

**Procedure # 10-03-15**  
**Page 1 of 3**  
**February 26, 2015**

**THE CITY OF NEW YORK**  
**DEPARTMENT OF PROBATION**

Issued by:

Approved by:

  
Wayne McKenzie, General Counsel

  
Ana M. Bermúdez, Commissioner

***Responding to Federal Civil Immigration Detainers and Administrative Warrants***

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***Policy***

Effective immediately, DOP will only honor federal civil immigration detainer and administrative warrants from the Department of Homeland Security Immigration and Customs Enforcement (“ICE”) to detain an individual currently on probation supervision under specific conditions. Any request from ICE for the detention or arrest of an individual under current probation supervision must be forwarded to DOP’s General Counsel for determination whether such request may be honored.

***Procedure***

DOP staff shall not expend time while on duty, or DOP resources of any kind, disclosing information that belongs to the department and is available to them only in their official capacity, in response to federal immigration inquiries or in communicating with federal immigration authorities, regarding any probation client’s reporting schedule, probation-related appointment schedule, incarceration status, release date, court appearance dates, or any other client-related information, other than information related to a person’s citizenship or immigration status, without approval from the General Counsel. Specifically, DOP staff is prohibited from detaining, arresting, requesting a probation client to report, or facilitating contact between ICE and a DOP client in any manner unless the General Counsel finds that:

(1) There has been a judicial determination of probable cause as to removability of the individual in question as evidenced by a judicial warrant, defined as a warrant based on probable cause and issued by a judge appointed pursuant to article III of the United States Constitution or a federal magistrate judge appointed pursuant to 28 U.S.C. §631, that authorizes federal immigration authorities to take into custody the person who is the subject of such warrant.

and

(2) The individual

a) Has been convicted of a violent or serious crime within the last five years. A “violent or serious crime” is defined as an offense listed in Appendix A, attached hereto. The attached appendix details the current crimes covered by this policy. Future additions or deletions will be incorporated by the Office of the General Counsel. Any period of time during which the person was incarcerated for a violent or serious crime, between the time of the commission of such violent or serious crime and the instant arrest, shall be excluded in calculating such five year period and such five year period shall be extended by a period or periods equal to the time served under such incarceration; or

b) Is identified as a possible match on the terrorist screening database or any similar or successor list maintained by the United States.

Absent General Counsel review and verification of the presence of **both** conditions, DOP will not honor ICE civil detainer requests. Such requests include, but are not limited to, warrants issued on Form I-200 and Form I-205. DOP staff may not contact or detain the individual in question while the General Counsel’s legal determination as to honoring the request is pending.

***RATIONALE:***

The City of New York promotes equitable policies that treat all residents equally and that recognize their contributions to our collective diversity, productivity, and vibrancy. It is possible to do so without compromising public safety. In that spirit, the City recently enacted legislation

*Procedure # 10-03-15*  
*Page 3 of 3*  
*February 26, 2015*

that prohibits and restricts the authority of NYPD and DOC to detain individuals in their custody on the basis of detainer requests that do not meet the above described criteria. In addition, many state and municipal entities nationwide, including the New York State Sheriffs' Association, have enacted legislation and adopted policies proscribing their employees from enforcing ICE-issued detainers and warrants that have not been subjected to a judicial determination of probable cause. Consequently, DOP will also no longer honor such requests.

**APPENDIX A--LIST OF 'VIOLENT OR SERIOUS CRIMES'**

A conviction under federal law or the law of another state that would constitute a "predicate felony conviction" under section 70.06(1)(b)(i) of the penal law provided that such conviction was for the equivalent of a violent or serious crime, would also constitute a "violent or serious crime" as defined herein. The following shall not count as a "conviction": a youthful offender adjudication issued pursuant to article seven hundred twenty of the criminal procedure law, or a comparable status pursuant to federal law or the law of another state, or a juvenile delinquent, as defined by subdivision one of section 301.2 of the family court act, or a comparable status pursuant to federal law or the law of another state.

<b><u>PL SEC.</u></b>	<b><u>OFFENSE TITLE</u></b>	<b><u>SEVERITY</u></b>
	<b>ARTICLE 120—ASSAULT AND RELATED OFFENSES</b>	
120.01	Reckless assault of a child by a child day care provider	E FELONY
120.02	Reckless assault of a child	D FELONY
120.03	Vehicular assault in the second degree	E FELONY
120.04	Vehicular assault in the first degree	D FELONY
120.04-A(4)	Aggravated vehicular assault	C FELONY
120.05	Assault in the second degree	D FELONY
120.06	Gang assault in the second degree	C FELONY
120.07	Gang assault in the first degree	B FELONY
120.08	Assault on a peace officer, police officer, fireman or emergency medical services professional	C FELONY

120.09	Assault on a judge	C FELONY
120.10	Assault in the first degree	B FELONY
120.11	Aggravated assault upon a police officer or a peace officer	B FELONY
120.12	Aggravated assault upon a person less than eleven years old	E FELONY
120.13	Menacing in the first degree	E FELONY
120.18	Menacing a police officer or peace officer	D FELONY
120.25	Reckless endangerment in the first degree	D FELONY
120.55	Stalking in the second degree	E FELONY
120.60	Stalking in the first degree	D FELONY
120.70	Luring a child	C, D, or E FELONY
	<b>ARTICLE 121—STRANGULATION AND RELATED</b>	
121.12	Strangulation in the second degree	D FELONY
121.13	Strangulation in the first degree	C FELONY
	<b>ARTICLE 125—HOMICIDE, ABORTION AND RELATED OFFENSES</b>	
125.10	Criminally negligent homicide	E FELONY
125.11	Aggravated criminally negligent homicide	C FELONY
125.12	Vehicular manslaughter in the second degree	D FELONY
125.13	Vehicular manslaughter in the first degree	C FELONY

125.14	Aggravated vehicular homicide	B FELONY
125.15	Manslaughter in the second degree	C FELONY
125.20	Manslaughter in the first degree	B FELONY
125.21	Aggravated manslaughter in the second degree	C FELONY
125.22	Aggravated manslaughter in the first degree	B FELONY
125.25	Murder in the second degree	B FELONY
125.26	Aggravated murder	A-I FELONY
125.27	Murder in the first degree	A-I FELONY
125.40	Abortion in the second degree	E FELONY
125.45	Abortion in the first degree	D FELONY
	<b>ARTICLE 130—SEX OFFENSES</b>	
130.25	Rape in the third degree	E FELONY
130.30	Rape in the second degree	D FELONY
130.35	Rape in the first degree	B FELONY
130.40	Criminal sexual act in the third degree	E FELONY
130.45	Criminal sexual act in the second degree	D FELONY
130.50	Criminal sexual act in the first degree	B FELONY
130.53	Persistent sexual abuse	E FELONY
130.65	Sexual abuse in the first degree	D FELONY
130.65-a	Aggravated sexual abuse in the fourth degree	E FELONY
130.66	Aggravated sexual abuse in the third degree	D FELONY

130.67	Aggravated sexual abuse in the second degree	C FELONY
130.70	Aggravated sexual abuse in the first degree	B FELONY
130.75	Course of sexual conduct against a child in the first degree	B FELONY
130.80	Course of sexual conduct against a child in the second degree	D FELONY
130.85	Female genital mutilation	E FELONY
130.90	Facilitating a sex offense with a controlled substance	D FELONY
130.95	Predatory sexual assault	A-II FELONY
130.96	Predatory sexual assault against a child	A-II FELONY
	<b>ARTICLE 135—KIDNAPPING, COERCION AND RELATED OFFENSES</b>	
135.10	Unlawful imprisonment in the first degree	E FELONY
135.20	Kidnapping in the second degree	B FELONY
135.25	Kidnapping in the first degree	A-I FELONY
135.35	Labor trafficking	D FELONY
135.50	Custodial interference in the first degree	E FELONY
135.65(2)(b)	Coercion in the first degree	D FELONY
	<b>ARTICLE 140—BURGLARY AND RELATED OFFENSES</b>	
140.17	Criminal trespass in the first degree	D FELONY

140.25	Burglary in the second degree	C FELONY
140.30	Burglary in the first degree	B FELONY
	<b>ARTICLE 145—CRIMINAL MISCHIEF AND RELATED OFFENSES</b>	
145.12	Criminal mischief in the first degree	B FELONY
	<b>ARTICLE 150—ARSON</b>	
150.05	Arson in the fourth degree	E FELONY
150.10	Arson in the third degree	C FELONY
150.15	Arson in the second degree	B FELONY
150.20	Arson in the first degree	A-I FELONY
	<b>ARTICLE 160—ROBBERY</b>	
160.05	Robbery in the third degree	D FELONY
160.10	Robbery in the second degree	C FELONY
160.15	Robbery in the first degree	B FELONY
	<b>ARTICLE 195—OFFICIAL MISCONDUCT AND OBSTRUCTION OF PUBLIC SERVANTS GENERALLY</b>	
195.07	Obstructing governmental administration in the first degree	E FELONY
195.08	Obstructing governmental administration by means of self-defense spray device	D FELONY
195.17	Obstruction of governmental duties by means of a bomb, destructive device, explosive, or	D FELONY

	hazardous substance	
	<b>ARTICLE 215--OTHER OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS</b>	
215.11	Tampering with a witness in the third degree	E FELONY
215.12	Tampering with a witness in the second degree	D FELONY
215.13	Tampering with a witness in the first degree	B FELONY
215.15	Intimidating a victim or witness in the third degree	E FELONY
215.16	Intimidating a victim or witness in the second degree	D FELONY
215.17	Intimidating a victim or witness in the first degree	B FELONY
215.51	Criminal contempt in the first degree	E FELONY
215.52	Aggravated criminal contempt	D FELONY
	<b>ARTICLE 220--CONTROLLED SUBSTANCES OFFENSES</b>	
220.18	Criminal possession of a controlled substance in the second degree	A-II FELONY
220.21	Criminal possession of a controlled substance in the first degree	A-I FELONY
220.28	Use of a child to commit a controlled substance offense	E FELONY

220.41	Criminal sale of a controlled substance in the second degree	A-II FELONY
220.43	Criminal sale of a controlled substance in the first degree	A-I FELONY
220.44	Criminal sale of a controlled substance in or near school grounds	B FELONY
220.48	Criminal sale of a controlled substance to a child	B FELONY
220.77	Operating as a major trafficker	A-I FELONY
	<b>ARTICLE 230—OFFENSES INVOLVING PROSTITUTION</b>	
230.05	Patronizing a prostitute in the second degree	E FELONY
230.06	Patronizing a prostitute in the first degree	D felony
230.19	Promoting prostitution in a school zone	E FELONY
230.25(2)	Promoting prostitution in the third degree	D FELONY
230.30	Promoting prostitution in the second degree	C FELONY
230.32	Promoting prostitution in the first degree	B FELONY
230.33	Compelling prostitution	B FELONY
230.34	Sex trafficking	B FELONY
	<b>ARTICLE 235—OBSCENITY AND RELATED OFFENSES</b>	
235.22	Disseminating indecent material to minors in the first degree	D FELONY

	<b>ARTICLE 240—OFFENSES AGAINST PUBLIC ORDER</b>	
240.06	Riot in the first degree	E FELONY
240.55	Falsely reporting an incident in the second degree	E FELONY
240.60	Falsely reporting incident in the first degree	D FELONY
240.61	Placing a false bomb or hazardous substance in the second degree	E FELONY
240.62	Placing a false bomb or hazardous substance in the first degree	D FELONY
240.63	Placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall	D FELONY
240.75	Aggravated family offense	E FELONY
	<b>ARTICLE 241—HARASSMENT OF A RENT REGULATED TENANT</b>	
241.05	Harassment of a rent regulated tenant	E FELONY
	<b>ARTICLE 255—OFFENSES AGAINST THE MARITAL RELATIONSHIP</b>	
255.26	Incest in the second degree	D FELONY
255.27	Incest in the first degree	B FELONY
	<b>ARTICLE 260—OFFENSES RELATING TO CHILDREN, DISABLED PERSONS AND VULNERABLE ELDERLY PERSONS</b>	

260.25	Endangering the welfare of an incompetent or physically disabled person in the first degree	E FELONY
260.32	Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree	E FELONY
260.34	Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree	D FELONY
	<b>ARTICLE 263—SEXUAL PERFORMANCE BY A CHILD</b>	
263.05	Use of a child in a sexual performance	C FELONY
263.10	Promoting an obscene sexual performance by a child	D FELONY
263.11	Possessing an obscene sexual performance by a child	E FELONY
263.15	Promoting a sexual performance by a child	D FELONY
263.16	Possessing a sexual performance by a child	E FELONY
263.30	Facilitating a sexual performance by a child with a controlled substance or alcohol	B FELONY
	<b>ARTICLE 265—FIREARMS AND OTHER DANGEROUS WEAPONS</b>	
265.01-a	Criminal possession of a weapon on school grounds	E FELONY
265.01-b	Criminal possession of a firearm	E FELONY

265.02(2)-(8)	Criminal possession of a weapon in the third degree	D FELONY
265.03	Criminal possession of a weapon in the second degree	C FELONY
265.04	Criminal possession of a weapon in the first degree	B FELONY
265.08	Criminal use of a firearm in the second degree	C FELONY
265.09	Criminal use of a firearm in the first degree	B FELONY
265.10	Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances	Various class D felonies
265.11	Criminal sale of a firearm in the third degree	D FELONY
265.12	Criminal sale of a firearm in the second degree	C FELONY
265.13	Criminal sale of a firearm in the first degree	B FELONY
265.14	Criminal sale of a firearm with the aid of a minor	C FELONY
265.16	Criminal sale of a firearm to a minor	C FELONY
265.17	Criminal purchase or disposal of a weapon	D FELONY
265.19	Aggravated criminal possession of a weapon	C FELONY
265.35(2)	Prohibited use of weapons	D or E FELONY
	<b>ARTICLE 270—OTHER OFFENSES RELATED TO PUBLIC SAFETY</b>	
270.30	Unlawful fleeing a police officer in a motor	E FELONY

	vehicle in the second degree	
270.35	Unlawful fleeing a police officer in a motor vehicle in the first degree	D FELONY
	<b>ARTICLE 405—LICENSING AND OTHER PROVISIONS RELATING TO FIREWORKS</b>	
405.16(1)	Aggravated unpermitted use of indoor pyrotechnics in the second degree	E FELONY
405.18	Aggravated unpermitted use of indoor pyrotechnics in the first degree	D FELONY
	<b>ARTICLE 460—ENTERPRISE CORRUPTION</b>	
460.22	Aggravated enterprise corruption	A-I FELONY
	<b>ARTICLE 470—MONEY LAUNDERING</b>	
470.21	Money laundering in support of terrorism in the fourth degree	E FELONY
470.22	Money laundering in support of terrorism in the third degree	D FELONY
470.23	Money laundering in support of terrorism in the second degree	C FELONY
470.24	Money laundering in support of terrorism in the first degree	B FELONY
	<b>ARTICLE 485—HATE CRIMES</b>	
485.05 (only)	Hate crimes	Various felonies

felonies)		
	<b>ARTICLE 490—TERRORISM</b>	
490.10	Soliciting or providing support for an act of terrorism in the second degree	D FELONY
490.15	Soliciting or providing support for an act of terrorism in the first degree	C FELONY
490.20	Making a terroristic threat	D FELONY
490.25	Crime of terrorism	Various felonies
490.30	Hindering prosecution of terrorism in the second degree.	C FELONY
490.35	Hindering prosecution of terrorism in the first degree.	B FELONY
490.37	Criminal possession of a chemical weapon or biological weapon in the third degree.	C FELONY
490.40	Criminal possession of a chemical weapon or biological weapon in the second degree.	B FELONY
490.45	Criminal possession of a chemical weapon or biological weapon in the first degree.	A-I FELONY
490.47	Criminal use of a chemical weapon or biological weapon in third degree.	B FELONY
490.50	Criminal use of a chemical weapon or biological weapon in second degree.	A-II FELONY

490.55	Criminal use of a chemical weapon or biological weapon in first degree.	A-I FELONY
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**VEHICLE AND TRAFFIC LAW FELONIES INVOLVING PERSONAL INJURY**

<b>VTL SECTION</b>	<b>OFFENSE TITLE</b>	<b>SEVERITY</b>
	<b>INCLUDED</b>	
600 (any felony included)	Leaving scene of an incident without reporting	D or E FELONY
	Any such violation (of 600(2)(a), personal injury) committed by a person after such person has previously been convicted of such a violation	D or E FELONY

**Attempt, conspiracy, solicitation**

A felony attempt, felony conspiracy, or felony criminal solicitation to commit any crime specified, other than the Vehicle and Traffic Law offenses and hate crime, or a felony criminal facilitation of such specified crime.