SPONSOR: Rep. Gorman & Rep. Ortega & Sen. Sturgeon
Reps. Berry, Griffith, Morrison, Phillips, Romer, Snyder-Hall, Burns, Lambert, Lynn, Neal, Ross Levin; Sens. Sokola, Seigfried, Cruce, Lockman

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 368
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO IMMIGRATION ENFORCEMENT AND COOPERATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 84B, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8401B. Definitions.

As used in this ~~chapter~~ chapter:

(1) a. "Civil immigration warrant" means any document that is not approved or ordered by a judge that can form the basis for an individual's arrest or detention for a civil immigration enforcement purpose.

b."Civil immigration warrant" includes Form I-200 "Warrant for the Arrest of Alien", Form I-203 "Order to Detain or Release Alien", Form I-205 "Warrant of Removal/Deportation", Form I-286 "Notice of Custody Determination", any predecessor or successor form, and all warrants, hits, or requests contained in the "Immigration Violator File" of the FBI's National Crime Information Center (NCIC) database.

c."Civil immigration warrant" does not include a valid judicial warrant or court order.

(2) a. "Immigration detainer" means a request to a State or local law-enforcement agency to provide notice of release or maintain custody of an individual based on an alleged violation of a civil immigration law, including detainers issued under Sections 1226 or 1357 of Title 8 of the United States Code or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations.

b."Immigration detainer" includes Form I-247A "Immigration Detainer – Notice of Action" and any predecessor or successor form.

~~"law-enforcement agency" means the Delaware State Police, the Wilmington City Police Department, the New Castle County Police, the University of Delaware Police Division, the Delaware State University Police~~

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~~Department, the police force established by the Delaware River and Bay Authority, the police department, bureau of police, or police force of any incorporated municipality, city, or town within this State, the Department of Natural Resources and Environmental Control, the Delaware Capitol Police, Probation and Parole Office of the Department of Correction, Probation and Parole of the Department of Services for Children, Youth and their Families, State Fire Marshal, the Department of Justice, the State Police Drug Diversion Unit, or the State Division of Alcohol and Tobacco Enforcement.~~

(3) "Law-enforcement agency" means a government agency that employs law-enforcement officers.

(4) "Law-enforcement officer" means as defined in § 222 of this title.

§ 8403B. Limitations on arrest and detention.

(a) Except as set forth under subsection (b) of this section, a law-enforcement agency or law-enforcement officer may not detain or continue to detain an individual solely on the basis of an immigration detainer or civil immigration warrant or otherwise comply with an immigration detainer or civil immigration warrant.

(b) A law-enforcement officer may cooperate with federal immigration officials by detaining an individual on the basis of an immigration detainer or civil immigration warrant after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under any of the following circumstances:

(1) The individual has been convicted of a violent felony, as designated under § 4201 of this title, or an equivalent crime under the laws of another jurisdiction.

(2) The individual is a registered sex offender.

(3) The individual has been convicted of 2 or more violations of § 4177 of Title 21 or the equivalent crime under the laws of another jurisdiction.

(4) The individual is a "perpetrator of domestic violence" as that term is defined in § 703A of Title 13.

§ 8404B. Limitations on immigration enforcement and cooperation.

(a) A law-enforcement agency or law-enforcement officer may not stop, arrest, search, detain, or continue to detain a person solely based on actual or suspected citizenship or actual or suspected immigration status.

(b) A law-enforcement agency or law-enforcement officer may not inquire about or investigate the immigration status of any individual, unless it is necessary for an ongoing investigation of an indictable offense by that individual and relevant to the offense under investigation.

(c) (1) Except as provided in paragraph (c)(2) of this section, a law-enforcement agency or law-enforcement officer may not inquire about or investigate the citizenship or immigration status or place of birth of any individual in the agency or officer's custody or who has otherwise been stopped or detained by the agency or officer.

(2) A law-enforcement agency or law-enforcement officer may make limited inquiries necessary to determine an individual's country of nationality in order to inform an individual of the right to communicate with consular officers or to facilitate such communication in accordance with the Vienna Convention on Consular Relations or other applicable agreements.

(d) Unless presented with a valid judicial warrant or court order, as otherwise required by federal law, or if the conditions of § 8403(b) of this title apply, a law-enforcement agency or officer may not do any of the following:

(1) Participate, support, or assist in any immigration enforcement operations, including any collateral assistance such as coordinating an arrest in a courthouse or other facility, providing use of any equipment, transporting any individuals, or establishing a security or traffic perimeter for immigration enforcement operations.

(2) Give any immigration agent access, including by telephone, to any individual who is in that agency's custody.

(3) Transfer any person into an immigration agent's custody.

(4) Provide to any immigration agent information not otherwise available to the public relating to an individual's release or contact information, or otherwise facilitate apprehension or questioning of an individual for immigration enforcement.

(5) Permit access to a detained individual for an interview with an immigration agent, unless the detainee signs a written consent form that explains the purpose of the interview, that the interview is voluntary, that the individual may decline to be interviewed, and that the individual may choose to be interviewed only with legal counsel present.

(6) Initiate contact with federal immigration authorities for the purpose of civil immigration enforcement, including notifying such authorities of the presence, custody status, or release of an individual subject to an immigration detainer or civil immigration warrant, except where required by a valid judicial warrant or court order or where the conditions of § 8403B(b) of this title apply.

§ 8405B. Interpretation of immigration enforcement limitations.

Nothing in this chapter shall be construed to restrict, prohibit, or prevent any law-enforcement agency or law-enforcement officer from engaging in the following:

(1) Enforcing the criminal laws of this State.

(2) Complying with all applicable federal, State, and local laws.

(3) Complying with a valid judicial warrant or other court order or responding to any request authorized by a valid judicial warrant or other court order.

(4) Participating with federal authorities in a joint law-enforcement task force, the primary purpose of which is unrelated to federal civil immigration enforcement.

(5) Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.

(6) Asking an arrested individual for information necessary to complete the required fields of a law-enforcement fingerprinting database, including information about the arrestee's place of birth and country of citizenship.

(7) Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification and assignments in the facility.

(8) Providing federal immigration authorities with information that is publicly available or readily available to the public in the same manner the public obtains it.

§ 8406B. Reporting.

(a) Beginning [January 1 following enactment of this Act], a law-enforcement agency must annually submit to the Attorney General a report that includes all of the following:

(1) The number of requests for assistance or cooperation with respect to immigration enforcement with which the law-enforcement agency complied.

(2) The number of immigration detainers or civil immigration warrants honored or complied with by the law-enforcement agency, and the reason that the agency asserts the compliance, assistance, or cooperation is authorized under this chapter or other applicable law.

(b) No personally identifying information may be included in a report required under this section.

§ 8407B. Enforcement.

(a) The Attorney General has authority to conduct investigations into violations of this chapter. The Attorney General may do any of the following:

(1) Require a law-enforcement agency, law-enforcement officer, or any other person or entity to file a statement or report in writing under oath or otherwise, as to all information the Attorney General may consider necessary.

(2) Examine under oath any law-enforcement officer or any other person alleged to have participated in or with knowledge of the alleged violation.

(3) Issue subpoenas, obtain records, conduct hearings, or take any other actions in aid of any investigation. In the event a law-enforcement agency, law-enforcement officer, or other person or entity fails to comply, in whole or in part, with a subpoena or other investigative request issued pursuant to this paragraph, the Attorney General may compel compliance through an action in the appropriate court.

(b) Upon the Attorney General's own information or upon the complaint of any person, the Attorney General may maintain an action for declaratory, injunctive, or any other equitable relief in the appropriate court against any law-enforcement agency, law-enforcement officer, or other person or entity who violates any provision of this Act. These remedies are in addition to, and not in substitution for, other available remedies.