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December 1, 2021

Joint Committee on Public Safety and Homeland Security  
Rep. Carlos González & Sen. Walter Timilty, Chairs

**SUPPORT FOR H.2418 and S.1579  
SAFE COMMUNITIES ACT**

The ACLU of Massachusetts and our nearly 100,000 members and activists throughout the Commonwealth support *An Act to Protect the Civil Rights and Safety of All Massachusetts Residents*, commonly known as the Safe Communities Act, in the strongest terms. We respectfully request that the committee advance this legislation to enhance the safety of all Massachusetts residents by ensuring that state and local law resources are not used for federal immigration enforcement.

Massachusetts must stand up for our values. We should not lift a finger, or spend a dime, in service of federal immigration enforcement policies that threaten our communities.

Under the Trump administration, immigration enforcement drastically increased and the priorities for deportation widened dramatically. But Trump's extreme assaults on immigrants were built on pre-existing structures that entangle local law enforcement in service of federal deportations. The exploitation of those structures in Massachusetts persists under the Biden administration — at the expense of community safety.

The COVID-19 pandemic has shown a light on many inequities in our society, including the inequities faced by our immigrant neighbors. Immigrants—both with and without federal immigration status—make up a large share of the essential workers that kept our state moving during shutdowns. While many workers were able to stay safe by working remotely, immigrants disproportionately work in industries that required them to be present in the workplace, and bore the brunt of the disease from the very beginning.<sup>1</sup>

Immigrants keep our state running and they deserve better. At the very least, our state should not volunteer our own state resources to help the federal government deport our community members.

If we continue to do so voluntarily, we do so at our peril. It is widely understood that the more local agencies assist with federal immigration issues, the more they lose the trust of their communities, who fear that any interaction with local government could get

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<sup>1</sup> Partners in Health, *COVID-19 Disproportionately Impacts Immigrants in Massachusetts*, July 23, 2020, <https://www.pih.org/article/covid-19-disproportionately-impacts-immigrants-massachusetts>

them deported. And when our neighbors fear local government and do not trust local police and local institutions, everyone's safety suffers.

For that reason, the Safe Communities Act has strong support from key law enforcement leaders. Over the last two years, we have worked with District Attorney Marian Ryan and several police chiefs to rework sections of the bill so they are consistent with already-existing practices and work in practice. Chiefs have told us that the bill reflects best practices already in use in many localities, and that good community policing relies on a clear demarcation between federal and local roles when it comes to immigration.

Over 60 towns and cities across the state have adopted policies to limit cooperation between local law enforcement and federal immigration enforcement. Now it's time for the legislature to act. Passing the Safe Communities Act would send a powerful message to immigrant communities throughout the commonwealth: we are not ICE agents and you are welcome here.

Massachusetts is not the first to plot this course. In addition to the hundreds of cities, towns, and counties across the country that have passed similar policies, five states have statewide protections akin to the Safe Communities Act. State legislatures in Connecticut, California, and Illinois passed legislation similar to the Safe Communities Act, most recently, the New Jersey attorney general placed a statewide ban on 287(g) contracts, which deputize local officials to act as ICE agents.

### **What the Safe Communities Act does**

It is important to be clear about the nature of the bill: what it is and what it is not.

The SCA does four main things: it ensures that state and local law enforcement officers do not ask about the immigration status of people they encounter; it prohibits state and local law enforcement from entering into 287(g) contracts, which deputize local jail staff to act as federal ICE agents; it sets the parameters for how local police, sheriffs, and courts collaborate with ICE; and it helps ensure that persons in local custody have notice about their rights before interacting with ICE.

#### **1. Prohibits law enforcement agencies from asking about status**

The bill prohibits Massachusetts law enforcement agencies, including police, court officers, and jail officials, from asking about the immigration status of people they encounter. The state police and many local departments already have similar policies, whether in writing or in practice, and most police officers will tell you that they never ask the question. Why? Because it is irrelevant to their work and disruptive to their public safety goals of preventing, investigating, and solving crime. Yet, without a statewide policy, officials are free to ask people they encounter about their immigration status – and in some places they do, chilling crime victims and witnesses from coming forward.

## **2. Prohibits 287(g) contracts**

The bill cancels the last remaining 287(g) contracts with the federal government and prohibits new ones. These contracts are the most extreme form of voluntary collaboration between localities and ICE. They deputize jail staff to act as federal ICE agents, while the local entity foots the bill. Massachusetts is the only state in New England to have such agreements and, indeed, a national outlier.

The 287(g) program is a wasteful, dangerous and dying effort by the federal government, as evidenced by the fact that two out of four Massachusetts contracts were canceled this past year. The Department of Homeland Security canceled its contract with Bristol County jail after years of complaints and a violent incident there, and Plymouth County cancelled its contract this fall. It's time to finally put an end to this failed program.

## **3. Limits collaboration with ICE**

The bill sets statewide parameters for local assistance in efforts to enforce immigration laws. This section was re-written for this session after much consultation with law enforcement leaders. We heard loud and clear from law enforcement that it was not feasible to expect local police and court officials not to answer direct questions from ICE — especially when they could answer those same questions if they came from other law enforcement agencies or members of the public.

The bill now narrowly focuses on only one kind of communication: it would prevent law enforcement from pro-actively alerting the Department of Homeland Security about a the imminent release of a person who has come into local custody but has not been found guilty of a crime and is not serving a sentence. That kind of communication serves only to facilitate civil immigration arrests, and is not a best practice. In fact, it frustrates the justice system by interfering with ongoing cases and chilling crime victims and witnesses from going to court.

The bill does not prevent any other kind of communication between police and ICE, including working together on criminal enforcement.

## **4. Establishes due process protections**

ICE agents visit all of our county jails and state prisons, and routinely interview individuals incarcerated there in order to make out a deportation case against them. The bill provides a sorely-missing level of due process by requiring that a person in local custody receive notice of their legal rights before an ICE agent interviews them. These include the right to contact their attorney (if they have one), decline the interview, or remain silent. Because there are no *Miranda* warnings in the immigration context, individuals in local custody often do not know that they have any legal rights, opening the door for ICE to misrepresent the situation and abuse its power.

## **The Safe Communities Act does not limit the ability of police to fight crime**

It's also important to be clear about what the Safe Communities Act does *not* do. It does *not* create a safe harbor for criminals. It does *not* stop police from doing their everyday work, including investigating crime, arresting people, or even working together with federal agencies on criminal matters. Under the Safe Communities Act, police can still participate in multi-agency investigations, or assist a federal agency in arresting an individual with a warrant or upon probable cause of a crime.

The Safe Communities Act is designed to *help* police do their jobs better by creating more community trust in law enforcement, as law enforcement leaders testified at the hearing on this bill.

By proscribing only limited types of ICE-police collaboration, the bill seeks to disentangle local police from the enforcement of civil immigration laws, sending a powerful message that Massachusetts police can be trusted, and leaving intact all other tools for criminal law enforcement.

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Massachusetts has often led the nation in advancing due process and civil rights. We now have an opportunity and a responsibility to play a leadership role in moving fundamental rights forward.

We strongly urge you to give the Safe Communities Act a favorable report, and we welcome the opportunity to work with the Committee as you consider this important proposal. Thank you.

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