

MAINE STATE LEGISLATURE

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DATE: 5/4/95

(Filing No. H- 205)

CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 67, L.D. 103, Bill, "An Act to Enable Sworn Law Enforcement Employees of the Immigration and Naturalization Service of the Department of Justice and Officers of the United States Custom Service of the Department of the Treasury to Enforce Maine Law"

Amend the bill by striking out the title and substituting the following:

'An Act to Grant Certain Federal Officers Limited Authority to Enforce Maine Law'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 25 MRSA §1502-A is enacted to read:

§1502-A. Cooperation of federal officers

1. Definition. For purposes of this section, "federal officers" means the following persons who are authorized to carry firearms in the performance of their duties as federal law enforcement employees or officers:

A. Special Agents of the Immigration and Naturalization Service of the Department of Justice;

B. Immigration Inspectors, including Deportation Officers and Immigration Examiners when acting in the capacity of Immigration Inspectors of the Immigration and Naturalization Service of the Department of Justice;

2 C. Border Patrol Agents of the Immigration and
4 Naturalization Service of the Department of Justice;

6 D. Officers of the United States Customs Service of the
 Department of the Treasury; and

8 E. Any of the officers listed in this subsection who are
10 assigned to or are acting in concert with a task force, but
 only if that task force meets the following requirements:

12 (1) The task force is a task force of the Maine Drug
14 Enforcement Agency authorized under this Title; or

16 (2) The task force is a joint federal-state task force
 operating primarily within the territorial boundaries
18 of this State and:

20 (a) An arrest is part of or related to an
 investigation of that federal-state task force; or

22 (b) An arrest occurs in a prosecutorial district
24 and either:

26 (i) The district attorney of that district
 or the district attorney's written designee
28 actively participates in and oversees the
 activities of the task force; or

30 (ii) The arrest occurs anywhere within the
 State and the Attorney General or the
32 Attorney General's written designee actively
34 participates in and oversees the activities
 of the task force.

36 Federal officers are law enforcement officers for the purposes of
38 Title 17-A, section 2, subsection 17.

40 2. Powers. Subject to suspension or revocation, without
 hearing, by the Attorney General or the Board of Trustees of the
42 Maine Criminal Justice Academy, a federal officer has the power
 to enforce state law when one or more of the following situations
44 exist.

46 A. The federal officer has an articulable and reasonable
 suspicion to believe that the person to be stopped has
48 committed, is committing or is about to commit a state crime
 or has probable cause to believe that the person to be
50 arrested has committed or is committing a state crime.

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institutions. The costs will depend on which classes of crimes are affected, which can not be determined at this time.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these new cases. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

The additional costs associated with the training of federal officers on Maine criminal law can be absorbed by the Department of the Attorney General and the Department of Public Safety utilizing existing budgeted resources.'

STATEMENT OF FACT

The amendment replaces the original bill. It enacts a new section of law that defines when certain federal immigration and customs employees and officers of the Department of Justice and the Department of the Treasury, who are authorized to carry firearms, may enforce state law.

The amendment also grants federal officers the same protections against liability as apply to the State Police and requires federal officers to receive from the Department of the Attorney General training in Maine criminal law and the use of force before the federal officers may enforce state law. The Immigration and Naturalization Service of the Department of Justice and the United States Customs Service of the Department of the Treasury shall also adopt training policies and other policies, including whether the power to enforce state law may be exercised when an officer is off duty or out of uniform, to implement the amendment. Policies must be approved by and filed with the Board of Trustees of the Maine Criminal Justice Academy.

The amendment further authorizes the Attorney General, at the Attorney General's discretion, or the Board of Trustees of the Maine Criminal Justice Academy to suspend or revoke, without hearing, the powers of any federal officer authorized by this amendment to enforce state law. Because the suspension or revocation of state law enforcement powers of a federal officer

does not typically result in the denial of employment of that officer, a hearing need not be provided. Empowering the Attorney General to suspend and revoke such powers is in keeping with the Attorney General's constitutional role as the chief law enforcement officer of the State and appropriate when the employer is a separate sovereign. A suspension or revocation of state powers does not affect the legality of any state law enforcement action made prior to notification to the officer of that suspension or revocation.

The amendment also prohibits federal law enforcement officers from exercising state law enforcement powers as part of a task force unless those officers are assigned to a joint federal-state task force in which certain state prosecutors play an equal role with federal prosecutors in the affairs of the task force. The participating role of certain state prosecutors in such a task force must be by specific designation of the Attorney General or, where appropriate, a district attorney. A federally employed, federal prosecutor who has merely been cross-designated as a state prosecutor will not satisfy this provision unless additionally designated in writing by the Attorney General or by an appropriate district attorney. In the alternative, federal officers would be empowered with state powers if they were assigned to a task force of the Maine Drug Enforcement Agency. The Maine Drug Enforcement Agency task force exception is in keeping with the purposes and provisions of the Maine Drug Enforcement Act and is in harmony with the preconditions imposed on federal-state task forces. The Maine Drug Enforcement Agency task forces, by statute, are required to have assigned to them state-employed, state prosecutors under the Maine Revised Statutes, Title 25, section 2955, subsection 7. The purpose of the amendment is to ensure that state prosecutors play a significant role in the supervision of organized investigative task forces operating in the State before any federal law enforcement officers are empowered to arrest, search or charge state citizens under state law. A federal law enforcement officer enforcing state law as part of or relating to a task force investigation can only be authorized or cross-deputized as a state law enforcement officer with the consent of the Attorney General. This condition of state prosecutorial oversight is consistent with the past practice of federal authorities in conditioning the exercise of federal powers by state task force officers upon the approval and direction of the United States Attorney's Office.