does not increase the probability of a flight risk. "ICE detainees a public-safety issue?" WBEZ 91.5 Chicago, (May 16, 2012). Retrieved from www.wbez.org/news/ice-detainees-public-safety-issue-99190
25. The Act provides that "juveniles [...] charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or alien juveniles in custody, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." 42 U.S. Code §5633(a)(11)(B)
26. 8 U.S.C. § 1431
27. 8 U.S.C. § 1401
28. A person is classified as LEP if he or she has a limited ability to read, write, speak or understand English. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, *Federal Register*, Vol. 67, No. 117, p. 41457, June 18, 2002.
29. DeMuro, P. *Pathways to Detention Reform, Vol. 4: Consider the Alternatives: Planning and Implementing Detention Alternatives.* Baltimore, MD: Annie E. Casey Foundation, p. 12. Retrieved from www.aecf.org
30. *Ibid.*, p. 13.
31. Dangers of Detention, pp. 1–2; Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings, National Juvenile Defender Center, p. 1.
32. Throughout this practice guide, we use the terms deportation and removal interchangeably to refer to proceedings in which an individual is ordered to leave the country. Under the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA),

- these proceedings are called removal proceedings. Court proceedings initiated before April 1, 1997, are called either deportation or exclusion proceedings instead of removal proceedings.
33. A juvenile court is defined broadly as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. 8 C.F.R. § 204.11(a)
 34. 8 USC § 1101(a)(15)(T)
 35. For information on the T visa, visit www.lafla.org (the Legal Aid Foundation of Los Angeles).
 36. 8 USC § 1101(a)(15)(U)
 37. For information on the U visa, visit www.ilrc.org and www.nationalimmigrationproject.org.
 38. The Board of Immigration Appeals (BIA) has consistently held “that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000) (en banc), citing *Matter of C.M.*, 5 I&N Dec. 27 (BIA 1953), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981)
 39. 8 U.S.C. § 1182
 40. 8 U.S.C. § 1182(a)(2)(C)
 41. 8 U.S.C. § 1182(a)(2)(E)(ii)
 42. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010)
 43. While this document refers to ICE as the primary agency with which juvenile justice systems interact, systems personnel located in border states may also interact with Customs and Border Patrol (CPB).
 44. *Arizona v. United States*, 567 US at *2–3 (2012); *De Canas v. Bica*, 424 U.S. 351, 355 (1976)
 45. *New York v. United States*, 505 U.S. 144, 166 (1992); *Printz v. United States*, 521 U.S. 898, 927 (1996)
 46. Federal law provides: “Federal, state or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373
 47. See *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407 (2009), upholding the policy of the Los Angeles Police Department prohibiting officers from initiating police action with the sole objective of inquiring into the immigration status of an individual.
 48. See, for example, Cook County Ordinance 11-O-73 (declining to respond to ICE detainers); Santa Clara County Board Policy 3.54 (same); see also District of Columbia Act 19-379 (limiting response to ICE detainers).
 49. See, for example, Santa Clara County Board Policy 3.54 (prohibiting County personnel from expending time and resources responding to ICE inquiries and communicating regarding incarceration status and release dates).
 50. The legal authority for ICE holds is in 8 USC § 1357(d) and the law implementing ICE holds is found in the Code of Federal Regulations at 8 CFR § 287.7.
 51. Center on Juvenile and Criminal Justice found that immigration enforcement in the California juvenile justice subjects youth to unnecessary prolonged detention, costing taxpayers an estimated \$127,978 per year. Teji, S. (Aug. 2013). *The Unnecessary Detention of Undocumented Youth*. www.cjcj.org/uploads/cjcj/documents/cjcj_juvenile_ice_hold_factsheet.pdf. At least two studies have also found that ICE hold requests result in an average of 21 days longer in custody than those without. See Greene, J.A. (2012, Aug. 22). *The Cost of Responding to Immigration Detainers in California, Preliminary Findings*. Brooklyn, NY: Justice Strategies; White, K.A., & Dwight, L. (2012, Dec. 1). *Misplaced Priorities: SB90 & The Costs to Local Communities*. Denver: The Colorado Fiscal Institute. See also, Beckett, K. and Evans, H. (2013) *Immigration Detainer Requests in King County, Washington: Costs and Consequences*. University of Washington. Guttin, A. (2010, Feb.) *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas*. Washington, DC: Immigration Policy Center; Shahani, A. (2010,

Oct.). New York City Enforcement of Immigration Detainers, Preliminary Findings. Brooklyn, NY: Justice Strategies.

52. The full text of the TRUST Act is available at: www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_4_bill_20131005_chaptered.pdf.

53. See *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317 (D. Or. April 11, 2014); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. Mar. 4, 2014); *Morales v. Chadbourne*, No. 12-0301 (D.R.I. April 24, 2012); Letter from ICE to various House of Representatives, dated February 25, 2014 (“While immigration detainers are an important part of ICE’s effort to remove criminal aliens... they are not mandatory as a matter of law.”) See also California Attorney General Kamala Harris, Attorney General, Responsibilities of Local Law Enforcement Agencies under Secure Communities, Information Bulletin, December 4, 2012 (“Several local law enforcement agencies appear to treat immigration detainers, sometimes called ‘ICE holds,’ as mandatory orders. But immigration detainers are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the individual arrestee.”) available at: www.aclunc.org/docs/immigration/ag_info_bulletin.pdf (last accessed November 16, 2013); Letter from David Venturella Assistant Director Immigration and Customs Enforcement to Santa Clara County Counsel Miguel Marquez (“ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien”) Available at: <http://media.sjbeeze.org/files/2011/10/4-ICE-response-to-SCC.pdf> (last accessed November 16, 2013); Letter from Santa Clara County Counsel Miguel Marquez to Members of Board of Supervisors, (Sept. 1, 2010) (“there is no statutory or regulatory requirement that the County comply with a detainer’s notification or information sharing provisions). Available at: http://altopolimigra.com/wp-content/uploads/2012/05/2010-09-01_SC-County-Counsel-Memo.pdf (last accessed November 16, 2013); Letter from Illinois State Attorney Anita Alavarez to Cook County Commissioner Garcia (July 26, 2011) (“ICE detainers are not akin to a criminal warrant, but rather a voluntary request of a law enforcement agency to cooperate with ICE”). Available at: http://altopolimigra.com/wp-content/uploads/2011/12/SA-opinion-7_26_11.pdf (last

accessed November 16, 2013); Memorandum from County Attorney Robert A. Cuevas, Jr. to Miami-Dade Mayor Carlos Gimenez (July 15, 2013) (“compliance with ICE detainer requests is voluntary and not mandated by federal law or regulations”) See Alfonso Chardy, *County Attorney: Feds can’t require longer immigration detentions*, Miami Herald, July 29, 2013, Available at www.miamiherald.com/2013/07/29/3529450/county-attorney-feds-cant-require.html; Letter from Santa Cruz County Counsel Dana McRae to Board of Supervisors (“ICE has admitted ... that detainer requests are, in fact, voluntary with no penalty for failure to comply”). Available at: http://sccounty01.co.santa-cruz.ca.us/Bds/Govstream/BDSvData/non_legacy/agendas/2012/20120522/PDF/055.pdf (last accessed November 16, 2013). See also Congressional Research Service, “Immigration Detainers: Legal Issues” at p. 12 (August 31, 2012) (“the federal government recently appears to have taken the position that detainers are “requests,” not “orders”” citing to *Uroza v. Salt Lake County*, No. 11-0713 (D. Utah. filed Aug. 5, 2011) available at www.fas.org/sgp/crs/homesecl/R42690.pdf

54. “ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.” Letter to Miguel Marquez, County Counsel, County of Santa Clara, from David Venturella, Immigration and Customs Enforcement Assistant Director, dated 2010. (On file with author.)

55. 8 CFR § 287.7(d). Form I-247 indicates that “holidays” means federal holidays.

56. 8 CFR § 287.7(d)

57. *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317 (D. Or. April 11, 2014). As a result of this decision many County Sheriffs in Oregon, Washington state, and Colorado as well as some in California are no longer holding individuals on ICE holds for ICE.

58. See e.g., *Morales v. Chadbourne*, No. 12-0301 (D.R.I. April 24, 2012); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. Mar. 4, 2014); *Roy v. Los Angeles County*, No. 12-9012 (C.D. Cal. filed October 19, 2012), *Brizuela v. Feliciano*, No. 12-0226 (D. Conn. filed Feb. 13, 2012); *Jimenez Moreno v. Napolitano*, No. 11-05452

- (N.D. Ill. filed Aug. 11, 2011), *Cacho v. Gusman*, No. 11-0225 (E.D. La. filed February 2, 2011); *Uroza v. Salt Lake County*, No. 11-0713 (D. Utah. filed Aug. 5, 2011).
59. Such states laws are not in violation of federal law. Notably, in *City of New York v. United States* the Second Circuit Court of Appeals indicated that an executive order that was part of a “generalized confidentiality” policy necessary for “the performance of legitimate municipal functions” would not be in violation of federal law. (179 F.3d 29, 35–37 (2d Cir. 1999)) Juvenile state confidentiality laws are such generalized confidentiality laws created for the protection and rehabilitation of juveniles.
60. The U.S. Supreme Court has declined to rule on the constitutionality of this provision prior to its implementation. However, the court made clear that detaining individuals solely to verify their immigration status would raise constitutional concerns. *Arizona v. United States*, 567 U.S. (2012).
61. Sickmund, M. (2009, June). *Delinquency Cases in Juvenile Court, 2005 Fact Sheet*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. Retrieved from www.ncjservehttp.org/NCJJWebsite/publications_detail.asp?n=NCJ224538
62. National Immigration Law Center. (2004). “Sample Language for Policies Limiting the Enforcement of Immigration Law by Local Authorities.” Retrieved from www.nilc.org/document.html?id=321
63. See MCC Immigration Committee Recommendations, www.houstontx.gov/police/pdfs/mcc_position.pdf and Police Chiefs Guide to Immigration, www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf
64. *Soto-Torres v. Johnson*, CIV S-99-1695 WBS/DAD (E.D. Cal. filed Aug. 30, 1999); Holding, R. (1999, Sept. 19) Heavy-handed INS agents. *San Francisco Chronicle*, SC-2. Retrieved from www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/09/19/SC80136.DTL
65. Gamboa, S. (2006, Apr. 13). AP Impact: Citizens Held as Illegal Immigrants. *The Monitor*.
66. ORR is a federal agency that is charged with the care and custody of “unaccompanied” immigrant minors who are in deportation proceedings. Unaccompanied is defined under federal law as a person under the age of 18 who does not have a parent or legal guardian who is willing or able to provide care and physical custody. The vast majority of youth who are apprehended by ICE are designated as unaccompanied and therefore, are in the custody of ORR and not ICE during their deportation proceedings.



THE ANNIE E. CASEY FOUNDATION

701 ST. PAUL STREET BALTIMORE, MD 21202 410.547.6600 WWW.AECF.ORG