CH 289

STATE OF ARIZONA

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July 2, 2007

The Honorable Timothy S. Bee
President
Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

Re: Senate Bill 1265: bailable offenses; illegal immigration

Dear President Bee:

Today I signed Senate Bill 1265, regarding the burden of proof necessary to hold without bail an illegal immigrant charged with a serious felony.

Senate Bill 1265 requires courts to deny bail if a defendant is charged with a serious felony and there is probable cause to believe the person has entered or remained in the United States illegally. Recently, some of our courts have sought to impose a higher standard of proof from prosecutors seeking to deny bail to such defendants. Such a higher standard is inconsistent with the intent of voters in enacting Proposition 100, the burden of proof required of prosecutors in federal cases, and the position of the State Attorney General. Senate Bill 1265 brings Arizona more in line with federal law. *See, e.g.*, *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (reaffirming *Gerstein v. Pugh*, 420 U.S. 103 (1975) (requiring probable cause determination as a prerequisite to extended detention)). It is appropriate that our standard of proof be consistent with Arizona voter intent and federal law.

Yours very truly,

Janet Napolitano
Governor

JN:TAN/jm

cc: The Honorable Jim Weiers
The Honorable Linda Gray

House Engrossed Senate Bill

**FILED**

**JANICE K. BREWER**
**SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 289

# SENATE BILL 1265

AN ACT

AMENDING SECTIONS 13-3906 AND 13-3961, ARIZONA REVISED STATUTES; RELATING TO BAIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3906, Arizona Revised Statutes, is amended to read:

13-3906. Processing arrestees; citizenship determination; notice; random audits

A. WITHIN TWENTY-FOUR HOURS after a person is brought to a law enforcement agency for incarceration, the law enforcement agency shall INQUIRE OF THE PERSON AND determine that person's country of citizenship. If the person is not a United States citizen, the law enforcement agency shall:

1. Notify the person's country of citizenship of the person's detention if the person does not waive notification or if the person's country of citizenship requires notification regardless of the person's waiver of notification.

2. ~~The law enforcement agency shall~~ Document the notification to the person's country of citizenship and any waiver of notification.

3. TRANSMIT ANY INFORMATION OBTAINED PURSUANT TO THIS SECTION TO THE COURT AND THE PROSECUTING AGENCY FOR THE PURPOSE OF MAKING A DETERMINATION PURSUANT TO SECTION 13-3961, SUBSECTION A, PARAGRAPH 5 OR SECTION 13-3967, SUBSECTION B, PARAGRAPH 11 OR FOR ANY OTHER LAWFUL PURPOSE.

B. The failure or inability of a law enforcement agency to provide the notice required by this section does not:

1. Affect the admissibility of any statements, the voluntariness of a guilty plea or the validity of a conviction.

2. Afford a defendant any rights in any proceeding related to deportation, exclusion or denial of naturalization.

Sec. 2. Section 13-3961, Arizona Revised Statutes, is amended to read:

13-3961. Offenses not bailable; purpose; preconviction; exceptions

A. A person who is in custody shall not be admitted to bail if the proof is evident or the presumption great that the person is guilty of the offense CHARGED and the offense charged is ~~either~~ ONE OF THE FOLLOWING:

1. A capital offense.

2. Sexual assault.

3. Sexual conduct with a minor who is under fifteen years of age.

4. Molestation of a child who is under fifteen years of age.

5. A serious felony offense if THERE IS PROBABLE CAUSE TO BELIEVE THAT the person has entered or remained in the United States illegally. For the purposes of this paragraph: ~~,~~

(a) THE COURT SHALL CONSIDER ALL OF THE FOLLOWING IN MAKING A DETERMINATION THAT A PERSON HAS ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY:

(i) WHETHER A HOLD HAS BEEN PLACED ON THE ARRESTED PERSON BY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT.

(ii) ANY INDICATION BY A LAW ENFORCEMENT AGENCY THAT THE PERSON IS IN THE UNITED STATES ILLEGALLY.

(iii) WHETHER AN ADMISSION BY THE ARRESTED PERSON HAS BEEN OBTAINED BY THE COURT OR A LAW ENFORCEMENT AGENCY THAT THE PERSON HAS ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY.

(iv) ANY INFORMATION RECEIVED FROM A LAW ENFORCEMENT AGENCY PURSUANT TO SECTION 13-3906.

(v) ANY EVIDENCE THAT THE PERSON HAS RECENTLY ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY.

(vi) ANY OTHER RELEVANT INFORMATION THAT IS OBTAINED BY THE COURT OR THAT IS PRESENTED TO THE COURT BY A PARTY OR ANY OTHER PERSON.

(b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or any violation of section 28-1383.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.

2. Protecting against the intimidation of witnesses.

3. Protecting the safety of the victim, any other person or the community.

C. THE INITIAL DETERMINATION OF WHETHER AN OFFENSE IS BAILABLE PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE MADE BY THE MAGISTRATE OR JUDICIAL OFFICER AT THE TIME OF THE PERSON'S INITIAL APPEARANCE.

~~C.~~ D. EXCEPT AS PROVIDED IN SUBSECTION A OF THIS SECTION, a person who is in custody shall not be admitted to bail if the person is charged with a felony offense and the state certifies by motion and the court finds after a hearing on the matter that there is clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense, that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community and that the proof is evident or the presumption great that the person committed the offense for which the person is charged. For the purposes of this subsection, "violent offense" means either of the following:

1. A dangerous crime against children.

2. Terrorism.

~~D.~~ E. On oral motion of the state, the court shall order the hearing required by subsection ~~C~~ D OF THIS SECTION at or within twenty-four hours of the initial appearance unless the person who is subject to detention or the state moves for a continuance. A continuance that is granted on the motion of the person shall not exceed five calendar days unless there are extenuating circumstances. A continuance on the motion of the state shall be granted on good cause shown and shall not exceed twenty-four hours. THE PROSECUTOR SHALL PROVIDE REASONABLE NOTICE AND AN OPPORTUNITY FOR VICTIMS AND WITNESSES TO BE PRESENT AND HEARD AT ANY HEARING. The person may be detained pending the hearing. The person is entitled to representation by counsel and is entitled to present information by proffer or otherwise, to testify and to present witnesses in the person's own behalf. Testimony of the person

charged that is given during the hearing shall not be admissible on the issue of guilt in any subsequent judicial proceeding, except as it might relate to the compliance with or violation of any condition of release subsequently imposed or the imposition of appropriate sentence or in perjury proceedings, or for the purposes of impeachment. The case of the person shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person's trial shall be given priority. The person may be admitted to bail in accordance with the Arizona rules of criminal procedure whenever a judicial officer finds that a subsequent event has eliminated the basis for detention.

~~E.~~ F. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn.

Sec. 3. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Emergency Not Enacted

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.