

**2007 DRAFTING REQUEST**

**Senate Joint Resolution**

Received: **03/06/2007**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Alan Lasee (608) 266-3512**

By/Representing: **Thomas Van Ess**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies: **Anne Sappenfield (LC)**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Prohibit pre-trial release of persons in the country illegally who are charged with a violent crime

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rryan 03/07/2007	csicilia 03/07/2007	nnatzke 03/07/2007	_____	lparisi 03/07/2007	mbarman 03/13/2007	

FE Sent For:

<END>

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/?	rryan	1 gs 3/7 07	nwn 3/7	nwn/rs 3/7			

FE Sent For:

<END>

LRR-2155

**Ryan, Robin**

**From:** Van Ess, Thomas  
**Sent:** Friday, January 12, 2007 8:50 AM  
**To:** Hanaman, Cathlene; Ryan, Robin  
**Cc:** Sappenfield, Anne  
**Subject:** FW: Emailing: elections

**Attachments:** Prop100.htm



Prop100.htm (47 KB)

Robin and Cathlene, Senator Lasee would like to request that the LRB draft legislation that would not allow bond for illegal immigrants in they are presumed to have committed the crime. Ann Sappenfield from Leg. Council found a link to the proposition that Arizona passed and the wording that was placed in their resolution. Please see #4 below and attachment. Sen. Lass would like to introduce this ASAP.

Thanks, Tom Van Ess

Thomas Van Ess  
Chief of Staff  
Office of Senator Alan Lasee  
608-266-3512

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, SECTION 22, CONSTITUTION OF ARIZONA; RELATING TO BAILABLE OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. Article II, section 22, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

22. Bailable offenses

Section 22. A. All persons charged with crime shall be bailable by sufficient sureties, except for:

- 1. FOR capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
- 2. FOR felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
- 3. FOR felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the

presumption great as to the present charge.

4. FOR SERIOUS FELONY OFFENSES AS PRESCRIBED BY THE LEGISLATURE IF THE PERSON CHARGED HAS ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY AND IF THE PROOF IS EVIDENT OR THE PRESUMPTION GREAT AS TO THE PRESENT CHARGE.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.

2. Protecting against the intimidation of witnesses.

3. Protecting the safety of the victim, any other person or the community.

2. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

-----Original Message-----

From: Sappenfield, Anne

Sent: Wednesday, January 10, 2007 12:20 PM

To: Van Ess, Thomas

Subject: RE: Emailing: elections

I would start with Robin Ryan (1-6927). If she isn't available, then, Cathlene Hanaman (7-9810).

-----Original Message-----

From: Sappenfield, Anne

Sent: Wednesday, January 10, 2007 11:42 AM

To: Van Ess, Thomas

Subject: Emailing: elections

Hi Tom--

It was passed in the Nov. 2006 election. Here are the numbers.

Anne

The message is ready to be sent with the following file or link attachments:

Shortcut to: <http://www.azcentral.com/elections/>

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Questions for Tom:

LRB-2155

- ① Want to deny bail for illegal aliens or authorize court to deny bail?
- ② Apply for any crime or just violent crimes?
- ③ Want to require clear and convincing evidence that defendant committed crime?
- ④ Want Bill or Constitutional Amendment?

---

Call 3/6/07 to Tom

- Require denial of release, don't leave to courts
- Const. Amend
- Require cl. & conv. and
- Just apply to violent crimes



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-21552

RLR:....

ejs

In 3/7/07  
Wanted Soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
2007 SENATE JOINT RESOLUTION

PMR  
D-N

Gen Cat

INS  
X

1 ; **Relating to:** eligibility for release before conviction (first consideration).

*Analysis by the Legislative Reference Bureau*

Currently, a person who is charged with a crime is generally eligible for release before trial, although the court may impose conditions for release. A court may deny pre-trial release to a person who is accused of committing first-degree homicide or certain sexual assaults, or 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.

**EXPLANATION OF PROPOSAL**

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.

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

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

[Article I] Section 8 (2) All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court,

change to 2 anal: texts and remove tabs  
(but keep indents)

that

1 protect members of the community from serious bodily harm or prevent the  
2 intimidation of witnesses, except a person who is present in the United States  
3 illegally and is charged with a violent felony is not eligible for release before trial  
4 under any circumstances if the state presents clear and convincing evidence that the  
5 person committed the violent felony . Monetary conditions of release may be imposed  
6 at or after the initial appearance only upon a finding that there is a reasonable basis  
7 to believe that the conditions are necessary to assure appearance in court. The  
8 legislature may authorize, by law, courts to revoke a person's release for a violation  
9 of a condition of release.

10 ***Be it further resolved, That*** this proposed amendment be referred to the  
11 legislature to be chosen at the next general election and that it be published for 3  
12 months previous to the time of holding such election.

13 (END)

D-N



2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2155/lins  
RLR:.....

INS X

e courts

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, the court 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.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2155/1dn

RLR:./:...

cjs

Thomas Van Ess:

This draft raises some constitutional questions. The U.S. Supreme Court has found that aliens, even aliens whose presence in this country is unlawful, are guaranteed due process of law by the 5th and 14th Amendments to the U.S. Constitution. See for example, *Plyler v. Doe*, 457 U.S. 202, (1982). Thus the state may not be able to mandate pre-trial detention of all people who are in the country illegally and charged with violent felonies. Due process may instead require that states provide aliens who are in the country illegally individualized determinations of flight risk or threat to the community before denying pre-trial release.

However, the U.S. Supreme Court has also stated that Congress, in the exercise of its broad power over naturalization and immigration, may make rules that would be unacceptable if applied to citizens. For example, in 2003 the Supreme Court upheld a federal law requiring that aliens who have already been found removable based on conviction of certain crimes be detained pending their removal proceedings. *Demore v. Kim*, 538 U.S. 510. This resolution is distinguishable from the scenario in *Demore*, because it affects persons who have not been convicted of a crime. Also, states do not have the same authority as Congress to make laws affecting aliens.

I have not found any case law that explicitly addresses the constitutionality of prohibiting pre-trial release of people who are in the country illegally.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2155/1dn  
RLR:cjs:nwn

March 7, 2007

Thomas Van Ess:

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Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**Parisi, Lori**

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**From:** Van Ess, Thomas  
**Sent:** Tuesday, March 13, 2007 8:45 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-2155/1 Topic: Prohibit pre-trial release of persons in the country illegally who are charged with a violent crime

Please Jacket LRB 07-2155/1 for the SENATE.