

What Defenders Should Know About the Keep Washington Working (KWW) and Courts Open to All (COTA) Acts

Introduction

In 2019, the Washington State legislature passed the [Keep Washington Working Act](#) (KWW),¹ and in 2020 it passed the [Courts Open to All Act](#) (COTA).² These laws prohibit various forms of collaboration and information sharing by local law enforcement agencies, court staff, and prosecutor's offices with federal immigration authorities. COTA also prohibits federal civil arrests at or near courthouses in Washington State.

This practice advisory summarizes relevant provisions of KWW and COTA and provides suggestions for how defenders might use violations of these laws in individual cases. If you would like to consult with the Immigration Project regarding a specific case, please submit an intake form [here](#).

Keep Washington Working

Except as required by law, as necessary for an ongoing criminal investigation, or pursuant to a court order or judicial warrant, RCW 10.93.160 **prohibits state and local law enforcement agencies³ and jails from:**

1. Collecting, or sharing with federal immigration authorities, information regarding individuals' birthplace and immigration or citizenship status;
2. Notifying immigration authorities that a person is in custody, or of the date and time of a person's release from custody;
3. Providing nonpublic personal information to immigration authorities;⁴
4. Giving immigration authorities access to interview people in custody about civil immigration violations or any noncriminal matters absent written consent;
5. Detaining someone solely to determine immigration or citizenship status;
6. Detaining or holding someone in custody based on a civil immigration warrant or hold request;
7. Denying services, benefits, privileges, or opportunities to individuals in custody, or under community custody, because of the existence of an immigration detainer, hold, notification request, or immigration warrant;⁵
8. Entering into an agreement with the federal government to deputize local law enforcement agents to perform immigration enforcement duties or to detain noncitizens for immigration purposes;
9. Contracting for, or accepting free, language services from immigration authorities.

NOTE: The Department of Corrections (DOC) is exempted from the restrictions on sharing information with ICE for persons in physical custody of DOC. **DOC can and will notify ICE about any noncitizens in the physical custody of DOC.**

¹ KWW, Washington Senate Bill No. 5497 (2019), codified at RCW 10.93.160.

² COTA, Substitute House Bill 2567 (2020), codified at RCW 2.28.300-2.28.330.

³ Including school resource officers. *See* RCW 10.93.160(2), (3).

⁴ Such as dates of birth, government identifiers, addresses, booking/driver's license photos, biometrics, etc.

⁵ There is an exception for "classification or placement purposes" for persons in the physical custody of DOC.

Courts Open to All

Except as required by law, as necessary for an ongoing criminal investigation, or pursuant to a court order or judicial warrant, **RCW 2.28.310 prohibits judges, court staff, court security personnel, prosecutors, and prosecutor's office staff from:**

- Inquiring into or collecting information about an individual's immigration or citizenship status or place of birth;
- Disclosing nonpublic personal information about an individual (including individuals on community custody) to immigration authorities.

RCW 2.28.310:

- Establishes court processes in the event of state or federal law enforcement action at court facilities and requires court staff to be notified of the presence of immigration enforcement officers intending to make a civil arrest.

RCW 2.28.310:

- Prohibits the civil arrest of any person "while going to, remaining at, or returning from, a court facility."

Enforcement

Neither KWW nor COTA contain an enforcement mechanism. However, the Attorney General's office monitors the implementation of KWW and COTA and may respond to complaints of noncompliance. A consortium of nonprofit legal and community-based organizations also monitors KWW/COTA implementation and compliance.⁶

If you suspect a violation of KWW occurred in your client's case, please email us at wdaip@defensenet.org.

KWW and COTA required all state and local LEAs and courthouses to adopt policies and procedures to implement and comply with the new statutes. The AG's office published model policies and guidance, which can be found [here](#). The office also has posted policies adopted [here](#), so you can see whether your jurisdiction has a relevant policy.

How to Use KWW/COTA Violations in Your Cases

If immigration authorities appear anywhere in your case investigation,⁷ you should determine whether KWW and/or COTA were violated. Counsel may be able to use violation information in a client's case to support pretrial motions.⁸ A motion to dismiss may be filed "in furtherance of justice" if the prosecution has engaged in "arbitrary action or misconduct."⁹ *See* CrR 8.3(b).

The detention and/or removal of a client or witness by ICE following a KWW/COTA violation may support motions to dismiss as an interference with the constitutional right to counsel or the right to bring or cross-examine witnesses. Any law enforcement communication with ICE (or other violations) should lead counsel to explore whether the client was targeted for impermissible reasons or whether grounds exist to challenge the prosecution's or witnesses' objectivity.

⁶ *See* [Immigrant Rights Observatory - Center for Human Rights \(washington.edu\)](#). There has been some individual case advocacy and litigation by nonprofit legal organizations following KWW/COTA violations. For more information, email WDAIP@defensenet.org.

⁷ For example, the police called immigration authorities to assist with or interpret during a traffic stop, defense witnesses are arrested by ICE, officers' communications with ICE reveal bias against noncitizens or persons of your client's race or nationality.

⁸ *See, e.g.*, WDA Practice Advisory, [Outrageous Governmental Conduct](#).

⁹ *See* CrR 8.3(b) and WDA Practice Advisory, [CrR 8.3\(b\) Dismissal for Government Misconduct](#).