**TOOLKIT:** State and Local Resolutions Opposing the 2012 National Defense Authorization Act (NDAA)

States, cities, and towns across the country have been considering resolutions or legislation opposing Sections 1021 and 1022 of the FY 2012 National Defense Authorization Act (NDAA), the dangerous provisions that would authorize the president — and all future presidents — to order the military to pick up and imprison people captured far from any battlefield without charging them or putting them on trial.

There’s an important role for concerned citizens and local lawmakers to play. This toolkit includes:
- The model legislation
- Talking points
- Tips on how to pass a community resolution
- A guide on how to organize an in-district meeting with your elected officials

Our model legislation does several things:

1. It sends a message from the legislative body to Congress that Sections 1021 and 1022 of the NDAA should be repealed.
2. It prohibits state/local employees from aiding the federal armed forces in any investigation, arrest, detention, or trial of any person within the United States under the NDAA.
3. It sends a message from the legislative body to Congress that the 2001 Authorization for Use of Military Force (AUMF) should expire at the end of the war in Afghanistan so that the government cannot continue to use the AUMF as justification for its claims that war is everywhere and anywhere and that the president can order the American military to imprison without charge or trial people picked up far from any battlefield.

More information on Section 1021 and 1022 of the NDAA can be found at [www.aclu.org/NDAA](http://www.aclu.org/NDAA).
A BILL to prevent any agency, political subdivision, employee, or member of the military of [State/City] from assisting the armed forces of the United States in the investigation, arrest, prosecution, or indefinite detention without charge or trial of any person within the United States, to call upon Congress to repeal the mandatory military detention and indefinite detention provisions of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) and affirm the prohibition against the use of the military domestically, to call upon Congress to make clear that it never authorized an endless, worldwide war, and for other purposes.

Be it enacted by the [Legislative Body] of [State/City]:

SECTION 1. FINDINGS. – The [Legislative Body] finds as follows:

(1) The Constitution of the United States is the foundation of our nation’s rights and freedom, and the basis of our representative democracy;
(2) For the first time in our Nation’s history, the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) codifies indefinite military detention without charge or trial of civilians captured far from any battlefield, violating the Constitution and corroding our Nation’s commitment to the rule of law, which generations have fought to preserve;
(3) There is substantial public debate and uncertainty whether Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) could be read even to repeal the Posse Comitatus Act and authorize indefinite military detention without charge or trial within the United States of U.S. citizens, in addition to legal permanent residents and others;
(4) The indefinite military detention of any person in the United States without charge or trial violates the 5th and 6th Amendments of the Constitution of the United States, Article III of the Constitution of the United States;
(5) The provisions of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) authorizing the indefinite military detention of civilians captured abroad far from any battlefield violate the laws of war by which the United States is bound and which it helped to establish, and harm our Nation’s reputation for upholding the rule of law and democratic values; these civilians should be prosecuted in our federal courts if there is evidence of wrongdoing, not detained without charge or trial;
(6) No president has the power to take the country into war, except as James Madison wrote, “to repel a sudden attack on the United States.” Congress decides whether and when to use military power. Our system of checks and balances should be restored by making sure that the 2001 Authorization for Use of Military Force cannot be used for endless war and endless indefinite detention without charge or trial. The Authorization for Use of Military Force should expire when United States combat operations in Afghanistan end.

SECTION 2. PROTECTIONS AGAINST MILITARY ACTION WITHIN [STATE/CITY]. – Notwithstanding any contrary provision of law, no agency of the
[state/city], political subdivision of the [state/city], employee of either acting in his official capacity, or any member of the [State] National Guard or [State] Defense Force, when such a member is serving in the [State] National Guard or the [State] Defense Force on official state duty, may engage in any activity that aids an agency of or the armed forces of the United States in the execution of 50 U.S.C. 1541 as provided by the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-18, § 1021) in the investigation, arrest, detention or trial of any person within the United States.

SECTION 3. SENSE OF THE [LEGISLATIVE BODY]

(a) It is the sense of the [legislative body] that Congress should repeal Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81).

(b) It is the sense of the [legislative body] that the National Defense Authorization Act and the Authorization for Use of Military Force (Public Law 107-40) do not now, and should never, authorize the Armed Forces of the United States to investigate, arrest, detain, or try any person within the United States, or to militarily detain without charge or trial civilians not captured on any battlefield, and that the Authorization for Use of Military Force expires upon the end of combat operations in Afghanistan by the Armed Forces of the United States, but that

(i) Congress retains the authority to declare war or authorize the use of military force, consistent with Article I of the Constitution.

(ii) The President retains the authority under Article II of the Constitution to deploy the Armed Forces to repel a sudden attack on the United States, its territories or possessions, or its Armed Forces.

(c) The [governor/mayor] shall send copies of this bill, upon passage, to our US Congressman and Senators, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.

On December 31, 2011, President Obama signed the National Defense Authorization Act (NDAA), codifying indefinite military detention without charge or trial into law for the first time in American history. (To learn more about the NDAA, visit www.aclu.org/NDAA).

- The law is an historic threat because it codifies indefinite military detention without charge or trial into law for the first time in American history. It could permit the president – and all future presidents – to order the military to imprison indefinitely civilians captured far from any battlefield without charge or trial.

- This kind of sweeping detention power is completely at odds with our American values, violates the Constitution, and corrodes our Nation’s commitment to the rule of law, which generations have fought to preserve.

- The breadth of the NDAA’s worldwide detention authority violates the Constitution and international law because it is not limited to people captured in an actual armed conflict, as required by the laws of war.

- Under the Bush administration, claims of worldwide detention authority were used to hold even a U.S. citizen captured on U.S. soil in military custody, and many in Congress assert that the NDAA should be used in the same way. The ACLU does not believe that the NDAA authorizes military detention of American citizens or anyone else in the United States. Any president’s claim of domestic military detention authority under the NDAA would be unconstitutional and illegal.

  - Nevertheless, there is substantial public debate and uncertainty around whether Sections 1021 and 1022 of the NDAA could be read even to repeal the Posse Comitatus Act and authorize indefinite military detention without charge or trial within the United States.

- The law does not require even an allegation that a detained person caused any harm or threat of harm to the United States or to any U.S. interest. Mere allegation of membership in, or support of, an alleged terrorist group could be the basis for indefinite detention. Under the American justice system, we don’t just lock people up indefinitely based on suspicion.

- Congress and the president should clean up the mess they created. Congress should repeal the NDAA’s detention provisions.
• More than ten years after the 9/11 attacks, with the United States withdrawing from Iraq and Afghanistan, the United States should not be asserting new worldwide authority for the military to imprison persons seized in any country.

• We have seen how disregard for the rule of law has disastrous results for America’s standing in the world. It is time for a return to the rule of law. It is time to turn that page.
How to Pass A Community Resolution

1. Get Started!
   - You can find a link to all materials, including model legislation, related to the 2012 National Defense Authorization Act (NDAA) at www.aclu.org/NDAA

2. Know Your Community
   - Understand your local administration and how decisions are made. You may be able to access this information by contacting a local government office or a former municipal official.
   - Collect information about the members of the City or County Council. Get informed about which members of the Council are most concerned about your issues and may be willing to support, if not sponsor, the resolution. Also, figure out what people or groups have leverage over council members who may not initially lend support for the resolution.
   - With the ACLU draft resolution in mind, consider what organizations and activists in your community may be particularly interested in joining the resolution effort.

   TIP: Stay organized by keeping records of your contacts. Knowing this information will help you complete the coalition building process.

3. Build a Coalition:
   - Identify organizations in your community that you think may wish to work on the resolution effort. You may also find allies by contacting the national organizations who have joined the ACLU in opposing Sections 1021 and 1022 of the National Defense Authorization Act (NDAA) - ask for local affiliates or activists in your area. Remember that you can and should draw on a broad array of organizations to support.
   - Send a letter to the organizations that you feel may be interested in working on this project. Remember to include the ACLU draft resolution with your letter as a starting point for your discussion.

   TIP: The coalition you assemble should be balanced and representative of the diversity in your community. Remember that having other organizations and activists support for binding language will be essential if you want a strong resolution to be passed. And know that building a strong, broad grassroots coalition will create a lasting defense against civil liberty abuses in your community that will continue after the resolution is passed.

4. Host an Organizing Meeting:
• Having discussed the initiative individually with some of your key organizational partners, you should convene a coalition meeting to discuss this project as a group.
• Establish roles and responsibilities for leadership.

TIP: You may want to involve sympathetic City Council members in the process.

5. **Build Public Awareness**

• Some suggested methods are to start a letter writing campaign, draft an op-ed piece in the local newspaper, engage in a public petition drive or set-up information tables in public places. In addition, with your coalition partners, you can organize 'teach-ins' with your members and/or forums with the general public invited. Any information given to the public needs to be accurate and concise.

6. **Implement a Strategy for Passing the Resolution**

• Schedule informal meeting(s) with your local council members. Present evidence of public support to the council members. Identify most persuasive council member(s) to introduce the resolution to the city or county council.
• Have influential people or groups call or visit members that need to be moved to support the resolution
• Identify key people to testify in support of the resolution at the meeting when the council will be debating the resolution.

TIP: Members of the coalition should be prepared to attend City or County Council meetings and testify publicly on behalf of the resolution. And remember to keep the media informed about your activities, about council votes and certainly about your success!

**CONGRATULATIONS; YOU'RE ON YOUR WAY!!**
In-District Meeting Guide

A lobby visit provides an opportunity for you to tell your elected official(s), in person, what you think about a certain issue and to encourage them to take action on that issue.

PREPARE FOR YOUR MEETING:

- **Do your homework.** Make sure you know the issue you are planning to discuss. Determine your strongest and most important talking points, and try to think of personal or local examples to support those points. If you are meeting about a specific bill, know the bill number. Have a good idea of what interest your particular member has – or could have – in your issue.
- **Decide who will attend the meeting.** Bringing more than four or five people can be hard to manage. Keep it small, but bring people who represent different groups that have an interest in the legislation.
- **Plan out your meeting.** Time is limited. Be sure to identify who will speak on each issue and who will take notes.
- **Be aware of the goal.** What is it you want your elected official to do – vote for or against the bill? Make a commitment to introduce or co-sponsor legislation? Be sure to stay focused on the goal for the meeting.

DURING THE MEETING:

- **Be prompt and patient.** Elected officials run on very tight schedules. Be sure to show up on time for your appointment, and be patient – it is not uncommon for legislators and staff to be late or to have your meeting interrupted by other business.
- **Keep it short and focused!** You will likely have 20 minutes or less with a staff person, and as little as 10 minutes if you meet with your elected official. Make the most of that brief time by sticking to your topic.
- **Speak with passion.** Believe in what you say, and say it respectfully and with conviction.
- **Introduce yourselves.** At the start of the meeting, each participant should briefly introduce his/herself. If you are a constituent, it is important to make that clear. Be sure to bring up any other connections, such as memberships in the same groups, common friends, or previous meetings. You can also thank the legislator for previous votes or actions that you supported.
- **Provide personal and local examples of the impact of the legislation or issue.** Be sure to demonstrate how the issue affects, or will affect, real people, the legislator, his/her constituency, and his/her district or state.
- **Don’t be afraid to say “I don’t know.”** If you don’t know the answer to a legislator’s question, it is fine to tell him/her that you will get that information for him/her. Never make up an answer to a question – giving wrong or inaccurate information can seriously damage your credibility. And do follow-up with the requested information after the meeting.
- **Always be respectful.** If you are talking about an issue about which you and your legislator disagree, it is easy to get frustrated. But, keep your cool. Listen to his/her concerns. Don’t argue, but if appropriate explain or clarify your position. There may still be an ask, such as asking him/her to allow the bill to be debated. A legislator with whom you disagree on one issue may be the champion on another issue you support, so it is important not to alienate him/her.
- **If the legislator is friendly, make an ask.** The ask could be to introduce or co-sponsor legislation, vote a certain way, etc. After making the ask, pause and give the legislator a chance to respond. Be open to an alternative commitment or to no commitment at all. It may be that he/she needs more information, so ask if there’s anything you can provide. A friendly legislator might also let you know what he/she is hearing from other legislators, provide an update, or help strategize.
- **Set deadlines for a response.** Often if an elected official hasn’t taken a position on legislation, he/she probably will not commit to one during a meeting. Ask when you should check back – and who you should follow-up with – to find out how your legislator intends to respond to your request. Be sure to get the contact information for the relevant staffer to follow-up.
- **Leave behind.** Leave a few pages of information for the legislator. Also, leave your contact information so that he or she can get back to you about the issue. Don’t forget to thank the legislator or staffer for his/her time.

AFTER THE MEETING:

- **Compare notes.** Right after the meeting, briefly compare notes with everyone in your group. Make sure you are on the same page about what the legislator committed to do and what follow up information you committed to send.
- **Report back.** Report the results of your meeting to your contact at the ACLU.
- **Say thanks and follow-up.** Each person who took part in the meeting should promptly send a personal thank you note to the elected official, even if the legislator did not ultimately share your views. This also provides the opportunity to send any requested follow-up materials or information.
- **Deadlines.** If the legislator or staff member doesn’t meet the deadline for action you agreed to during the meeting, ask him/her to set another deadline. Be persistent but flexible!

*Good luck! Remember that your legislators work for you. Also remember that legislators face hundreds of issues each session, and it is likely that you know more information about your issue than your legislator does.*