



2023 ASSEMBLY BILL 397

September 6, 2023 - Introduced by Representatives GUNDRUM, ARMSTRONG, BODDEN, BROOKS, DITTRICH, PENTERMAN, RETTINGER, WICHGERS and EDMING, cosponsored by Senators BRADLEY, JACQUE and NASS. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to create** 175.57 of the statutes; **relating to:** determining the lawful
2 presence of a person arrested for or charged with a crime or certain civil
3 violations.

Analysis by the Legislative Reference Bureau

This bill requires a law enforcement officer to determine whether a person who is arrested for or charged with a crime or civil violation is lawfully present in the state. Under the bill, if the officer has reasonable suspicion, based on failure to provide identification, that the person is not lawfully present in the state, the officer must attempt to verify whether the person is lawfully present in the state. If the person produces documentary proof of lawful presence, the law enforcement officer may not further inquire into the citizenship or immigration status of the person. However, if the person does not provide documentary proof of lawful presence, the law enforcement officer must attempt to verify the person's immigration status with the federal government. Under the bill, a law enforcement officer may not base reasonable suspicion of unlawful presence on a person's race, color, or national origin except as permitted under the U.S. and Wisconsin Constitutions.

Under the bill, if the person is determined to be unlawfully present in the state, the law enforcement officer must report the person to the appropriate federal immigration authority, must cooperate with the immigration authorities to the greatest extent possible, and, if permitted under federal law, must detain the person until the federal immigration authority can take the person into federal custody.

The bill requires law enforcement agencies to collect data regarding the number of persons charged with a crime or civil violation who are determined to be

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unlawfully present in the state. The Department of Justice must collect this data and submit a report on the data to the legislature every six months.

For further information see the state and local 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:

1 **SECTION 1.** 175.57 of the statutes is created to read:

2 **175.57 Determination of lawful presence. (1)** In this section:

3 (a) “Documentary proof of lawful presence” means any of the following:

4 1. A U.S. passport.

5 2. A birth record bearing an official seal or other mark of authentication and
6 issued by a state, county, or municipality within the United States or by a territory
7 or possession of the United States.

8 3. A record of birth abroad issued by the federal department of state.

9 4. A certificate of naturalization.

10 5. A certificate of U.S. citizenship.

11 6. A permanent resident card or alien registration receipt card, along with the
12 person’s bureau of citizenship and immigration services alien registration number.

13 7. Any other proof specified in 49 CFR 383.71 (b) (9), along with the person’s
14 bureau of citizenship and immigration services alien registration number.

15 8. Documentary proof of conditional permanent resident status in the United
16 States.

17 9. A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry
18 into the United States.

19 10. An approved application for asylum in the United States or documentary
20 proof that the person has entered into the United States in refugee status.

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- 1 11. A pending application for asylum in the United States.
- 2 12. A pending or approved application for temporary protected status in the
3 United States.
- 4 13. An approved deferred action status.
- 5 14. A pending application for adjustment of status to that of an alien lawfully
6 admitted for permanent residence in the United States or conditional permanent
7 resident status in the United States.
- 8 15. A valid Wisconsin operator's license or a valid identification card issued
9 under s. 343.50.
- 10 (b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).
- 11 **(2)** (a) If a law enforcement officer has reasonable suspicion that a person who
12 is lawfully arrested for or charged with a crime, or with a violation of state law that
13 may result in the imposition of a forfeiture, is not lawfully present in this state, the
14 law enforcement officer shall request documentary proof of lawful presence of the
15 person before releasing the person. For the purposes of this paragraph, a person's
16 refusal or failure to provide identification at the time he or she is arrested or charged
17 constitutes reasonable suspicion that the person is not lawfully present in this state.
- 18 (b) If a person described under par. (a) provides documentary proof of lawful
19 presence, a law enforcement officer may not further inquire into the person's
20 citizenship or immigration status.
- 21 **(3)** (a) If the person refuses or fails to provide documentary proof of lawful
22 presence under sub. (2) (a), the law enforcement officer shall make a reasonable
23 attempt to verify the person's immigration status with the federal government
24 pursuant to 8 USC 1373 (c).

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1 (b) If, under par. (a), the federal government verifies that the person is
2 unlawfully present in this state, the law enforcement agency shall notify the U.S.
3 Immigration and Customs Enforcement or the U.S. Customs and Border Protection
4 of the person's unlawful presence, shall cooperate with those agencies to the greatest
5 extent possible to enforce federal immigration laws, and, if applicable, shall detain
6 the person as provided under 8 USC 1252c.

7 (4) If a person who has been determined to be unlawfully present in this state
8 is convicted of a crime and is imprisoned, upon the person's discharge from jail or
9 from confinement in prison, the sheriff or the department of corrections shall proceed
10 under sub. (3) (b).

11 (5) A law enforcement officer may not consider race, color, or national origin
12 in the enforcement of this section except to the extent permitted by the U.S. and
13 Wisconsin Constitutions.

14 (6) (a) A law enforcement agency shall collect data on all of the following and
15 provide the data to the department of justice upon request:

16 1. The number of persons charged with a crime or civil violation who are
17 verified as unlawfully present in this state under sub. (3), the number of those
18 persons who were convicted of the crime or civil violation charged, and a list of the
19 types of crimes or civil violations that were committed.

20 2. The number of persons under subd. 1. who were on probation, parole, or
21 extended supervision when the crime or civil violation was committed.

22 (b) Beginning January 1, 2025, and every 6 months thereafter, the department
23 of justice shall submit a report compiling the data collected under par. (a) to the
24 appropriate standing committees of the legislature under s. 13.172 (3).

25 (END)