



Kansas Sheriffs' Association

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**Neutral Testimony to the Senate Federal and State Affairs Committee
SB158 – Sanctuary Prohibitions
February 15, 2017**

Chairman LaTurner and Committee Members,

The Kansas Sheriff's Association submits testimony that is neutral on SB158.

In March of 2014, the *Galarza v. Szalczyk* ruling was handed down by the 3rd Circuit. The case ruled on the Fourth Amendment rights of illegal aliens and particularly the use of federal detainer holds (ICE Detainers) requests placed upon local Sheriff's. The ruling stated that ICE detainers are simply a request and violate a person's 4th Amendment rights if not accompanied by other charges. Second, Congress's only specific mention of detainers appears in INA § 287, 8 U.S.C. § 1357(d). The Act does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal. Moreover, in reviewing this statute, the Supreme Court has noted that § 1357(d) is a request for notice of a prisoner's release, not a command (or even a request) to LEAs to detain suspects on behalf of the federal government. *Arizona v. United States*, — U.S. —, —, 132 S.Ct. 2492, 2507, 183 L.Ed.2d 351 (2012) (observing that "[s]tate officials can also assist the Federal Government by responding to requests for information about when an alien will be released from their custody. See § 1357(d).").

In the above named ruling, the county had to pay out over \$100,000.00 to the plaintiff. This was taxpayer money.

There are also two additional rulings in Federal Court that talks about ICE detainers, one is *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-St, 2014 WL 1414305. This ruling said the ICE detainer lacked probable cause and violated *Miranda-Olivares's* Fourth Amendment rights.

The second and most recent case is *Moreno v. Napolitano* which was a class action challenging ICE's authority to issue detainers. The ruling stated "Because the immigration detainers issued under ICE's detention program seek to detain subjects without a warrant-even in the absence of a determination by ICE that the subjects are likely to escape before a warrant can be obtained-the Court will enter judgment for Plaintiffs declaring the immigration detainers issued against Plaintiffs void." Additionally the Judge ruled that detainers should not be used in the District Office of Chicago ICE. Kansas falls under the authority of the Chicago District Office of ICE.

Kansas Sheriff's are committed to being focused on local crime prevention, and the Sheriff's office works to appropriately cooperate with federal agencies in this mission. The proposed legislation has one issue the association would like to see addressed. On page 3, lines 4-14, subsections (f) and (g). The proposed legislation states "If a city or county incurs liability for enforcing the federal immigration laws to the full extent permitted by federal law, the city or county responsible for the costs incurred shall be reimbursed for such costs by filing a claim against the state pursuant to article 9 of chapter 46

Fed and State Committee

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Attachment # 42

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of the Kansas Statutes Annotated, and amendments thereto." The issue at hand is the State can deny the claim by the city or county, thus causing litigation. The Kansas Sheriff's Association proposes that if any city or county incurs liability the State of Kansas "will" reimburse the city or county that incurred the cost. We also are concerned with the language, "to the full extent permitted by federal law" since if we lose a lawsuit the court would be saying the action was not "permitted by law." We suggest using the term, "pursuant to this act" instead. We ask that the proposed amendment below be considered.

The Kansas Sheriff's Association is neutral on SB158 due to the one concern in the above testimony.

Thank you for allowing this opportunity to provide testimony on this bill.

Sheriff Jeffrey T. Easter
Legislative Chair for the Kansas Sheriff's Association

Proposed Amendments:

(f) If a city or county is a defendant in litigation arising from enforcing the federal immigration laws ~~to the full extent permitted by federal law pursuant to this act~~, the attorney general shall, at the request of the city or county, defend the city or county in the litigation. All costs incurred by the attorney general to defend a city or county as provided in this subsection, including payment of court costs, shall be paid from the state general fund.

(g) If a city or county incurs liability for enforcing the federal immigration laws ~~to the full extent permitted by federal law pursuant to this act~~, the state shall reimburse the city or county responsible for the costs incurred ~~from the state general fund shall be reimbursed for such costs by filing a claim against the state pursuant to article 9 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.~~