

SENATE No. 1398

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

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 relative to the Commonwealth's obligation to preserve public safety for all Massachusetts residents.

PETITION OF:

NAME:

Diana DiZoglio

DISTRICT/ADDRESS:

First Essex

SENATE No. 1398

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 1398) of Diana DiZoglio for legislation relative to communications and interactions of law enforcement agencies with federal immigration enforcement agencies. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE [Refile Branch], NO. OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the Commonwealth's obligation to preserve public safety for all Massachusetts residents.

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. This act shall be known and may be cited as the “C.O.P.P.S Act”.

2 SECTION 2. Chapter 126 of the General Laws is hereby amended by inserting after
3 section 39 the following section:-

4 Section 40. Definitions

5 As used in sections 40 to 43, inclusive, the following words shall have the following
6 meanings, unless the context clearly requires otherwise:

7 “Administrative warrant”, a warrant, notice to appear, removal order, or warrant of
8 deportation, issued by an agent of a federal agency charged with the enforcement of immigration

9 laws or the security of the borders, including Immigration and Customs Enforcement and
10 Customs and Border Protection. An administrative warrant is not one issued by a judicial officer.

11 “Civil immigration detainer request”, a request, including one using federal form I-247A,
12 I-247D or I-247N, issued by a federal immigration officer authorized under 8 C.F.R. section
13 287.7 or by any other authorized federal immigration officer directed to a local, state or federal
14 law enforcement official, whereby it requests the law enforcement official to keep the individual
15 in police custody for a period up to 48 hours beyond the time when the he/she would otherwise
16 be released in order to give federal immigration officials additional time to take potentially take
17 custody of the individual.

18 “United States Department of Homeland Security” or “DHS”, the United States
19 Department of Homeland Security and its component agencies, including Immigration and
20 Customs Enforcement, Enforcement and Removal Operations, Homeland Security
21 Investigations, the former Immigration and Naturalization Service, Customs and Border
22 Protection, and any other federal agency charged with the enforcement of immigration laws.

23 “Immigration enforcement”, any and all efforts to investigate, enforce, or assist in the
24 investigation or enforcement of any federal immigration law. Such purposes do not include
25 verification of an applicant’s eligibility for state or federal programs or services.

26 “Limited English proficient”, individuals who do not speak English as their primary
27 language and who have a limited ability to read, write, speak, or understand English.

28 “Law enforcement agency”, police departments of political subdivisions of the
29 Commonwealth, sheriffs’ departments, houses of correction, courts, the Massachusetts State
30 Police, the Environmental Police, the Massachusetts Department of Corrections, the

31 Massachusetts Probation Service, the Office of Community Corrections, and the Massachusetts
32 Trial Court Community Service Program, school, college and university campus police, and any
33 other entity in the commonwealth, other than federal agencies, that are charged with the
34 enforcement of laws, the operation of jails or prisons, or the custody of detained persons.

35 “Released from local custody”, when a person may be released from the custody of a
36 Massachusetts law enforcement agency because any of the following conditions has occurred:

37 (a) Criminal charges against the person have been dropped or dismissed;

38 (b) The person has been acquitted of criminal charges filed against the person;

39 (c) The person has served the time required for the person’s sentence;

40 (d) The person has posted a bail or bond, or has been released on the person’s own
41 recognizance;

42 (e) The person has been referred to pre-trial diversion services;

43 (f) The person has been sentenced to an alternative to incarceration, including a
44 rehabilitation facility;

45 (g) The person has been released from custody under probation; or

46 (h) The person is otherwise eligible for release under state or local law.

47 “Serious Violent Crime”, any crime punishable by imprisonment in the State Prison that

48 (i) has as an element the use, attempted use or threatened use of physical force or a deadly

49 weapon against the person of another; (ii) is burglary, arson or kidnapping; or (iii) involves the

50 use of explosives.

51 SECTION 3. Chapter 126 of the General Laws is hereby amended by inserting after
52 section 40 the following section:-

53 Section 41. Standards for Communicating and Interacting with Federal Immigration
54 Enforcement Agencies

55 (1) No officer or employee of any agency, executive office, department, board,
56 commission, bureau, division or authority of the commonwealth or any political subdivision
57 thereof, shall use funds, police lockups, detention beds, or personnel for purposes related solely
58 to immigration enforcement, including providing courtesy booking to the United States
59 Department of Homeland Security unless the person in question is being booked on a
60 Massachusetts statutory violation; provided, however, that nothing in this subsection shall
61 prevent a law enforcement agency from communicating with the United States Department of
62 Homeland Security as set forth at Section 41 (10). Nothing in this subsection shall prohibit
63 Houses of Correction from entering into Inter-Governmental Service Agreements with the
64 United States Department of Homeland Security in which persons in Immigration and Customs
65 Enforcement custody are housed at the House of Correction and the United States Department of
66 Homeland Security pays a daily fee for each person detained there.

67 (2) No law enforcement agency shall inquire about a person's immigration status, unless
68 such information is required by law, or is an element in a crime for which the law enforcement
69 agency is investigating the person.

70 (3) Neither a law enforcement agency nor the Massachusetts Registry of Motor Vehicles
71 shall make any information in its databases or other record-keeping systems available to any
72 entity for enforcement of any federal program requiring registration of persons on the basis of

73 race, gender, sexual orientation, religion, or national or ethnic origin. Any agreements
74 inconsistent with this section are null and void; provided, however, that nothing in this
75 subsection shall prohibit or restrain a law enforcement agency or the Massachusetts Registry of
76 Motor Vehicles from sending to, or receiving from, any local, state, or federal agency,
77 information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

78 (4) No officer or employee of a law enforcement agency shall arrest or detain an
79 individual prior to an arrest, solely for immigration enforcement purposes or solely on the basis
80 of a civil immigration detainer request or an administrative warrant; provided, however, that
81 nothing in this subsection shall prevent an officer or employee of a law enforcement agency from
82 arresting or detaining a person in the course of a criminal investigation or prosecution supported
83 by probable cause that the person has committed a crime, consistent with constitutional standards
84 applicable to all people in the commonwealth.

85 (5) No sworn officer of any law enforcement agency as defined in Section 40 of this
86 Chapter shall effectuate an arrest or continue to detain a person based solely for federal civil
87 immigration related purposes or solely on the basis of a civil immigration detainer request or an
88 administrative warrant, once that person has been released from law enforcement custody by
89 virtue of the bail administration process as outlined in Chapter 276 of the general laws.

90 Notwithstanding the preceding paragraph, a person, who has been arrested by a sworn
91 officer of a law enforcement agency for a Massachusetts statutory violation of the law or by the
92 authority of a judicial warrant then in full force and effect, whereby that law enforcement agency
93 subsequently receives an immigration detainer request resulting from that initial arrest, such
94 person shall not be admitted to bail any time sooner than six (6) hours after the receipt of the

95 immigration detainer request, except by a judge in open court, if the individual has been so
96 arrested for any terrorist related activity as part of an ongoing federal joint terrorism task force
97 investigation or has been convicted of any of the following offenses:

98 1. Any conviction for a serious violent crime as defined in Section 40 of this
99 chapter;

100 2. Any conviction for any sexual assault, sexual abuse or sexual exploitation related
101 offenses;

102 3. Any conviction of any offense which has the element of active participation in a
103 criminal street gang, as defined in 18 U.S.C Section 521(a) or Massachusetts general laws
104 chapter 265 Section 44;

105 4. Any conviction of any firearm related offenses;

106 5. Any conviction of any human trafficking offenses as defined in [federal statute in
107 US Code] or Chapter 265 Sections 49-51;

108 6. Any conviction of any drug trafficking offenses;

109 7. Any conviction for any domestic violence offense if the current arrest is for a
110 domestic violence offense;

111 Provided, however, that under no such circumstances shall such detention exceed the
112 period of six (6) hours from the time when such detainer was initially received by the law
113 enforcement agency that effectuated the independent arrest for the Massachusetts statutory
114 violation of the law or pursuant to a judicial warrant then in full force and effect.

115 Nothing in this subsection shall prevent an officer or employee of a law enforcement
116 agency from continuing to detain a person in the course of a criminal investigation or
117 prosecution supported by probable cause that the person committed a crime, consistent with
118 constitutional standards applicable to all people in the commonwealth.

119 (6) No officer or employee of any agency, executive office, department, board,
120 commission, bureau, division or authority of the commonwealth or any political subdivision
121 thereof shall perform the functions of an immigration officer, whether pursuant to 8 U.S.C.
122 section 1357(g) or any other law, regulation, or policy, whether formal or informal. Any
123 agreements inconsistent with this section are null and void.

124 (7) The presence of a civil immigration detainer request or administrative warrant shall
125 not be considered in any bail determination.

126 (8) An interview between a United States Department of Homeland Security agent and a
127 person in the custody of a law enforcement agency conducted for immigration enforcement
128 purposes shall take place only if the person in custody has given consent. Before the interview,
129 the law enforcement agency shall provide the person in custody with a written consent form that
130 explains the purpose of the interview, that the interview is voluntary, and that the person may
131 decline to be interviewed or may choose to be interviewed only with the person's attorney
132 present; provided, however, that a law enforcement agency shall not be responsible for the
133 payment of the person's attorney's fees and expenses. If the person in custody declines the
134 interview, no law enforcement agency shall allow DHS agents to conduct the interview. If the
135 person indicates that he or she wishes to have an attorney present, the law enforcement agency
136 shall allow the person to contact an attorney and shall permit such attorney to meet with the

137 detained person and to be present during the interview, and in the case that no attorney can be
138 present, the interview shall not take place.; provided, however, that the law enforcement agency
139 shall not be responsible for the payment of the person's attorney fees and expenses. The written
140 consent form shall be available in English, Arabic, Spanish, Portuguese, Chinese, Haitian Creole,
141 Vietnamese, and Khmer or Cambodian. If the person is limited English proficient, the law
142 enforcement agency shall make best efforts to provide interpretive services.

143 (9) If any person is subject to a civil immigration detainer request or an administrative
144 warrant, the law enforcement agency having custody of the person shall provide the person with
145 a copy of the civil immigration detainer request and/or the administrative warrant, and any other
146 documentation pertaining to the person's case that is presented to the law enforcement agency by
147 United States Department of Homeland Security agents.

148 (10) No law enforcement agency shall provide or allow DHS agents access to a list of
149 persons in the law enforcement agency's custody unless such a list is a public record, as defined
150 in section seven, twenty-sixth of chapter four. No law enforcement agency shall provide DHS
151 agents information regarding the future release date of a person in its custody, including in
152 response to a civil immigration detainer request, unless the person in custody has been arrested
153 for any terrorist related activity as part of an ongoing federal joint terrorism task force
154 investigation or has been convicted of any of the following offenses:

155 1. Any conviction for a serious violent crime as defined in Section 40 of this
156 chapter;

157 2. Any conviction for any sexual assault, sexual abuse or sexual exploitation related
158 offenses;

159 3. Any conviction of any offense which has the element of active participation in a
160 criminal street gang, as defined in 18 U.S.C Section 521(a) or Massachusetts general laws
161 chapter 265 Section 44;

162 4. Any conviction of any firearm related offenses;

163 5. Any conviction of any human trafficking offenses as defined in [federal statute in
164 US Code] or Chapter 265 Sections 49-51;

165 6. Any conviction of any drug trafficking offenses;

166 7. Any conviction for any domestic violence offense if the current arrest is for a
167 domestic violence offense.

168 Notwithstanding, a law enforcement agency may inform DHS agents that a person has
169 been released from the agency's custody, and a law enforcement agency may communicate with
170 DHS about a person who is not in custody but is the subject of an ongoing investigation for a
171 crime not relating to immigration enforcement. Nothing in this section shall prohibit or restrain
172 any state or local agency from sending to, or receiving from, any local, state, or federal agency,
173 information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

174 SECTION 4. Chapter 126 of the General Laws is hereby amended by inserting after
175 section 41 the following section:-

176 Section 42. Transport of persons subject to civil immigration detainer requests or
177 administrative warrants

178 Law enforcement officials shall not transport a person who is in local custody to any
179 facility in order to place the person into United States of Homeland Security custody; provided,

180 however, that nothing in this section shall be construed as prohibiting a law enforcement agency
181 from transporting a person who is in United States Homeland Security custody. Nothing in this
182 section shall be construed as limiting or changing the duties of Sheriffs in section 24 of chapter
183 37, except that United States Department of Homeland Security facilities or United States
184 Department of Homeland Security custody shall not be considered non-correctional for the
185 purposes of subsection (c) of that section.

186 SECTION 5. Chapter 126 of the General Laws is hereby amended by inserting after
187 section 42 the following section:-

188 Section 43. Data Collection

189 All law enforcement agencies shall retain copies of all immigration detainer requests and
190 administrative warrants received along with any accompanying information, and record the
191 following for any person subject to either one: race, gender, date and time of arrest, arrest
192 charges, date and time of receipt of a civil immigration request or administrative warrant; date
193 and time that the person was taken into custody by federal immigration agents; immigration or
194 criminal history known or marked on the civil immigration detainer request form; whether the
195 civil immigration detainer request was accompanied by additional documentation regarding
196 immigration status or proceedings; and, whether a copy of the forms were provided to the
197 person.

198 All law enforcement agencies that receive civil immigration detainer requests shall report
199 all information collected pursuant to this section to the civil rights division of the attorney
200 general's office every 6 months. Such information, with the exception of criminal offender

201 record information, as defined in section 167 of chapter 6, shall be a public record, within the
202 meaning of section 3 of chapter 66 and clause Twenty-sixth of section 7 of chapter 4.

203 SECTION 6. Severability

204 The provisions of this act are severable. If any provision of this act or its application is
205 held invalid, that invalidity shall not affect other provisions or applications that can be given
206 effect without the invalid provision or application