

Analysis of Michigan HB-4138

HOUSE BILL No. 4138

January 30, 2013

Introduced by Reps. McMillin, McBroom, VerHeulen, Johnson, Kelly, Howrylak, Foster, Somerville, Genetski, MacMaster, Pagel, Ananich, Irwin, Yonker and Lauwers and referred to the Committee on Oversight.

A bill to prohibit any agency of this state, any political subdivision of this state, any employee of any agency of this state or any political subdivision of this state, or any member of the Michigan national guard from assisting an agency of the armed forces of the United States in the investigation, prosecution, or detention of any citizen of the United States under certain circumstances.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1.

- (1) Subject to subsection (2), notwithstanding any provision of law to the contrary, no agency of this state, no political subdivision of this state, no employee of an agency of this state or a political subdivision of this state acting in his or her official capacity, and no member of the Michigan national guard on official state duty shall aid an agency of the armed forces of the United States in any investigation, prosecution, or detention of any person pursuant to section 1021 of the national defense authorization act for fiscal year 2012, if such aid would place that state agency, political subdivision, employee, or member of the Michigan national guard in violation of the United States constitution, the state constitution of 1963, or any law of this state.
- (2) Subsection (1) does not apply to participation by state or local law enforcement or the Michigan national guard in a joint task force, partnership, or other similar cooperative agreement with federal law enforcement if that joint task force, partnership, or similar cooperative agreement is not for the purpose of investigating, prosecuting, or detaining any person pursuant to section 1021 of the national defense authorization act for fiscal year 2012.

ANALYSIS

1. *U.S. armed forces fall under the Dept. of Defense, and wage war. Sub-section (1) merely says Michigan employees can't help the U.S. Armed Forces detain Michigan "citizens" under the 2012 NDAA if it's unconstitutional. This changes nothing, and provides Michiganders and other persons in Michigan with zero protections against "indefinite military detention."*
2. *In fact, Sub-section (1) merely states the obvious. Don't violate your oath, whatever that means. If the Michigan Legislature feels something is unconstitutional in the 2012 NDAA, they should say so explicitly.*
3. *Also, it **doesn't** require the official Michigan entities aforementioned to interpose, just not to participate. That's not comforting. This tells Michigan law enforcement to "stand down" in the face of tyrannical and unconstitutional acts by the feds, rather than to "step up" and defend the Constitution.*
4. *Federal law enforcement agencies fall under the Dept. of Justice and enforce federal laws. Sub-section (2) of this law **exempts** all those aforementioned agencies for helping federal law enforcement commit the same unconstitutional acts in partnership with the federal government as long as the arrangement wasn't specifically made for the express purpose of detaining citizens.*
5. *Since the 2012 NDAA was signed into law Dec. 31, 2011, then the prohibition doesn't apply to most (if not all) of the joint task forces, and other similar arrangements between Michigan and agencies of the federal government.*
6. *This bill does not call the "indefinite detention" provisions unconstitutional, and leaves not just the citizens exposed, but also those state agencies and agents who are in working arrangements (MOU's) with federal agencies. Interposition legislation is needed.*

RECOMMENDED CHANGES

Sec. 1.

- (1) No person in Michigan shall aid an agency of the United States government in any investigation, prosecution, or detention of any person pursuant to section 1021 of the national defense authorization act for fiscal year 2012, the law of war, or any similar law or authority, as such aid would place that person in violation of the United States constitution, the state constitution of 1963, or the laws of this state.
- (2) A person who violates sub-section (1) shall be punished under the Michigan Criminal Code related to, but not limited to assault, battery, kidnapping, and murder, as applicable.

* Strike original sub-section 2 completely. There should be no exemption from the prohibition against violating the Constitution.

- END -

RECOMMENDED SUBSTITUTE AMENDMENT:

RESTORING CONSTITUTIONAL GOVERNANCE ACT OF MICHIGAN

<http://theintolerableacts.org/docs/RCG-Act-of-MI.pdf>

ADDITIONAL RESOURCES FOR MICHIGAN

[NDAA resolutions for Michigan legislators, local government, and sheriffs](#)

CONTACT US:

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