

# FLORENCE POLICE DEPARTMENT

## GENERAL ORDER

<b>Subject:</b> <b>ALABAMA IMMIGRATION LAW</b>	<b>Procedure:</b> General Order 19.6.1 CALEA	<b>Total Pages:</b> 7
<b>Authorizing Signature:</b>  Original with Authorizing Signature on File	<b>Effective:</b> 12/20/2011 <input checked="" type="checkbox"/> <b>New</b> <input type="checkbox"/> <b>Amended</b> <input type="checkbox"/> <b>Rescinds</b>	

**I. POLICY**

It is the policy of the Florence Police Department to fairly and equitably enforce the provisions of the Code of Alabama (1975) Sections 31-13-1 through 31-13-29, and Section 32-6-9 without regard to an individual's race, color, or national origin.

**II. PURPOSE**

This written order establishes guidelines for agency personnel for enforcement of the Beason – Hammon Alabama Immigration and Citizen Protection Act as codified in the Code of Alabama (1975) Sections 31-13-1 through 31-13-29, and Section 32-6-9.

**III. SCOPE**

This written order is applicable to all personnel.

**IV. RESPONSIBILITY**

All affected personnel will comply with this directive.

**V. DEFINITIONS:** The following definitions will serve as guidance for all personnel when applying the circumstances covered by this legislation.

- A. **ALIEN:** Any person who is not a citizen or national of the United States, as described in 8 USC Section 1101, et seq., and any amendments thereto.
  - 1. **NON-IMMIGRANT ALIEN:** An alien in possession of a valid nonimmigrant visa, issued by the United States Department of State. Such non-immigrants are admitted to the United States for a specified temporary period of time and include but are not limited to visitors for pleasure and/or business, temporary workers, crewman, and a variety of other specific visa required circumstances.
  - 2. **IMMIGRANT ALIEN:** An alien lawfully admitted for permanent residence. Lawfully admitted aliens for permanent residence are authorized for employment and may naturalize as United States Citizens after completing naturalization requirements.
  - 3. **UNDOCUMENTED ALIEN:** An alien within the boundaries of

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the United States who has not been admitted or paroled by authorized U.S. Government officials.

- B. **LAWFUL CONTACT:** Contact by an officer with any person who is the **suspect of a crime, a traffic violator, or other like investigation into criminal activity.** *(The contact may not involve the victim of criminal activity, the child of the victim of a criminal act, a critical witness in any prosecution, or the child of any critical witness in a criminal prosecution, as the proceedings under this law are prohibited under these specific circumstances by Section 31-13-20 until all of the related legal proceedings are concluded.)*
- C. **REASONABLE SUSPICION:** Reasonable suspicion is a legal standard of proof in United States law that is less than probable cause, the legal standard for arrests and warrants, but more than an “inchoate and un-particularized suspicion or hunch.” Under Section 31-13-12 examples of circumstances giving rise to reasonable suspicion may include, but are not limited to, the following:
1. Lack of ID;
  2. Possession of a foreign ID;
  3. Flight or preparing for flight from custody;
  4. Voluntary statements (admissions that they are “un-documented;”
  5. Attempt of vehicle occupants to hide;
  6. Prior knowledge of immigration status;
  7. Inability to provide their address;
  8. Providing inconsistent information;
  9. Claiming not to know the other vehicle occupants.
- D. **“WHEN PRACTICABLE”:** The Alabama Peace Officer’s Standards and Training Commission has promulgated the definition of “when practicable” as it applies to enforcement of this act. Officers may use their discretion under the following conditions during the detention of a suspect to limit the time the investigatory stop. Specific considerations of “when practicable” include:
1. There may be times when it is not “practical, safe or in the best interest of your investigation” to make the inquiry into the immigration status of a suspect.
  2. Issues that may be considered by an Officer include: call volume, availability of back-up, location, emergency conditions, the ability to communicate with ICE, or other exigent circumstances.
- E. **“LAWFUL PRESENCE” OR “LAWFULLY PRESENT”:** **A person shall be regarded as an alien unlawfully present in the United States**

**only if the person's unlawful immigration status has been verified by the federal government pursuant to 8 USC Section 1373 (c). No officer of this state or any political subdivision of this state shall attempt to independently make a final determination of an alien's immigration status.**

An alien possessing self-identification in any of the following forms is entitled to the presumption that he or she is an alien *lawfully present in the United States*:

1. A valid, unexpired Alabama driver's license;
2. A valid, unexpired Alabama non-driver identification card;
3. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier (fingerprint, etc);
4. Any valid United States, federal or state, government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance;
5. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.
6. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W Form by the United States Department of Homeland Security indicating the bearer's admission to the United States.

**VI. PROCEDURES:** The following procedures will be utilized by Florence Police Personnel when enforcing the provisions of this Act. There are three main categories of circumstances under which this act will be in effect. The procedures outlined in each category are listed below:

- A. If a person is under arrest for a lawful charge not related to their citizenship or immigration status, **and** there is reasonable suspicion that the person is an undocumented alien:
  1. The person will be booked into the Lauderdale County Detention Center pursuant to standard booking procedures and **the booking officer will be advised** that reasonable suspicion exists that the person arrested is an undocumented alien.
  2. The arresting officer will document their reasonable suspicion in their required paperwork. Included in the documentation, the arresting officer will note the name of the booking officer that was notified.
  3. It will be the responsibility of the Lauderdale County Detention

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Center to contact and notify federal Immigrations and Customs Enforcement (ICE) personnel in order to ascertain the legal status of the individual.

4. When a positive query response is received from ICE prior to the jail releasing the subject, all subsequent actions will be handled by the Lauderdale County Detention Center.
- B. If a person is detained without a lawful charge, but reasonable suspicion exists that the person is an undocumented alien:
1. Lawful contact must be established as defined.
  2. Dispatch will be notified by radio of the need to check the legal status of the individual. All relevant information for an adequate NLETS query must be obtained and provided to dispatch. Dispatch will then contact the designated ICE office for verification of immigration status.
  3. Appropriate state forms, either an Incident/Offense report with necessary supplements, and/or any applicable Arrest reports will be completed and submitted.
  4. When practical, the person may be detained for a reasonable amount of time in order to ascertain their citizenship and immigration status. The normal time needed to gather the appropriate information and fill out an Incident report is approximately 25 minutes. If the Officer detains the subject beyond that time, the Incident report must contain specific details explaining the reasons and circumstances that led the Officer to extend the length of the investigative detention. The report must contain the exact time that dispatch was notified, and the time the individual was released, as well as other information describing the circumstances of the detention.
  5. When a positive query is received from ICE by dispatch AFTER the individual was released, Dispatch will notify ICE that a report has been completed and will provide ICE the case number for the incident. The Officer's report will contain a notation that a timely response from ICE was not received and the individual had been released.
- C. If a driver is stopped for a traffic violation and reasonable suspicion exists that the person is an undocumented alien, the following procedures will apply:
1. **CURRENT DL IN POSSESSION:** If the driver has a current driver's license in their possession, enforce traffic law violations as you would with any other driver pursuant to policy.
  2. **DL NOT IN POSSESSION:** If the driver is in violation of Code of Alabama (1975) Section 32-6-9, Possession and Display of

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License, then:

- a. Use traditional procedures (DQ, DQS, Spillman check, etc) to verify the status of the driver's license, and obtain a physical description.
  - 1) If the physical description matches, you may enforce the traffic law violations as you would with any other driver pursuant to policy;
  - 2) If the physical description does not match, or you are otherwise unable to determine the identity of driver and reasonable suspicion exists that the driver is an undocumented alien, transport the driver to the "nearest and most accessible magistrate."
3. **OTHER APPROVED IDENTIFICATION IN POSSESSION:** If the driver is able to produce any document listed below that is approved under Section 29 (K) of HB 56, the Officer will enforce the traffic law violations as would be done with any other driver pursuant to policy. Approved forms of identification are:
  - a. A valid, unexpired Alabama driver's license; or
  - b. A valid, unexpired Alabama non-driver identification card; or
  - c. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier; or
  - d. Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance; or
  - e. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States; or
  - f. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W Form by the United States Department of Homeland Security indicating the bearer's admission to the United States.
4. "NOT ON FILE" OR "FILE NUMBER": If the driver does not have a DL in their possession (32-6-9), nor has any other approved form of identification, the Officer will attempt to use traditional means of determining a driver's status. The Officer will run the

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person through NCIC, Spillman, run a “DQ,” and/or run a “DQS.” If after using these means of verification the individual returns “not on file” or has an Alabama identification number beginning with an “F” (otherwise known as a “file number”), the person will then be transported to the “nearest accessible magistrate.”

5. IF an individual meets the criteria mentioned above and needs to be transported to the “nearest or most accessible magistrate” **AND IT IS AFTER HOURS**, the person will be placed under arrest and transported to the Lauderdale County Detention Center where they will be detained until their legal status is determined. The process of ascertaining legal status is initiated by:
  - a. Establishing that lawful contact was established originally;
  - b. Notifying dispatch by radio of the need to check the legal status of the individual. All relevant information for an adequate NLETS query must be obtained and provided to dispatch. Dispatch will then contact the designated ICE office for verification of immigration status.
  - c. Completing appropriate state forms, either an Incident/Offense report with necessary supplements, and/or any applicable Arrest reports.
  - d. Upon receiving the query response, dispatch will notify both the Officer and the Lauderdale County Detention Center regarding the content of the response. The Officer will include the content of this response in his/her paperwork.

**VII. CIVIL AND/OR CRIMINAL LIABILITY:** Officers must be aware that failure to effectively enforce this law pursuant to Alabama code may place the Florence Police Department and the individual officer in a position of civil liability or criminal liability. All officers must enforce this Act pursuant to applicable provisions contained within the Act (See sections 31-13-5 and 31-13-6).

**VIII. COURT OF JURISDICTION:** Prosecution under this statute will occur through the court system where the initial charges are filed.

**IX. JUVENILE ARRESTS:** If a juvenile is arrested under this code, the following procedures will apply:

- A. The juvenile will be brought to the police department. JPO will be notified.
- B. Dispatch will be notified to contact ICE through NLETS in order for the suspect’s immigration status to be determined.
- C. If ICE returns a positive response prior to the release of the juvenile from custody, JPO will be notified of the positive response from ICE.
- D. If a timely response is not received from ICE, the Officer will work

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closely with JPO in order to determine the most appropriate disposition.

- E. The officer will complete appropriate state forms including and Incident/Offense report and necessary supplements, and any appropriate Arrest Report.
- X. EMPLOYMENT, BUSINESS, OR JOBSITE CHECKS:** This law does not give legal authority for members of the Florence Police Department to initiate or conduct jobsite and/or business checks in order to determine the citizenship/immigration status of an individual. If a citizen contacts the department and requests action of this type, the citizen will be thanked for calling and informed that the current law does not authorized the Florence Police Department to conduct jobsite checks for citizenship/immigration status. The employee will then instruct the citizen to contact the Birmingham ICE office.