Montana Prohibition Against Sanctuary Policies
A Legal and Policy Analysis (January 24, 2013)

Overview
House Bill (HB) No. 50, introduced by State Representative David Howard, prohibits local governments from enacting, adopting, implementing, enforcing, or referring to the electorate immigration sanctuary policies. It also allows state agencies to withhold funds to local governments that do not comply with the provisions of the bill. Additionally, a person domiciled in Montana can seek a writ of mandamus to compel compliance with the bill.

In general, bills or laws like HB 50 are introduced as a response to “sanctuary cities,” which refer to localities that are perceived to have adopted policies that limit local officials’ involvement in the business of enforcing federal immigration law. For instance, in recent years, some localities concerned with upholding strong community policing programs have adopted policies prohibiting their police officers from asking questions about an individual’s immigration status. Other localities have attempted to “opt out” of the federal Secure Communities program (when that was still an option). Still other localities have decided to restrict the authority of local police to honor federal immigration detainers.

It appears from the language of the bill and from comments made by Representative Howard that the intent of HB 50 is to have police officers and local and state officials inquire about immigration status and enforce immigration law. Indeed, Representative Howard told the Montana Judiciary Committee that HB 50 “ensures local governments will enforce immigration law and not turn a blind eye to undocumented immigrants.”

Analysis
HB 50 is unnecessary. Two provisions of federal law already prohibit all government entities (including state and local government entities) from restricting communication between state/local government entities/officials and the federal Department of Homeland Security (DHS) regarding the immigration status of any individual. First, 8 U.S.C. §1644 (part of the Personal Responsibility and Work Opportunity Act or “PRWORA”) states: “Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

Second, 8 U.S.C. §1373 (part of the Illegal Immigration Reform and Immigrant Responsibility Act or “IIRAIRA”), enacted a month after PRWORA, borrows and expands on the above language:

(a) In general – Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities – Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

1. Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
2. Maintaining such information.
3. Exchanging such information with any other Federal, State, or local government entity.

In summary, because the two federal laws listed above already prohibit all state and local government entities from restricting communication between DHS officials and state and local government officials, HB 50 is superfluous.

Additionally, bills such as HB 50 can burden state resources because they require local agencies to take on federal enforcement duties. This mandate means that state and local agencies that are already facing economic challenges may need to devote much needed resources to perform new and different duties. It also may mean that state and local personnel will require additional training and professional development opportunities to handle any new tasks. Lastly, it may mean that important duties that were previously performed by state and local officials simply cannot be done because of lack of time and resources. Thus, having state and local agencies enforce federal immigration law does not make economic sense, particularly in a state like Montana with a small foreign-born population where Hispanics make up just 3 percent of the population.

Interestingly, important guidance can be gleaned from the Texas State Legislature. Toward the end of 2011, Texas battled over proposed anti-sanctuary cities bills in both the House and the Senate. The effort to pass legislation of this type ultimately was undone by opposition from influential Republican donors as well as evangelical Christian leaders. The anti-sanctuary cities bills were considered by these groups to be “unfunded mandates” requiring local agencies to use
local resources in carrying out federal immigration enforcement. Similar to HB 50, the bills would have put local governments at risk of losing state grant money if they did not comply.²

Also, having local police enforce federal immigration law by complying with HB 50 can compromise the safety of everyone, including citizens. Bills such as HB 50 often force local police to shift their focus and resources toward immigration enforcement. The devastating effect of this realignment is most evident in Maricopa County, Arizona. The U.S. Department of Justice continues to examine the failure of the Maricopa County Sheriff’s Office to investigate over 300 cases of sexual assault and child molestation while the office shifted its resources toward federal immigration enforcement.³

Moreover, bills like HB 50 also further incentivize over-enforcement of the law, because officers do not wish to be accused of not complying with the state mandate and, in the case of HB 50, become the subject of a writ of mandamus. The over-enforcement of the law can lead to the violation of civil rights and liberties of residents throughout Montana. It also can harm the welfare of communities. Indeed, how will HB 50 impact individuals that need to interact with state and local agencies, such as schools, hospitals, libraries, police departments, and social service offices? Will this bill deter people from seeking help from their local fire department? Will the victim of a crime or a witness to a crime decide not to report a crime or assist in an investigation? Will a person decide not to call 411 in an emergency? Will this bill deter people from getting vaccinations?

Not surprising, law enforcement leaders from Texas⁴ to California⁵ to Utah⁶ to Massachusetts⁷ have spoken out about the damage that immigration enforcement-only approaches can do to community policing programs. Kenneth E. Lavallee, Police Chief of Lowell, Massachusetts, aptly stated: “When immigrant residents of Lowell are afraid to report crimes because they worry that contact with my officers could lead to deportation, criminals are allowed to roam free

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⁵ The San Jose, CA Police Department released a statement approving the San Jose City Council’s policy of putting community policing before immigration enforcement. Here is the section of the City Council’s policy quoted and approved by the Police Department:The City of San Jose has a strong interest in assuring that legal and undocumented immigrants do not fear interacting with their local governmental authorities. In past years, the City has seen how the reluctance of immigrants to interact with local authorities can critically undermine the health and safety of our community. For example, the failure of victims to report crimes, the reluctance of witnesses to cooperate with the police, or the unwillingness of parents to take children to school or to a health clinic, can have grave impacts on the well-being of all of San Jose’s residents, including U.S. citizens. http://www.sjpd.org/inews/viewPressRelease.asp?ID=430
⁶ Lacayo, “One Year Later,” at 5 (quoting Utah Attorney General Mark Shurtleff: “local law enforcement resources should focus on criminal activities, not civil violations of the federal code.”)
and the entire community suffers as a result.”

Fear erodes the important element of trust between the police and the communities they serve. The erosion of trust impacts immigrant women particularly harshly. Among other things, it renders them helpless in the face of domestic violence.

Steven Anderson, police chief in Tuscaloosa, Alabama, told This American Life that getting police into immigration enforcement is a waste of resources – that he has real crime to root out in Tuscaloosa, and “[t]he Hispanic population was not the population in our community that was committing those crimes. So immigration was not a problem for our police department. It was not in my top 10, maybe not even in my top 20, of concerns that I had for the city of Tuscaloosa.”

Further, Section (2) of HB 50 allows a person domiciled in Montana to bring a writ of mandamus to compel compliance by state and local government entities. This section is onerous and, as noted above, can provide the impetus for state and local officials to over-enforce federal immigration law. It also has the potential of burdening the court system and wasting the resources of local and state governments and their agencies.

Lastly, HB 50 runs counter to trends across the nation that have shown a more moderate approach to immigration enforcement by both federal and state officials. Immigration reform remains a top priority of President Obama during his second term. House Speaker John Boehner has said that he would consider proposals for comprehensive immigration reform. At the state legislature level, fewer immigration-related bills were introduced and became law in 2012.

This document was prepared in January 2013, by CLINIC’s State & Local Advocacy Attorney Karen Herrling. This document provided for informational purposes only and is not intended as legal advice. For questions, please contact Karen at kherrling@cliniclegal.org or (717-396-3893).

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9 Witness, for example, the February 10, 2011 testimony of Antonia Peña, a volunteer with Casa de Maryland, before an Ad Hoc Congressional Hearing hosted by Representative Raúl Grijalva (D-AZ). Ms. Peña recounted the story of her friend, Maria, a Salvadoran mother living in Maryland who is now in removal proceedings because she called the police for help against a domestic attack. See U.S. Congress. Ad Hoc Congressional Hearing hosted by Representative Raúl Grijalva. “Emerging Issues in Ending Violence Against Immigrant Women.” Testimony of Antonia Peña, Volunteer with Casa de Maryland. February 10, 2011. [http://www.huffingtonpost.com/rep-raul-grijalva/immigrants-need-the-viole_b_832424.html](http://www.huffingtonpost.com/rep-raul-grijalva/immigrants-need-the-viole_b_832424.html); [http://www.youtube.com/watch?v=zul_HUJa6P0](http://www.youtube.com/watch?v=zul_HUJa6P0). Such stories of victims being further victimized by the immigration system are not hypothetical. They are real and documented.