



Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 8, 2018

RE: OPPOSITION TO HOUSE BILL 28 (WHITE)

[House Bill 28](#) (HB 28) punishes local officials who choose to prioritize their communities' safety over the bill's agenda-driven legislative priorities, diverts badly-needed local resources away from communities to serve the needs of the federal government, and corrodes public trust in law enforcement, making everyone less safe.

On behalf of the 59,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote 'no' on [House Bill 28](#) for the following reasons:

Exposes municipalities to unprecedented liability

HB 28 would make municipalities vicariously liable for personal and/or property damages resulting from crimes committed in the jurisdiction by immigrants who are not lawfully present in the United States. This strict liability provision is radically different from previous exceptions and common law rules for municipal immunity, which generally do not hold municipalities liable for third-party actions.¹

Municipalities risk violating state and federal laws, including the Fourth Amendment

Among the criteria for holding municipalities liable, HB 28 includes instances in which an undocumented person commits a crime after being released by local law enforcement despite an Immigration and Customs Enforcement (ICE) detainer request. Numerous courts have held that arrest or detention by local law enforcement based on an ICE detainer can violate state and federal laws, including the Fourth Amendment. These requests by ICE are not issued by a judge and may not be supported by probable cause to believe that the individual named in the detainer has committed a crime.² Courts have also held that municipalities can be held legally responsible for holding people on immigration detainees.³

As a result, HB 28 puts municipalities in an impossible bind – either hold people on ICE detainees and risk liability for violating their legal rights or release them and risk being held liable for damages under HB 28's liability provision.

¹ See, e.g., 42 Pa. Cons. Stat. § 8541 (setting forth general rule that “no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person”); 42 Pa. Cons. Stat. § 8542 (exceptions to governmental immunity).

² See, e.g., *Santos v. Frederick Co. Bd. of Commissioners*, 725 F.3d 451 (4th Cir. 2013) (police officers violated woman's Fourth Amendment rights when they arrested her based on civil immigration warrant); *Roy v. County of Los Angeles*, No. 2:12-cv-09012-AB-FFM, 2018 U.S. Dist. LEXIS 27268, at *66-70 (C.D. Cal. Feb. 7, 2018) (county violated Fourth Amendment by holding individuals on the basis of civil immigration detainees without probable cause to believe the individuals were involved in criminal activity); *Mercado v. Dallas Cty., Texas*, No. 3:15-CV-3481-D, 2017 WL 169102, at *9 (N.D. Tex. Jan. 17, 2017) (facially valid “ICE detainees did not provide ... sufficient probable cause to withstand Fourth Amendment scrutiny”). See also *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 947-948 (D. Minn. 2017) (recognizing that operational decision to honor a civil immigration detainer may subject county to liability for false imprisonment under state common law); *Alfaro-Garcia v. Henrico County*, 2016 U.S. Dist. LEXIS 132274, *45-46 (E.D. Va. 2016) (recognizing potential liability against sheriff under state tort law for honoring civil immigration detainer).

³ See, e.g., *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); *Roy*, 2018 U.S. Dist. LEXIS 27268, at *66-70.

Undermines a municipality's choice to separate local law enforcement from immigration enforcement

Local officials prefer to make their own decisions about whether or when to assist in federal immigration enforcement. That is because “[active involvement in immigration enforcement can complicate local law enforcement agencies' efforts to fulfill their primary missions of investigating and preventing crime.](#)”⁴ HB 28 would override local decision-making authority by prohibiting municipalities from adopting “an ordinance, regulation or plan or take any other action that limits or prohibits a public official, employee or law enforcement officer of the municipality from communicating or cooperating with an appropriate public official, employee or law enforcement officer of the Federal government concerning the immigration status of an individual in this Commonwealth.”⁵ If a municipality violates this liability provision, it risks losing all state funding.

By uniformly prohibiting municipalities from setting their own policies regarding federal immigration enforcement and communication with ICE, HB 28 threatens to:

- **Expose municipalities to liability for unlawful practices:** HB 28's communication provision means that municipalities cannot, for example, prohibit police officers from inquiring about national origin or immigration status to prevent racial or ethnic profiling or discrimination during an investigation. Without the ability to establish standard policies and procedures for local law enforcement, HB 28 is likely to lead to confusion among officers, resulting in inconsistent practices that expose municipalities to claims of unconstitutional racial and ethnic profiling or illegal searches or seizures.
- **Encourage over-reporting of personal data to ICE:** HB 28 requires municipalities to allow any employee or official to communicate directly with ICE. Whether in an abundance of caution or with overzealous intent, local employees and officials may over-report residents' data to ICE. HB 28 would prevent municipalities from imposing any limits on the data that officers can transmit to ICE. As a result, HB 28 could lead to dragnet collection and sharing of information about U.S. citizens with the federal government.
- **Undermine public safety:** Pennsylvania's immigrant population totals over 870,000 individuals, and tens of thousands of U.S. citizens in Pennsylvania live with at least one family member who is undocumented.⁶ Consequently, when police officers are permitted to ask residents about their immigration status, whole communities begin to view law enforcement as an arm of ICE. As a result, trust and cooperation between law enforcement and local communities deteriorate, making it [harder to solve and prevent crimes.](#)⁷ To avoid undermining public safety in this way, many jurisdictions have adopted policies specifically designed to separate local policing from immigration enforcement.
- **Divert local resources to support federal enforcement:** Complying with federal immigration requests requires local officials to expend time and money on enforcement that is outside their jurisdiction and expertise and may be at odds with their duties and obligations to their communities. By threatening to withhold critical state funding, HB 28 [coerces municipalities](#)⁸ into dedicating their already limited resources to serve the needs of the federal government.

For these reasons, we urge you to vote “no” on House Bill 28.

⁴ Fischer, Craig, editor. *Police Chiefs and Sheriffs Speak Out on Local Immigration Enforcement*. Police Executive Research Forum, 2008, www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/police%20chiefs%20and%20sheriffs%20speak%20out%20on%20local%20immigration%20enforcement%202008.pdf.

⁵ General Assembly of Pennsylvania, House Bill 28, P.N. 2006: page 3, lines 22-27, Session of 2017.

⁶ *See Fact Sheet: Immigrants in Pennsylvania*, Center for American Progress, 4 Oct. 2017, <https://www.americanimmigrationcouncil.org/research/immigrants-in-pennsylvania>.

⁷ *See, e.g.*, Campbell, Alexia. “US police chiefs are fighting the crackdown on ‘sanctuary cities.’” *Vox*, 18 Aug. 2017, www.vox.com/policy-and-politics/2017/8/18/16130954/police-sanctuary-cities; Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Dept. of Urban Planning and Policy – Univ. of Illinois at Chicago, May 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁸ Chang, Cindy, et al. *I'm not going to do it.' Police aren't eager to help Trump enforce immigration laws.* Los Angeles Times, 30 Jan. 2017, www.latimes.com/local/california/la-me-trump-immigration-cops-20170130-story.html.