

Connecticut first state to set rules for holding undocumented immigrants for ICE

Tuesday, March 27, 2012

By Mary E. O'Leary, Topics Editor
moleary@nhregister.com / Twitter: [@nhrmoleary](https://twitter.com/nhrmoleary)

HARTFORD — Connecticut has adopted a set of protocols for dealing with requests from Immigration and Customs Enforcement that will determine whether or not undocumented immigrants will be held for the agency to pick up.

It apparently is the first state to do so, according to Michael Lawlor, Gov. Dannel P. Malloy's point person on criminal justice issues, although other counties in the country and New York City have done this.

The administrative rules were signed Friday by Department of Correction Commissioner Leo Arnone, according to documents obtained by the Register.

The Department of Homeland Security is rolling out a controversial program called Secure Communities, under which ICE can issue a "detainer" to correction facilities asking that they hold an inmate for 48 hours to allow ICE to take them into custody.

Under Secure Communities, the FBI automatically shares arrest data with ICE.

Critics, including Homeland Security's own task force charged with studying the program, have said it ensnares many low-level offenders or non-offenders, rather than the dangerous felons or habitual violators of immigration rules it was intended to reach.

The governors of Illinois, Massachusetts and New York have stated their opposition to Secure Communities as harming the relationship between immigrants and local police departments. New Haven Police Chief Dean Esserman is among city police chiefs who oppose it.

Secure Communities had already been in force in Fairfield County under former Gov. M. Jodi Rell, but only recently expanded to the rest of Connecticut.

Lawlor said officers are now being trained in the new protocol, which will be effective April 16.

In the meantime, he said ICE has sent detainer requests for less than 10 inmates in each of the last three weeks, which have been honored.

The detainer kicks in once an inmate's case has been adjudicated or he or she posts bail. Lawlor did not know if those who were detained were taken into custody.

The protocol is a long checklist that officers will have to go through to determine how to proceed.

Basically, it looks to see if ICE has started removal proceedings, issued a warrant for an undocumented immigrant or whether there already is an outstanding deportation order in place.

It would look for any criminal warrants, whether the individual has gang connections, is on a terrorist list or has ever been convicted of a felony, among other things.

Anyone meeting such criteria would be held for ICE.

The Worker and Immigration Rights Advocacy Clinic at the Yale Law School recently filed a federal class-action suit challenging the use of detainers by ICE and asked that its case be expedited.

The suit charges that holding someone as a result of the detainer request is unconstitutional and unauthorized by Congress.

It also said it is illegal to hold a person without charging them for more than 48 hours. ICE does not pick up inmates on holidays or weekends, so the detainer could go longer than two days.

Lawlor said the state wanted to put standards in place for correction officers to follow. If an inmate does not meet any of the criteria, he will not be held, Lawlor said.

“There has to be some objective basis to hold them,” Lawlor said.

He conceded that detaining someone longer than 48 hours is an open legal question, but until it is resolved, the state will honor the detainer request, when appropriate, excluding holidays and weekends.

Lawlor Tuesday said they had received 7 detainer requests for inmates. One was being held in lieu of \$250,000 bail, charged with risk of injury to a minor; another was charged with several misdemeanors.

Once the charges have been dealt with, conceivably one inmate might be held and the other released, Lawlor said.

He said the state will monitor the situation and see what pattern emerges.

The state official said they don't want local police to be equated with immigration agents in the eyes of the community, which could interfere with neighborhood cooperation in criminal investigations.

Lawlor said he hoped ICE concentrates on the serious offenders as it has been charged with doing.

He said ICE officials have been notified of the new protocols. The agency did not respond to a request for comment.

Travis Silva, a Yale Law School intern, was happy that the Department of Correction was looking to narrow those it will detain. He said that the protocols however, don't address the constitutional issues that they have raised in their suit.

The suit states an immigration detainer is not a warrant based on sworn evidence and reviewed by a judge or a probable cause hearing.

Silva also said it was unclear who fits into the various categories on the DOC lists

One criterion is whether an inmate was found guilty of a felony in another state. He said older penal codes in other states are much harsher and don't necessarily mean the inmate is a dangerous person.

"Cheating at gambling in a casino is a felony," he said.

He pointed out that non-citizens picked up by ICE are not all undocumented and could be here legally with permanent residence status.

In Fairfield County, according to ICE's records, more than 70 percent of those deported under Secure Communities had no criminal record or had a misdemeanor conviction.

The Board of Aldermen in New Haven has asked that Connecticut not participate in Secure Communities, and advocates recently rallied in Hartford on the issue with the same request.

The Yale law clinic suit claims the state Department of Correction has been honoring detainers, even when the individual is charged with a traffic offense.

Secure Communities, instituted in 2008, was promoted to the states as rounding up the "worst of the worst" and national security risks.

Some counties have stopped cooperating when it went beyond this and their costs were not reimbursed.

<http://nhregister.com/articles/2012/03/27/news/doc4f727619070ce218682048.txt>