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**State and Local Enforcement of
Federal Immigration Law**

The Arizona Experiment

**Beverly Ginn,
Edwards & Ginn PC
Tucson, AZ**

SENATE BILL 1070

IMMIGRATION

The adoption of SB 1070, described, depending on one's point of view, as either the best or the worst set of the State immigration laws adopted in the United States in recent history.

Senate Bill 1070

What is known as SB 1070 is actually a "blend" of two legislative enactments:

- SB 1070, signed by the Governor on April 23, 2010
- HB 2162, signed by the Governor on April 30, 2010.

SB 1070 as amended:

- Added these new statutes to Arizona law:
 - 11-1051 Cooperation and assistance in enforcement of immigration laws; indemnification
 - 13-1509 Willful failure to complete or carry an alien registration document
 - 13-2928 Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment
 - 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment

SB 1070 as amended (cont'd)

- Amended these existing statutes:
 - 13-2319 Smuggling
 - 13-3883 Arrest by officer without a warrant
 - 23-212 Knowingly employing unauthorized aliens
 - 23-212.01 Intentionally employing unauthorized aliens
 - 23-214 Verification of employment eligibility
 - 28-3511 Removal and immobilization or impoundment of vehicle
 - 41-1724 Gang and immigration intelligence team enforcement mission fund
 - AND OTHERS

A.R.S. §11-1051

This statute is the immigration enforcement statute. It provides direction with regard to stops, detentions and arrests.

“A. No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.”

“B. For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. ... “

“B. ... Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). ...”

“B. ...A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution. ...”

“B. ...A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.
2. A valid Arizona nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification. ...”

Paragraph C requires notification of Customs and Border Protection once an unlawfully present alien who has been convicted of a crime is discharged from imprisonment or pays any fine that was imposed.

Paragraph D authorizes local law enforcement to transport an unlawfully present alien to a federal facility or federal transfer point.

This is an effort to statutorily overrule the 9th Circuit's opinion that Arizona peace officers do not have the authority to transport persons who are in violation of federal civil laws. *Gonzales v. Peoria*, 722 F.2d 468 (9th Cir. 1983)

"E. In the implementation of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
2. The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 United States Code section 1373(c)."

This was interesting, because "Washington" would not allow ICE or CBP to work with Arizona law enforcement on implementation of SB 1070.

"F. Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

1. Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.
2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.
3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act.
4. Pursuant to 8 United States Code section 1373 and 8 United States Code section 1644."

"H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code sections 1373 and 1644, to less than the full extent permitted by federal law. "

Paragraphs I-K:

Penalty \$500 - \$5000 per day, payable to State gang and immigration task force.

Plus costs and attorneys fees.

Officer indemnified for costs and expenses, except if acting in bad faith.

"L. This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens."

New Criminal Laws

- 13-1509 Willful failure to complete or carry alien registration document
- 13-2928 Unlawful stopping to hire and pick up passengers for work; unlawful application solicitation or employment
- 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment

A.R.S. §13-1509 Willful failure to complete or carry alien registration document

- A. In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 USC §1304(e) or §1306 (a).
- F. This section does not apply to a person who “maintains authorization” from the federal government to remain in the United States.

A.R.S. §13-1509 Willful failure to complete or carry alien registration document (cont’d)

- 8 U.S.C. § 1304 (e) requires all registered aliens age 18 or older to carry, at all times, his or her certificate of alien registration or alien registration receipt card.
- Elements of 8 U.S.C. § 1304(e)
 - 1. An alien
 - 2. Who registers
 - 3. Who is 18 years of age or older
 - 4. And fails to carry registration or registration card

A.R.S. §13-1509 Willful failure to complete or carry alien registration document (cont’d)

An arrest under A.R.S. § 13-1509 for a violation of 8 U.S.C. § 1304 (e) may only be made when:

1. Person is an alien who has registered
2. and who has remained in the country beyond the time or conditions authorized by their registration
3. and who is not carrying his or her registration documents.

For example, a person who comes into the country on a student visa which is now expired and who does not have that visa in his or her possession.

A.R.S. §13-1509 Willful failure to complete or carry alien registration document (cont’d)

8 U.S.C. § 1306 (a) makes it a federal crime for an alien who is required to register and be fingerprinted to willfully fail to register or be fingerprinted. An alien is required to register if the alien is 14 years of age or older, not registered and in the United States 30 days or longer. If the alien is under 14, the parent has the legal responsibility to register the child.

Elements of 8 U.S.C. § 1306 (a)

- 1. An alien
- 2. Who is 14 or older
- 3. In the U.S. more than 30 days
- 4. Willfully
- 5. Fails to register or register child under 14

CHECK WITH THE LOCAL MISDEMEANOR PROSECUTOR FOR THE REQUIRED PROOF.

A.R.S. § 13-2928 Unlawful stopping to hire and pick up passengers for work

- A. Applies to a vehicle occupant
1. Stopping on a street, roadway or highway
 2. To attempt to hire, or to hire and pick up passenger
 3. For work at a different location
 4. If the motor vehicle blocks or impedes the normal movement of traffic

Officers should note that this subsection applies to all persons, without regard to immigration status.

A.R.S. § 13-2928 Unlawful stopping to hire and pick up passengers for work

- B. Applies to a worker getting hired on the street
1. Entering a motor vehicle
 2. That is stopped on a street, roadway or highway
 3. In order to be hired by an occupant of the vehicle
 4. To be transported to work at a different location
 5. If the motor vehicle blocks or impedes the normal movement of traffic

Officers should note that this subsection applies to all persons, without regard to immigration status.

A.R.S. § 13-2928 Unlawful stopping to hire and pick up passengers for work

- C. Applies to a worker who is applying, soliciting, working
1. Is unlawfully present in the US
 2. Is an unauthorized alien (does not have the legal right or authorization under federal law to work)
 3. Knowingly applies for work, solicits work in a public place, or performs work as an employee or independent contractor in this state
- D. Officers may not consider race, color or national origin in the enforcement of this section except as previously discussed.
- E. Immigration status is to be determined by ICE, CBP, or a 287g certified officer.
- F. Class 1 misdemeanor

A.R.S. § 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens

- A. If a person is in violation of a criminal law and transports, conceals or encourages as follows:
1. Transporting with knowledge
 - a. Transports or moves, or attempts to transport or move
 - b. An alien
 - c. In furtherance of the illegal presence of the alien
 - d. In a means of transportation
 - e. If the person knows or recklessly disregards that the alien has come to, entered or remained in the US in violation of law

A.R.S. § 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens (cont'd)

- A. If a person is in violation of a criminal law and transports, conceals or encourages as follows:
2. Concealing with knowledge
 - a. Conceals, harbors or shields or attempts
 - b. An alien
 - c. From detection in any place
 - d. If the person knows or recklessly disregards that the alien has come to, entered or remained in the US in violation of law

A.R.S. § 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens (cont'd)

- A. If a person is in violation of a criminal law and transports, conceals or encourages as follows:
3. Encourages
 - a. Encourages or induces
 - b. An alien
 - c. To come to or reside in this state
 - d. If the person knows or recklessly disregards that such coming to, entering or residing in this state is or will be in violation of law

A.R.S. § 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens (cont'd)

- A means of transportation used in the commission of this section is subject to impoundment under § 28-3511.
- Officers may not consider race, color or national origin in the enforcement of this section except as previously discussed.
- Exceptions: CPS workers, persons acting as first responders, ambulance attendants, EMT's.
- Immigration status is to be determined by ICE, CBP, or a 287g certified officer.
- Class 1 misdemeanor; if there are more than 10 aliens the violation is a class 6 felony.

Training and implementation

- The Governor directed AZPOST to provide training for all Arizona peace officers by the effective date of the law (July 29, 2010).
- AZPOST immediately decided to do the training by video.
- The video is available on the internet.
<http://www.azpost.state.az.us/SB1070infocenter.htm>

Training

- Most officers watched the video and reviewed the handouts which were made available
- Many attended training done by police attorneys
- Most of 11-1051 was enjoined by the federal district court on 7/28, the day before the new law was to become effective.

How effective was the video?

<http://www.thedailyshow.com/watch/thu-july-8-2010/latino-911->

PREGUNTAS?

Bev. Ginn
Edwards & Ginn, P.C.
520.444.4469
bevginn@gmail.com