

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 protect the civil rights and safety of all Massachusetts residents.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
James B. Eldridge	Middlesex and Worcester	
Juana Matias	16th Essex	
Jack Lewis	7th Middlesex	1/24/2017
Jason M. Lewis	Fifth Middlesex	1/24/2017
Michael J. Barrett	Third Middlesex	1/26/2017
Marjorie C. Decker	25th Middlesex	1/26/2017
Sonia Chang-Diaz	Second Suffolk	1/26/2017
Ruth B. Balsler	12th Middlesex	1/27/2017
Frank I. Smizik	15th Norfolk	1/27/2017
Cynthia S. Creem	First Middlesex and Norfolk	1/27/2017
Mike Connolly	26th Middlesex	1/27/2017
Joseph A. Boncore	First Suffolk and Middlesex	1/30/2017
William N. Brownsberger	Second Suffolk and Middlesex	1/30/2017

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court (2017-2018)

An Act to protect the civil rights and safety of 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 “Safe Communities 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-247D
12 or I-247N, issued by a federal immigration officer authorized under 8 C.F.R. section 287.7 or by

13 any other authorized federal immigration officer to a local law enforcement official to, among
14 other things, maintain custody of a person once that person is released from local custody or to
15 notify the United States Department of Homeland Security of the person's release.

16 “United States Department of Homeland Security”, the United States Department of
17 Homeland Security and its component agencies, including Immigration and Customs
18 Enforcement, the former Immigration and Naturalization Service, Customs and Border
19 Protection, and any other federal agency charged with the enforcement of immigration laws.

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

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

25 “Law enforcement agency”, police departments of political subdivisions of the
26 Commonwealth, sheriffs’ departments, houses of correction, courts, the Massachusetts State
27 Police, the Massachusetts Department of Corrections, the Massachusetts Probation Service, the
28 Office of Community Corrections, and the Massachusetts Trial Court Community Service
29 Program, school, college and university campus police, and any other entity in the
30 commonwealth, other than federal agencies, that are charged with the enforcement of laws, the
31 operation of jails or prisons, or the custody of detained persons.

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

- 34 (a) Criminal charges against the person have been dropped or dismissed;
- 35 (b) The person has been acquitted of criminal charges filed against the person;
- 36 (c) The person has served the time required for the person's sentence;
- 37 (d) The person has posted a bail or bond, or has been released on the person's own
38 recognizance;
- 39 (e) The person has been referred to pre-trial diversion services;
- 40 (f) The person has been sentenced to an alternative to incarceration, including a
41 rehabilitation facility;
- 42 (g) The person has been released from custody under probation; or
- 43 (h) The person is otherwise eligible for release under state or local law.

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

46 Section 41. Standards for Communicating and Interacting with Federal Immigration
47 Enforcement Agencies

48 (1) No officer or employee of any agency, executive office, department, board,
49 commission, bureau, division or authority of the commonwealth or any political subdivision
50 thereof, shall use funds, resources, facilities, property, equipment, or personnel for immigration
51 enforcement purposes; provided, however, that nothing in this subsection shall prohibit houses of
52 correction from entering into Inter-Governmental Service Agreements with the United States
53 Department of Homeland Security in which persons in Immigration and Customs Enforcement

54 custody are housed at the house of correction and the United States Department of Homeland
55 Security pays a daily fee for each person detained there.

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

59 (3) Neither a law enforcement agency nor the Massachusetts Registry of Motor Vehicles
60 shall make any information in its databases or other record-keeping systems available to any
61 entity for enforcement of any federal program requiring registration of persons on the basis of
62 race, gender, sexual orientation, religion, or national or ethnic origin. Any agreements
63 inconsistent with this section are null and void; provided, however, that nothing in this
64 subsection shall prohibit or restrain a law enforcement agency or the Massachusetts Registry of
65 Motor Vehicles from sending to, or receiving from, any local, state, or federal agency,
66 information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

67 (4) No officer or employee of a law enforcement agency shall arrest or detain a person
68 solely for immigration enforcement purposes or solely on the basis of a civil immigration
69 detainer request or an administrative warrant; provided, however, that nothing in this subsection
70 shall prevent an officer or employee of a law enforcement agency from arresting or detaining a
71 person in the course of a criminal investigation or prosecution supported by probable cause that
72 the person has committed a crime, consistent with constitutional standards applicable to all
73 people in the commonwealth.

74 (5) No officer or employee of a law enforcement agency shall continue to detain a person
75 solely for immigration purposes or solely on the basis of a civil immigration detainer request or

76 an administrative warrant once that person has been released from local custody. Nothing in this
77 subsection shall prevent an officer or employee of a law enforcement agency from continuing to
78 detain a person in the course of a criminal investigation or prosecution supported by probable
79 cause that the person committed a crime, consistent with constitutional standards applicable to all
80 people in the commonwealth.

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

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

88 (8) An interview between a United States Department of Homeland Security agent and a
89 person in the custody of a law enforcement agency conducted for immigration enforcement
90 purposes shall take place only if the person in custody has given consent. Before the interview,
91 the law enforcement agency shall provide the person in custody with a written consent form that
92 explains the purpose of the interview, that the interview is voluntary, and that the person may
93 decline to be interviewed or may choose to be interviewed only with the person's attorney
94 present; provided, however, that a law enforcement agency shall not be responsible for the
95 payment of the person's attorney's fees and expenses. If the person in custody declines the
96 interview, no law enforcement agency shall allow United States Department of Homeland
97 Security agents to conduct the interview. If the person indicates that the person wishes to have an

98 attorney present, the law enforcement agency shall facilitate the presence of such attorney, and in
99 the case that no attorney can be present, the interview shall not take place; provided, however,
100 that the law enforcement agency shall not be responsible for the payment of the person's
101 attorney's fees and expenses. If the person is limited English proficient, an interpreter shall be
102 timely offered free of charge. The written consent form shall be available in English, Arabic,
103 Spanish, Portuguese, Chinese, Haitian Creole, Vietnamese, and Khmer or Cambodian. The
104 provision of oral interpretation and the written consent form shall be consistent with 42 U.S.C.
105 section 2000d et seq., as amended, and 28 C.F.R. section 42.405(d)(1).

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

111 (10) No law enforcement agency shall provide or allow United States Department of
112 Homeland Security agents access to booking lists or information regarding the incarceration
113 status or release date of a person in its custody, unless such person is serving a sentence for a
114 serious violent felony. For the purpose of this subsection, "serious violent felony" means a
115 violent felony for which there is no district court jurisdiction pursuant to section 26 of Chapter
116 218. Law enforcement agencies shall not otherwise notify the United States Department of
117 Homeland Security about a person's pending release from custody and shall not respond to
118 requests from the United States Department of Homeland Security for publicly-available
119 information regarding a person in custody, including requests pursuant to federal form I-247N;
120 provided, however, that nothing in this section shall prohibit or restrain any state or local agency

121 from sending to, or receiving from, any local, state, or federal agency, information regarding
122 citizenship or immigration status, consistent with 8 U.S.C. section 1373.

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

125 Section 42. Transport of persons subject to civil immigration detainer requests or
126 administrative warrants

127 Law enforcement officials shall not transport a person who is in local custody to any
128 facility in order to place the person into United States of Homeland Security custody; provided,
129 however, that nothing in this section shall be construed as prohibiting a law enforcement agency
130 from transporting a person who is in United States Homeland Security custody. Nothing in this
131 section shall be construed as limiting or changing the duties of Sheriffs in section 24 of chapter
132 37, except that United States Department of Homeland Security facilities or United States
133 Department of Homeland Security custody shall not be considered non-correctional for the
134 purposes of subsection (c) of that section.

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

137 Section 43. Data Collection

138 All law enforcement agencies shall retain copies of immigration detainer requests and
139 administrative warrants received along with accompanying information, and record the following
140 for any person subject to either one: race, gender, date and time of arrest, arrest charges, date and
141 time of receipt of a civil immigration request or administrative warrant; date and time that the

142 person was taken into custody by federal immigration agents; immigration or criminal history
143 known or marked on the civil immigration detainer request form; whether the civil immigration
144 detainer request was accompanied by additional documentation regarding immigration status or
145 proceedings; and, whether a copy of the forms were provided to the person.

146 All law enforcement agencies that receive civil immigration detainer requests shall report
147 all information collected pursuant to this section to the civil rights division of the attorney
148 general's office every 6 months. Such information, with the exception of criminal offender
149 record information, as defined in section 167 of chapter 6, shall be a public record, within the
150 meaning of section 3 of chapter 66 and clause Twenty-sixth of section 7 of chapter 4.

151 SECTION 6. Severability

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