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Commentary: 'Sanctuary' bill would force NH police to do federal government's bidding

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This week, the New Hampshire Senate is considering Senate Bill 132, the so-called “anti-sanctuary cities” bill. This bill, rooted in harmful myths, would intrude on the autonomy of local police departments, require these departments to do the bidding of the federal government, and have a devastating impact on immigrant communities and their loved ones. The Senate must listen to the broad, widely shared concerns raised by law enforcement, immigration advocates, the ACLU of New Hampshire, the New Hampshire Municipal Association, and Roman Catholic Diocese of Manchester, and reject this legislation.

This bill purports to ban “sanctuary cities,” but New Hampshire does not have “sanctuary cities.” All police departments in New Hampshire coordinate with federal agencies to apprehend individuals — including undocumented individuals — who may have engaged in crimes. (The U.S. Supreme Court has made clear that being undocumented, by itself, is not a crime.)

Instead, what SB132 does is explicitly disallow any adoption of a “sanctuary policy.” A “sanctuary policy” is broadly defined as any policy that prohibits any local police department from cooperating with the enforcement of federal immigration laws.

There would be extreme consequences to this bill, including local police departments being mandated to comply with requests by the federal government to detain people believed to be undocumented, regardless of that department’s other priorities.

Under this bill's sweeping text, any local police department that elects not to hold people who the federal government wants detained would now likely be deemed to have a policy that prohibits cooperating with federal immigration laws — a “sanctuary policy.” To make matters worse, the bill even requires the state attorney general to file actions against allegedly offending local police departments.

The bill is flawed for several other reasons.

First, it is a massive intrusion on local control, and contravenes New Hampshire's “live free or die” value and history that our local officials do not do the bidding of the federal government. SB132 violates this fundamental principle by making local officials — and the tax dollars that support them — accountable not to their citizens, but to the federal government.

This loss of autonomy is why several in New Hampshire law enforcement opposed the original bill at the State House. As one police chief, with the support of three other local police chiefs, explained, “this legislation is unnecessary and would prohibit agencies from promulgating and implementing policies and procedures that suit the needs of the communities they serve.” The version of SB132 now before the Senate poses this same problem and would effectively strip away a local police department's ability to make policy choices that the department has deemed to be in the best interest of its community.

Second, this bill effectively requires local governments to honor and enforce immigration “detainer” requests issued by the federal government, which lack due process. Detainer requests are when the federal government asks local law enforcement to detain a person on the suspicion that they are undocumented without a warrant or judicial approval, and merely based on the say-so of one federal agent. Given this lack of due process, between 2008 and 2012, the federal government erroneously issued 834 detainers against U.S. citizens and over 20,000 legal permanent residents.

Third, this bill would undermine community trust in law enforcement. As one report shows, when local police detain individuals simply due to their alleged undocumented status, they create an environment where these individuals — including victims of domestic violence or informants — are afraid to call for help and report crimes. This not only makes law enforcement's job

harder, but it also threatens the safety of Granite Staters and harms the relationships between departments and the communities they serve.

These instances have even occurred right here in New Hampshire. In 2018, one New Hampshire police department detained an undocumented person for the federal government after that person helped the department with a criminal investigation.

Some of this bill's supporters state that immigrants are engaging in rampant criminal activity. This is false. In 2020, the CATO Institute reviewed available data in Texas and found that the criminal conviction rate of undocumented people was 45% below that of those born in the U.S. Another peer-reviewed research paper published in December 2020 shows that undocumented immigrants in Texas likely aren't part of a crime wave. In fact, they're much less likely to be arrested for serious crimes than are people born in the U.S. As of 2021, there are more than 82,000 Granite Staters (about 6% of the population) who were born outside the United States. They include U.S. citizens and lawful permanent residents. All are a vital part of our New Hampshire communities.

In short, SB132 is not about apprehending undocumented individuals who have committed crimes. It is about compelling local officials to target and detain individuals who the federal government thinks are undocumented, regardless of whether there's any evidence of criminal behavior.

SB132 is wrong for New Hampshire.