

Budget Amendment ID: FY2019-S4-1147

EPS 1147

Civil Rights and Safety

Messrs. Eldridge and Lewis moved that the proposed new text be amended by adding the following:

SECTION XX. Chapter 147 of the General Laws is hereby amended by adding the following section:-

Section 63. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Civil immigration detainer request”, any request by a federal immigration officer authorized under 8 C.F.R. section 287.7 or by any other authorized party, including any request made using federal form I-247A, I-247D or I-247N, asking a non-federal law enforcement agency, officer or employee to maintain custody of a person once that person is released from local custody or to notify the United States Department of Homeland Security of the person's release.

“Law enforcement agency”, any state, municipal, college or university police department, sheriff's department, correctional facility, prosecutorial office, court, or program of one or more of the foregoing entities, or any other non-federal entity in the commonwealth charged with the enforcement of laws or the custody of detained persons.

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

(b) No officer or employee of a law enforcement agency, while acting under color of law, shall inquire about the immigration status of an individual unless such inquiry is required by federal or state law; provided that a judge or magistrate may make such inquiries as are necessary to adjudicate matters within their jurisdiction.

(c) All law enforcement agencies in the commonwealth shall, within 12 months of passage of this act,

incorporate information regarding lawful and unlawful inquiries about immigration status into their regular introductory and in-service training programs. If a law enforcement agency receives a complaint or report that an officer or employee has inquired about an individual's immigration status when such inquiry is not required by law, the agency shall investigate and take appropriate disciplinary or other action.

(d) If a law enforcement agency has in its custody a person who is the subject of a civil immigration detainer request or a non-judicial warrant, the agency shall promptly provide the person, and his or her attorney if the person is represented by an attorney, with a copy of such detainer request or non-judicial warrant, and any other documentation the agency possesses pertaining to the person's immigration case.

(e) An interview between a United States Department of Homeland Security agent and a person in the custody of a law enforcement agency conducted for immigration enforcement purposes shall take place only if the person in custody has given consent to the interview by signing a consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with an attorney present. The consent form shall be prepared by the office of the attorney general and made available to law enforcement agencies in English and other languages commonly spoken in Massachusetts. The office of the attorney general may work with interested not-for-profit organizations to prepare translations of the written consent form. The law enforcement agency shall make best efforts to provide a consent form that is in a language that the person understands, and to provide interpretation if needed, to obtain the person's informed consent.

(f) If the person in custody indicates that he or she wishes to have an attorney present for the interview, the law enforcement agency shall allow him or her to contact such attorney, and in the case that no attorney can be present, the interview shall not take place; provided, however, that the law enforcement agency shall not be responsible for the payment of the person's attorney's fees and expenses.

SECTION XX. Chapter 126 of the General Laws is hereby amended by adding the following section:-

Section 40. Agreements to Enforce Federal Law.

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

SECTION XX. Chapter 30 of the General Laws is hereby amended by adding the following section:-

Section 66. (a) Under no circumstances shall the commonwealth, any political subdivision thereof, or any employee or agent of the commonwealth or any of its political subdivisions, establish any operation or program that requires, or has the effect of causing, persons to register or check in based in whole or in part on their religion, national origin, nationality, citizenship, race, ethnicity, gender, gender identity, sexual orientation or age, or maintain any records system, government file or database for the purpose of registering persons based in whole or in part on those categories.

(b) In the event that any federal government operation or program requires, or has the effect of causing, persons to register or check in based in whole or in part on their religion, national origin, nationality, citizenship, race, ethnicity, gender, gender identity, sexual orientation or age, including but not limited to any such operation or program created pursuant to 8 United States Code, sections 1302(a) and 1303(a):

(1) no resources of the commonwealth or any political subdivision thereof shall be expended in the enforcement or implementation of such registry or check-in program;

(2) no employee or agent of the commonwealth or any of its political subdivisions shall access, or seek to access, any information maintained pursuant to such registry or check-in program; and

(3) no employee or agent of the commonwealth or any of its political subdivisions shall provide or disclose or offer to provide or disclose information to, or respond to a request for information from, such registry or check-in program.

(c) This section shall not apply to any government operation or program that: (1) merely collects and compiles data about nationals of a foreign country entering or exiting the United States; or (2) issues visas, grants United States citizenship, confers an immigration benefit, or temporarily or permanently protects noncitizens from removal.

(d) Nothing in this section shall prohibit or restrain the commonwealth, any political subdivision thereof, or any employee or agent of the commonwealth or any of its political subdivisions, from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with Section 1373 of Title 8 of the United States Code.