



Contact: Charlie Schmidt  
Public Policy Counsel  
804.402.0767  
cschmidt@acluva.org

## **Oppose HB 1468 – An unnecessary and unconstitutional bill targeting immigrants**

HB 1468 is an unnecessary “message” bill that unfairly targets the immigrant community and exposes sheriffs and local correctional authorities to costly constitutional litigation.

**This law does nothing.** Virginia already has some of the strictest laws in the nation regarding local law enforcement’s cooperation with Immigration and Customs Enforcement (ICE). We are one of two states that mandate that everyone taken into custody at a jail or prison must have their immigration status checked so ICE is informed immediately when a person is first taken into custody. We are also one of the few states that has an explicit presumption against bail for anyone present in the United States without authority who is alleged to have committed certain crimes. HB 1468, if it could be enforced, simply restates what is already the law in Virginia. Moreover, the legislature has taken action in recent years to facilitate appropriate transfers to ICE by allowing people incarcerated in Virginia correctional facilities to be released to ICE up to five days before the end of the sentence imposed for state or local law violations.

**The law creates confusion and conflict between judicial authority and executive power.** Section 19.2-120.1 of the Code of Virginia gives a judge the power to deny or grant bond for an immigrant accused of a crime who has a detainer placed against them by ICE. The way HB 1468 is written, even if a judge exercises her discretion to release a person, who is the subject of a detainer, on bond, the local sheriff, or official in charge of the jail facility, is prohibited from releasing the accused except to “another facility” or directly to ICE officials. Sheriffs simply do not have the power to ignore a court order to release an accused on bond pending trial.

**If the law could be enforced, it is unconstitutionally vague.** Local Sheriffs have no constitutional authority to enforce ICE detainers. ICE detainers are civil orders that federal officials must enforce. Sheriffs, and local jail officials, can only hold someone pending trial if they have been accused of a crime and a judge denies bond or they can’t meet the terms of the bond. Sheriffs, and local jail officials, do not have the authority to hold someone based solely on a civil detainer issued by ICE officials. HB 1468 seems to both acknowledge and contradict this in Paragraph A.

When a law is vague, it cannot stand up to a constitutional challenge. As the Supreme Court of the United States said long ago, “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.” *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926)

**HB 1468 is just bad law.**