

Why Mississippi Representatives Should Reject Senate Bill 2306

Senate Bill 2306 (SB 2306) is bad for public safety, bad for local communities, and bad for Mississippi. Among other things, this bill creates a limitless mandate for law enforcement agencies in Mississippi to “assist” the federal government in the enforcement of immigration laws, exposes local agencies to liability, and will cost local communities thousands of dollars that could be better spent on issues of local concern. SB 2306 strips local law enforcement agencies of critical discretion, in effect conscripting them to prioritize immigration enforcement over local public safety needs, and they will be forced to pick up the bill for it too.

SB 2306 undermines community safety for all Mississippians by taking away discretion from local police in prioritizing their work.

The safety of every community member depends on trust and a willingness to interact with police in order to participate in investigating and solving crimes. SB 2306 would undermine community safety by interfering with common-sense police efforts to assure that crime victims and witnesses feel safe when interacting with police to help solve and prevent crimes. As one Mississippi Senator put it: “Under this legislation, if a victim reports something to the authorities, the authorities are obligated to call up the feds and tell them to come pick up the victim.”¹

SB 2306 also reaches far beyond what is currently required under federal law, pushing police departments to prioritize the enforcement of federal immigration law at every turn, above their primary mission and goal, which is to ensure public safety. The bill contains a limitless requirement that police agencies “assist” federal agencies in the enforcement of federal immigration laws, notwithstanding the fact that this is a federal, not a local responsibility. This could encompass any number of activities, such as requests for tactical support for immigration enforcement operations, or the allocation of office space in jails for immigration interviews. This limitless mandate upends the ability of local agencies to prioritize the use of local public safety resources.

SB 2306 will cost cities and counties a significant amount that could be spent more effectively on addressing issues prioritized by the local community.

SB 2306 mandates every Mississippi law enforcement agency to utilize scarce jail resources and beds to hold individuals at federal immigration officials’ request. The requests, or ICE detainers, ask the local jail to hold the individual named in the detainer voluntarily for an additional 48-hour period after he/she would otherwise be released. Local agencies are not reimbursed for the cost of detaining these individuals and could be liable in federal court for constitutional violations that may result (see below).

SB 2306 will leave local communities to foot the bill for liability that results from the bill’s mandates.

Since ICE detainers are merely requests, local law enforcement agencies expose themselves to liability for deciding to detain an individual for any length of time based solely on an ICE detainer request. Many localities across the country that chose to honor ICE detainers have been

¹ <http://www.jacksonfreepress.com/news/2016/mar/08/sanctuary-cities-immigrants-may-soon-be-illegal-mi/>.

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held financially liable for civil rights violations resulting from unlawful detentions on ICE detainees.²

SB 2306's indemnification clause will not insulate local agencies from this liability. First, state law can never insulate a local agency from liability in federal court based on a violation of federal law. Second, SB 2306's "protections" hinge the indemnification of local agencies on the actions of a third party—ICE. According to SB 2306's requirements, a local agency is protected from liability for detentions made as a result of an ICE detainer where they are supported by probable cause. This means that local agencies are protected only if immigration officials had sufficient evidence amounting to probable cause before they issued the ICE detainer. But as multiple federal court cases have found, ICE detainees are often not supported by probable cause.³

SB 2306 is a purported solution in search of a problem. Even the bill's sponsor, Sen. Sean Tindell admitted that there are in fact no "sanctuary cities" in Mississippi.⁴ If SB 2306 becomes law, every local community in Mississippi would be exposed to potential liability for constitutional violations while sacrificing more pressing public safety concerns. . We urge you to reject this proposal.

² See ACLU Immigrants' Rights Project, *Recent court decisions relating to ICE detainees*, July 27, 2015 available at https://www.aclu.org/sites/default/files/field_document/recent_ice_detainer_cases_2.pdf (partial list of recent damages awards and settlements).

³ See, e.g., *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Oregon 2014) ("an ICE detainer [] provides no probable cause for detention").

⁴ <http://www.jacksonfreepress.com/news/2016/mar/08/sanctuary-cities-immigrants-may-soon-be-illegal-mi/>.