

Date:

(Filing No. H- )

## JUDICIARY

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### STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to H.P. 1315, L.D. 1971, “An Act to Protect Workers in This State by Clarifying the Relationship of State and Local Law Enforcement Agencies with Federal Immigration Authorities”

Amend the bill in section 1 in c. 337-E in §4761 by striking out all of subsection 1 (page 1, lines 8 and 9 in L.D.).

Amend the bill in section 1 in c. 337-E in §4761 by renumbering the subsections to read consecutively.

Amend the bill in section 1 in c. 337-E by striking out all of §§4762 to 4764 (page 2, lines 3 to 39; page 3, lines 1 to 40; page 4, lines 1 to 40; and page 5, lines 1 to 6 in L.D.) and inserting the following:

#### **§4762. Activities unaffected**

This chapter may not be construed to prohibit:

**1. Exchanging information consistent with federal law.** 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

**2. Actions against person pursuant to certain criminal laws.** A law enforcement agency from investigating, lawfully detaining, executing a criminal warrant or taking other action against a person pursuant to state criminal law or federal law as provided in section 4763, subsection 2.

#### **§4763. Prohibited activities**

**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 for immigration enforcement purposes, including:

- (1) Inquiring into a person's immigration status;
- (2) Detaining a person solely on the basis of a hold request;
- (3) Providing to immigration authorities information regarding the person's release date unless that information is available to the public;
- (4) Providing to immigration authorities 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; or

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

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, take enforcement action against or detain a person upon reasonable suspicion of or arrest a person 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 execution of a warrant or sharing of confidential information with a federal law enforcement agency or 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, including but not limited to terrorism, drug trafficking or human trafficking; 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); or

E. Give an immigration authority access to interview an individual in the custody of the agency, as long as the immigration authority's interview request is supported by a valid court order.

**§4764. Duties of custodial law enforcement agencies**

A law enforcement agency shall, for an inmate in the agency's custody:

**1. Written consent for voluntary interview.** 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. The consent form must be written in the primary language of the inmate and read to the inmate by a person who is not an immigration authority. This paragraph does not establish a right of counsel that otherwise does not exist in law; and

**2. Notice of hold request.** Upon receiving a hold request, provide a copy of the request to the inmate and inform the inmate that the law enforcement agency is prohibited under section 4763 from detaining an inmate based solely on the hold request.

**§4765. Records**

A law enforcement agency shall make reasonable efforts to retain for a period of 4 years 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.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment, which is the majority report of the committee, reorganizes and amends the language of the bill to clarify which interactions between state and local law enforcement agencies and immigration authorities are permitted and which are prohibited. The amendment:

1. Clarifies that this legislation does not prohibit communication between state and local law enforcement agencies and federal, state or local immigration authorities, as provided by 8 United States Code, Sections 1373 and 1644;

**(See attached)**