

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.

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## 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

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## 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.

Sec. 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.

1           (5) NCIC.—The term “NCIC” means the Na-  
2           tional Crime Information Center of the Federal Bu-  
3           reau of Investigation.

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.

19               (2) COMPATIBILITY.—The report submitted  
20               under paragraph (1) shall contain proposals to im-  
21               prove the compatibility among Federal immigration  
22               databases in order to—

23                       (A) improve data entry, including elimi-  
24                       nating data entry backlogs;

1 (B) improve the means by which immigra-  
 2 tion information is exchanged; and

3 (C) increase accessibility of information to  
 4 Federal, State, and local law enforcement agen-  
 5 cies.

6 (3) PROGRESS.—The report submitted under  
 7 paragraph (1) shall describe—

8 (A) the progress made in eliminating data  
 9 entry backlogs in such databases; and

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.—

15 (1) IN GENERAL.—Subject to subsection (c),  
 16 the director of each State and local law enforcement  
 17 agency receiving Federal financial assistance under  
 18 section 241(i) of the Immigration and Nationality  
 19 Act (8 U.S.C. 1231(i)) shall, as a condition of such  
 20 assistance, submit a report to the Secretary, in such  
 21 form, in such manner, and containing such immigra-  
 22 tion and DWI information collected in the course of  
 23 the director's normal duties as the Secretary re-  
 24 quires for entry into Federal immigration databases.

1           (2) REPORT ON RESOURCES.—Not later than  
2       90 days after the date of the enactment of this Act,  
3       the Secretary and the Attorney General shall jointly  
4       submit to Congress a report on additional resources  
5       required by State and local law enforcement agencies  
6       to comply with the requirement under paragraph  
7       (1).

8       (b) PROMOTION OF LAW ENFORCEMENT SUPPORT  
9       CENTER.—The Secretary shall promote the use of the  
10      LESC by State and local law enforcement agencies.

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

1           (2) shall be timely and readily available to State  
 2           and local law enforcement officers while they are in  
 3           the course of their normal duties.

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           ferred 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 Immigra-  
 13           tion 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”;

16                   (2) in paragraph (2), by adding at the end the  
 17                   following: “If such training is provided by a State or  
 18                   political subdivision of a State to an officer or em-  
 19                   ployee of such State or political subdivision of a  
 20                   State, the cost of such training (including applicable  
 21                   overtime costs) shall be reimbursed by the Secretary  
 22                   of Homeland Security.”;

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;

1 (B) in subparagraph (D), by striking the  
 2 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 intoxi-  
16 cated, 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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