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An Act To Protect the Liberty of Immigrants and Asylum Seekers in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 337-D is enacted to read:

CHAPTER 337-D

MAINE LIBERTY ACT

§ 4721. Short title

This chapter may be known and cited as "the Maine Liberty Act."

§ 4722. Legislative findings and purpose

The Legislature finds and declares that immigrants are valuable and essential members of the community of the State. A relationship of trust between the State's immigrant community and state and local agencies is central to the public safety and well-being of the people of the State. This trust is threatened when state and local agencies are entangled with federal immigration enforcement programs, resulting in immigrant community members being afraid to approach police when they are victims of and witnesses to crimes, seek basic health services or attend school. The entanglement of state and local agencies with federal immigration enforcement programs diverts limited resources and blurs the lines of accountability between local, state and federal governments. State and local participation in federal immigration enforcement programs also raises concerns under the United States Constitution, including the prospect that residents of the State could be detained in violation of Amendment IV, targeted on the basis of race or ethnicity in violation of the equal protection clause of Amendment XIV or denied access to education based on immigration status. This Act seeks to ensure effective policing, protect the safety, well-being and constitutional rights of the people of the State and direct the State's limited resources to matters of greatest concern to the State and the local governments of the State.

§ 4723. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Civil immigration warrant. "Civil immigration warrant" means a warrant for a violation of federal civil immigration law.

2. Department of Homeland Security. "Department of Homeland Security" means the United States Department of Homeland Security, or its successor agency, and any of its component agencies, including the United States Immigration and Customs Enforcement and the United States Customs and Border Protection.

3. Hold request. "Hold request" means a request issued by an immigration authority to a local law enforcement agency, including an immigration detainer, that the law enforcement agency maintain custody of a person in the law enforcement agency's custody beyond the time the person would otherwise be eligible for release in order to facilitate transfer to the immigration authority.

4. Immigration authority. "Immigration authority" means a federal, state or local officer, employee or other person performing immigration enforcement functions, including the Department of Homeland Security.

5. Immigration detainer. "Immigration detainer" means a written request, including a civil or administrative warrant, issued on behalf of the Department of Homeland Security to a federal, state or local law enforcement agency to provide notice of release of and to detain an individual based on an inquiry into immigration status or an alleged violation of a civil immigration law, including detainers issued pursuant to 8 Code of Federal Regulations, Section 287.7 or 236.1, or on a Department of Homeland Security form requesting voluntary notification of a pending release of a person identified by the Department of Homeland Security as a suspected priority alien or requesting a law enforcement agency to voluntarily take action to maintain custody of a detained person.

6. Immigration enforcement. "Immigration enforcement" means efforts to investigate or assist in the investigation of a violation of or enforce or assist in the enforcement of a federal civil immigration law or federal criminal immigration law that penalizes a person's presence in, employment in or entry to the United States.

7. Inmate. "Inmate" means an individual in the custody of a law enforcement agency.

8. Law enforcement agency. "Law enforcement agency" means an agency in the State, including an employee or agent of the agency, charged with enforcement of state, county, municipal or federal laws or with managing custody of detained persons in the State and includes but is not limited to municipal police departments, sheriff's departments, the State Police, a university or college campus police department, the Department of Corrections and the Department of Public Safety.

§ 4724. Prohibited activities of law enforcement

1. Prohibited activities. A law enforcement agency may not:

A. Except as provided in subsection 2, use agency or department money or personnel to investigate, interrogate, detain, detect, stop, arrest or search a person solely for immigration enforcement purposes, including:

(1) Inquiring into a person's immigration status;

(2) Detaining a person on the basis of a hold request;

(3) Providing information regarding the person's release date unless that information is available to the public;

(4) Providing personal information about the person, including the person's home address or work address;

(5) Making or intentionally participating in an arrest based upon a hold request;

(6) Assisting immigration authorities in activities described in 8 United States Code, Section 1357(a)(3); or

(7) Performing the functions of an immigration authority;

B. Place a law enforcement officer under the supervision of a federal agency or employ a law enforcement officer deputized as a special federal officer or special federal deputy for immigration enforcement;

C. Use an agent or employee of an immigration authority as an interpreter for local law enforcement agency matters regarding a person in the law enforcement agency's custody;

D. Transfer a person to an immigration authority unless authorized by a court order or criminal warrant;

E. Provide office space within a law enforcement agency facility for use by an immigration authority for a generalized search of or inquiry about an inmate; or

F. Contract with the Federal Government for use of a law enforcement agency facility to house a person as a federal detainee for immigration enforcement purposes.

With the exception of willful or wanton misconduct, a law enforcement agency that acts in good faith compliance with this section in releasing a person subject to a hold request is immune from civil or criminal liability as a result of making the release.

2. Permitted activities. Notwithstanding the provisions of subsection 1, if an activity does not violate a policy of the law enforcement agency or a state or local law or policy of the jurisdiction in which the agency is operating, a law enforcement agency may:

A. Investigate, enforce or detain upon reasonable suspicion of or arrest for a violation of 8 United States Code, Section 1326 that may be subject to the enhancement specified under 8 United States Code, Section 1326(b)(2) and that is detected during an unrelated law enforcement activity. A transfer to an immigration authority under this paragraph is permitted only if authorized by a court order or criminal warrant;

B. Respond to a request from an immigration authority for information about a specific person's criminal history, including a previous criminal arrest or conviction or similar public criminal history record information accessed under Title 16, chapter 7, when otherwise permitted by state law;

C. Conduct enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with another law enforcement agency, for the purpose of a task force investigation, if:

(1) The primary purpose of the joint law enforcement task force is not immigration enforcement;

(2) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement; and

(3) Participation in the task force by the law enforcement agency does not violate any state or local law or policy to which the agency is subject;

D. Make an inquiry into information necessary to certify an individual identified as a potential crime or trafficking victim for a visa pursuant to 8 United States Code, Section 1101(a)(15)(T) or 1101(a)(15)(U) or to comply with 18 United States Code, Section 922(d)(5);

E. Give an immigration authority access to interview an individual in the custody of the agency; or

F. Arrest or detain a person upon a hold request if the person:

(1) Has been convicted of a felony;

(2) Is subject to pending criminal charges when bail has not been set;

(3) Is subject to an outstanding arrest warrant;

(4) Is identified as a possible match in the federal terrorist screening database or similar database;

(5) Is subject to a final order of deportation or removal issued by a federal immigration authority; or

(6) Presents an unacceptable risk to public safety as determined by the law enforcement agency.

3. Detention solely for immigration enforcement. If it is determined that a person is being detained solely for the purposes of immigration enforcement, the person must be released as soon as possible and may be detained no longer than 48 hours, excluding Saturdays, Sundays and federal holidays.

4. Report to Attorney General. In addition to the reports required by section 4727, a law enforcement agency annually shall submit to the Attorney General a report that contains the following information:

A. If the law enforcement agency participates in a joint law enforcement task force for which the agency dedicates personnel or resources on an ongoing basis:

(1) The purpose of the task force;

(2) The federal, state and local law enforcement agencies involved;

(3) The total number of arrests made during the reporting period; and

(4) The total number of arrests made for immigration enforcement purposes during the reporting period; and

B. The number of transfers to immigration authorities conducted pursuant to a court order or criminal warrant and the underlying offense that authorized each transfer.

A report under this subsection is a public record under Title 1, chapter 13 except for personally identifying information of a person or information that may endanger the safety of a person involved in an investigation or the successful completion of an investigation.

5. Report by Attorney General. On March 1, 2020, and annually thereafter, the Attorney General shall report for the previous calendar year for all law enforcement agencies reporting under subsection 4 the total number of arrests made by all joint law enforcement task forces and the total number of arrests made for the purposes of immigration enforcement, excluding any information that may endanger the safety of a person involved in an investigation or the successful completion of an investigation. The Attorney General shall post the report on the Attorney General's publicly accessible website.

6. Exceptions. This section does not prohibit:

A. A law enforcement agency from sending to or requesting or receiving from an immigration authority information regarding the immigration status of a person or maintaining or exchanging that information with any other federal, state or local governmental entity under 8 United States Code, Section 1373 or 1644; or

B. A law enforcement agency from asserting the agency's own jurisdiction over a criminal law enforcement matter.

§ 4725. Duties of custodial law enforcement agencies

1. Custodial duties. A law enforcement agency shall for an inmate in the agency's custody:

A. In advance of an interview between the inmate and an immigration authority regarding a civil immigration violation, provide the inmate with a written consent form that explains the purpose of the interview, that the interview is voluntary and that the inmate may decline the interview or be interviewed only with the inmate's attorney present. If possible, the consent form must be written in the primary language of the inmate. This paragraph does not establish a right of counsel that otherwise does not exist in law; and

B. Upon receiving a hold request, provide a copy of the request to the inmate and inform the inmate whether the agency intends to comply with the request.

2. Custodial prohibitions. A law enforcement agency may not:

A. Restrict access to an in-custody educational or rehabilitative program or good behavior credit-earning opportunity on the sole basis of citizenship or immigration status, including whether the inmate is in removal proceedings or an immigration authority has issued a hold request or civil immigration warrant against the inmate; or

B. Consider citizenship or immigration status as a factor in determining an inmate's custodial classification level, including whether the person is in removal proceedings or an immigration authority has issued a hold request or civil immigration warrant against the inmate.

§ 4726. Model policies and guidance

1. Model policies. The Attorney General, in consultation with the appropriate stakeholders, shall publish by October 1, 2020, and subsequently update as necessary, a model policy for limiting assistance provided to an immigration authority to the fullest extent possible consistent with federal and state law at public facilities, including schools, libraries, postsecondary education institutions, health facilities and shelters operated by the State or a political subdivision of the State; courthouses; and facilities owned or operated by a state department, agency, division or political subdivision, to ensure that the facilities are safe and accessible to all residents of the State regardless of immigration status. A public facility under this subsection shall implement the model policy and a private facility that provides a service related to physical or mental health and wellness, education or access to justice is encouraged to adopt the model policy or similar policy. The Attorney General may consult with a public or private facility to modify the model policy for the facility as determined by the specific characteristics of that facility.

2. Database protection. The Attorney General, in consultation with the appropriate stakeholders, shall publish by October 1, 2020, and subsequently update as necessary, guidance, audit criteria and training recommendations to ensure a database operated by a state or local law enforcement agency limits the availability of information for the purposes of immigration enforcement to the fullest extent possible consistent with federal and state law. A state or local law enforcement agency may implement the guidance, audit criteria and training recommendations published under this subsection.

§ 4727. Records

1. Retention of records. A law enforcement agency shall retain a copy of a hold request and any other request along with any accompanying information or documentation provided by an immigration authority and information on the inmate subject to the hold request, including:

- A. The inmate's race;
- B. The inmate's gender;
- C. The inmate's place of birth;
- D. The inmate's date and time of arrest;
- E. All of the inmate's charges of arrest;
- F. The date and time of receipt of the hold request;
- G. The date and time that the inmate was taken into custody by the immigration authority acting under authority of the hold request;
- H. The inmate's immigration and criminal history known or recorded in the hold request;
- I. A listing of any accompanying information or documentation regarding immigration status or proceedings; and
- J. Documentation that a copy of the hold request was provided to the inmate as required by section 4725, subsection 1, paragraph B.

2. Report to Attorney General. A law enforcement agency shall report quarterly to the Attorney General all information collected pursuant to this section, except for criminal history record information.

SUMMARY

This bill establishes the Maine Liberty Act, which governs the relationship of state and local law enforcement agencies, including correctional facilities, with federal immigration authorities, including:

1. Prohibiting a law enforcement agency from stopping, investigating, interrogating, arresting or detaining a person solely for immigration enforcement purposes, including in response to a hold request,

immigration detainer or administrative warrant issued by the United States Department of Homeland Security, or allowing the United States Department of Homeland Security access to inmates, inmate information or law enforcement agency facilities or providing law enforcement agency resources or personnel to assist immigration enforcement activities;

2. Clarifying that a law enforcement agency upon a request from the United States Department of Homeland Security may arrest and detain a person and perform other law enforcement duties due to suspected criminal activity or other reasons not solely based on the person's immigration status;

3. Establishing the permissible scope of collaboration of a law enforcement agency with a joint law enforcement task force and requiring reporting to the Attorney General on all arrests made by the task force, including all arrests made for immigration enforcement purposes;

4. Requiring a law enforcement agency to release as soon as possible and detain no longer than 48 hours a person determined to be held solely for immigration enforcement purposes;

5. Establishing duties and prohibitions for law enforcement agencies regarding immigration issues of inmates, including requiring the agency to inform an inmate of the inmate's rights prior to interview by an immigration authority and whether the agency intends to comply with a hold request and prohibiting an agency from restricting access to educational programming and good conduct credits or determining an inmate's custodial status based upon the inmate's immigration status;

6. Requiring the Attorney General to publish a model policy regarding limiting assistance to immigration authorities in public facilities and publish guidance, audit criteria and training recommendations to ensure that a database operated by a state or local law enforcement agency limits the availability of database information to immigration authorities; and

7. Requiring a law enforcement agency to record certain information regarding hold requests and certain other information from immigration authorities received by the agency and to report quarterly to the Attorney General on this information.