

**SENATE . . . . . No. 1398**

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**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:	DISTRICT/ADDRESS:	
<i>Diana DiZoglio</i>	<i>First Essex</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>

**SENATE . . . . . No. 1398**

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

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

**The Commonwealth of Massachusetts**

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**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