

OFFICE OF OPERATIONS

ORDER NO. 5

February 8, 1995

TO: All Personnel, Office of Operations

FROM: Director, Office of Operations

SUBJECT: PENAL CODE SECTIONS 113 AND 114

EFFECTIVE: IMMEDIATELY

PURPOSE

This Order advises Department personnel of the elements required to make an arrest for California Penal Code Sections 113 and 114.

INFORMATION

On November 8, 1994, California voters approved Proposition 187, the "Save our State" ballot initiative. The issues of citizenship, legal status in the United States or undocumented alien status are not matters for police action. The Department values the great diversity of people in both our residential and business communities and serves all people with equal dedication. It is therefore incumbent upon all employees of the Department to make a personal commitment to equal enforcement of the law and quality service to the public regardless of citizenship.

Sections 113 and 114 have been added to the California Penal Code. They are very specific and relate only to the manufacture, sale and distribution of false documents (P.C. 113) to conceal true citizenship or resident alien status (P.C. 114). In particular, mere possession of false documents other than for sale is not a violation of either section. The aforementioned sections are narrow in scope and will probably require a minimal amount of enforcement action. It is important that all personnel be familiar with the elements of both sections and the Department's position regarding enforcement activities pursuant to them.

Penal Code Section 113 (Felony)

Section 113 states in part, "any person who manufactures, distributes, or sells false documents to conceal the true citizenship or resident alien status of another person is guilty of a felony."

A felony violation of Penal Code Section 113 requires all of the following:

1. Evidence of false documents (Plural);
2. Manufacturing, distribution or sale; and,
3. Arrestee's knowledge that the false documents are intended to conceal true citizenship or resident alien status of another person.

Penal Code Section 113 (Misdemeanor)

The misdemeanor section states in part, "any person who manufactures or sells any false government document with the intent to conceal the true citizenship or resident alien status of another person is guilty of a misdemeanor."

A misdemeanor violation of Penal Code Section 113 requires all of the following:

1. Evidence of false government document (singular);
2. Manufacturing or sale; and,
3. Arrestee's knowledge that the false document(s) is intended to conceal true citizenship or resident alien status of another person.

Penal Code Section 114

Section 114 states in part, "any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a felony."

A violation of Penal Code Section 114 requires all of the following:

1. Evidence of false documents (plural);
2. Use (not just possession); and,

3. Arrestee's intent (specific intent) to conceal his or her true citizenship or resident alien status.

PROCEDURE

Officers' Responsibilities

Officers investigating incidents in which the *prima facie* elements of Penal Code Sections 113 and 114 are present shall:

- * Immediately notify a supervisor;
- * Conduct a thorough investigation to ensure that all of the elements of the criminal violations are present;
- * Arrest the suspect(s) in accordance with Department guidelines; and,
- * With supervisory approval, book the suspect for the appropriate charge.

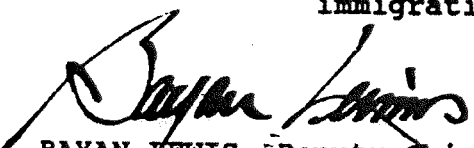
Note: Officers shall not initiate police action where the objective is to discover the alien status of a person. Officers shall not arrest nor book persons for violation of Title 8, Section 1325 of the United States Immigration Code (4/264.50).

Supervisors' Responsibilities

Supervisors who respond to an incident in which the *prima facie* elements of Penal Code Sections 113 and 114 are present shall:

- * Ensure that probable cause exists to make a lawful arrest;
- * Ensure that all of the elements of the crime are present;
- * Provide booking approval for the appropriate charge.

Note: Supervisors should be mindful of the Department's intent regarding the enforcement of United States immigration laws.


BAYAN LEWIS, Deputy Chief
Director
Office of Operations

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