

110TH CONGRESS
1ST SESSION

S. 850

To improve sharing of immigration information among Federal, State, and local law enforcement officials, to improve State and local enforcement of immigration laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2007

Mr. BURR (for himself and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve sharing of immigration information among Federal, State, and local law enforcement officials, to improve State and local enforcement of immigration laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the

5 “Scott Gardner Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for

7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Improved Federal sharing of immigration information.

See. 4. State and local reporting of immigration information.

Sec. 5. DWI and immigration information in the National Criminal Information Center.

Sec. 6. State and local enforcement of Federal immigration laws.

Sec. 7. Detention and deportation of aliens for driving while intoxicated.

Sec. 8. Federal detention facilities.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) DWI.—The term “DWI” means driving
4 while intoxicated and any similar motor vehicle viola-
5 tion.

6 (2) FEDERAL IMMIGRATION DATABASE.—The
7 term “Federal immigration database” means—

8 (A) the database of the LESC insofar as
9 it relates to immigration information;

10 (B) the database of the NCIC insofar as it
11 relates to immigration information; and

12 (C) any other database containing immi-
13 gration information identified by the Secretary
14 of Homeland Security.

15 (3) IMMIGRATION INFORMATION.—The term
16 “immigration information” means information speci-
17 fied by the Secretary, in consultation with the Attor-
18 ney General, relating to immigration, including ille-
19 gal immigration.

20 (4) LESC.—The term “LESC” means the Law
21 Enforcement Support Center.

4 (6) SECRETARY.—The term “Secretary” means
5 the Secretary of Homeland Security.

6 SEC. 3. IMPROVED FEDERAL SHARING OF IMMIGRATION 7 INFORMATION.

8 (a) IN GENERAL.—The Secretary shall share immi-
9 gration information with the Attorney General.

10 (b) IMPROVED OPERATION OF FEDERAL IMMIGRA-
11 TION DATABASES.—

12 (1) REPORT.—Not later than 90 days after the
13 date of the enactment of this Act, the Secretary and
14 the Attorney General shall jointly submit to Con-
15 gress a report on methods for improving perform-
16 ance of Federal immigration databases to ensure the
17 prompt entry of immigration information into such
18 databases.

23 (A) improve data entry, including eliminating data entry backlogs;
24

10 (B) any additional resources required to
11 eliminate such backlogs.

12 SEC. 4. STATE AND LOCAL REPORTING OF IMMIGRATION
13 INFORMATION.

14 (a) REQUIREMENT.—

11 (c) EXEMPTION FROM STATE AND LOCAL REPORT-
12 ING REQUIREMENT.—State and local law enforcement
13 agencies are not required to collect or report immigration
14 information relating to any individual who assists law en-
15 forcement agencies in the performance of the duties of
16 such agencies, including assistance as an informant, a wit-
17 ness, or in a similar capacity.

18 SEC. 5. DWI AND IMMIGRATION INFORMATION IN THE NA-
19 TIONAL CRIMINAL INFORMATION CENTER.

20 (a) INCLUSION.—DWI and immigration information
21 in the NCIC—

22 (1) shall appear as a flag in the Wanted Person
23 File of the NCIC database; and

4 (b) MANDATORY DETENTION.—A State or local law
5 enforcement officer who finds a flag for a DWI and immi-
6 gration violation of an alien in the Wanted Person File
7 of the NCIC and who arrests the alien shall detain the
8 alien in a State or local jail until the alien can be trans-
9 fered to Federal custody.

10 SEC. 6. STATE AND LOCAL ENFORCEMENT OF FEDERAL IM-
11 MIGRATION LAWS.

12 (a) IN GENERAL.—Section 287(g) of the Immigration
13 and Nationality Act (8 U.S.C. 1357(g)) is amended—
14 (1) in paragraph (1), by striking “may enter”
15 and inserting “shall enter”;

23 (3) by striking paragraph (9); and

24 (4) by redesignating paragraph (10) as para-
25 graph (9).

1 (b) RULEMAKING.—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary shall issue
3 regulations to carry out the amendments made by sub-
4 section (a).

5 (c) EFFECTIVE DATES.—

6 (1) REQUIREMENT FOR AGREEMENT.—Except
7 as provided under paragraph (2), the amendments
8 made by subsection (a) shall take effect on the ear-
9 lier of—

10 (A) the date on which regulations are
11 issued under paragraph (1); and

12 (B) the date that is 1 year after the date
13 of the enactment of this Act.

14 (2) PAYMENT FOR TRAINING COSTS.—The
15 amendment made by subsection (a)(2) shall take ef-
16 fect on the first day of the first fiscal year beginning
17 after the date of the enactment of this Act.

18 **SEC. 7. DETENTION AND DEPORTATION OF ALIENS FOR**
19 **DRIVING WHILE INTOXICATED.**

20 (a) IN GENERAL.—Section 236 of the Immigration
21 and Nationality Act (8 U.S.C. 1226) is amended—

22 (1) in subsection (c)(1)—

23 (A) in subparagraph (C), by striking “, or”
24 at the end;

(B) in subparagraph (D), by striking the comma at the end and inserting “; or”; and

3 (C) by inserting after subparagraph (D)
4 the following:

5 “(E) is deportable on any grounds and is
6 apprehended for driving while intoxicated, driv-
7 ing under the influence, or similar violation of
8 State law (as determined by the Secretary of
9 Homeland Security) by a State or local law en-
10 forcement officer covered under an agreement
11 under section 287(g);”;

12 (2) by redesignating subsection (e) as sub-
13 section (f); and

14 (3) by inserting after subsection (d) the fol-
15 lowing:

16 “(e) DRIVING WHILE INTOXICATED.—If a State or
17 local law enforcement officer apprehends an individual for
18 an offense described in subsection (c)(1)(E) and the offi-
19 cer has reasonable grounds to believe that the individual
20 is an alien—

21 “(1) the officer shall use the databases of the
22 Federal Government, including the National Crimi-
23 nal Information Center and the Law Enforcement
24 Support Center, to determine if the individual—

25 "“(A) is an alien; and

1 “(B) is unlawfully present in the United
2 States; and

3 “(2) if any database under paragraph (1) indi-
4 cates that the individual is an alien unlawfully
5 present in the United States—

6 “(A) an officer covered under an agree-
7 ment under section 287(g) may issue a Federal
8 detainer to maintain the alien in custody in ac-
9 cordance with such agreement until the alien is
10 convicted for such offense or the alien is trans-
11 ferred to Federal custody;

12 “(B) the officer may transport the alien to
13 a location where the alien can be transferred to
14 Federal custody and removed from the United
15 States in accordance with applicable law; and

16 “(C) the Secretary of Homeland Security
17 shall reimburse the State and local law enforce-
18 ment agencies involved for the costs of trans-
19 porting aliens when such transportation is not
20 done in the course of their normal duties; or

21 “(3) if any database under paragraph (1) indi-
22 cates that the individual is an alien that is not un-
23 lawfully present in the United States, the officer
24 shall—

1 “(A) take the alien into custody for such
2 offense in accordance with State law;

3 “(B) promptly notify the Secretary of
4 Homeland Security of such apprehension; and

5 “(C) maintain the alien in custody pending
6 a determination by the Secretary with respect
7 to any action to be taken by the Secretary
8 against such alien.”.

9 (b) DEPORTATION FOR DRIVING WHILE INTOXI-
10 CATED.—

11 (1) IN GENERAL.—Section 237(a)(2) of the Im-
12 migration and Nationality Act (8 U.S.C. 1227(a)(2))
13 is amended by adding at the end the following:

14 “(F) DRIVING WHILE INTOXICATED.—Any
15 alien who is convicted of driving while intox-
16 icated, driving under the influence, or a similar
17 violation of State law (as determined by the
18 Secretary of Homeland Security), or who re-
19 fuses, in violation of State law, to submit to a
20 Breathalyzer test or other test for the purpose
21 of determining blood alcohol content is deport-
22 able and shall be deported.”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by paragraph (1) shall apply to violations or refusals
25 occurring after the date of enactment of this Act.

1 (c) SHARING OF INFORMATION BY MOTOR VEHICLE
2 ADMINISTRATORS REGARDING DWI CONVICTIONS AND
3 REFUSALS.—Each State motor vehicle administrator
4 shall—
5 (1) share information with the Secretary relat-
6 ing to any alien who has a conviction or refusal de-
7 scribed in section 237(a)(2)(F) of the Immigration
8 and Nationality Act (8 U.S.C. 1227(a)(2)(F));
9 (2) share such information with other State
10 motor vehicle administrators through the Drivers Li-
11 cense Agreement of the American Association of
12 Motor Vehicle Administrators; and
13 (3) provide such information to the NCIC at
14 such time and in such form as the Secretary may re-
15 quire.

16 **SEC. 8. FEDERAL DETENTION FACILITIES.**

17 (a) REPORT ON CURRENT ALLOCATION FORMULA;
18 RECOMMENDATIONS FOR STOP-GAP MEASURES.—Not
19 later than 90 days after the date of the enactment of this
20 Act, the Secretary shall submit a report to Congress that
21 describes the formula for allocation of Federal detention
22 facilities for aliens under section 241(g) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1231(g)). The report
24 shall include proposals for the temporary expansion of
25 State and local jails to detain increased numbers of illegal

1 aliens pending construction or expansion of Federal deten-
2 tion facilities.

3 (b) NEW CONSTRUCTION IN HIGH CONCENTRATION
4 AREAS.—In accordance with such section 241(g), the Sec-
5 retary shall ensure that, to the greatest extent practicable,
6 construction of new detention facilities is undertaken in
7 or near areas in which the Secretary has determined that
8 there is a high concentration of illegal aliens.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out this section.

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