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ICE & DETAINER CLARIFICATION

§19.2-81.6 gives law enforcement officers the authority to arrest illegal aliens. Upon arrest of such an individual the officer is required to take the individual before a magistrate or other issuing authority having jurisdiction, pursuant to §19.2-82. If a warrant is issued under §19.2-81.6, it shall expire within 72 hours, or when the individual is taken into custody by ICE, whichever occurs first. Once the magistrate commits this person to jail, they should be booked into LIDS as Reason Confined-10 and an offense code of ARR998859 (authority to arrest illegal aliens). This inmate will have a payable status at this time because the state warrant requires the jail to hold him/her. ICE has 72 hours from the date and time of the warrant to take this individual into custody, or to enter into a contract with the jail to hold him as their inmate. Otherwise the jail is required to release him once the 72 hrs has passed, as long as he has no local/ state charges.

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STATE RESPONSIBLE DEFINITION

In the March Gazette there was an article explaining the changes in jail per diem rates as well as the change in the definition of a State Responsible inmate. These updates were published as a result of 2010 General Assembly Action. However, during the reconvened session of the General Assembly, held on April 21st, the legislature approved an amendment by the Governor to strike this change in definition. Therefore, a State Responsible inmate continues to be defined as, any person convicted of one or more felony offenses and (a) the sum of consecutive effective sentences for felonies, committed on or after January 1, 1995, (Offense Type 'A'), is (i) more than twelve months or (ii) one year or more, or (b) the sum of consecutive effective sentences for felonies, committed before January 1, 1995, (Offense Type 'B') is more than two years.

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Not all illegal aliens are held as a result of the Illegal Alien Warrant. A more common occurrence is for an inmate to be committed to jail on local/state charges, an Illegal Alien Query (IAQ) is submitted, and ICE decides to issue a detainer. An ICE detainer has two primary purposes. The first is to require a jail to hold someone for 48 hours who would otherwise be released, so that ICE may take them into custody. The second is to ensure that for any inmate currently serving a local/state sentence, the jail be required to notify ICE of the inmate's release date, so that they may take him into custody prior to release. All procedures outlined herein assume that the inmate has no local/state sentence to serve and is being held solely on the ICE detainer.

It is important to remember that the issuance of a detainer does not mean that this person has become a federal inmate. Once an ICE detainer is placed on an inmate the offense code ARR9988S9 (authority to arrest illegal aliens) should be added to their confinement. ICE has 48 hours from the date the detainer was issued, (excluding Saturdays, Sundays, and federal holidays) to assume custody. During this 48 hours the inmate may be held as Reason Confine 10 (RC10), pursuant to Federal Regulation 8 CFR 287.7 Title 8. If ICE has not taken the inmate into custody before the 48 hour expiration the jail is required to release him as long as he has no local/state charges.

Once the detainer has expired, if the jail continues to hold the inmate, they should be released in LIDS with Reason Release 23, and rebooked with Reason Confine 73, as the expiration of the ICE detainer releases the state from any obligation to hold him. At this point the Compensation Board will begin to take a federal overhead recovery amount. This daily recovery amount is different for each jail and may be identified in the most recent Jail Cost Report. Alexandria City Jail, Central Virginia Regional Jail, and Northern Neck Regional Jail are exempt from federal overhead recovery. If ICE issues a detainer but is unable to take custody of the inmate prior to the expiration of the detainer the jail may choose to enter into a contract with ICE to hold the individual as an ICE inmate. It would be wise for the jail to negotiate a payable ICE per diem that is at least as much as the Compensation Board federal overhead recovery amount. Please remember, if the jail continues to hold this inmate after the expiration of the detainer, the Compensation Board will take the federal overhead recovery, whether or not the jail has entered into a contract with ICE. The decision whether or not to hold a federal inmate is at the discretion of the Sheriff/Superintendent.

It is important to remember that the time an inmate is allowed to be confined as RC 10 is determined by whether the inmate is held on an Illegal Alien Warrant or an ICE Detainer. A Illegal Alien Warrant allows the jail 72 hours, a detainer allows the jail 48 hours. If the jail has an ICE Detainer and would like that extra day of holding the inmate as RC10 they may go to the magistrate for the warrant if the inmate has previously been convicted of a felony in the United States. A confinement of RC10 for more than 48 hours when an inmate is being held solely on an ICE Detainer, not the Illegal Alien Warrant, will be an audit finding.

Please note that the 72-Hr Rule applies to illegal aliens committed to LIDS as a result of the issuance of a state warrant pursuant to §19.2-81.6. The 48-Hr Rule applies to illegal aliens detained by ICE. These rules do not apply to all inmates detained by a federal agency. With the exception of ICE, there is no state or federal law that requires a jail to hold an inmate solely on a detainer. If an inmate has served their sentence, a non-ICE federal detainer is not sufficient authority to hold him. For example, if a jail is holding an inmate on local charges who also happens to have a detainer placed on him by the US Marshals, and the jail advises the Marshals of the inmate's release date, once he reaches that release date the jail is not lawfully obligated to continue holding him.

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The decision whether or not to continue holding an inmate on a federal detainer once all time has been served is the responsibility of the Sheriff/Superintendent. If a Sheriff/Superintendent does hold an inmate on nothing more than a detainer from any non-ICE federal agency, or if they enter into an agreement with the agency to hold the inmate as federally responsible, they must book the inmate out with Reason Release 23 and rebook with Reason Confine 73. At this point the Compensation Board will begin to take a federal overhead recovery on all jails with the exception of those previously mentioned. To recover this money the Sheriff/Superintendent should bill the detaining federal agency. Non-payment from the detaining federal agency does not excuse the jail from the state's federal overhead recovery, as holding this inmate simply on a detainer was done at the Sheriff/Superintendent's discretion. The best way to avoid this kind of situation is to be sure to notify the detaining federal agency as soon as possible of an inmate's projected release date. Additionally, it may be in the Sheriff/Superintendent's best interest to notify the federal agency that they will release the inmate in question unless the agency remits an acknowledgement to the jail that they will assume responsibility for said inmate, considering him a federal inmate from that day forward.

Please remember, as stated previously, the procedures outlined here assume that the illegal alien or federal detainee has no local/state sentence to serve or any other impediment to their release besides the issues discussed in this article. If an inmate with an ICE/Federal detainer has pending local/state charges or is serving a local/state sentence they should be confined with the Reason Confine code appropriate for those charges. If you are unsure as to how an inmate should be confined in LIDS please do not hesitate to contact Kari Bullock or Anne Wilmoth for clarification.

MENTAL HEALTH SURVEY

The Virginia General Assembly requires the Compensation Board to submit a Mental Illness in Jails report every year by November 1st. Information and statistics included in the report will be used in determining the volume of mentally ill inmates in jail as well as funding and program needs for those diagnosed with mental illness and substance abuse disorders. The primary data source for the Mental Illness in Jails report is the annual Jail Mental Health Survey, therefore accurate completion of this survey is key.

A pdf version of the mental health survey was posted to the Compensation Board website on June 1st. Please print this survey and distribute to all staff who may be required to provide data. Survey data collected for this year will be for the month of July 2010 and fiscal year 2010. Please take time to review the survey to identify any requests for information that your jail does not collect regularly so that you may be sure to collect this information during the month of July.

The live 2010 Jail Mental Health Survey will be posted to the Compensation Board website on August 2nd. Questions 1-4 will be blocked, to later be filled by Compensation Board staff. Question 10, which requires that you cross reference diagnosis with most serious offense, will also be blocked until all LIDS certifications have been received and forecasting data has been run. Once forecasting numbers have been run, a report will be provided to assist in answering Question 10, and the question will be unblocked.

Due to the fact that information for Questions 1-4 and Question 10 cannot be provided until all July LIDS certifications have been completed, we ask that you certify no later than August 9th. The survey is now due by August 20th.

LIDS Training

The following are upcoming LIDS Trainings sessions. If you are aware of any staff training needs please register these individuals for one of the below listed trainings.

July 15th-Basic Training (Online Users)

August 19th- Basic Training (Batch Users)

September 16th- Basic Training (Audit Prep)

All training sessions will be held at the Hanover County Sheriff's Office from 9a.m. to 3:30 p.m. To register for training please call or email Kari Bullock at 804-371-4299 or kari.bullock@scb.virginia.gov



The Compensation Board would like to thank the LIDS Advisory Committee members, as well as all speakers and attendees for making this year's LIDS Conference a success. In addition we would also like to thank Lt. Diane Wilson from Rappahannock Regional Jail for recommending our venue, the Marriott Richmond-West. We hope you enjoyed this year's conference and looking forward to seeing you next time, in 2012.

Updates & Reminders

- ◆ Updated Virginia Crime Codes may be downloaded from the Compensation Board website . Access the 'LIDS' page, then click on the VCC link.
- ◆ A full list of printable Virginia Crime Codes, including retired codes, may be downloaded from the website of the Virginia Criminal Sentencing Commission by accessing the following link http://www.vcsc.virginia.gov/codes_qbe.html and download the 2009 Research Edition of the Virginia Crime Code.
- ◆ Local work release inmates should be coded in LIDS as RC-26. State Responsible work release inmates may be coded as RC-26 OR 28. An inmate that would've been previously coded as a Jail Contract Bed, RC-27, may be still confined with RC-27 or RC-20. The only reason to confine them as RC-27 would be to enable the jail to track this population. Please remember that even if you confine these inmates as RC-27 they will not appear on a JCB report, as inmates must be posted as JCB's by Compensation Board personnel for them to appear on the JCB Report.
- ◆ The updated Inquiry, Financial Management, and Reconciliation Tools sections of the LIDS Users Guide have been posted to the Compensation Board website.