

**SENATE . . . . . No. 1135**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***James B. Eldridge***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to restore community trust in Massachusetts law enforcement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1135) of James B. Eldridge, Anthony W. Petruccelli, Patricia D. Jehlen, Linda Dorcena Forry and other members of the General Court for legislation to restore community trust in Massachusetts law enforcement. Public Safety and Homeland Security.

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act to restore community trust in Massachusetts law enforcement.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 126 of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended by inserting the following new section:-

3 Section 40.

4 (a) Definitions

5 For purposes of this chapter, the following terms have the following meanings:

6 (1) "Administrative warrant" means an immigration warrant, notice to appear, removal  
7 order, or warrant of deportation, issued by ICE, Customs and Border Protection, or a successor  
8 or similar federal agency charged with enforcement of civil immigration laws.

9 (2) "Citizenship or immigration status" means all matters regarding questions of  
10 citizenship of the United States or any other country, the authority to reside in or otherwise be  
11 present in the United States, the time or manner of a person's entry into the United States, or  
12 another civil immigration matter enforced by the Department of Homeland Security or other  
13 federal agency charged with the enforcement of civil immigration laws.

14 (3) "Commonwealth" shall include the territory and government of the state of  
15 Massachusetts and any county, city, or municipal governing bodies or political subdivisions  
16 therein.

17 (4) “Custodial Law Enforcement Agency” means the local law enforcement agency  
18 having custody of the person against whom a detainer is lodged.

19 (5) “ICE” means the United States Immigration and Customs Enforcement Agency, and  
20 includes the former Immigration and Naturalization Service, Customs and Border Protection, and  
21 any successor agency charged with the enforcement of civil immigration laws.

22 (6) “Immigration detainer” means a written request issued by ICE, Customs and Border  
23 Protection, former INS, or any other federal agency charged with the enforcement of civil  
24 immigration laws, to another federal, state, or local law enforcement agency to provide notice of  
25 release and to detain an individual based on an inquiry into immigration status or an alleged  
26 violation of a civil immigration law, including detainers issued pursuant to 8 C.F.R. § 287.7 and  
27 8 C.F.R. § 236.1, and on DHS Form I-247 “Immigration Detainer – Notice of Action.”

28 (7) “Inmate” means anyone in the custody of a law enforcement agency as defined under  
29 (h) of this section, and does not include individuals in the custody of Immigration and Customs  
30 Enforcement.

31 (8) “Law Enforcement Agency” means an agency in Massachusetts charged with  
32 enforcement of state, county, municipal, or federal laws, or with managing custody of detained  
33 persons in the Commonwealth, and includes municipal police departments, sheriffs’  
34 departments, state police, campus police, and the Massachusetts Department of Corrections.

35 (9) “State correctional institution” means a penal institution managed by the  
36 Massachusetts Department of Corrections.

37 (10) “Law enforcement official” means any officer of a state, county, or municipal  
38 agency authorized to enforce criminal statutes, regulations, or local ordinances, or to operate jails  
39 or to maintain custody of individuals in jails, and any person or local agency authorized to  
40 operate juvenile detention facilities or to maintain custody of individuals in juvenile detention  
41 facilities. This includes “police officers” as defined in Section 1 of chapter 90C.

#### 42 (b) Standards for Responding to Immigration Detainers

43 (1) There being no legal authority upon which the federal government may compel an  
44 expenditure of Commonwealth resources to comply with an immigration detainer, there shall be  
45 no expenditure of any Commonwealth resources or effort by law enforcement officials for this  
46 purpose, except as expressly provided within this Chapter.

47 (2) A law enforcement official or agency in the Commonwealth may detain an inmate  
48 pursuant to an immigration detainer, provided that:

49 (i) Such detention is permitted by local, state and federal law and the Massachusetts and  
50 United States Constitutions; and

51 (ii) The inmate has not been ordered released by the criminal justice system, pursuant to:  
52 (A) a finding of not guilty;  
53 (B) dismissal of charges; or  
54 (C) granting release pending trial by a bail commissioner or clerk, judge, or magistrate, as  
55 soon as the inmate has met any imposed conditions for release; and  
56 (iii) The following conditions are met:  
57 (A) The subject of the detainer is over 18 years of age;  
58 (B) The inmate has been convicted and confined to a state correctional institution for five  
59 years for an offense enumerated in chapter 265;  
60 (C) The immigration detainer is accompanied by a prior order of removal for the subject  
61 of the detainer, or evidence that DHS has filed a Form I-862 Notice to Appear with the  
62 immigration court; and  
63 (D) The custodial law enforcement agency has an agreement with the federal government  
64 for the reimbursement of all costs associated with the further detention of that individual.  
65 (3) No inmate subject to an immigration detainer shall be denied bail solely on the basis  
66 of that detainer. Such an inmate shall still be subject to the custody provisions of subsection  
67 (b)(2) of this act.  
68 (4) Law enforcement agencies shall not make inmates available for ICE interviews, in  
69 person or over the telephone or videoconference, unless the inmate is provided an opportunity to  
70 have counsel present during the interview and signs a written consent form in a language the  
71 inmate understands, that explains who the interviewer is and the possible legal consequences of  
72 providing information to ICE. Notice of the interview request shall be provided in a language or  
73 manner that the inmate understands. Inmates who are hospitalized or on suicide watch shall not  
74 be made available for ICE interviews.  
75 (5) If any inmate is subject to an immigration detainer or a Notice to Appear in  
76 immigration court, the custodial law enforcement agency shall provide notice in writing to that  
77 inmate of the nature and substance of the detainer or notice, immediately following the receipt of  
78 that detainer or Notice to Appear. Such notice shall be provided in a language or manner that the  
79 inmate understands.  
80 (6) Unless ICE agents provide a criminal warrant, or a law enforcement agency has a  
81 legitimate law enforcement purpose that is not related to the enforcement of civil immigration  
82 laws, law enforcement agencies shall not provide booking lists to ICE, or communicate with ICE

83 regarding individuals' incarceration status or release dates. Nothing in this section shall limit the  
84 exchange of information regarding citizenship or immigration status as permitted by federal law.

85 (c) Administrative Arrests

86 There being no legal authority for law enforcement officials in the Commonwealth to  
87 enforce federal civil immigration laws, law enforcement officials shall not make arrests or detain  
88 any individual based on an administrative immigration warrant in the National Crime  
89 Information Center (NCIC) database.

90 (d) Transfers of custody

91 Law enforcement officials are not responsible for the enforcement of federal immigration  
92 laws and shall not arrest or transport inmates for civil immigration enforcement purposes or on  
93 the basis of a civil immigration detainer, unless the inmate has been formally placed in federal  
94 immigration custody under a contract with the Department of Homeland Security, or in  
95 accordance with section 2 of this act. Nothing in this section shall be construed as limiting or  
96 changing the duties of Sheriffs regarding transportation in section 24 of chapter 37, except that  
97 ICE facilities or ICE custody shall not be considered non-correctional for the purposes of  
98 subsection (c) of that section.

99 (e) Data Collection

100 (1) All law enforcement agencies shall record the following for any inmates subject to an  
101 immigration detainer: race, gender, place of birth, date and time of arrest, arrest charges, date and  
102 time of receipt of detainer, immigration or criminal history known or marked on the detainer  
103 form, whether the detainer was accompanied by additional documentation regarding immigration  
104 status or proceedings, whether a copy of the detainer was provided to the inmate, and, if  
105 applicable, the date and time that ICE came to take custody of the inmate.

106 (2) All law enforcement agencies that receive detainer requests shall report the  
107 information in subsection (a) yearly to the Civil Rights Division of the Attorney General's  
108 Office. Such information, with the exception of the name of the individual named in the  
109 detainer, shall be a public record, within the meaning of section 3 of chapter 66.