

SUBJECT: Immigration/Residency Status

PURPOSE:

The ___ Judicial District Probation Department (“Probation”) provides supervision to offenders sentenced to probation irrespective of the offender’s citizenship. This policy is inapplicable to JD cases.

POLICY:

1. Request for information regarding Offenders Immigration Status from Immigration and Customs Enforcement (ICE), Department of Homeland Security

- a. Pursuant to 8 U.S.C. § 1373, a probation department may not prevent ICE from sending or requesting information regarding an offender’s citizenship or immigration status
 - i. Pursuant to federal law, if a request is received from ICE requesting the citizenship or immigration status of an offender, aged 18 years or older, a probation officer shall only provide the following information in response to such a request:
 1. County of citizenship; and
 2. Current immigration status in the U.S.
- b. A probation department shall not disclose any information to ICE unless ICE specifically requests said offender’s citizenship and immigration status.
- c. The sharing of information with ICE, other than an offender’s citizenship and immigration status, is prohibited.

2. Pre-sentence Investigations

- a. If an offender aged 18 years or older informs Probation that he or she was born in a country other than the United States or its territories during a pre-sentence investigation, the PSI writer shall follow the procedures set forth in section 1(a) of this policy.
- b. If a PSI writer receives information from ICE regarding an offender’s residency status, that information shall be included in the PSI. For example, “According to ICE records, a detainer has been placed on the defendant at the county jail.”
- c. If the PSI writer makes a sentence recommendation in the PSI, recommendations for all identified undocumented immigrant offenders shall read as follows: “The defendant is eligible for probation supervision should the Court so order, pursuant to C.R.S. § 18-1.3-204. However, based on the defendant’s immigration status, further inquiry by the Court is necessary prior to imposing probationary conditions.”

3. Procedures Related to Offenders Subject to Deportation

- a. Verification of Deportation Status

- i. If a probation officer has reason to believe an offender under probation supervision has been deported, the probation officer shall attempt to confirm an offender's location and immigration status utilizing NCIC.
 - ii. In the event that deportation information is unavailable in NCIC, the probation officer may attempt to confirm an offender's location and immigration through other means as authorized by department policy.
 - b. Filing of a Complaint and Warrant when Deportation is Verified
 - i. Probation officers shall file a complaint and ask the Court to terminate probation as unsuccessful if the offender fails to report to probation and deportation has been verified.
 - ii. Probation officers shall file a complaint and request a warrant when an offender fails to report to probation, deportation has not been verified, and there has been no contact from the offender for at least 30 days.
 - 1. Probation officers shall close the case utilizing the "DEPO" code in the Eclipse event screen upon verification that a warrant for the offender has been issued.
 - iii. Probation officers shall not file a complaint and request a warrant when it has been verified that an offender is in ICE custody and unable to comply with the terms of probation due to said detention.
 - iv. Complaints for revocation filed pursuant to this section shall be in narrative format and include the following:
"The defendant was deported on _____ and is not appropriate for community supervision due to his/her removal from the U.S. by ICE."

4. Requests for Offender Status or Data

- a. Requests for offender information made by ICE shall be addressed in accordance with the Colorado Criminal Justice Records Act and Colorado Supreme Court Chief Justice Directive 05-01.