




State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

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 an 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.

2009 DRAFTING REQUEST

Bill

Received: 06/04/2010

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Donald Pridemore (608) 267-2367

By/Representing:

May Contact:

Drafter: phurley

Subject: Local Gov't - misc
Criminal Law - law enforcement

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pridemore@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Undocumented residents

Instructions:

See attached

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>
/?							
/P1	phurley 07/25/2010	kfollett 07/28/2010	phenry 07/28/2010	_____	lparisi 07/28/2010		
/P2	phurley 08/12/2010	kfollett 08/13/2010	mduchek 08/19/2010	_____	cduerst 08/19/2010		

FE Sent For:

<END>

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/P1	phurley 07/25/2010	kfollett 07/28/2010	phenry 07/28/2010	<u> </u> Kmy 8/3 f4	lparisi 07/28/2010		

FE Sent For:

1P215f MD 8/13
8/13

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/?	phurley	1P116f 7/28		_____	_____		

FE Sent For:

<END>



WED.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

7-26-10
D-note

Gen

1 AN ACT ..., relating to: determining the legal presence of a person arrested for
2 or charged with a crime or certain civil 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:

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

4 **175.55 Determination of legal presence.** (1) In this section, "law
5 enforcement officer" has the meaning given in s. 165.85 (2) (c). ✓ ✓

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

SECTION 1

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 has entered into
19 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.

*documentary
proof that
the person*

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 United States Immigration
 11 and Customs Enforcement or the United States Custom and Border Protection
 12 Agency that a person who has not provided proof of his or her legal presence in this
 13 state has been identified and shall securely transport the person to a federal facility
 14 in this state or to any other point of transfer into federal custody. A law enforcement
 15 officer shall obtain judicial authorization before securely transporting a person
 16 under this section to a 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 United States Immigration and Customs Enforcement or the United
8 States Customs and 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 United States
11 and 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.

D-Note

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

LRB-4746/P1dn
PJH:kjf:ph

July 28, 2010

Representative Pridemore:

Please review this preliminary draft and the notes contained therein. If you have any questions, please let me know. I look forward to continued discussions with your office about this draft.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

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

PI
LRB-4746/?dn

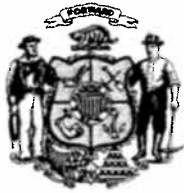
PJH: kjf

Date

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Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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2 presence of a person arrested for or charged with a crime or certain civil
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9 in the imposition of a fine, forfeiture, or period of imprisonment is not legally present
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11 of the person before the person is released.

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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.

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

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1 (n) A pending application for adjustment of status to that of an alien lawfully
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****NOTE: These are taken from the requirements to obtain drivers' licenses in Wisconsin.

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(END)