

What you need to know about Senate Bill 35

A Guide from the ACLU of Ohio Legal Department*

What is Ohio Senate Bill 35?

- Ohio Senate Bill 35 (SB 35) would instruct the Ohio Attorney General to pursue an agreement (called a Memorandum of Understanding) with federal immigration authorities that would permit the enforcement of federal immigration laws by local law enforcement officers on a statewide level.

What is a Memorandum of Understanding (MOU)?

- It is a document that expresses what parties agree to do (like an agreement or contract). Many governmental agencies use them to define a relationship between departments or agencies.
- Federal immigration law (Illegal Immigration Reform and Immigrant Responsibility Act, Section 287(g)) allows the secretary of the U.S. Department of Homeland Security to enter into MOUs with state and local law enforcement agencies, permitting designated local law enforcement officers to enforce federal immigration law.

What is different between SB 35 and last year's Ohio Senate Bill 260?

- If it had passed, SB 260 would have allowed county sheriffs to pursue a MOU allowing enforcement of federal immigration laws by local law enforcement officers. The main difference is that SB 260 focused on a county or city level MOU while SB 35 allows for a statewide MOU.

Would this cost local government money?

- Yes. The fiscal note prepared by the Legislative Service Commission¹ about SB 260 in 2008 tells us that Ohio's sheriffs see immigration enforcement as too costly.
- It points out that county sheriffs are generally choosing not to utilize existing legal authority to detain prisoners for criminal immigration violations. The reason: cost and capacity.
- Based on LSC's research, "it seems likely that county sheriffs generally would not expend their limited resources (time, moneys, and people) in rendering assistance to federal immigration officials."

How many active MOUs are there in the United States to enforce federal immigration matters?

- As of November 2008, there are 67 active MOUs.²

Which states have statewide MOUs?

- Alabama, Arizona, Colorado, Florida, Georgia, Massachusetts, Minnesota, Missouri, New Mexico, and Tennessee.³ Generally, these are states with points of entry into the United States.

¹ <http://www.lbo.state.oh.us/fiscal/fiscalnotes/127ga/SB0260SP.HTM>.

² http://www.ice.gov/pi/news/factsheets/section287_g.htm

³ http://www.ice.gov/pi/news/factsheets/section287_g.htm; AL State Police, AZ Department of Corrections, AZ Department of Public Safety, CO Department of Public Safety, FL Department of Law Enforcement, GA

**Not meant to constitute legal advice. If you have a legal problem, please contact a lawyer.*

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Whose responsibility is it to investigate and enforce immigration matters?

- It is the responsibility of the federal government. State and local police should not be in the business of enforcing immigration laws. Enforcement of the nation's immigration laws should be left to the federal government and to the federal government alone.

Why should only the federal government enforce immigration laws?

- Immigration laws are terribly complex and require extensive training to understand and enforce properly. Unlike other laws that are distinctly civil or criminal, immigration law is not so clear. Some immigration violations are civil while some are criminal.
- Asking police to become experts in distinguishing valid forms of identification from invalid is an unrealistic expectations.
- Even immigration lawyers and federal agents can find it difficult to make determinations related to immigration status.

Why is having inadequately trained officers a problem?

- Enforcement by inadequately trained officers leads to racial profiling.
- Local police enforcement of immigration law could give way to rampant racial profiling where people who look or sound foreign would be stopped or asked for proof of legal status.
- In this country, we value fairness and equality. We do not want our police to be spending resources going after people because of what they look or sound like, instead of going after real criminals.

Does local law enforcement officials' participation in federal immigration investigations and enforcement endanger public safety?

- Yes. Trust is crucial to effective community police. Immigrants' trust in local law enforcement is destroyed when police act as immigration agents.
- Without assurances that they will not be subject to an immigration investigation, detention, and possible deportation, many immigrants will not come forward with vital information about crimes.
- This chilling effect is especially concerning in the context of domestic violence. Battered immigrants will be afraid to call the police for help.

Will state and local police be able to handle the strain on resources to be able to enforce immigration law?

- State and local police resources are already stretched thin.
- Asking local and state local enforcement agencies to enforce federal immigration laws will strain their already overburdened resources and will require substantial resource commitments of time, training, and administrative costs.
- This is why many local police departments and sheriffs oppose immigration enforcement initiatives and have taken public positions against them.

Department of Public Safety, MA Department of Corrections, MN Department of Public Safety, MO State Highway Patrol, NM Department of Corrections, TN Department of Safety.

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