



Oregon State Sheriffs' Association

Conservators of the Peace

Toll Free In Oregon (800) 624-4405

Salem (503) 364-4204

Fax (503) 364 -2059

January 27, 2017

Legal Analysis: President's Executive Order of January 25, 2017.

Many Oregon residents are asking their local Sheriff how President Trump's January 25, 2017 Executive Order on Immigration will change local practices. The Oregon State Sheriffs' Association provides the following analysis of this complex issue.

The answer, at least in the short term, is that immediate changes to police practices are unlikely. All Oregon police agencies are prohibited by state statute, ORS 181A.820, from spending public dollars, resources or personnel to locate or arrest a person whose **only** violation of law is that they are in the country in violation of federal immigration law. That statute has been in place since 1987, and unless the Oregon legislature changes it, that law will continue to prohibit Oregon police officers from acting as immigration enforcement officers. The county or city governing body may enact local ordinances that further restrict police officers in that jurisdiction from cooperating with ICE or otherwise assisting in immigration enforcement. The executive order signed by the President does not directly affect Oregon law enforcement officers - it is binding only upon federal agencies.

If a person is illegally in the country, and commits another violation of law, Oregon police officers are specifically allowed by Oregon law to cooperate by exchanging information with Immigration and Customs Enforcement (ICE), and Oregon jails do so routinely. We believe Oregon jails are fully compliant with federal law requiring local cooperation in accordance with 8 USC 1373.

Oregon jails do not honor requests by ICE to detain persons past their local release date, because doing so is a violation of the person's rights and subjects the jail to serious civil liability. [See link to court case below.](#) Oregon jails will hold a person for ICE if presented with a warrant signed by a federal magistrate. In light of ORS 181A.820, and the fact that the federal court has made it clear that Oregon jails do not honor ICE detainer requests in keeping with the binding federal district court decision, Oregon could be considered a "sanctuary state" under the policies of the Trump administration, and the state may be threatened with loss of federal grant funding. At this time the "sanctuary" definition is unclear. Cities or counties that have declared themselves "sanctuary cities" may also face threats of loss of federal grant funds. There will undoubtedly be legal challenges if the federal government actually does take away federal grant funds for sanctuary states, counties or cities, but there is some legal authority for them to do so.

There are still many unknowns in terms of future federal immigration enforcement policy. Congress could make changes in the federal law, the Oregon legislature could modify state statute, and a city or county could reconsider their level of cooperation with federal immigration authorities. Federal courts will almost certainly weigh in on these issues at some point. Oregon Sheriffs will continue to keep the lines of communication open with federal officials and state partners as this issue unfolds.

For the time being, Oregon Sheriffs are bound to follow state law, which currently only allows exchange of information with ICE when a foreign-born person is arrested. Oregon Sheriffs are also required to follow local ordinances enacted by their county governing bodies. Each Sheriff in Oregon is elected by the people and stands ready to answer law enforcement questions you may have about your county.

Executive Order on Immigration

<https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>

ORS 181A.820

<https://www.oregonlaws.org/ors/181A.820>

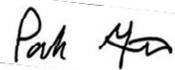
Oregon court case finding 4th Amendment Violation for honoring ICE detainer request

<http://crimmigration.com/2014/04/17/oregon-federal-court-detainer-led-to-fourth-amendment-violation/>

8 U.S. Code 1373

<https://www.law.cornell.edu/uscode/text/8/1373>

Sincerely,



Pat Garrett
Sheriff, Washington County
President, Oregon State Sheriffs' Association