

SAFE COMMUNITIES ACT

S.1305 and H.3269

Sen. Jamie Eldridge and Rep. Juana Matías, Sponsors

Executive Summary and Explanation

TITLE: An Act to Protect the Civil Rights and Safety of All Massachusetts Residents

SECTION 1 Sets forth the popular title of the bill as the “Safe Communities Act.”

SECTION 2 Definitions.

“Immigration enforcement” defined to include participation in efforts to investigate or enforce any federal immigration law, as well as assisting such efforts.

“Law enforcement agency” defined to include all entities in the Commonwealth charged with the enforcement of laws, the operations of jails or prisons, or the custody of detained persons, including state and local police departments; school, college and university police; courts; sheriffs’ departments; and departments of corrections and probation.

SECTION 3 Standards for Communicating and Interacting with Federal Immigration Enforcement Agencies.

Subsection (1) Prohibits the use of state or local funds, resources, facilities, equipment or personnel for immigration enforcement purposes.

- Excludes verification of an applicant’s eligibility for state or federal programs or services, which routinely require noncitizens to provide information regarding citizenship or immigration status to verify eligibility.
- Excludes agreements between the Department of Homeland Security (DHS) and Houses of Correction whereby ICE pays a daily rate to house people in ICE custody there. The bill does not seek to end these local detention contracts. The availability of local detention space ensures that detained persons have continued access to family members and attorneys.

Explanation: The January 25, 2017 Executive Order “Enhancing Public Safety in the Interior of the United State” envisions using “all available systems and resources” to deport removable noncitizens, and proposes an expansive role for state and local governments in civil immigration enforcement “to the maximum extent permitted by law.” Because we do not yet know all the enforcement activities contemplated by this role, Subsection (1) is a broad “catch all” rule to include prospective as well as current forms of enforcement activities. The bill creates a broad prohibition that would remain applicable in the face of changing federal tactics.

Subsection (2) Prohibits Massachusetts law enforcement agencies from inquiring about a person’s citizenship or immigration status, unless it is required by law or is an element in a crime for which law enforcement is investigating the person.

Explanation: Puts citizens and noncitizens on an equal footing with respect to treatment by law enforcement agencies, discourages profiling, and sends a strong message to immigrant communities that local police will provide protection and services to all, regardless of status. With few exceptions, state and local governments are under no legal obligation to collect information about immigration status. Therefore, prohibiting the collection of unnecessary information is the best defense to a request to share that information.

Subsection (3) Prohibits law enforcement agencies or the Registry of Motor Vehicles from giving access their databases for the purpose of enforcing any **federal registry program** based on national origin or other protected characteristics (not including immigration status).

Explanation: This subsection responds to President Trump’s statement of intention to create a “Muslim registry” – an effort that is based on religious and ethnic discrimination and likely unconstitutional. This subsection ensures that Massachusetts does not participate in such a registry.

Subsection (4) Prohibits MA law enforcement agencies from arresting or detaining someone solely for immigration enforcement purposes, or based solely on a civil immigration detainer request. Does not prevent law enforcement from arresting or detaining someone in the course of a criminal investigation or prosecution supported by probable cause of a crime, consistent with constitutional standards.

Explanation: This subsection brings Massachusetts in line with current legal standards relating to ICE detainer requests and administrative warrants, which have no judicial oversight and provide no evidence of probable cause of criminal activity. The U.S. District Court of Appeals for the First Circuit held in 2015 that when police grant such a request, it constitutes a new arrest that requires probable cause for that arrest.¹ In 2016, a single justice of the Supreme Judicial Court (SJC) found that Massachusetts law enforcement agencies lack authority to arrest someone based on a civil immigration detainer.² A case before the SJC squarely presents the issue of whether such detentions violate federal or state constitutional rights.³

Subsection (5) Prohibits continued detention based on solely on an immigration detainer request.

Subsection (6) Prohibits state and local agencies, including law enforcement agencies, from performing the functions of an immigration officer under 8 U.S.C. § 1357(g) or similar federal programs. Prohibits and dissolves any contracts/MOUs between DHS and state agencies for same.

¹ *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015).

² Judgment, *Moscoco v. Justice of the E. Boston Div. of the Boston Mun. Ct.*, No. SJ-2016-0168 (May 26, 2016).

³ *Lunn v. Commonwealth*, SJC-12276. Issues presented available at <http://www.mass.gov/courts/case-legal-res/case-information/amicus-announcements/>.

Explanation: “287(g)” agreements are contracts between the federal government and local agencies that deputize local law enforcement personnel with the powers of immigration officers, allowing them to identify and process people for deportation. DHS’s own Inspector General has criticized these types of contracts as wasteful, ineffective, and lacking oversight.⁴ They open the door to racial and ethnic profiling by allowing local officials to act as ICE agents while performing their local duties without adequate supervision from the federal government. Moreover, the federal government does not reimburse localities for salary, overtime or benefits of their personnel performing immigration functions, nor for travel, housing or per diem associated with training them, resulting in significant cost savings for the federal government and **significant expense** for local government.⁵

Participation in these contracts is completely voluntary. In Massachusetts, the Department of Corrections and Bristol and Plymouth counties have such agreements with the federal government. This provision would cancel these existing contracts and prohibit new ones.

Subsection (7) Prohibits consideration of civil immigration detainers or administrative warrants in bail determinations.

Explanation: Upholds standard for bail determinations, regardless of immigration status. Note that civil administrative warrants are not true warrants, because they are issued by an immigration officer without judicial oversight, and are not evidence of criminal activity. The existence of an ICE detainer or warrant provides no evidence of a person’s flight risk, connections to the community, or likelihood of reoffending, so they should have no bearing on the bail determination.

Subsection (8) Requires due process protections when DHS/ICE agents are permitted access to interview people in jails and prisons, including written consent to be interviewed, and to be informed of the right to decline an interview or be interviewed with their attorney present (at their own expense). The consent form must be available in the listed nine languages. If the person is has limited English proficiency, it requires provision of interpreter services.

Explanation: Noncitizens are largely unaware that they have the right to decline an interview by immigration authorities, or to have their own attorney present. Noncitizens without proficiency in English are vulnerable to giving consent by signing documents they do not understand.

Subsection (9) Requires that copies of detainers be provided to people subject to them.

Subsection (10) Prohibits giving DHS access to booking lists or information about incarceration status or release dates of a person in custody, unless that person is serving a sentence for a serious violent felony.

⁴ See generally, Dept. of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements* (Mar. 4, 2010), at https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf.

⁵ *Id.* at 4. (“ICE does not provide direct funding to participating jurisdictions Participating LEAs are responsible for salaries and benefits of their personnel performing immigration-related functions under the agreement. The LEAs are also responsible for travel costs, housing, and per diem associated with required training.”) *Id.* ICE does fund supervision, training, and IT equipment and services, and reimburses jurisdictions that house people in ICE custody under separately-negotiated Inter-Governmental Service Agreements. *Id.*

Subsection (11) Provides that nothing in the section shall prevent the exchange information about citizenship or immigration status, consistent with 8 U.S.C. § 1373 (see subsection 3 above for reference).

Explanation: Presiden Trump has vowed to deny federal funding to cities that limit their collaboration with immigration enforcement using, among other unknown strategies, the prohibitions in 8 U.S.C. § 1373, which prohibits state and local governments from restricting the exchange of information regarding *citizenship and immigration status*. This bill focuses on the exchange of *other kinds of information* that are not part of that federal law, namely the list of people in a jail on any given day and their release dates.

SECTION 4 Prohibits law enforcement agencies from transferring a person subject to a detainer or administrative warrant into DHS custody. Does not apply to persons already in ICE custody who are being housed by the agency.

Explanation: This section ensures that local agencies are not assisting in deportation efforts by transporting people to be processed and detained by DHS. For those already in DHS custody but detained in our county jails, it allows local officials to transport them, which is usually to court hearings. Without local transportation, people in ICE detention would miss crucial court dates.

SECTION 5 Recordkeeping requirement – This section requires MA law enforcement agencies to keep certain records regarding immigration detainers and warrants and to report them to the Civil Rights Division of the Attorney General’s office every 6 months. Note that most such information is a public record.

SECTION 5 Severability clause allows preservation of rest of bill if any single provision is determined to be invalid.