



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment V

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-4746 (For: Rep. Pridemore)

has been transferred to the drafting file for

2011 LRB-1116 (For: Rep. Pridemore)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/22/2011 (Per: PJH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

Illegal Stats

<http://www.doj.state.wi.us/dles/cibmanuals/files/TIME/HTML/authoritytodetainand arrestforfederalimmigrationviolations.htm>

http://www.usillegalaliens.com/impacts_of_illegal_immigration_crime.html

In 1980, our Federal and state facilities held fewer than 9,000 criminal aliens but at the end of 2003, approximately 267,000 illegal aliens were incarcerated in U.S. correctional facilities, as follows

- 46,000 in Federal prisons
- 74,000 in state prisons
- 147,000 in local jails

The article also notes that approximately 27% of all prisoners in Federal custody are criminal illegal aliens and the majority (63%) of those are Mexican citizens. However, the large Mexican component is mostly due to the fact that the majority of illegal aliens are from Mexico and the incarceration rate is only slightly above the Mexican representation (~57%) of the illegal aliens in the overall illegal alien population, although a more recent crossing analysis indicates a much higher Mexican content.

The article goes on to state that in fiscal 2004, the Federal govt. spent \$1.4 billion to incarcerate criminal aliens. This total included \$280 million of reimbursements made to state and local governments under the State Criminal Alien Assistance Program [SCAAP] - a Department of Justice program managed by the Bureau of Justice Assistance (BJA) - but SCAAP funds cover less than 25% of the full cost of incarcerating criminal aliens, leaving the balance of 75% to be picked up by the local jurisdiction.

It is worth noting that all the incarceration costs, some \$5.6 billion in 2004, are ultimately paid for by the taxpayers. Throughout this paper, it is worth noting the costs being imposed on society for illegal aliens as you will see that the costs will continue to accumulate, often dramatically so. It is also worth noting that with proper border security and immigration enforcement there would be few illegal aliens and little of those costs would be incurred thus allowing a cost-benefit analysis.

The GAO issued a report, number GAO-05-337R, entitled *Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails* on May

9, 2005, prepared for the Subcommittee on Immigration, Border Security, and Claims. It noted:

"At the federal level, the number of criminal aliens incarcerated increased from about 42,000 at the end of calendar year 2001 to about 49,000 at the end of calendar year 2004--a 15 percent increase. The percentage of all federal prisoners who are criminal aliens has remained the same over the last 3 years--about 27 percent. The majority of criminal aliens incarcerated at the end of calendar year 2004 were identified as citizens of Mexico. We estimate the federal cost of incarcerating criminal aliens--BOP's cost to incarcerate criminals and reimbursements to state and local governments under SCAAP--totaled approximately \$5.8 billion for calendar years 2001 through 2004. BOP's cost to incarcerate criminal aliens rose from about \$950 million in 2001 to about \$1.2 billion in 2004--a 14 percent increase."

And interestingly notes:

"Federal reimbursements for incarcerating criminal aliens in state prisons and local jails declined from \$550 million in 2001 to \$280 million in 2004, in a large part due to a reduction in congressional appropriations."

This illustrates the failings of your government as the Federal Government is responsible for securing the borders but allows more and more illegal aliens to violate the sovereignty of the United States. However, when the illegal aliens commit crimes and are arrested, they are paying less and less of the state and local costs of incarcerating them. That's something you might want to ask your state's congressional members about. Although notable, the public cost of incarcerating illegal aliens is trivial alongside the carnage they imposed on their victims. Remember, incarcerated illegal alien perpetrators committed crime before being incarcerated. So the question is "How much crime?"

To give you an idea of "how much crime," as noted in *Illegal Alien Crime Wave in Full Swing*, in April 2005, the GAO released a report on a study of 55,322 illegal aliens incarcerated in federal, state, and local facilities during 2003. It found the following:

Of the 55,322 illegal aliens studied, researchers found that they were arrested a total of 459,614 times, averaging about 8 arrests per illegal alien.

- They were arrested for a total of about 700,000 criminal offenses, averaging about 13 offenses per illegal alien.
- 49% had previously been convicted of a felony, 20% of a drug offense; 18% a violent offense, and 11%, other felony offenses.
- 81% of the arrests occurred after 1990

- 56% of those charged with a reentry offense had previously been convicted on at least 5 prior occasions.
- Defendants charged with unlawful reentry had the most extensive criminal histories. 90% had been previously arrested. Of those with a prior arrest, 50% had been arrested for violent or drug-related felonies.

Note the last two points – they mean the perpetrators were "**previously deported.**" Regardless, ALL those crimes would have never happened, i.e. were preventable, with serious deportation of the illegal aliens already here and proper border security to prevent both entry and re-entry.

In reviewing those numbers, note that the study only sampled about 21% of the incarcerated illegal aliens. To get the full extent of the collateral damage, we need to extrapolate the average number of offenses out across all 267,000 incarcerated illegal alien criminals. Doing so results in some **1,288,619 crimes!**

Don't the MSM and illegal alien supporters continually tell us that illegal immigration is a "victimless crime" and that they are only here to do the work Americans don't want to do? Since each crime has a victim, 1,288,619 sounds like a lot of victimization to me. Maybe they are also referring to doing the "work" that American criminals don't want to do. Also keep in mind that the 1,288,619 crimes are only the ones committed by the hard core illegal alien criminals that were finally caught and incarcerated. The ones not caught and the new criminals crossing daily are committing more crime each and every day.

One of the problems in identifying the involvement of illegal aliens in crime, is that NOBODY TRACKS IT as a particular demographic statistic. While the INS keeps track of all sorts of demographic data for the illegal aliens that were actually arrested and deported and puts it in the Yearbook of Immigration Statistics, the judicial system does not track it. As noted in Cop murder spotlights crisis of killer aliens - No government agency tracks crimes by illegals, not even attacks on police so nobody really knows how many illegal alien criminals there are or how many crimes they are actually committing. Many simply fall through the cracks.

If we assume illegal aliens commit crime at the same rate as citizens in the general population, an assumption that may grossly underestimate their involvement as we will see later, we can estimate the number of crimes being committed by illegal aliens. To do this, we note the number of illegal aliens in the population and apply the percentage representation in the population to the total number of crimes committed.

The current population of illegal aliens ranges from a generally accepted low of 12 million to a few estimates in the 25-30 million range. For the purposes of this discussion, I will use a relatively lower estimate of 15 million in a population of 300 million which is a 5% representation. It is worth noting that many official

government figures use a bit lower number. If in fact accurate, a lower number of illegal aliens in the general population would actually increase their disproportionate involvement, something that is probably occurring anyway as we shall see latter.

According to FBI's Uniform Crime Reports (UCR), Crime in the United States (CIUS) 2005, for the *Estimated Number of Arrests* and applying a straight 5% illegal alien participation component we now get:

CRIMES (actual arrests)	Number In USA	by illegal aliens
Total	14,094,186	704,709
Murder & non-negligent manslaughter	14,062	703
Forcible rape	25,528	1,276
Offenses against family & children	129,128	6,456

The last column is the estimated criminal collateral damage being inflicted by illegal aliens for 2005 as a straight proportional percentage basis of the population. Similar collateral damage would have been inflicted in 2006 and you can expect about as much in 2007.

Using a simple cost-benefit analysis, is this much crime acceptable to save ten cents on a head of lettuce?

You probably wouldn't think so if you were one of the 704,709 victims. Again, keep in mind, this is the collateral damage being inflicted PER YEAR with a 5% participation rate. If the number of illegal aliens is greater than 15 million the number of crimes goes up. If the participation rate is greater, the number of crimes goes up.

In trying to figure out who is actually committing the crimes and whether the 5% straight participation is valid, interestingly, as noted in [The Tarpit](#) blog, Hispanics/Latinos, by far the largest component of illegal aliens, become "White, Caucasian, or Other" perpetrators in [Arizona](#). The same thing in [Colorado](#), [Florida](#), [New Jersey](#), [New Mexico](#), and probably other states as well. Even the FBI doesn't seem to want to know as neither the nationality of the perpetrator nor a Hispanic/Latino category is even present in either their [Uniform Crime Reports](#) or [Victims and Offenders Supplement](#).

When I inquired of Justice Department as to why they didn't want to know if Hispanics or foreign nationals were committing any crime, their response was:

"The Uniform Crime Reporting Program was mandated by Congress to collect and publish the crimes that are reported to police agencies for statistical purposes, not investigative purposes.

The elements of race and ethnicity built into the UCR Program adhere to the guidelines established by *DIRECTIVE NO 15, RACE AND ETHNIC STANDARDS FOR FEDERAL STATISTICS AND ADMINISTRATIVE REPORTING*. Those guidelines are set by the Office of Management and Budget, and as federal agency in the capacity of overseer of the UCR Program, the FBI is required to abide by those guidelines. For UCR purposes there are four racial categories: White; Black; American Indian or Alaskan Native; and Asian or Pacific Islander. The term Hispanic is an indicator of ethnicity, and the UCR Program does not currently collect information on ethnicity."

I also asked the Justice Department what categories the foreign national terrorists and the 2,752 Americans killed by foreign nationals on 9-11-2001 fell into but did not get a response.

While the Justice Department tracks nearly every conceivable aspect of crime, evidently, Congress only wants to know what crimes "White, Black, American Indian, and Asian" Americans are committing. Interestingly, however, ethnicity is very important for establishing minority status and preferences but totally unimportant for determining who is committing crimes. Crimes being committed by illegal aliens, aka foreign nationals, are not tracked.

While we are on the subject of the FBI's Uniform Crime Reports (UCR), Jim Kouri notes in *Crime Statistics and the Itsy Bitsy Yellow Polka Dot Bikini*:

"Yet the public is generally unaware that the UCR system is essentially a voluntary system; there is no federal legislation that requires States or local jurisdictions to report their crime data to the FBI.

The voluntary nature of the UCR, of course, affects the accuracy and completeness of the data. Although the FBI devotes a great deal of attention to the quality of the data it publishes in CIUS, it cannot mandate agencies to provide data on time (or at all)."

Thus, if anything, the FBI underreports crime.

In any case, it would appear that other than what the INS reports when foreign nationals are deported, **NOBODY IS TRACKING CRIMES COMMITTED ON US SOIL BY FOREIGN NATIONALS**. Given the seriousness of the crimes and large participation by mostly Hispanic, illegal alien, a.k.a. foreign national, criminals it almost seems as if the various government agencies don't want you to know. Also, I could not find any investigative reporting by the MSM on the issue. If even a small number of those 704,709 crimes were committed against members of the

media or politicians maybe we would have heard something but the silence is deafening.

As noted in a September 2006 article, *Cop murder spotlights crisis of killer aliens*, in WND

"While no government agencies specifically track crimes by illegal aliens, there have been some efforts to quantify the loss. Last December, Mac Johnson set out to investigate the number of homicides perpetrated by illegal aliens. Since the federal government would not provide any useful information, he contacted all 50 statehouses. Three months later, he had fewer than a dozen responses. Only one state, Vermont, provided any useful information.

He then set out to statistically estimate the number of murders by illegal aliens based on available crime data and conservative estimates of the actual number of illegal aliens in the country – which, of course, nobody really knows.

He found that between 1,806 and 2,510 people in the U.S. are murdered annually by illegal aliens. If he's right, that would represent between 11 percent and 15 percent of all murders in the U.S.":

Using the mean of Mr. Johnson's range, that means there are **2,158 murders committed annually by illegal aliens** – crimes that never would have happened if they weren't here. This is part of the collateral damage of tolerating illegal immigration.

Note that at 2,158 murders that would be 15.3% of all the murders reported by the FBI, which would be about **three times the representation** of illegal aliens in the general population. Whether illegal aliens are committing three times as many of the other crimes as well is unknown because **NOBODY IS TRACKING IT**. Regardless, keep that "three times" in mind because it will come up again.

At this point it is worth noting that Representative King states in *Biting the Hand That Feeds You*, referenced in the INTRODUCTION and often quoted all over the internet, that illegal aliens are responsible for 4,380 murders. I believe Congressman King based his numbers on two GAO reports (d05337r and d05646r) on the number of incarcerated illegal aliens and the total number of incarcerated prisoners and applying the resulting percentage to the FBI's reported number of crimes. Based on this estimate, illegal aliens would be responsible for about 31% of the murders, a rate that is about 6.2 times their representation in the population. While there are indications that this number may be more accurate, nobody really knows because **NOBODY IS TRACKING IT**.

Returning to the FBI's crime list and a straight 5% prorated share committed by illegal aliens, some 704,709 yearly crimes, each of these crimes has both a personal and economic impact. You can easily imagine the personal devastation

on the individual and families as they ask "why me?" Since all these crimes would not have happened if there were no illegal aliens in the country, the unfortunate answer is that "because we as a nation and people have tolerated, and in many cases aided and abetted, illegal immigration."

The economic burden which these crimes impose on their victims and society have costs. As noted earlier there has been a tremendous increase in the law enforcement budgets and each caught criminal needs to be incarcerated at about \$25,000 per year. How much more law enforcement is spending as a direct consequence of illegal aliens is unknown but reviewing the expenditure graphs, note that the rate of the expenditures increases after around 1989 which correspond with the large increase in the illegal alien population.

In any case, with 267,000 illegal aliens incarcerated, as of 2003, just the incarceration costs at \$25,000 per inmate per year is \$6.7 BILLION per year. I'll take a wild guess that you didn't realize we were spending that much. Do you have any better ideas on what we could be spending \$6.7 billion a year on rather than providing three meals a day and color TV to a bunch of illegal alien prisoners? While you think about that, here is another one to ponder: how much money would we have saved since 1980 if there were still only 9,000 incarcerated illegal aliens rather than 267,000?

As extensive as these direct costs are, there are also indirect costs imposed on the victims, including loss of income and property, uncompensated hospital bills, and treatment for resulting emotional and psychological trauma.

As noted in the abstract of the report *Victim costs of violent crime and resulting injuries*, by **Miller, Cohen, and Rossman**:

"This DataWatch estimates the costs and monetary value of lost quality of life due to death and nonfatal physical and psychological injury resulting from violent crime. In 1987 physical injury to people age twelve and older resulting from rape, robbery, assault, murder, and arson caused about \$10 billion in potential health-related costs, including some unmet mental health care needs. It led to \$23 billion in lost productivity and almost \$145 billion in reduced quality of life (in 1989 dollars). If associated deaths and cases resulting in psychological injury only are included, costs average \$47,000 for rape, \$19,000 for robbery, \$15,000 for assault, and \$25,000 for arson. Considering only survivors with physical injury, rape cost \$60,000, robberies \$25,000, assaults \$22,000, and arson \$50,000. Costs are almost \$2.4 million per murder. Lifetime costs for all intentional injuries totaled \$178 billion during 1987-1990."

Note that those costs are in 1989 dollars. Using the CPI index to adjust for 2006 dollars, multiply those numbers by 1.62 which means each rape costs society an average of \$76,140 and each murder costs some \$3.9 million. Thus just the

2,158 murders committed by illegal aliens burdened our society with \$8.4 BILLION in costs.

The report tabulates the various costs for each crime as follows:

Exhibit 3
Summary Of Victim Injury Costs Per Physical Injury, In 1989 Dollars

Cost category	Rape plus other injury	Robbery	Assault	Arson	Murder
Total monetary	\$ 6,228	\$ 3,075	\$2,991	\$12,885	\$ 671,136
Medical	1,367	430	678	1,490	6,467
Emergency services	66	34	25	147	520
Productivity	4,683	2,562	2,084	11,612	656,192
Administrative	112	49	204	108	7,957
Total mental health	36,306	10,387	5,802	1,224	-
Mental health medical	4,990	1,072	490	100	-
Mental health productivity	1,465	333	202	48	-
Quality of life lost to psychological injury	29,851	8,982	5,110	1,076	-
Quality of life	17,842	11,485	13,521	35,022	1,715,918
Total cost	60,376	24,947	22,314	49,603	2,387,054

Source: Vanderbilt/Urban Institute Cost of Crime Study, 1993.

Note: Excludes property damage, legal costs, and employer costs; includes attempted rapes and robberies that resulted in physical injury.

You may find similar summarized totals from the Justice Dept. in a summary *Cost of Crime*.

Again, applying the CPI increase, the total costs in 2006 dollars would be \$289 BILLION. If illegal aliens were responsible for just 5% of it then that would be \$14.4 BILLION.

For a comprehensive look at the cost of crime, see a report by Professor David Anderson, *The Aggregate Burden of Crime*, which reports that the net annual burdened costs of crime is actually far higher. The report notes that in 1999 the costs exceeded \$1 trillion. In 2006 dollars that would be \$1.62 TRILLION. 5% of that would be in excess of \$81 BILLION.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to create** 175.55 of the statutes; **relating to:** determining the legal
2 presence of a person arrested for or charged with a crime or certain civil
3 violations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 175.55 of the statutes is created to read:
5 **175.55 Determination of legal presence.** (1) In this section, "law
6 enforcement officer" has the meaning given in s. 165.85 (2) (c).
7 (2) If a law enforcement officer has reasonable suspicion that a person who is
8 arrested for or charged with a crime or with a violation of state law that may result
9 in the imposition of a fine, forfeiture, or period of imprisonment is not legally present
10 in this state, a person authorized under sub. (6) shall determine the legal presence
11 of the person before the person is released.

1 **(3)** For the purposes of this section, proof of legal presence may be any of the
2 following:

3 (a) A U.S. passport.

4 (b) A birth certificate bearing an official seal or other mark of authentication
5 and issued by a state, county, or municipality within the United States or by a
6 territory or possession of the United States.

7 (c) A certification of birth abroad issued by the federal department of state.

8 (d) A certificate of naturalization

9 (e) A certificate of U.S. citizenship.

10 (f) A permanent resident card or alien registration receipt card, along with the
11 person's bureau of citizenship and immigration services alien registration number.

12 (g) Any other proof specified in 49 CFR 383.71 (a) (9), along with the person's
13 bureau of citizenship and immigration services alien registration number.

14 (h) Documentary proof of conditional permanent resident status in the United
15 States.

16 (i) A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry
17 into the United States.

18 (j) An approved application for asylum in the United States or documentary
19 proof that the person has entered into the United States in refugee status.

20 (k) A pending application for asylum in the United States.

21 (L) A pending or approved application for temporary protected status in the
22 United States.

23 (m) An approved deferred action status.

1 (n) A pending application for adjustment of status to that of an alien lawfully
2 admitted for permanent residence in the United States or conditional permanent
3 resident status in the United States.

****NOTE: These are taken from the requirements to obtain drivers' licenses in Wisconsin.

4 (4) Any person who does not provide proof of his or her legal presence in this
5 state as provided under sub. (3) may be held in secured custody for no more than 48
6 hours. If the person provides proof of his or her legal presence during that time, the
7 person may be released. If the person is not being held in secured custody pursuant
8 to another statute and does not provide proof of his or her legal presence during that
9 time, the law enforcement agency shall proceed under sub. (5).

****NOTE: I did not include, in this draft, any provisions for a person being required to pay the costs of his or her jail time. I am not sure if you intend for a person who is legally present to pay these costs, or what happens if a person who is not legally present either does not or cannot pay. Please review and let me know your thoughts on this matter.

10 (5) The law enforcement agency shall notify the U.S. Immigration and
11 Customs Enforcement or the U.S. Customs and Border Protection that a person who
12 has not provided proof of his or her legal presence in this state has been identified
13 and shall securely transport the person to a federal facility in this state or to any
14 other point of transfer into federal custody. A law enforcement officer shall obtain
15 judicial authorization before securely transporting a person under this section to a
16 point of transfer that is outside of this state.

****NOTE: The question of whether the federal agency will take custody of persons who have not proven their legal presence is unsettled. This draft, like the Arizona law, is silent as to what should happen if the federal agency refuses to take custody of the person. You may want to review this issue with the department of justice and let me know if you would like the draft to address this possibility.

17 (6) If a person who does not provide proof of his or her legal presence is
18 convicted of a crime and is imprisoned, upon the person's discharge from jail or from

1 confinement in prison, the sheriff or the department of corrections shall proceed
2 under sub. (5).

****NOTE: Under this subsection, a person who has not proven his or her legal presence is, upon release from jail or confinement in prison, taken to federal custody. However, persons released from confinement in prison are generally released to extended supervision in Wisconsin; they are still technically serving their "term of imprisonment" under Wisconsin law and are under the jurisdiction of the department of corrections. I am not sure if and how, under this subsection, the department of corrections may release a person from his or her term of imprisonment before the period of extended supervision is completed. You may want to discuss this with the department of justice and the department of corrections for clarification of this point.

3 (7) For the purposes of this section, a person's legal presence may be
4 determined by:

5 (a) A law enforcement officer who is authorized by the federal government to
6 verify or ascertain a person's immigration status or legal presence.

7 (b) The U.S. Immigration and Customs Enforcement or the U.S. Customs and
8 Border Protection pursuant to 8 USC 1373 (c).

****NOTE: The language in sub. (7) is taken from Arizona HB 2162. I am not sure if this means that *only* law enforcement officers who have obtained federal authorization may verify legal presence or what type of training/education law enforcement officers may be required to undergo in order to obtain federal authorization.

9 (8) A law enforcement officer may not consider race, color, or national origin
10 in the enforcement of this section except to the extent permitted by the U.S. and
11 Wisconsin constitutions.

****NOTE: The language in sub. (8) is taken from Arizona HB 2162.

****NOTE: This draft does not include language that would prohibit political subdivisions from enacting a policy or ordinance that limits the enforcement of immigration law. After subsequent discussions about this draft, I believe that those provisions exceed the scope of your request. Please let me know if you do want me to include language to that effect in the next draft.

2007 SENATE JOINT RESOLUTION 29

March 21, 2007 – Introduced by Senators A. LASEE, COWLES, SCHULTZ, LEIBHAM and GROTHMAN, cosponsored by Representatives KAUFERT, F. LASEE, GUNDERSON, BALLWEG, KERKMAN, MUSSER, HAHN, ROTH, LOTHIAN, VAN ROY, VOS, J. OTT and KLEEFISCH. Referred to Committee on Judiciary and Corrections.

- 1 **To amend** section 8 (2) of article I of the constitution; **relating to:** eligibility for
2 release before conviction (first consideration).

Analysis by the Legislative Reference Bureau

Currently, the Wisconsin Constitution provides that a person who is charged with a crime is generally eligible for release before trial, although the court may impose conditions of release. The Wisconsin Constitution further provides that the legislature may authorize, but not require, courts to deny pre-trial release to a person who is accused of committing first-degree homicide or certain sexual assaults, or to a person who is accused of committing or attempting to commit a violent crime if the person has a previous conviction for committing or attempting to commit a violent crime. The statutes currently provide courts such authority to deny pre-trial release.

This proposed constitutional amendment, proposed to the 2007 legislature on first consideration, provides that a person who is present in the United States illegally and who is charged with a violent felony is not eligible for release before trial if the state presents clear and convincing evidence that the person committed the violent felony.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

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- 3 **Resolved by the senate, the assembly concurring, That:**

- 4 **SECTION 1.** Section 8 (2) of article I of the constitution is amended to read:

2007 ASSEMBLY BILL 895

February 28, 2008 – Introduced by Representatives VAN ROY, KLEEFISCH, NYGREN, DAVIS, BALLWEG, LEMAHIEU, MUSSER, VOS, A. OTT, NASS, ALBERS, OWENS, LOTHIAN and MURSAU, cosponsored by Senators SCHULTZ, DARLING and ROESSLER. Referred to Committee on Judiciary and Ethics.

1 **AN ACT relating to:** agreement for state officers to enforce federal immigration
2 law.

Analysis by the Legislative Reference Bureau

Federal law authorizes the U.S. attorney general to enter into an agreement with a state for officers or employees of the state to perform functions of federal immigration officers relating to the investigation, apprehension, or detention of aliens. This bill requires that by July 1, 2008, the secretary of corrections request that the U.S. attorney general enter into such an agreement for Department of Corrections employees to perform functions relating to the investigation, apprehension, or detention of aliens in correctional institutions operated by the department.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1. Nonstatutory provisions.**

4 (1) The secretary of corrections shall by July 1, 2008, request that the attorney
5 general of the United States enter into an agreement under 8 USC 1357 (g)

ASSEMBLY BILL 895

1 authorizing employees of the department of corrections to perform functions of
2 federal immigration officers relating to the investigation, apprehension, or detention
3 of aliens in state correctional institutions.

4 (END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to create* 175.55 of the statutes; **relating to:** determining the legal
2 presence of a person arrested for or charged with a crime or certain civil
3 violations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 175.55 of the statutes is created to read:

5 **175.55 Determination of legal presence.** (1) In this section, "law
6 enforcement officer" has the meaning given in s. 165.85 (2) (c). *§*

7 (2) If a law enforcement officer has reasonable suspicion that a person who is
8 arrested for or charged with a crime or with a violation of state law that may result
9 in the imposition of a fine, forfeiture, or period of imprisonment is not legally present
10 in this state, a person authorized under sub. (6) shall determine the legal presence
11 of the person before the person is released.

Issued a citation or local ordinance

1 **(3)** For the purposes of this section, proof of legal presence may be any of the
2 following:

3 (a) A U.S. passport.

4 (b) A birth certificate bearing an official seal or other mark of authentication
5 and issued by a state, county, or municipality within the United States or by a
6 territory or possession of the United States.

7 (c) A certification of birth abroad issued by the federal department of state.

8 (d) A certificate of naturalization

9 (e) A certificate of U.S. citizenship.

10 (f) A permanent resident card or alien registration receipt card, along with the
11 person's bureau of citizenship and immigration services alien registration number.

12 (g) Any other proof specified in 49 CFR 383.71 (a) (9), along with the person's
13 bureau of citizenship and immigration services alien registration number.

14 (h) Documentary proof of conditional permanent resident status in the United
15 States.

16 (i) A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry
17 into the United States.

18 (j) An approved application for asylum in the United States or documentary
19 proof that the person has entered into the United States in refugee status.

20 (k) A pending application for asylum in the United States.

21 (L) A pending or approved application for temporary protected status in the
22 United States.

23 (m) An approved deferred action status.

1 (n) A pending application for adjustment of status to that of an alien lawfully
2 admitted for permanent residence in the United States or conditional permanent
3 resident status in the United States.

****NOTE: These are taken from the requirements to obtain drivers' licenses in Wisconsin.

4 (4) Any person who does not provide proof of his or her legal presence in this
5 state as provided under sub. (3) may be held in secured custody for no more than 48
6 hours. If the person provides proof of his or her legal presence during that time, the
7 person may be released. If the person is not being held in secured custody pursuant
8 to another statute and does not provide proof of his or her legal presence during that
9 time, the law enforcement agency shall proceed under sub. (5). ~~XXX~~

****NOTE: I did not include, in this draft, any provisions for a person being required to pay the costs of his or her jail time. I am not sure if you intend for a person who is legally present to pay these costs, or what happens if a person who is not legally present either does not or cannot pay. Please review and let me know your thoughts on this matter.

allow citys to charge jail costs

10 (5) The law enforcement agency shall notify the U.S. Immigration and
11 Customs Enforcement or the U.S. Customs and Border Protection that a person who
12 has not provided proof of his or her legal presence in this state has been identified
13 and shall securely transport the person to a federal facility in this state or to any
14 other point of transfer into federal custody. A law enforcement officer shall obtain
15 judicial authorization before securely transporting a person under this section to a
16 point of transfer that is outside of this state.

****NOTE: The question of whether the federal agency will take custody of persons who have not proven their legal presence is unsettled. This draft, like the Arizona law, is silent as to what should happen if the federal agency refuses to take custody of the person. You may want to review this issue with the department of justice and let me know if you would like the draft to address this possibility.

allow fingerprint

17 (6) If a person who does not provide proof of his or her legal presence is
18 convicted of a crime and is imprisoned, upon the person's discharge from jail or from

1 confinement in prison, the sheriff or the department of corrections shall proceed
2 under sub. (5).

****NOTE: Under this subsection, a person who has not proven his or her legal presence is, upon release from jail or confinement in prison, taken to federal custody. However, persons released from confinement in prison are generally released to extended supervision in Wisconsin; they are still technically serving their "term of imprisonment" under Wisconsin law and are under the jurisdiction of the department of corrections. I am not sure if and how, under this subsection, the department of corrections may release a person from his or her term of imprisonment before the period of extended supervision is completed. You may want to discuss this with the department of justice and the department of corrections for clarification of this point.

NO U
proven -
just
leave as
is.

3 (7) For the purposes of this section, a person's legal presence may be
4 determined by:

5 (a) A law enforcement officer who is authorized by the federal government to
6 verify or ascertain a person's immigration status or legal presence.

7 (b) The U.S. Immigration and Customs Enforcement or the U.S. Customs and
8 Border Protection pursuant to 8 USC 1373 (c).

****NOTE: The language in sub. (7) is taken from Arizona HB 2162. I am not sure if this means that *only* law enforcement officers who have obtained federal authorization may verify legal presence or what type of training/education law enforcement officers may be required to undergo in order to obtain federal authorization.

9 (8) A law enforcement officer may not consider race, color, or national origin
10 in the enforcement of this section except to the extent permitted by the U.S. and
11 Wisconsin constitutions.

****NOTE: The language in sub. (8) is taken from Arizona HB 2162.

****NOTE: This draft does not include language that would prohibit political subdivisions from enacting a policy or ordinance that limits the enforcement of immigration law. After subsequent discussions about this draft, I believe that those provisions exceed the scope of your request. Please let me know if you do want me to include language to that effect in the next draft.

12 (END)

see notes - include in next section.

to avoid this is in the challenge pre-emption. If it's there because there must carry on presence of take out

Hurley, Peggy

From: Savage, Bill
Sent: Wednesday, August 11, 2010 2:49 PM
To: Hurley, Peggy
Subject: RE: Prohibiting sanctuary cities

include the \$500 per day damages.
thanks,

From: Hurley, Peggy
Sent: Wed 8/11/2010 12:08 PM
To: Savage, Bill
Subject: Prohibiting sanctuary cities

Hi Bill,

I am attaching a copy of a 2007 bill that Representative Pridemore co-sponsored. The bill prohibits local governments from establishing "sanctuary cities" and allows a private right of action that would compel the city to comply with the law. The bill does not include liquidated damages, however. When we had our discussion last week, the question of a \$500 or even \$1000/day damages award came up and it was unclear to me whether Representative Pridemore thinks they are necessary for his bill. Do you want me to simply incorporate this 2007 bill into your draft, or should we go with the monetary damages, as well?

Peggy Hurley
Legislative Reference Bureau
808 266 8906

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2162

AN ACT

AMENDING SECTIONS 1-501 AND 1-502, ARIZONA REVISED STATUTES; AMENDING SECTION 11-1051, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 2, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-1509, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 3, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2928, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2929, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO IMMIGRATION AND BORDER SECURITY; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 1-501, Arizona Revised Statutes, is amended to
3 read:
4 1-501. Eligibility for federal public benefits; documentation;
5 violation; classification; citizen suits; attorney
6 fees; definition
7 A. Notwithstanding any other state law and to the extent permitted by
8 federal law, any NATURAL person who applies for a federal public benefit that
9 is administered by this state or a political subdivision of this state and
10 that requires participants to be citizens of the United States, legal
11 residents of the United States or otherwise lawfully present in the United
12 States shall submit at least one of the following documents to the entity
13 that administers the federal public benefit demonstrating lawful presence in
14 the United States:
15 1. An Arizona driver license issued after 1996 or an Arizona
16 nonoperating identification license.
17 2. A birth certificate or delayed birth certificate issued in any
18 state, territory or possession of the United States.
19 3. A United States certificate of birth abroad.
20 4. A United States passport.
21 5. A foreign passport with a United States visa.
22 6. An I-94 form with a photograph.
23 7. A United States citizenship and immigration services employment
24 authorization document or refugee travel document.
25 8. A United States certificate of naturalization.
26 9. A United States certificate of citizenship.
27 10. A tribal certificate of Indian blood.
28 11. A tribal or bureau of Indian affairs affidavit of birth.
29 B. For the purposes of administering the Arizona health care cost
30 containment system, documentation of citizenship and legal residence shall
31 conform with the requirements of title XIX of the social security act.
32 C. To the extent permitted by federal law, an agency of this state or
33 political subdivision of this state may allow tribal members, the elderly and
34 persons with disabilities or incapacity of the mind or body to provide
35 documentation as specified in section 6036 of the federal deficit reduction
36 act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu
37 of the documentation required by this section.
38 D. Any person who applies for federal public benefits shall sign a
39 sworn affidavit stating that the documents presented pursuant to subsection A
40 OF THIS SECTION are true under penalty of perjury.
41 E. Failure to report discovered violations of federal immigration law
42 by an employee of an agency of this state or a political subdivision of this
43 state that administers any federal public benefit is a class 2 misdemeanor.
44 If that employee's supervisor knew of the failure to report and failed to

1 direct the employee to make the report, the supervisor is guilty of a class 2
2 misdemeanor.

3 F. This section shall be enforced without regard to race, color,
4 religion, sex, age, disability or national origin.

5 G. Any person who is a resident of this state has standing in any
6 court of record to bring suit against any agent or agency of this state or
7 its political subdivisions to remedy any violation of any provision of this
8 section, including an action for mandamus. Courts shall give preference to
9 actions brought under this section over other civil actions or proceedings
10 pending in the court.

11 H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY
12 PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
13 OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON
14 THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

15 ~~H.~~ I. For the purposes of this section, "federal public benefit" has
16 the same meaning prescribed in 8 United States Code section 1611.

17 Sec. 2. Section 1-502, Arizona Revised Statutes, is amended to read:

18 1-502. Eligibility for state or local public benefits;
19 documentation; violation; classification; citizen
20 suits; attorney fees; definition

21 A. Notwithstanding any other state law and to the extent permitted by
22 federal law, any agency of this state or a political subdivision of this
23 state that administers any state or local public benefit shall require each
24 NATURAL person who applies for the state or local public benefit to submit at
25 least one of the following documents to the entity that administers the state
26 or local public benefit demonstrating lawful presence in the United States:

27 1. An Arizona driver license issued after 1996 or an Arizona
28 nonoperating identification license.

29 2. A birth certificate or delayed birth certificate issued in any
30 state, territory or possession of the United States.

31 3. A United States certificate of birth abroad.

32 4. A United States passport.

33 5. A foreign passport with a United States visa.

34 6. An I-94 form with a photograph.

35 7. A United States citizenship and immigration services employment
36 authorization document or refugee travel document.

37 8. A United States certificate of naturalization.

38 9. A United States certificate of citizenship.

39 10. A tribal certificate of Indian blood.

40 11. A tribal or bureau of Indian affairs affidavit of birth.

41 B. For the purposes of administering the Arizona health care cost
42 containment system, documentation of citizenship and legal residence shall
43 conform with the requirements of title XIX of the social security act.

1 C. To the extent permitted by federal law, an agency of this state or
2 political subdivision of this state may allow tribal members, the elderly and
3 persons with disabilities or incapacity of the mind or body to provide
4 documentation as specified in section 6036 of the federal deficit reduction
5 act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu
6 of the documentation required by this section.

7 D. Any person who applies for state or local public benefits shall
8 sign a sworn affidavit stating that the documents presented pursuant to
9 subsection A OF THIS SECTION are true under penalty of perjury.

10 E. Failure to report discovered violations of federal immigration law
11 by an employee of an agency of this state or a political subdivision of this
12 state that administers any state or local public benefit is a class 2
13 misdemeanor. If that employee's supervisor knew of the failure to report and
14 failed to direct the employee to make the report, the supervisor is guilty of
15 a class 2 misdemeanor.

16 F. This section shall be enforced without regard to race, color,
17 religion, sex, age, disability or national origin.

18 G. Any person who is a resident of this state has standing in any
19 court of record to bring suit against any agent or agency of this state or
20 its political subdivisions to remedy any violation of any provision of this
21 section, including an action for mandamus. Courts shall give preference to
22 actions brought under this section over other civil actions or proceedings
23 pending in the court.

24 H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY
25 PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
26 OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON
27 THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

28 ~~H.~~ I. For the purposes of this section, "state or local public
29 benefit" has the same meaning prescribed in 8 United States Code section
30 1621, except that it does not include commercial or professional licenses, ~~or~~
31 benefits provided by the public retirement systems and plans of this state OR
32 SERVICES WIDELY AVAILABLE TO THE GENERAL POPULATION AS A WHOLE.

33 Sec. 3. Section 11-1051, Arizona Revised Statutes, as added by Senate
34 Bill 1070, section 2, forty-ninth legislature, second regular session, as
35 transmitted to the governor, is amended to read:

36 ~~11-1051. Cooperation and assistance in enforcement of~~
37 immigration laws; indemnification

38 A. No official or agency of this state or a county, city, town or
39 other political subdivision of this state may limit or restrict the
40 enforcement of federal immigration laws to less than the full extent
41 permitted by federal law.

42 B. For any lawful ~~contact~~ STOP, DETENTION OR ARREST made by a law
43 enforcement official or a law enforcement agency of this state or a law
44 enforcement official or a law enforcement agency of a county, city, town or
45 other political subdivision of this state IN THE ENFORCEMENT OF ANY OTHER LAW

1 OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE where reasonable
2 suspicion exists that the person is an alien ~~who~~ AND is unlawfully present in
3 the United States, a reasonable attempt shall be made, when practicable, to
4 determine the immigration status of the person, except if the determination
5 may hinder or obstruct an investigation. Any person who is arrested shall
6 have the person's immigration status determined before the person is
7 released. The person's immigration status shall be verified with the federal
8 government pursuant to 8 United States code section 1373(c). A law
9 enforcement official or agency of this state or a county, city, town or other
10 political subdivision of this state may not ~~solely~~ consider race, color or
11 national origin in implementing the requirements of this subsection except to
12 the extent permitted by the United States or Arizona Constitution. A person
13 is presumed to not be an alien who is unlawfully present in the United States
14 if the person provides to the law enforcement officer or agency any of the
15 following:

- 16 1. A valid Arizona driver license.
- 17 2. A valid Arizona nonoperating identification license.
- 18 3. A valid tribal enrollment card or other form of tribal
19 identification.

20 4. If the entity requires proof of legal presence in the United States
21 before issuance, any valid United States federal, state or local government
22 issued identification.

23 C. If an alien who is unlawfully present in the United States is
24 convicted of a violation of state or local law, on discharge from
25 imprisonment or on the assessment of any monetary obligation that is imposed,
26 the United States immigration and customs enforcement or the United States
27 customs and border protection shall be immediately notified.

28 D. Notwithstanding any other law, a law enforcement agency may
29 securely transport an alien who the agency has received verification is
30 unlawfully present in the united states and who is in the agency's custody to
31 a federal facility in this state or to any other point of transfer into
32 federal custody that is outside the jurisdiction of the law enforcement
33 agency. A law enforcement agency shall obtain judicial authorization before
34 securely transporting an alien who is unlawfully present in the United States
35 to a point of transfer that is outside of this state.

36 E. IN THE IMPLEMENTATION OF THIS SECTION, AN ALIEN'S IMMIGRATION
37 STATUS MAY BE DETERMINED BY:

38 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
39 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

40 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED
41 STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION
42 1373(c).

43 ~~E.~~ F. Except as provided in federal law, officials or agencies of
44 this state and counties, cities, towns and other political subdivisions of
45 this state may not be prohibited or in any way be restricted from sending,

1 receiving or maintaining information relating to the immigration status,
2 lawful or unlawful, of any individual or exchanging that information with any
3 other federal, state or local governmental entity for the following official
4 purposes:

5 1. Determining eligibility for any public benefit, service or license
6 provided by any federal, state, local or other political subdivision of this
7 state.

8 2. Verifying any claim of residence or domicile if determination of
9 residence or domicile is required under the laws of this state or a judicial
10 order issued pursuant to a civil or criminal proceeding in this state.

11 3. If the person is an alien, determining whether the person is in
12 compliance with the federal registration laws prescribed by title II, chapter
13 7 of the federal immigration and Nationality act.

14 4. Pursuant to 8 United States Code section 1373 and 8 United States
15 Code section 1644.

16 ~~F.~~ G. This section does not implement, authorize or establish and
17 shall not be construed to implement, authorize or establish the REAL ID act
18 of 2005 (P.L. 109-13, division B; 119 Stat. 302), including the use of a
19 radio frequency identification chip.

20 ~~G.~~ H. A person who is a legal resident of this state may bring an
21 action in superior court to challenge any official or agency of this state or
22 a county, city, town or other political subdivision of this state that adopts
23 or implements a policy ~~or practice~~ that limits or restricts the enforcement
24 of federal immigration laws, INCLUDING 8 UNITED STATES CODE SECTIONS 1373 AND
25 1644, to less than the full extent permitted by federal law. If there is a
26 judicial finding that an entity has violated this section, the court shall
27 order that the entity pay a civil penalty of not less than ~~one thousand~~ FIVE
28 HUNDRED dollars and not more than five thousand dollars for each day that the
29 policy has remained in effect after the filing of an action pursuant to this
30 subsection.

31 ~~H.~~ I. A court shall collect the civil penalty prescribed in
32 subsection ~~G.~~ H of this section and remit the civil penalty to the state
33 treasurer for deposit in the gang and immigration intelligence team
34 enforcement mission fund established by section 41-1724.

35 ~~I.~~ J. The court may award court costs and reasonable attorney fees to
36 any person or any official or agency of this state or a county, city, town or
37 other political subdivision of this state that prevails by an adjudication on
38 the merits in a proceeding brought pursuant to this section.

39 ~~J.~~ K. Except in relation to matters in which the officer is adjudged
40 to have acted in bad faith, a law enforcement officer is indemnified by the
41 law enforcement officer's agency against reasonable costs and expenses,
42 including attorney fees, incurred by the officer in connection with any
43 action, suit or proceeding brought pursuant to this section in which the
44 officer may be a defendant by reason of the officer being or having been a
45 member of the law enforcement agency.

1 ~~K~~ L. This section shall be implemented in a manner consistent with
2 federal laws regulating immigration, protecting the civil rights of all
3 persons and respecting the privileges and immunities of United States
4 citizens.

5 Sec. 4. Section 13-1509, Arizona Revised Statutes, as added by Senate
6 Bill 1070, section 3, forty-ninth legislature, second regular session, as
7 transmitted to the governor, is amended to read:

8 13-1509. Willful failure to complete or carry an alien
9 registration document; assessment; exception;
10 authenticated records; classification

11 A. In addition to any violation of federal law, a person is guilty of
12 willful failure to complete or carry an alien registration document if the
13 person is in violation of 8 United States Code section 1304(e) or 1306(a).

14 B. In the enforcement of this section, an alien's immigration status
15 may be determined by:

16 1. A law enforcement officer who is authorized by the federal
17 government to verify or ascertain an alien's immigration status.

18 2. The United States immigration and customs enforcement or the United
19 States customs and border protection pursuant to 8 United States Code section
20 1373(c).

21 C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
22 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
23 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO
24 THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

25 ~~G~~ D. A person who is sentenced pursuant to this section is not
26 eligible for suspension of sentence, probation, pardon, commutation of
27 sentence, or release from confinement on any basis except as authorized by
28 section 31-233, subsection A or B until the sentence imposed by the court has
29 been served or the person is eligible for release pursuant to section 41-
30 1604.07.

31 ~~H~~ E. In addition to any other penalty prescribed by law, the court
32 shall order the person to pay jail costs. ~~and an additional assessment in~~
33 ~~the following amounts:~~

34 1. ~~At least five hundred dollars for a first violation.~~

35 2. ~~Twice the amount specified in paragraph 1 of this subsection if the~~
36 ~~person was previously subject to an assessment pursuant to this subsection.~~

37 ~~E. A court shall collect the assessments prescribed in subsection D of~~
38 ~~this section and remit the assessments to the department of public safety,~~
39 ~~which shall establish a special subaccount for the monies in the account~~
40 ~~established for the gang and immigration intelligence team enforcement~~
41 ~~mission appropriation. Monies in the special subaccount are subject to~~
42 ~~legislative appropriation for distribution for gang and immigration~~
43 ~~enforcement and for county jail reimbursement costs relating to illegal~~
44 ~~immigration.~~

1 F. This section does not apply to a person who maintains authorization
2 from the federal government to remain in the United States.

3 G. Any record that relates to the immigration status of a person is
4 admissible in any court without further foundation or testimony from a
5 custodian of records if the record is certified as authentic by the
6 government agency that is responsible for maintaining the record.

7 H. A violation of this section is a class 1 misdemeanor, except that
8 THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR a FIRST violation of this
9 section ~~is~~ THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN TWENTY DAYS
10 IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT SHALL NOT SENTENCE
11 THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.

12 ~~1. A class 3 felony if the person violates this section while in~~
13 ~~possession of any of the following:~~

14 ~~(a) A dangerous drug as defined in section 13-3401.~~

15 ~~(b) Precursor chemicals that are used in the manufacturing of~~
16 ~~methamphetamine in violation of section 13-3404.01.~~

17 ~~(c) A deadly weapon or a dangerous instrument, as defined in section~~
18 ~~13-105.~~

19 ~~(d) Property that is used for the purpose of committing an act of~~
20 ~~terrorism as prescribed in section 13-2308.01.~~

21 ~~2. A class 4 felony if the person either:~~

22 ~~(a) Is convicted of a second or subsequent violation of this section.~~

23 ~~(b) Within sixty months before the violation, has been removed from~~
24 ~~the United States pursuant to 8 United States Code section 1229a or has~~
25 ~~accepted a voluntary removal from the United States pursuant to 8 United~~
26 ~~States Code section 1229e.~~

27 Sec. 5. Section 13-2928, Arizona Revised Statutes, as added by Senate
28 Bill 1070, section 5, forty-ninth legislature, second regular session, as
29 transmitted to the governor, is amended to read:

30 13-2928. Unlawful stopping to hire and pick up passengers for
31 work; unlawful application, solicitation or
32 employment; classification; definitions

33 A. It is unlawful for an occupant of a motor vehicle that is stopped
34 on a street, roadway or highway to attempt to hire or hire and pick up
35 passengers for work at a different location if the motor vehicle blocks or
36 impedes the normal movement of traffic.

37 B. It is unlawful for a person to enter a motor vehicle that is
38 stopped on a street, roadway or highway in order to be hired by an occupant
39 of the motor vehicle and to be transported to work at a different location if
40 the motor vehicle blocks or impedes the normal movement of traffic.

41 C. It is unlawful for a person who is unlawfully present in the United
42 States and who is an unauthorized alien to knowingly apply for work, solicit
43 work in a public place or perform work as an employee or independent
44 contractor in this state.

1 D. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
2 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
3 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO
4 THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

5 E. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS
6 MAY BE DETERMINED BY:

7 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
8 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

9 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED
10 STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION
11 1373(c).

12 ~~D.~~ F. A violation of this section is a class 1 misdemeanor.

13 ~~E.~~ G. For the purposes of this section:

14 1. "Solicit" means verbal or nonverbal communication by a gesture or a
15 nod that would indicate to a reasonable person that a person is willing to be
16 employed.

17 2. "Unauthorized alien" means an alien who does not have the legal
18 right or authorization under federal law to work in the United States as
19 described in 8 United States Code section 1324a(h)(3).

20 Sec. 6. Section 13-2929, Arizona Revised Statutes, as added by Senate
21 Bill 1070, section 5, forty-ninth legislature, second regular session, as
22 transmitted to the governor, is amended to read:

23 13-2929. Unlawful transporting, moving, concealing, harboring
24 or shielding of unlawful aliens; vehicle
25 impoundment; exception; classification

26 A. It is unlawful for a person who is in violation of a criminal
27 offense to:

28 1. Transport or move or attempt to transport or move an alien in this
29 state, in furtherance of the illegal presence of the alien in the United
30 States, in a means of transportation if the person knows or recklessly
31 disregards the fact that the alien has come to, has entered or remains in the
32 United States in violation of law.

33 2. Conceal, harbor or shield or attempt to conceal, harbor or shield
34 an alien from detection in any place in this state, including any building or
35 any means of transportation, if the person knows or recklessly disregards the
36 fact that the alien has come to, has entered or remains in the United States
37 in violation of law.

38 3. Encourage or induce an alien to come to or reside in this state if
39 the person knows or recklessly disregards the fact that such coming to,
40 entering or residing in this state is or will be in violation of law.

41 B. A means of transportation that is used in the commission of a
42 violation of this section is subject to mandatory vehicle immobilization or
43 impoundment pursuant to section 28-3511.

1 C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
2 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
3 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO
4 THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

5 D. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS
6 MAY BE DETERMINED BY:

7 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
8 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

9 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED
10 STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION
11 1373(c).

12 ~~E.~~ E. This section does not apply to a child protective services
13 worker acting in the worker's official capacity or a person who is acting in
14 the capacity of a first responder, an ambulance attendant or an emergency
15 medical technician and who is transporting or moving an alien in this state
16 pursuant to title 36, chapter 21.1.

17 ~~F.~~ F. A person who violates this section is guilty of a class 1
18 misdemeanor and is subject to a fine of at least one thousand dollars, except
19 that a violation of this section that involves ten or more illegal aliens is
20 a class 6 felony and the person is subject to a fine of at least one thousand
21 dollars for each alien who is involved.

22 Sec. 7. Joint border security advisory committee; membership;
23 duties; report; delayed repeal

24 A. The joint border security advisory committee is established
25 consisting of the following members:

- 26 1. The president of the senate or the president's designee.
27 2. The speaker of the house of representatives or the speaker's
28 designee.
29 3. Two members of the house of representatives who are appointed by
30 the speaker of the house of representatives.
31 4. Two members of the senate who are appointed by the president of the
32 senate.
33 5. Six members who are appointed by the governor.

34 B. Committee members are not eligible to receive compensation for
35 committee activities but may be eligible for reimbursement of expenses
36 pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.

37 C. The president and the speaker of the house of representatives shall
38 each appoint a cochairperson of the committee.

39 D. The commission shall meet on the call of the two cochairpersons,
40 but no more frequently than monthly.

41 E. The committee may:

- 42 1. Take testimony and other evidence regarding the international
43 border with Mexico.
44 2. Analyze border crossing statistics.
45 3. Analyze related crime statistics.

- 1 4. Make recommendations designed to increase border security.
2 5. Make other recommendations deemed essential by the committee.
3 F. The committee may use the services of legislative staff as
4 required.
5 G. Beginning November 30, 2010 and each month thereafter, the
6 commission shall submit a written report of its findings and recommendations
7 to the speaker of the house of representatives, the president of the senate
8 and the governor. The commission shall provide a copy of the report to the
9 secretary of state.
10 H. Notwithstanding any law to the contrary, the committee may vote to
11 go into executive session to take testimony or evidence it considers
12 sensitive or confidential in nature, which if released could compromise the
13 security or safety of law enforcement or military personnel or a law
14 enforcement or national guard law enforcement support operation.
15 I. This section is repealed from and after December 31, 2014.
16 Sec. 8. Immigration legislation challenges
17 A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and
18 any other law, through December 31, 2010, the attorney general shall act at
19 the direction of the governor in any challenge in a state or federal court to
20 Laws 2010, chapter 113 and any amendments to that law.
21 B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and
22 any other law, through December 31, 2010, the governor may direct counsel
23 other than the attorney general to appear on behalf of this state to defend
24 any challenge to Laws 2010, chapter 113 and any amendments to that law.
25 Sec. 9. Conditional enactment
26 Sections 11-1051, 13-1509, 13-2928 and 13-2929, Arizona Revised
27 Statutes, as amended by this act, do not become effective unless Senate Bill
28 1070, forty-ninth legislature, second regular session, relating to unlawfully
29 present aliens, becomes law.