I. PURPOSE

Local police agencies depend on the cooperation of immigrants in solving all types of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many individuals with undocumented family members also include legal immigrants, this would drive a potential wedge between police and large portions of the legal immigrant community as well.

II. POLICY

Local police are not charged with the enforcement of federal immigration laws. The federal government and its agencies are the authorities responsible for enforcement of the immigration law. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (I.N.A.) which regulate a person’s entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration.

A. Criminal versus Civil Violations

1. Immigration laws differ from the criminal laws local police officers deal with most regularly in that immigration laws contain both civil and criminal aspects.

2. Immigration law is extremely complex, and is constantly changing. There are criminal and civil violations of immigration law. Civil violations include, for example, illegal presence and failure to depart after the expiration of a temporary visa. Criminal violations include illegal entry, re-entry after deportation, and failure to depart after an order of removal. To make matters more complicated, those in this last category are committing a criminal offense only if the government can show that they “willfully” failed to depart; but most removal orders are entered in absentia. If failure to depart is
not “willful” (if, for example, the person was not aware that there was a removal order entered against them), the offense is a civil violation.

3. State and local police have no authority to arrest and detain a person for a civil violation. There are federal agencies specifically charged with the enforcement and application of the complex immigration laws and regulations. These agents do not handle street disorder, robberies, murders, traffic problems, and a host of other issues facing state and local officers. These federal agencies are designed and their agents are specifically trained, to enforce these immigration laws.

III. PROCEDURE

A. Limitations on Arrest without a Warrant

1. Local police agencies must comply with the laws of their own municipalities and states as well as the policies imposed by the police agency. State laws may not authorize local police to detain persons for immigration violations and this is recognized by the federal agencies as shown by the language of some of the civil detention notices currently being placed on the NCIC system.

2. The NCIC alerts to detain include the qualifiers “if permitted by state and local law” and “If permitted in your jurisdiction.” Federal immigration officers do not face such restrictions, because the federal immigration laws allow them to detain and interrogate a person as to their right to be, or remain, in the United States without a warrant.

3. New Brunswick Police Department policy mandates that employees of this department will not detain persons pursuant to an ICE Detainer (DHS I-247 http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf) in situations other than those arising from incidents mandated by the New Jersey Attorney General’s Directive 2007-03 http://www.nj.gov/oag/newsreleases07/ag-le-directive-2007-3.pdf and no departmental resources will be expended to comply with these detainers in situations other than those arising from an inquiry mandated in the aforementioned NJAG directive.

B. Possible Effects on Immigrant Cooperation

1. Immigrant enforcement by state and local police would have an adverse effect in community/police relations. It is the intention of the New Brunswick Police Department to maintain positive relations with all members of the New Brunswick Community by providing fair, compassionate and unbiased police service to all community members regardless of the community members’ immigration status.

C. NCIC/SCIC HITS

1. Officers shall not arrest or otherwise detain persons who are entered in the NCIC/SCIC system by U.S. Immigration and Customs Enforcement (I.C.E.) unless the entry is for an actual criminal arrest warrant and only after the hit confirmation process has been completed. An NCIC/SCIC immigration status warning hit is not an arrest warrant and as such, officers have no authority to detain or arrest on the basis of an immigration status warning.
2. Officers shall not engage in racial profiling with regard to any enforcement action as stated in the New Brunswick Police Department’s policy on racially influenced policing.

D. Detainer Vs. Warrant

1. It is important for officers to discern between an I.C.E Detainer (DHS I-247) and an arrest warrant.
   
a. DHS I-247 Detainer

   Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer Notice of Action, to any Federal, State or Local law enforcement agency. A detainer serves to advise another law enforcement agency that I.C.E. seeks custody of the individual in the custody of that agency for the purpose of further investigation on for actual removal of that person. A detainer is a request from I.C.E. and not a court issued order.

b. Arrest Warrant

   An arrest warrant is a legal order issued by a court that directs all sworn law enforcement officers to deliver a specific individual by means of arrest before the appropriate court. Police Officers have no discretion in deciding whether to arrest said individual and must take the named person into custody on a valid arrest warrant.

E. Assistance to Federal Immigration Authorities

1. The New Brunswick Police Department shall provide the appropriate level of assistance to federal authorities when requested.

2. When any Officer/Detective or Dispatcher receives a request from I.C.E. for police assistance, the Watch Commander, shall be notified and fully informed of the circumstances.

3. The Watch Commander shall review the request and direct the proper police assistance as needed. Only when requested by I.C.E. for tactical and safety reasons, Officers/Detectives will be assigned to accompany the federal agents to the location of the enforcement activity, but shall not take an active role in the immigration enforcement action.

4. When assistance is requested by I.C.E., the Watch Commander shall ensure that an Investigation Report as well as a New Brunswick Police Department Immigration Customs Enforcement Contact Form are forwarded to the Operations Division Commander. Paperwork submitted shall include, at a minimum, the location and target of the I.C.E. action, the names of the I.C.E. Agent(s), and their agency/office phone number.
5. Officers will provide assistance in the form of information, referrals and any other basic need or social service a resident may require as a result of the action.

6. Requests for information from the public or press shall be directed to the New Brunswick Police Department Public Information Officer.

7. This directive shall be reviewed by the Police Director, or his designee, as needed, for updating purposes.

8. Any Officer/Detective or Dispatcher, who receives a notification from I.C.E. of any activity being conducted in the City Of New Brunswick, shall ensure the Watch Commander is notified. The Watch Commander will then complete a New Brunswick Police Department Immigration Enforcement Contact Form and forward it to the Operations Division Commander.

9. Any information collected in relation to this policy shall be forwarded to the Operations Division Commander, Captain Michael Bobadilla, for oversight, review, and file.

10. The Watch Commander shall complete a New Brunswick Police Department Immigration Customs Enforcement Contact Form at the completion of their shift as part of their daily-required paperwork. This form must be completed whether or not there were any notifications to or from I.C.E., or any requests for New Brunswick Police assistance from I.C.E. were received. The Watch Commander shall check the box labelled N/A on the New Brunswick Police Department Immigration Customs Contact Form if there were no interactions with I.C.E. during the shift. The completed New Brunswick Police Department Immigration Customs Contact Form shall be forwarded to the Operations Division Commander, Captain Michael Bobadilla.