

**A SUMMARY OF THE  
Homeland Security Enhancement Act of 2005  
(S. 1362)**

*Prepared by the National Immigration Law Center and the National Council of La Raza*

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**SECTION 1: Title.**

**SECTION 2: Defines “state.”**

- “State” has the meaning given in section 101(a)(36) of the Immigration and Nationality Act (INA).

**SECTION 3: Reaffirms inherent authority of states to enforce immigration laws**

- Declares that state and local law enforcement officers have and always have had the “inherent authority” to enforce immigration laws, including the authority to investigate, identify, apprehend, arrest, detain, and transfer (including transport across state lines to detention centers) noncitizens to federal custody.

**SECTION 4: Prohibition of noncooperation statutes, policies, or practices, and provision of information regarding noncitizens**

- Establishes that any state or local statute, policy, or practice that prohibits local officers from enforcing immigration laws, or cooperating with federal immigration law enforcement, or providing information to an official of the U.S. government regarding the immigration status of an individual who is believed to be illegally present in the U.S. is in violation of section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).
- States that all state and local law enforcement agencies should provide to the U.S. Dept. of Homeland Security (DHS) information on each noncitizen apprehended or arrested in the jurisdiction of the state or locality who is believed to be in violation of an immigration law.
- No later than 10 days after the noncitizen is apprehended, the following information regarding the person should be provided to DHS:
  - Name;
  - Address or place of residence;
  - Physical description;
  - Date, time and location of agent’s encounter with immigration violator and the reason for stop, detention, apprehension or arrest;
  - Driver’s license number and its state of issuance, if applicable;
  - Identification number, any designation number on the document and the issuing entity, if applicable;

- The license plate number, make and model of any automobile registered or driven by the violator, if applicable;
- A photo, if readily obtainable;
- Fingerprints, if readily obtainable.
- DHS shall reimburse states and localities for all reasonable costs incurred by the state or locality as a result of providing this information.

**SECTION 5: Criminalizes all immigration law violations and increases penalties for illegal entry**

- Adds a new section to the Immigration and Nationality Act (INA) to provide that noncitizens who are present in the United States in violation of the INA shall be guilty of a misdemeanor and fined and/or imprisoned for no more than one year.
- Subjects noncitizens who are present in the U.S. in violation of the INA to asset forfeiture.
- Provides an affirmative defense to criminal prosecution or asset forfeiture only for noncitizens who overstayed the time permitted by their visas due to an exceptional or unusual hardship or physical illness that prevented them from leaving by the required date.
- Increases the criminal penalties for illegal entry from six months imprisonment to one year.

**SECTION 6: Requires insertion of immigration data into the National Crime Information Center (NCIC)**

- Authorizes entry of information regarding immigration violations into the NCIC and requires DHS, within 180 days of enactment, to provide NCIC information on any noncitizens
  - Against whom a final order of removal has been issued;
  - Who have signed a voluntary departure agreement;
  - Who have overstayed their visas; or
  - Whose visas have been revoked.
- Requires this data entry regardless of whether the noncitizen has received notice of a final order of removal, has already been removed, or sufficient identifying information about the noncitizen is available.

**SECTION 7: Requires the federal government to create new detention space**

- Increases federal detention space.
- Authorizes DHS to construct or acquire 20 additional detention facilities in the U.S., with the capacity to detain at least 10,000 people, for noncitizens detained pending removal or a decision on their removal from the U.S.
- States that DHS shall consider using portions of closed military installations for this purpose.
- Authorizes appropriations for this section.

**SECTION 8: Requires federal authorities to take into custody noncitizens detained by state and local enforcement agencies**

- Requires DHS to either (1) take into federal custody any “illegal alien” who was apprehended or arrested by a state or locality no later than 72 hours after the person is apprehended or 72 hours after the conclusion of the state charging or dismissal process, or (2) request that the relevant state or local law enforcement agency temporarily incarcerate or transport the person for transfer to federal custody.
- Requires DHS to designate in each state at least one federal, state, or local prison or jail or private prison or detention facility as the central transfer facility for that state.
- Requires DHS to reimburse states and localities for all reasonable expenses incurred for the incarceration and transportation of “illegal aliens” and establishes a formula for reimbursement.
- Requires the secretary of DHS to ensure that noncitizens are incarcerated in facilities that provide an appropriate level of security.
- Requires DHS to establish a regular circuit and schedule for prompt transfer of apprehended “illegal aliens” from the custody of states and localities to federal custody. DHS may enter into contracts to implement this subsection.
- Defines “illegal alien” for purposes of this section as a person who:
  - Entered the United States without inspection or at any time or place other than as designated by the DHS secretary;
  - Was admitted as a nonimmigrant and, at the time s/he was taken into custody by state or local law enforcement officers, failed to maintain such status or to comply with conditions of that status;
  - Was admitted as an immigrant and subsequently failed to comply with the requirements of that status; or
  - Failed to depart the United States under a final order of removal or voluntary departure agreement.
- Authorizes \$500 million for detention and transportation to federal custody of noncitizens not lawfully present for fiscal year 2006 and each subsequent year.

**SECTION 9: Requires DHS to make training and training materials available to state and local law enforcement personnel**

- Requires the DHS secretary, within 180 days of the bill’s enactment, to establish a training manual and pocket guide for state and local law enforcement agencies to enforce immigration law. Such training must include information on transporting noncitizens across state lines and identifying fraudulent documents.
- Provides that the training manual and pocket guide must be made available to all state and local law enforcement personnel, and clarifies that they are not required to carry the training manual or pocket guide while on duty.
- Requires the U.S. Dept. of Justice or DHS to provide the training through as many means as possible, including residential training at federal facilities, on-site training at state or local police agencies, online training courses by computer, teleconferencing, videotape or DVD.

- Authorizes training via Internet.
- Warns that training of state and local officers should not displace training of federal personnel.
- Clarifies that training may not be deemed a prerequisite for enforcement of immigration laws.
- Limits training provided under INA sec. 287(g) to 14 days or 80 hours, whichever is longer.

#### **SECTION 10: Provides broad immunity to law enforcement personnel and agencies**

- Renders state and local law enforcement officers immune, to the same extent as federal law enforcement officers, from personal liability arising out of the enforcement of immigration law, provided that the officer acted within the scope of official duties.
- Provides state and local law enforcement agencies with immunity from claims of money damages based on federal, state, or local civil rights law for an incident arising out of enforcement of any immigration law. Establishes an exception to this immunity for any violation of criminal law that agencies may commit in connection with the enforcement of immigration laws.

#### **SECTION 11: Permits use of state and local detention facilities for immigration violators pending examination and decision on removal**

- Allows noncitizens arrested for immigration violations to be detained while awaiting examination or a decision on removal in a state or local prison, jail, detention center or other comparable facility if:
  - It is the most suitably located facility under the circumstances;
  - An arrangement for use of the facility can be made; and
  - The facility satisfies the standards for housing, care, and security of persons held in custody of a U.S. marshal.

#### **Section 12: Requires states and localities to participate in the Institutional Removal Program (IRP)**

- Mandates that DHS continue to operate the IRP, which identifies removable noncitizens in federal and state correctional facilities, ensures that they are not released into the community, and removes them from the U.S. after the completion of their sentences.
- Directs that the IRP be extended to all 50 states.
- Requires states that receive federal funds for the incarceration of criminal noncitizens to cooperate with the IRP and, as a condition for receiving such funds, expeditiously and systematically identify criminal noncitizens in its prison and jail populations, and promptly convey such information to federal IRP authorities.
- Authorizes state and local law enforcement officers to:
  - Hold a noncitizen for a period of up to 14 days after the individual has completed his/her prison term, in order to effectuate the transfer of a removable or unlawfully present noncitizen to federal custody; or

- Issue a detainer that would require a noncitizen who has served his/her sentence to be detained by the state prison until U.S. Immigration and Customs Enforcement can take the noncitizen into custody.
- Requires that technology such as videoconferencing be used, to the extent possible, in order to make the IRP available in remote locations, and requires that mobile access to federal databases and live scan technology be used, to the extent possible, to make such resources available.
- Authorizes increasing appropriations for the IRP.

**SECTION 13: Protections for crime victims and witnesses**

- States that nothing in this Act requires law enforcement personnel to arrest or report the names of crime victims or witnesses to DHS or enforce federal immigration laws.

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***FOR MORE INFORMATION, CONTACT***

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