

76-9-1003 Detention or arrest -- Determination of immigration status.

- (1)
- (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop, detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1) and the officer is otherwise unable to verify the identity of the person, the officer:
 - (i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the person is arrested for an alleged offense that is a class A misdemeanor or a felony; and
 - (ii) may attempt to verify the immigration status of the person, except as exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except that if the person is arrested and booked for a class B or C misdemeanor, the arresting law enforcement officer or the law enforcement agency booking the person shall attempt to verify the immigration status of the person.
 - (b) In individual cases, the law enforcement officer may forego the verification of immigration status under Subsection (1)(a) if the determination could hinder or obstruct a criminal investigation.
 - (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.
 - (d) Subsection (1)(a) does not apply to a county or municipality when it has only one law enforcement officer on duty and response support from another law enforcement agency is not available.
- (2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the officer makes observations that give the officer reasonable suspicion that the operator or any of the passengers in the vehicle are violating Section 76-5-308, 76-5-310, or 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the extent possible within a reasonable period of time:
- (a) detain the occupants of the vehicle to investigate the suspected violations; and
 - (b) inquire regarding the immigration status of the occupants of the vehicle.
- (3) When a person under Subsection (1) is arrested or booked into a jail, juvenile detention facility, or correctional facility, the arresting officer or the booking officer shall ensure that a request for verification of immigration status of the arrested or booked person is submitted as promptly as is reasonably possible.
- (4) The law enforcement agency that has custody of a person verified to be an illegal alien shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.
- (5) A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Amended by Chapter 196, 2013 General Session