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**To: Cindy Domingo, Chief of Staff to CM Larry Gossett**  
**From: Ann Benson, Directing Attorney, WDA's Immigration Project**  
**Eileen Farley, Division Director, King County Public Defenders**  
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**Re: Criminal Court Custody Determinations and the Impact of ICE Detainers**

The following provides a brief overview of how custody and release determinations happen in criminal court for a person booked into the King County Jail and how the presence of an ICE detainer-request interfaces with and impacts this process. This analysis is limited to noncapital cases. In Superior Court the custody/release process is governed by court rules CrR 3.2 and 3.21. In Municipal Court this process is governed by court rules 3.2 and 3.2.1.

### **Criminal Court Proceedings:**

- Upon booking into the King County Jail, the person must be brought before the court within 48 hours for to determine whether there is probable cause to charge him/her with a crime.
- Where the court determines that there is no probable cause based upon the evidence, the person must be released without conditions.
- Where the court determines that there is probable cause, there is a presumption that the person shall be released on her/his own recognizance unless one of the following circumstances is present:
  - Not reasonably likely to appear for future court dates: If, upon review of relevant factors, the court determines that the person is not reasonably likely to appear for future hearings, the court may then impose the *least restrictive* conditions to ensure the person's appearance, including a monetary bond amount.
  - Substantial danger to the community or likely to interfere with the proceedings: The court must review each case, based upon criteria set forth in the court rules to determine whether the person is a danger to the community or poses a risk of interference with the judicial proceedings. The court may then impose a host of conditions in order for the person to be released, including regular reporting and supervision by law enforcement and the posting of a monetary bond amount.
- After the initial determination, the person's conditions of release may be reconsidered at future hearings based upon a motion of either party.

- Other than in capital cases, no person may be held in King County Jail without imposing conditions upon which he/she can be released (even if the person cannot meet them, e.g., cannot secure the bond amount).

### The Impact of ICE Detainer-Requests Upon Release Procedures

- **What an ICE Detainer-Request Is and Is Not:** It is a request to the local jurisdiction to notify ICE when they are releasing an identified individual from local custody. Compliance is not mandated under federal law and local jurisdictions have the authority to determine under what, if any circumstances, they will honor the request. The request is not an indication of a person's immigration status; nor is it an indication of whether s/he will, in fact, be removed (deported).
- **Filing of the ICE Detainer-Request:** ICE has access to the booking data base information for all persons booked into King County jail. Although King County ordinance 16692 prohibits county employees from inquiring about immigration status, booking information they request includes "place of birth." Under immigration law, a person's birth outside the U.S. triggers a "presumption of alienage," meaning that person is presumed not to be a U.S. citizen. Either through information from the data base or subsequent interviews of the detained person (almost always without counsel<sup>1</sup>), ICE determines whether to file an ICE detainer-request with the jail. Detainer requests are often filed within 48 hours of the booking (prior to the initial court appearance regarding custody/release).
- **Triggering the ICE Detainer-Request:** This occurs upon the person's release from jail, either because the court has ordered release on recognizance, the person posts the bond amount, charges are dismissed or the person is convicted and has served his/her sentence. Once the detainer-request is triggered for any of these reasons, the jail notifies ICE of the person's impending release per the ICE detainer-request. Federal regulations (8 C.F.R. 287.7) authorize the jail to maintain continued custody for an additional period beyond release for up to 48 hours (excluding weekends and holidays) for ICE to assume custody of the person.
- **Impact on Criminal Court Release Determinations:** In the majority of cases, an ICE detainer will be filed by the time of the person's initial custody/probable cause hearing. The court has access to the jail data base (which indicates when an ICE detainer-request has been filed), as do both the state and defense counsel. Because they are aware that persons with ICE detainers will be transferred to the immigration detention center in Tacoma, and not brought back for future hearings, many judges impose significantly higher monetary bond amounts in these cases solely to prevent the person's release from custody, so that the criminal proceedings will be completed before the detained person is transferred to ICE detention. Persons in this situation also often do not post bond because they know that it will be forfeited when they are transferred to ICE and fail to appear for future hearings. Consequently, as found in the March 2013 report from the University of Washington, *Immigration Detainer Requests in King County Washington: Costs & Consequences*, noncitizens with ICE detainer-requests spend significantly longer periods in the King County jail than U.S. citizens.

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<sup>1</sup> Individuals have a Constitutional right to remain silent during ICE questioning and the right to legal representation. However, ICE is not obligated to and does not inform individuals of these rights. There is no right to appointed counsel in removal proceedings or during other ICE enforcement actions.