
AN ACT to create 175.57 of the statutes; relating to: determining the lawful presence of a person arrested for or charged with a crime or certain civil 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 who are determined to be unlawfully present in the state who are
charged with a crime or civil violation. 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:

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

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

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

2. A birth record bearing an official seal or other mark of authentication and issued by a state, county, or municipality within the United States or by a territory or possession of the United States.
3. A record of birth abroad issued by the federal department of state.
4. A certificate of naturalization.
5. A certificate of U.S. citizenship.
6. A permanent resident card or alien registration receipt card, along with the person’s bureau of citizenship and immigration services alien registration number.
7. Any other proof specified in 49 CFR 383.71 (b) (9), along with the person’s bureau of citizenship and immigration services alien registration number.
8. Documentary proof of conditional permanent resident status in the United States.
9. A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States.
10. An approved application for asylum in the United States or documentary proof that the person has entered into the United States in refugee status.
11. A pending application for asylum in the United States.

12. A pending or approved application for temporary protected status in the United States.

13. An approved deferred action status.

14. A pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

15. A valid Wisconsin operator’s license or a valid identification card issued under s. 343.50.

(b) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

(2) (a) If a law enforcement officer has reasonable suspicion that a person who is lawfully arrested for or charged with a crime, or with a violation of state law that may result in the imposition of a forfeiture, is not lawfully present in this state, the law enforcement officer shall request documentary proof of lawful presence of the person before releasing the person. For the purposes of this paragraph, a person’s refusal or failure to provide identification at the time he or she is arrested or charged constitutes reasonable suspicion that the person is not lawfully present in this state.

(b) If a person described under par. (a) provides documentary proof of lawful presence, a law enforcement officer may not further inquire into the person’s citizenship or immigration status.

(3) (a) If the person refuses or fails to provide documentary proof of lawful presence under sub. (2) (a), the law enforcement officer shall make a reasonable attempt to verify the person’s immigration status with the federal government pursuant to 8 USC 1373 (c).
(b) If, under par. (a), the federal government verifies that the person is unlawfully present in this state, the law enforcement agency shall notify the U.S. Immigration and Customs Enforcement or the U.S. Customs and Border Protection of the person’s unlawful presence, shall cooperate with those agencies to the greatest extent possible to enforce federal immigration laws, and, if applicable, shall detain the person as provided under 8 USC 1252c.

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

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

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

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

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

(b) Every 6 months, the department of justice shall submit a report compiling the data collected under par. (a) to the appropriate standing committees of the legislature under s. 13.172 (3).