
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1150 Session of
2015

INTRODUCED BY FOLMER, MARCH 7, 2016

REFERRED TO INTERGOVERNMENTAL OPERATIONS, MARCH 7, 2016

AN ACT

1 Prohibiting the Commonwealth, its political subdivisions and
2 certain persons from assisting the armed forces of the United
3 States in the investigation, arrest, prosecution or
4 indefinite detention without charge or trial of any person
5 within the United States under certain Federal laws; and
6 imposing duties on the Attorney General and the Secretary of
7 the Commonwealth.

8 The General Assembly finds and declares as follows:

9 (1) The Constitution of the United States secures and
10 protects our individual rights and freedoms and forms the
11 foundation and basis of our constitutional republic.

12 (2) For the first time in our nation's history, the
13 National Defense Authorization Act for Fiscal Year 2012
14 (Public Law 112-81, 125 Stat. 1298) codifies indefinite
15 military detention of civilians captured far from any
16 battlefield without charge or trial, which law violates the
17 Constitution of the United States and corrodes our nation's
18 commitment to the rule of law, a commitment which generations
19 have fought to preserve.

20 (3) There is substantial public debate and uncertainty
21 as to whether sections 1021 and 1022 of the National Defense

1 Authorization Act for Fiscal Year 2012 (Public Law 112-81,
2 125 Stat. 1562 and 1563) could be read to repeal the Posse
3 Comitatus Act (20 Stat. 152, 18 U.S.C. § 1385) and authorize
4 indefinite military detention without charge or trial, within
5 the United States, of citizens, legal permanent residents and
6 others.

7 (4) The Commonwealth should preserve its sovereignty as
8 upheld in the United States Supreme Court decision *Printz v.*
9 *United States*, 521 U.S. 898 (1997). In *Printz*, the United
10 States Supreme Court held that the Federal Government may not
11 command the states' officers, or those of their political
12 subdivisions, to administer or enforce Federal law.

13 Furthermore, the indefinite military detention of any person
14 in the United States without charge or trial violates the
15 4th, 5th and 6th Amendments and Article III of the
16 Constitution of the United States.

17 (5) The National Defense Authorization Act for Fiscal
18 Year 2012 authorizing the indefinite military detention of
19 civilians captured far from any battlefield violates the laws
20 of war by which the United States is bound and harms our
21 nation's reputation for upholding the rule of law and
22 democratic values.

23 (6) Civilians should be prosecuted in Federal court if
24 there is evidence of wrongdoing, not detained without charge
25 or trial.

26 (7) No President of the United States has the power to
27 take the country into war except, as James Madison wrote, "to
28 repel a sudden attack on the United States." The Congress of
29 the United States decides whether and when to use military
30 power. Our system of checks and balances should be restored

1 by ensuring that the 2001 Joint Resolution of the Congress of
2 the United States known as the Authorization for Use of
3 Military Force (Public Law 107-40, 115 Stat. 224) and the
4 National Defense Authorization Act for Fiscal Year 2012
5 cannot be used for endless war and indefinite detention
6 without charge or trial. The Authorization for Use of
7 Military Force should expire when United States combat
8 operations in Afghanistan end, and sections 1021 and 1022 of
9 the National Defense Authorization Act for Fiscal Year 2012
10 should be replaced.

11 (8) The Congress of the United States should repeal
12 sections 1021 and 1022 of the National Defense Authorization
13 Act for Fiscal Year 2012.

14 (9) The National Defense Authorization Act for Fiscal
15 Year 2012 and the Authorization for Use of Military Force do
16 not now and should never authorize the armed forces of the
17 United States to investigate, arrest, detain or try any
18 person within the United States or to militarily detain,
19 without charge or trial, civilians not captured on a
20 battlefield.

21 (10) The Authorization for Use of Military Force should
22 expire upon the end of combat operations in Afghanistan by
23 the armed forces of the United States, and the Congress of
24 the United States must retain the authority to declare war or
25 authorize the use of military force consistent with Article I
26 of the Constitution of the United States, and the President
27 of the United States must retain the authority under Article
28 II of the Constitution of the United States to deploy the
29 armed forces to repel a sudden attack on the United States,
30 its territories or possessions or its armed forces.

1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 Section 1. Protections against military action within this
4 Commonwealth.

5 (a) General rule.--Notwithstanding any contrary provision of
6 law, no agency of the Commonwealth or any of its political
7 subdivisions, employees acting in their official capacity or any
8 member of the Pennsylvania National Guard, when such a member is
9 serving in the Pennsylvania National Guard on official State
10 duty, may engage in any activity that aids an agency of or the
11 armed forces of the United States in the investigation, arrest,
12 detention or trial of any person within the United States under
13 the authority of sections 1021 or 1022 of the National Defense
14 Authorization Act for Fiscal Year 2012 (Public Law 112-81, 125
15 Stat. 1562 and 1563), the Joint Resolution of the Congress of
16 the United States known as the Authorization of Use of Military
17 Force (Public Law 107-40, 115 Stat. 224), or any other law
18 purporting to authorize the same.

19 (b) Duty of Attorney General.--The Attorney General shall
20 report to the Governor and the General Assembly any attempt by
21 an agency or agent of the United States Federal Government to
22 secure the implementation of sections 1021 and 1022 of the
23 National Defense Authorization Act for Fiscal Year 2012 through
24 the operations of the United States Federal Government,
25 including any of its agencies, departments, employees or agents,
26 or through the operations of the Commonwealth, a political
27 subdivision of the Commonwealth or a corporation providing
28 services to the Commonwealth, including any of its agencies,
29 departments, employees or agents.

30 (c) Duty of Secretary of the Commonwealth.--The Secretary of

1 the Commonwealth shall send copies of this act, upon its
2 enactment, to the President of the United States, the
3 Pennsylvania delegation in the United States Congress, the
4 United States Senate Committee on the Judiciary, the United
5 States Senate Select Committee on Intelligence, the United
6 States House of Representatives Committee on the Judiciary, the
7 United States House of Representatives Permanent Select
8 Committee on Intelligence and the United States Attorney
9 General.

10 Section 2. Effective date.

11 This act shall take effect immediately.