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The Role of States in Immigration Enforcement

The ability of states to influence illegal immigration is being explored as state legislatures consider or enact laws concerning workplace requirements, access to benefits, voting requirements, college tuition, identification, and other areas related to immigration policy. Since the attacks of September 11, 2001, the illegal immigration debate also has included the role state law enforcement agencies should play in dealing with unauthorized immigrants and border security.

Some argue that the problems resulting from illegal immigration are so serious that states, in concert with federal efforts, should take all possible steps to stem the flow of unauthorized immigrants. These problems, they say, include the high costs of providing services and the appropriateness of allowing unauthorized immigrants to enjoy rights and privileges that should be reserved for citizens and legal residents. Others argue that enforcing immigration policy is a federal responsibility and that state action in this area is inappropriate. Still others contend that federal immigration policy should be completely revamped, such as by enacting a guest worker program, and that piecemeal state action in this area is counterproductive.

Governors in two states – Arizona and New Mexico – declared states of emergency in 2005 over immigration issues, and recent opinion polls reflect the public's interest in this topic. Seventy-nine percent of those surveyed in November 2005 for a Scripps-Howard

Texas Poll said that the government is not doing enough to stop unauthorized immigration. Eighty-four percent of those surveyed said they considered unauthorized immigration from Mexico to be a serious problem.

These numbers are similar to the results of a Washington Post-ABC News national poll conducted in December 2005 in which about

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80 percent of those surveyed said the government was not doing enough to keep illegal immigrants from coming into the United States.

President Bush has called for changes to immigration policy and laws, including changes in the way the federal government handles immigrants caught crossing the border illegally and increases in manpower, technology, and physical barriers designed to prevent illegal border crossings. In addition, the president has proposed increased enforcement of requirements barring the employment of illegal workers and the establishment of a temporary worker program. Federal lawmakers are responding to this debate by considering several proposals that would amend current law dealing with border security, enforcement of laws designed to discourage illegal residency in the United States, technology and infrastructure – including a security fence along the border – workplace requirements, and more.

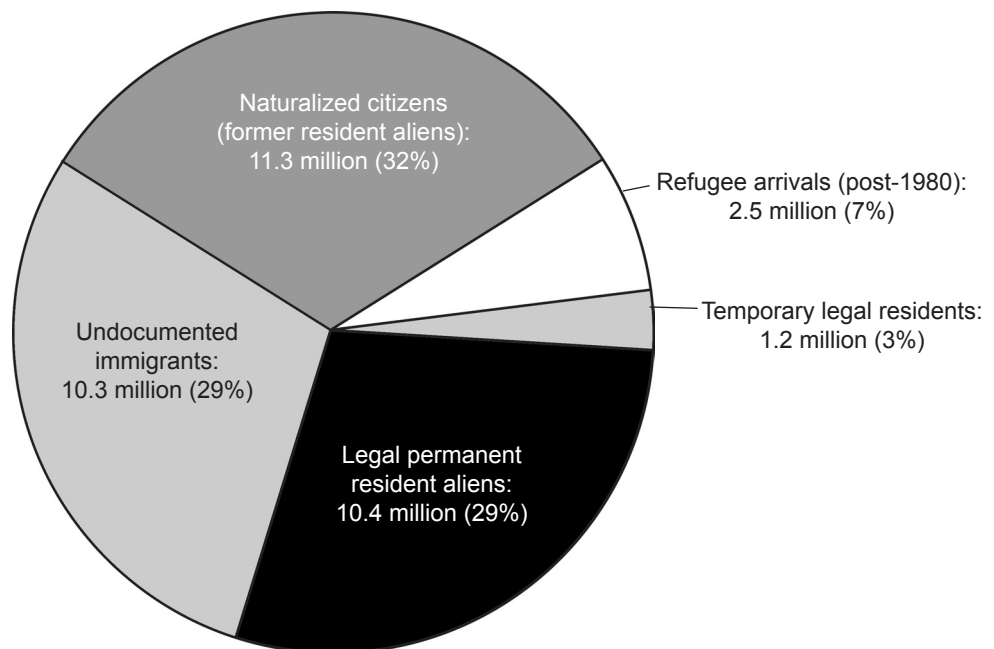
This report outlines states' responses to issues surrounding illegal immigration. It details proposals that have been considered in other states and summarizes the debate over these policy areas.

Estimates of illegal immigration. A report by the Pew Hispanic Center used U.S. census data to estimate that as of March 2005 the undocumented population in the United States has reached nearly 11 million, including more than 6 million Mexicans, which translates to roughly 3.7 percent of the U.S. population as a whole. In March 2004, according to the Pew report, approximately 29 percent of the foreign-born population in this country was unauthorized (see Figure 1, below). Over the past decade, according to the report, an average of 700,000 to 800,000 unauthorized immigrants arrived annually. However, some of these immigrants leave the United States, some die, and some obtain legal status, resulting in an average net growth of unauthorized migrants of about half a million persons annually. Although most of the undocumented population are young adults, about one-sixth of the population is under the age of 18.

With 14 percent of the nation's undocumented population, Texas ranks second among states to California, with 24 percent of the undocumented population (see Table 1, page 3). This puts the unauthorized migrant population at roughly 6 percent of the Texas population.

Figure 1
Legal status of immigrants in United States, 2004

Total foreign born U.S. population in 2004: 35.7 million



Source: Pew Hispanic Center

State Legislation and Proposals

At least 22 states considered proposals relating to illegal immigration in 2005, according to the National Immigration Law Center. These proposals covered a broad range of policy areas, including workplace requirements, access to public benefits, driver's license and identification card requirements, voter registration requirements, college tuition standards, and law enforcement issues.

Workplace requirements

Under federal law, employers are prohibited from knowingly hiring aliens not authorized to work in the United States. According to the Congressional Research Service (CRS), the law prohibits hiring or continuing to employ an alien knowing he or she is unauthorized to work and hiring any worker without following specific record-keeping requirements. The law lists acceptable documents that employees can present to prove their legal status, and employers are required to complete Employment Eligibility Verification (I-9) forms for each employee.

U.S. Immigration and Customs Enforcement, part of the federal Department of Homeland Security, is authorized to conduct investigations to determine whether employers are complying with the law. Employers who do not comply can be subject to civil fines, and some violations can result in imprisonment. The state of Texas currently has no role in sanctioning employers who break federal law by hiring illegal workers.

Some state legislative proposals have sought to discourage illegal immigration by authorizing state sanctions on employers who hire unauthorized workers or by enacting other workplace requirements. These proposals include imposing state fines on employers who hire illegal workers, prohibiting the receipt of state contracts by employers who violate federal immigration law, and revoking licenses of employers who hire workers illegally.

In 2005, according to the NCSL, Arizona, Connecticut, Georgia, New York, and South Carolina considered proposals to impose fines and revoke licenses of employers who hire unauthorized workers, but none were enacted. That

same year, at least six states also considered, but did not enact, proposals that would have prohibited the awarding of government contracts to firms that employ unauthorized workers.

Proposals to deny workers' compensation claims for unauthorized workers were introduced in two states. In a bill dealing with workers' compensation issues, Wyoming amended its statutes to define "employee" to be someone an employer believes to be a citizen or permanent resident, according to the NCSL. Another proposal would hold employers responsible for the costs of providing uncompensated medical care for employees who are not in the United States lawfully.

Arizona enacted legislation in 2005 that prohibits cities, towns, and counties from constructing and maintaining a work center if any part of the center facilitates the knowing employment of an unlawful alien.

Supporters of state-imposed sanctions on employers say state laws to sanction employers who hire illegal workers are needed because federal law has proven ineffective. Employers often ignore federal law and hire illegal workers with impunity. Some employers feel that due to a lack of enforcement of federal law, there is little risk that they will be sanctioned for employing illegal workers and see any fines as a cost of doing business.

Table 1
Estimates by state of undocumented immigrant population, 2002-04

California	2,400,000
Texas	1,400,000
Florida	850,000
New York	650,000
Arizona	500,000
Illinois	400,000
New Jersey	350,000
North Carolina	300,000
All other	3,150,000

Source: Pew Hispanic Center

State sanctions would bring additional resources and consistent and aggressive enforcement to the problem and allow for enforcement by persons closer to the work site. It is appropriate to use state resources to enforce employer sanctions because the problems resulting from illegal workers most affect states, employers, and legal workers on the local level. It is only fair to address the problem of illegal immigration on the demand side as well as the supply side. Industries should not rely or be built on illegal labor.

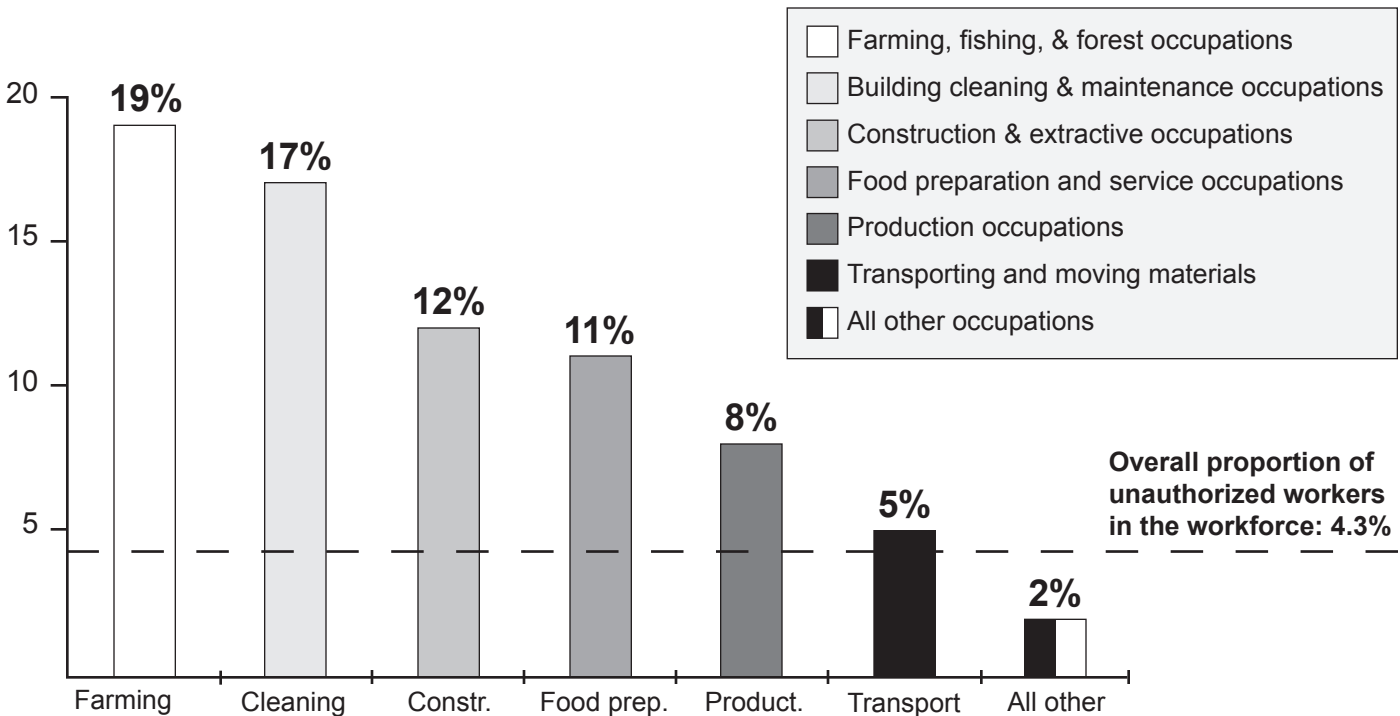
Opponents of state-imposed sanctions on employers say it is unnecessary for states to impose sanctions on employers for hiring undocumented workers because federal laws already prohibit such hiring, and sanctions already exist for breaking these laws. States should not impose employer sanctions on top of existing federal sanctions because doing so could lead to a patchwork of requirements for employers and to uneven or unfair enforcement of federal law. Texas should not spend its finite resources duplicating federal efforts when the state has other pressing financial needs. Rather than making state employers, in effect, deputy immigration agents, perceived problems with illegal immigration should be dealt with by changing federal law or beefing up enforcement efforts.

In some industries federal sanctions have proved ineffective because undocumented workers are essential, and state sanctions would fare no better. The enforcement of additional or overly punitive sanctions against employers could damage the Texas economy, and certain sectors, such as the construction industry, might experience particular harm. Before imposing additional employer sanctions, the labor problem in certain industries should be addressed through a guest worker program or similar initiative. In addition, labor laws could be better enforced so that the rights of all workers were recognized and economic incentives for hiring undocumented workers were eliminated.

The availability of counterfeit documents and the difficulties employers have in judging the authenticity of those documents also would make state sanctions as ineffective as federal sanctions have proved in some cases. It would be unfair to sanction an employer who misjudged the integrity of a document provided by an unauthorized worker.

Figure 2
Proportion of unauthorized workers within various occupations, 2004

Source: Pew Hispanic Center



Access to benefits

U.S. citizens and some legal immigrants are eligible for federal and state benefits, including food stamps, Medicaid, the Children's Health Insurance Program (CHIP), and cash assistance. Because there is a federal funding component to all of these programs, the eligibility requirements generally are guided by federal law, although the eligibility determination process may differ from state to state. In Texas, the application forms ask for both a declaration of citizenship or legal immigrant status and a Social Security number. The Texas Health and Human Services Commission has verification and other checks built into the enrollment process for some programs and requires proof of citizenship for others.

The federal Emergency Medical Treatment and Active Labor Act of 1986 requires emergency room physicians to assess and stabilize any patient, regardless of ability to pay or immigration status. Because of this law, hospitals with emergency facilities often treat undocumented immigrants. If patients are unable to pay out-of-pocket for their care, these charges often go unreimbursed.

Some local governments in Texas and elsewhere have established locally funded health plans, in part to avoid costlier emergency room charges by providing services in other settings. Some counties also have chosen to restrict their programs to U.S. citizens or legal residents, but others stipulate only that an applicant must be a "resident" to be eligible. There was some concern that county and hospital district programs could not offer services to undocumented immigrants, but a provision in HB 2292 by Wohlgemuth, enacted by the 78th Legislature in 2003, allows local authorities to include all residents in a local medical assistance plan.

Some argue that states and local entities should gather statistics on the use by illegal immigrants of certain public benefits and services such as emergency room medical care and local public health programs. Others say that gathering this information could serve as a form of intimidation that might discourage some eligible persons from seeking needed care.

In the first half of 2005, fifteen states considered proposals to restrict illegal immigrants' access to public benefits, but only one bill became law, according to NCSL. Virginia enacted a law that prohibits non-citizens and people

residing illegally in the United States from receiving state or local public benefits, unless required by federal law. The law has exemptions for some state-funded medical assistance for certain immigrant children and long-term care patients. Applicants can receive temporary benefits by signing an affidavit attesting to U.S. citizenship or legal residency and following up with the required proof. Many of the proposals in other states would have required applicants for benefits to show proof of citizenship or would have prohibited undocumented immigrants from receiving local public benefits unless required by federal law.

In 2004, Arizona voters approved a ballot initiative, Proposition 200, which requires state and local government employees to verify the identity, eligibility, and immigration status of applicants for "state and local public benefits that are not federally mandated." State and local government employees are required to report to federal immigration authorities violations of federal immigration laws by applicants for public benefits. Failure to make the required report is a misdemeanor. Another provision in the law deals with voter registration and identification (see page 6). After initial legal challenges, the public benefits portions of the law are being implemented in four state benefit programs: general assistance under the Arizona Department of Economic Security; the sight conservation program, which provides eye examinations, glasses, and other services for the prevention or correction of eye problems to individuals 21 or more years of age who are receiving certain other benefits programs; the neighbors helping neighbors program that provides certain low-income Arizonans with assistance in paying utility bills, conserving energy, and weatherization; and the state's program for utility repair, replacement, and deposit assistance.

All resident school-age children in Texas are eligible to attend public schools, regardless of their immigration status. The U.S. Supreme Court's decision in *Plyler v. Doe*, 457 U.S. 202 (1982) requires public schools to accept children who are undocumented immigrants without charge. In addition, the high court struck down a Texas statute that withheld from local school districts any state funds for education of children who were not "legally admitted" into the United States and that authorized school districts to deny enrollment to such children. It ruled that the law violated the equal-protection clause of the U.S. Constitution by depriving a "disfavored group" of the means of obtaining an education without adequate justification.

Supporters of state requirements to prove citizenship for public benefits say that these provisions merely enforce current laws, most of which already restrict benefits to U.S. citizens. Requiring proof of citizenship prevents fraud in benefit programs and would not deny benefits to anyone who is lawfully eligible to receive them. It is unfair for taxpayers to continue to pay the high cost of providing public benefits to those who are not eligible to receive them.

Opponents of state requirements to prove citizenship for public benefits say that these measures are unnecessary. Undocumented immigrants already are ineligible for numerous public benefits, and there are penalties for fraud and making false claims. Other benefits, such as education and emergency medical care, are federally mandated for all, regardless of immigrant status. State and local employees should not enforce federal immigration law by making judgments on the citizenship status of applicants for public benefits. Unauthorized immigrants come to the United States seeking jobs, not benefits.

Proof of citizenship for voter registration

In 2005, according to the National Immigration Law Center, several states considered, but did not enact, legislation that would have required persons to submit proof of U.S. citizenship to register to vote. While all states require voters to be U.S. citizens, only Arizona has a requirement that voters produce proof of citizenship before being able to register, according to NCSL. The Arizona requirement was part of Proposition 200, approved by voters in 2004, that also requires voters to show proof of identity at the polling place. The voter registration component currently is being implemented while the requirement to show identification when voting is being implemented for Arizona's elections this year.

In Texas, the voter registration application requires applicants to check a box indicating U.S. citizenship and requires a signature attesting that the voter understands that giving false information is a crime. Election Code, ch. 17 establishes a procedure for challenging a voter on the elements of the voter registration application. HB 516 by B. Brown, which died in committee during the 79th Legislature in 2005, would have specified a list of documents for use in establishing U.S. citizenship and required voter registration applications to include a copy of such a document.

Supporters of requiring proof of citizenship for voter registration say that states should be willing to enforce current laws that restrict voting to U.S. citizens and to protect this right by ensuring that only citizens are voting. Any burden on citizens or local voting officials would be minimal, and protecting the integrity of the vote would be well worth any minor inconvenience. Having fair, honest elections is important enough to require a one-time demonstration of citizenship.

Opponents of requiring proof of citizenship for voter registration say that the burden required to prove citizenship for voter registration would depress legal votes, especially among low-income, minority, elderly, or disabled voters. These individuals might not have the required documents nor the ability to bear the expense or clear bureaucratic hurdles necessary to obtain them. In addition, this requirement would place a burden on local election officials who would have to evaluate and store the documents. Requiring proof of citizenship is unnecessary because there is no evidence that a problem exists with non-citizens voting, and remedies exist in current law to address such a problem if it arises.

In-state college tuition

In 2005, New Mexico became the ninth state to permit unauthorized immigrants to pay tuition at public colleges and universities at in-state resident rates. It joined Texas, California, Illinois, Kansas, New York, Oklahoma, Utah, and Washington. Also in 2005, the Arizona Legislature enacted legislation prohibiting in-state tuition to unauthorized immigrants, but it included other provisions relating to unauthorized immigration that the governor found objectionable in vetoing the bill. Alaska and Mississippi specifically prohibit allowing unauthorized immigrants to pay in-state resident tuition.

In 2001, Texas became the first state to enact legislation that allows undocumented immigrants to pay in-state college tuition at any public institution. In order to qualify for in-state rates, a student first must have lived in Texas with a parent or guardian for at least three years before graduating from a public or private high school and must declare an intention to seek status as a legal resident as soon as the student is eligible. According to the Texas Higher Education Coordinating Board (THECB), about 3,700 such students

were enrolled in Texas higher education institutions in the autumn of 2004 out of a population of approximately 1.2 million students.

Opponents of the Kansas in-state tuition law sued the state because they said it violated a federal immigration law that prohibits states from allowing illegal immigrants to pay in-state tuition. They say that sec. 1623 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (8 U.S.C.) is designed to ensure that any state that offers discounted, in-state college tuition rates to illegal aliens also must offer those same discounted tuition rates to all U.S. citizens and nationals, regardless of what state they live in.

U.S. Dist. Judge Richard D. Rogers, in *Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005), ruled that the plaintiffs had no standing to challenge the Kansas in-state tuition provision. He determined that the plaintiffs could show no potential harm or injury to themselves since their own non-resident status would not change regardless of whether resident tuition applied to illegal immigrants. He also ruled that as private individuals, the plaintiffs had no authority to seek to enforce federal immigration law, which is under the exclusive jurisdiction of the U.S. Department of Homeland Security (DHS). The plaintiffs have appealed the ruling, and separate complaints have been filed with the DHS challenging the tuition laws in Texas and New York.

According to the Texas Civil Rights Review, each year, 65,000 immigrants without legal status graduate from U.S. high schools. While federal law prohibits illegal immigrant students from receiving federally backed financial aid, undocumented students in Texas are eligible for state financial aid under the same conditions that other students must meet, except that undocumented students cannot qualify for work study or the “B-on-Time” program, through which students who graduate “on time” from a four-year university with a 3.0 grade-point-average may receive loans.

Lawmakers in the U.S. Congress have proposed legislation to provide undocumented students a way to obtain legal status. The Development, Relief and Education for Alien Minors (DREAM) Act – S. 2075 by Durbin – would allow undocumented students who arrived in the United States before the age of 16, lived here at least five years, and graduated from high school or had been accepted to college to apply for six years of conditional legal status that would become permanent if the student went on to

college or military service. The proposed legislation also would allow states to define residency for higher education purposes.

Supporters of in-state tuition for unauthorized immigrants say that it is good public policy to further the education of immigrants who already are integrated into local communities and want to contribute to the local and national economy. State laws granting in-state tuition for undocumented immigrants open the doors of higher education to those who need it most and do not violate federal law because the requirements set for in-state tuition apply to all students, whether they reside in the country illegally or not. Without the opportunity to qualify for in-state tuition, many undocumented immigrants cannot obtain an affordable college education because they are not eligible to receive federal financial aid. Undocumented immigrants who have grown up in the United States and graduate from U.S. high schools should not be punished for the actions of parents who brought them illegally to this country.

Opponents of in-state tuition for unauthorized immigrants say that state laws granting in-state tuition for illegal aliens reward illegal activity and encourage more illegal immigration. In addition, they contend that such laws violate federal law because they discriminate against U.S. citizens and legal immigrants because states are not permitted to treat non-residents who are U.S. citizens worse, with respect to college benefits, than it treats illegal aliens who are physically present in the state. As a result, they say, numerous illegal aliens are paying in-state rates to attend Texas colleges and universities, while U.S. citizens who do not reside in Texas are required to pay higher, out-of-state tuition rates.

Identification and driver’s licenses

In the first part of 2005, at least 27 states considered proposals relating to identification documents and immigrants, and nine bills were enacted, according to NCSL. Some of these proposals related to documents necessary to obtain state driver’s licenses. Texas is not among the approximately 40 states that require applicants to prove legal U.S. residency to obtain a driver’s license.

Texas Transportation Code, sec. 521.142 requires applicants for driver’s licenses to state their full name and place and date of birth and to present proof of identity to the Department of Public Safety (DPS). Texas Administrative

Code, Title 37, sec. 15.24 lists three categories of acceptable identification documents. An applicant must present one type of document from a list of “primary” identification or one type from a list of “secondary” identification, plus one or more types of supporting identification. Primary

identification includes a valid or expired Texas driver’s license or identification card, a U.S. passport, U.S. military identification cards, and certain U.S. immigration documents. Secondary identification – defined as recorded government documents whose authenticity can be verified

Border security

The U.S. Department of Homeland Security’s Bureau of Customs and Border Protection (CBP) is the primary federal agency responsible for protecting U.S. ports and borders. At ports of entry, CBP officers screen goods and travelers. The U.S. Border Patrol, a branch of CBP, is charged with preventing the illegal entry of persons and contraband between ports of entry. Its work includes apprehending persons entering the United States illegally, interdicting drug smugglers and other criminals, and preventing the entry of terrorists and weapons of mass destruction. Texas is home to five border patrol sectors.

Increasing violence along the U.S.-Mexico border, including an alleged incursion into Texas by military-style drug smugglers from Mexico in January 2006, has been the subject of recent U.S. congressional hearings. Officers from DPS and the Hudspeth County Sheriff’s Office pursued the alleged smugglers to the international border, and Texas border sheriffs testified at a congressional hearing on the subject. Additional hearings are scheduled for the spring of 2006.

In February 2006, Gov. Perry announced a border security plan that includes assigning DPS personnel and other resources to the border area to assist in law enforcement, ordering a Texas Ranger investigation into alleged incursions into Texas, and assigning other state resources including the Texas Department of Criminal Justice canine search teams, Texas Parks and Wildlife game wardens, and Texas Department of Transportation road barriers to the area.

This plan follows one the governor announced in October 2005 that included grants for law enforcement measures on the border. So far about \$6 million in federal grant funds has been awarded to 16 counties on the Texas-Mexico border with each county receiving \$367,000 and a coalition of border sheriffs receiving \$120,000 to coordinate activities and facilitate communication among

the counties. While each county can decide how to spend its grant funds, most are spending them on additional personnel, overtime pay, and equipment. HR 4437, the immigration and border legislation passed by the U.S. House of Representatives in December 2005, includes an authorization for up to \$100 million in grant funding for law enforcement officers along the border. In February 2006, Gov. Perry awarded an additional \$3.8 million in state criminal justice planning funds to the Texas Border Sheriff’s Coalition. The coalition will divide these funds among law enforcement entities on the border.

The governor’s October 2005 plan proposed one statutory change – to expand the state’s current wiretap authority from the limited number of offenses for which it can be used currently, including murder and certain drug crimes, to all serious and violent offenses listed in the Code of Criminal Procedure, art. 42.12, sec. 3g.

Officials in other border states also are considering plans to increase law enforcement resources on the Mexico border. Arizona Gov. Janet Napolitano has proposed spending \$100 million on border security, mainly to fund items such as equipment and overtime pay for local law enforcement efforts on the Arizona-Mexico border. In February 2006, Gov. Napolitano proposed spending \$5 million of those funds on combating the illegal methamphetamine trade, including assigning two Arizona Department of Public Safety squads to the border area and one to the Phoenix area. Another proposal by an Arizona legislator would spend \$30 million for immigration enforcement purposes, including grants to counties for incarceration infrastructure, border security personnel, and physical barriers, and \$20 million for the Arizona Department of Public Safety to expand its border activities. In California, a group is gathering signatures for a ballot initiative that would establish a state police agency dedicated to homeland security and assisting the federal government in enforcing federal immigration laws.

– includes an original or certified copy of a U.S. or Canadian birth certificate and driver’s licenses issued by other states. Supporting materials include public school records, marriage licenses, utility bills, voter registration cards, Social Security cards, and consular documents issued by a state or national government, including a Mexican-issued *matricula consular*.

In addition, DPS obtains Social Security numbers from all applicants who have been issued a number. License and identification card applicants who state that they have not applied for or received a Social Security number must sign an affidavit attesting to these facts.

HB 1137 by W. Smith, enacted by the 79th Legislature in its 2005 regular session, allows DPS to enter into reciprocal agreements with foreign countries so that certain persons can obtain Class C commercial driver’s licenses. Such a person is required to hold a license issued by the other country that is similar to a Texas Class C license. A non-U.S. citizen must present to DPS documentation authorizing the person to be in the United States before the person may be issued a driver’s license under a reciprocal agreement.

Title II of the federal REAL ID Act of 2005 includes provisions imposing minimum standards for state-issued driver’s licenses that are to be put to a “federal use.” Federal agencies will be prohibited from accepting as identification state-issued driver’s licenses or identification cards after May 11, 2008, if they do not meet the new standards. To comply, a state issuing a driver’s license will have to verify that the applicant is a U.S. citizen or a legal resident of this country as well as confirm the applicant’s Social Security number. The rules to implement the law currently are being written.

Supporters of requiring driver’s license applicants to prove citizenship say states that require only proof of identity, rather than legal U.S. residence, reward illegal behavior by making it easy for illegal aliens to obtain driver’s licenses. States should not wait for the federal REAL ID deadline in 2008 to require that applicants for driver’s licenses or identification cards prove legal residency in the United States.

Opponents of requiring driver’s license applicants to prove citizenship say that driving in some states, including Texas, often is a necessity because many areas do not have adequate mass transit systems. Driving is a lifeline to work, health care, education, and more. It is far better for all drivers – including undocumented immigrants – to be licensed and insured than for them to drive illegally. Current law does not “reward” illegal immigrants. A driver’s license is not proof of citizenship, and granting one should not be contingent on a person’s immigration status. States should not be involved in enforcing immigration laws at driver’s license bureaus.

The role of local law enforcement

Current law. Violations of federal immigration laws include both criminal and civil penalties. Traditionally, state and local law enforcement’s authority for enforcing immigration laws has been limited to criminal provisions of the federal laws. The enforcement of civil provisions, which include the apprehension and removal of deportable aliens, has been viewed by many as an exclusively federal responsibility, according to the Congressional Research Service (CRS). The mere illegal presence of someone in the United States is a civil immigration violation, according to CRS, and entering the United States illegally is a misdemeanor criminal offense. Texas, like many states, generally does not authorize law enforcement officers to make arrests for misdemeanors committed outside their presence. For a detailed analysis of this issue, see *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, CRS Report for Congress, March 11, 2004, (order code RL32270).

The question of the authority of state and local law enforcement officers to enforce federal immigration law is complicated by numerous other factors, including statutory exceptions and judicial interpretation. Amendments to federal laws have authorized states to enforce civil immigration violations in limited circumstances, according to NCSL. For example, the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) allows states and localities to play a role in enforcing federal civil immigration laws if the state has entered into a voluntary written agreement with the federal government.

The law requires, among other things, that local law enforcement officers be educated and trained about federal immigration law, and the agreement must list the specific powers and duties of the local law enforcement officers. Alabama, Florida, and the Los Angeles County Sheriff's Department each have entered into an IIRIRA agreement with the federal government, and a handful of other states and local entities are considering or pursuing such agreements.

State and local officials also have specific authority to enforce federal immigration law under provisions in the Anti-Terrorism and Effective Death Penalty Act of 1996, which allow them to arrest and detain aliens who are present unlawfully in the United States and previously were deported or left the country after a felony conviction in this country. In addition, state and local law enforcement authorities under IIRIRA can enforce certain civil immigration provisions if there is a "mass influx" of foreign nationals as determined by the U.S. Attorney General, the situation requires an immediate response from the federal government, and federal officials obtain the consent of the state and local supervising department.

Local policies. While there is debate over the role of local law enforcement officers in enforcing federal immigration law, CRS reports that it is permissible as a matter of practice for local law enforcement officers to inquire into the immigration status of someone they encounter while performing their routine duties and in some cases to contact federal officials if an officer questions a person's immigration status. However, some jurisdictions have their own policies in these situations.

Some Texas cities have official or unofficial policies, known as "sanctuary" or "don't ask, don't tell" policies, in which law enforcement officers are not required to ask or report on the immigration status of people they encounter, including victims and witnesses. For example, under a 1992 Houston Police Department policy, officers do not ask about the immigration status of persons arrested for crimes less serious than a Class B misdemeanor. Recently, questions have been raised about the Houston policy, and in December 2005, Houston Mayor Bill White asked the Houston Police Department to review it.

In 1997, the city of Austin adopted a resolution stating that the city would not discriminate or deny city services on the basis of a person's immigration status. In general,

the Austin Police Department does not inquire about immigration status or enforce immigration laws during its routine law enforcement activities. In late 2005, the parents of a teenager killed in Austin by someone they say was here illegally filed a lawsuit in U.S. district court alleging that the city's policy violates federal law concerning communicating with federal officials about person's immigration status.

CRS reports that as of 2004 two states – Alaska and Oregon – had policies restricting their law enforcement authorities' enforcement of immigration laws. A 2003 joint resolution adopted by the Alaska Legislature prohibits state agencies from using resources to enforce federal immigration law, and a 1987 Oregon law prohibits state and local law enforcement officers from using agency money or equipment to detect or apprehend foreign citizens based on federal immigration violations. This does not apply to exchanging information about persons arrested for criminal offenses.

Proposals and debate. In 2005, about a dozen states considered, but did not enact, proposals specifically authorizing local law enforcement officers to enforce immigration law, to cooperate with federal officials who enforce the law, or to prohibit local rules that limit cooperation with federal immigration enforcement, according to the National Immigration Law Center. Arkansas enacted a law that establishes some of the steps necessary for negotiating and signing an agreement with the federal government for state law enforcement officers to assist in the enforcement of immigration law, according to the NCSL.

In 2005, Arizona enacted a law that allows judges to factor immigration status into the sentencing of criminal offenders. Arizona voters will decide in November 2006 whether to amend their state constitution to prohibit bail for persons who have entered or remained in the United States illegally.

Supporters of an enhanced role for states and local enforcement in federal immigration policy say local law enforcement officers are best able to enforce immigration law because of their relationships with communities. Law-abiding residents would benefit by having better enforcement of these laws to combat the negative effect that illegal immigration has on communities and to address the threat that illegal aliens pose to national security. Having local law enforcement officers inquire

about immigration status or cooperate with federal officers would not deplete state resources but could be seamlessly integrated into an officer's general duties, and training in federal law and procedures is available.

Opponents of an enhanced role for states and local enforcement of federal immigration policy say

the role of local law enforcement officers is to solve and prevent crime, not to enforce federal immigration law. Having these officers enforce immigration laws would harm the trust and good relationships necessary for an officer to operate successfully in the community. Crime victims and witnesses could be less likely to cooperate with police if they feared actions could be taken against them or their family for immigration violations. Local resources, including detention space, already are stretched thin, and using these resources to enforce immigration law would deprive local communities. In addition, local law enforcement officers would need extensive training in immigration law and federal statutory and constitutional provisions to prevent civil rights violations and racial profiling. Federal immigration law should be uniformly enforced, which would be difficult if performed by local officers.

Federal Legislation and Proposals

Numerous proposals have been made on the federal level dealing with illegal immigration. Proposals filed in the 109th Congress range widely in the policy areas they would affect. Some of the topics being debated on the federal level include:

- **Border enforcement** – funding for additional border patrol, customs, and other law enforcement agents.
- **Interior enforcement** – enhancing criminal penalties for immigration violations, which would make certain offenses, such as illegal presence in the country, a felony.
- **Penalties for human smuggling and other offenses** – creating offenses or increasing penalties related to human smuggling and other activities dealing with illegal immigrants.

- **End “catch and release” policy** – ending a federal policy by which unauthorized immigrants other than Mexicans who are caught entering the United States illegally are released on the condition that they later appear in court. (However, in at least one zone of the Texas-Mexico border near Eagle Pass that policy recently has been suspended and non-Mexican illegal immigrants are being prosecuted for immigration violations and put through deportation proceedings.)
- **Technology and infrastructure** – increased funding for technology, such as radios for border law enforcement officers, and for infrastructure, such as building a security fence along the border.
- **Workplace requirements** – creating a national database that businesses must use to ensure that their workers are legal, increasing penalties for hiring illegal employees, and increasing penalties for fraudulent documents.
- **Birthright citizenship** – ending the current policy that automatically grants citizenship to children born in the United States to unauthorized immigrants.
- **Guest worker program** – creating a program under which workers temporarily could work legally in the United States or under which they could become legal residents.
- **Local government enforcement of civil immigration laws** – giving state and local law enforcement officers explicit authority to enforce civil immigration laws.

One proposal, H.R. 4437 by Sensenbrenner, the proposed Border Protection, Antiterrorism, and Illegal Immigration Control Act, was approved by the U.S. House of Representatives in December 2005. Among its numerous provisions, it would require employers to verify employees' immigration status through a central system, increase the number of border personnel, enhance penalties for certain immigration violations, and end the “catch and release” policy currently used in some areas for illegal immigrants who are not Mexicans. As part of the provisions related to human smuggling, the bill would create an offense for

someone who encouraged, directed, or induced a person to reside or remain in the United States while knowing or recklessly disregarding the fact that the person was in the country unlawfully. It also would provide certain technology such as radios for border law enforcement personnel and require the building of a fence along parts of the United States-Mexico border, including parts of Texas.

Some have proposed increasing funding to the State Criminal Alien Assistance Program (SCAAP) that partially reimburses states and local entities for their costs of

incarcerating undocumented aliens held on state or local charges. The Texas Department of Criminal Justice (TDCJ) received \$17.1 million in fiscal 2005 and is budgeted to receive \$18.6 million in fiscal 2006 under this program. TDCJ works with the federal Immigration and Customs Enforcement (ICE) agency to identify offenders who are unauthorized aliens. ICE is notified by TDCJ before it releases one of these offenders, and if the offender is deportable, ICE places a detainer on them. The offender then is released to the custody of ICE. – **by Kellie Dworaczyk**

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 Building
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