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STATE REPRESENTATIVE • 58TH ASSEMBLY DISTRICT

Testimony on Senate Bill 384

Senate Committee on Judiciary and Public Safety | January 3, 2024 | Room 411
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Chair Wanggaard, Vice-Chair Jacque, and distinguished members of the Senate Committee on Judiciary and Public Safety, thank you for the opportunity to testify on Senate Bill 384 today. I am pleased to author this legislation with Senator Julian Bradley to ensure the safety of Wisconsinites never takes a backseat due to a lack of leadership at the federal level.

The crisis at the southern border has continued to worsen with each passing year. In fiscal year 2021, the United States Customs and Border Patrol (CBP) had 1.7 million encounters with illegal immigrants. In fiscal year 2023, there were 2.4 million encounters with illegal immigrants by the CBP.

These and other individuals enter the country illegally, are apprehended and given a court date – which could be years from now due to the massive backlog facing immigration courts. In the meantime, those individuals are released into the country. If they do not return for their court date, law enforcement/immigration authorities put at a massive disadvantage to find them.

While the federal government handles enforcement and regulation of illegal immigration, its effect are felt in Wisconsin. Most notably, Wisconsin has to invest more time and resources into combatting human drug trafficking.

Our bill seeks to address the shortcomings and lack of leadership at the federal level. Our bill ensures law enforcement are able to check the lawful presence of a criminal with Immigration and Customs Enforcement (ICE). It requires law enforcement to hold someone who is in the United States illegally until the appropriate federal authority can take them into custody. Finally, our bill requires

that data be reported to the Wisconsin Department of Justice (DOJ). DOJ will report these statistics to the Legislature every six months.

Working with ICE to enforce the laws on the books and having DOJ record this data and present it to the Legislature ensures laws are followed and Wisconsinites have access to this important data. I am pleased with the work Senator Bradley and I have done to ensure the safety of our friends and neighbors comes first.

I appreciate the opportunity to provide testimony to the distinguished members of this committee.



To: Members, Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: January 3, 2024
RE: **Testimony for information only on SB 384**

Our organizations submit these comments for information only on Senate Bill 384, determining the lawful presence of a person arrested for or charged with a crime or certain civil violations.

To be clear, Badger State Sheriffs' Association and Wisconsin Sheriffs and Deputy Sheriffs Association are NOT opposed to this legislation. We are not in favor of illegal immigration and do not support any person committing crimes or civil violations in our communities.

However, we have concerns regarding the creation of additional work requirements for local law enforcement agencies and officers. SB 384 requires law enforcement to attempt to verify lawful status, report the individual to federal authorities and detain the person until the federal immigration authority can take the individual into federal custody for a person arrested for or charged with a crime or certain civil violations. In addition, it requires additional data and reporting to the state DOJ on these activities. It is worth nothing that even if this data is collected, our ability as Wisconsin Sheriffs and deputies and the state DOJ, to control what happens next on the federal level is very limited.

The other concern we have with this legislation is the requirement to detain the person until the federal immigration authority can take the individual into federal custody. While we support federal efforts to apprehend, hold, and deport criminals, the issue we are concerned that we cannot lawfully hold someone beyond what is allowed relating to their state charges for ICE to take physical custody of the person, without violating the person's Constitutional rights. Case law from across the country has found that prolonged detention without probable cause or warrant is unconstitutional.

In addition to the legality concerns, there is also a cost associated with holding individuals in the county jails and those costs would be likely not reimbursed by the federal government unless there is a prearranged contract.

We ask the committee to consider these issues with SB 384 and discuss ideas to examine how local Wisconsin law enforcement can be a partner to combat illegal immigration.

The Badger State Sheriffs' Association represents all of Wisconsin's 72 elected county sheriffs. The Wisconsin Sheriffs and Deputy Sheriffs Association is a professional organization representing over 1,000 members, including sheriffs, deputies, and jail officers. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.



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January 3, 2024

Chair Wanggaard, Vice-Chair Jacque, and Honorable Members of the Senate Committee on Judiciary and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony on Senate Bill 170, Senate Bill 384, and Senate Bill 789.

ACLU-WI Supports SB-170

In Wisconsin, approximately 1.4 million people have a criminal record, which can result in many collateral consequences that can make successful re-entry a daunting task.¹ People often struggle mightily to land a stable job, secure housing, access public benefits, get an education, and more. A Wisconsin Watch report cites statistics from the Prison Policy Initiative which found that while 93% of formerly incarcerated people between the ages of 25 and 44 actively seek work, they are five times more likely to be unemployed than the average American.² Taking into account the scope and scale of our criminal legal system, mass joblessness among the 1.4 million Wisconsinites with a criminal record has profound implications for our economy.

The thoughtful work and recommendations of the Legislative Council Study Committee on Increasing Offender Employment Opportunities culminated in a package of legislation centering around addressing these obstacles faced by Wisconsinites transitioning back to the community from incarceration. As multiple presentations during Study Committee meetings illuminated, employment reduces recidivism, and incentives for individuals to seek employment matter. SB-170 is one necessary component of that package that will increase self-sustaining job opportunities for formerly incarcerated people in our state and keep our communities safe by reducing recidivism.

The Earned Release Program (ERP) has existed in some form in Wisconsin since the 1980s. Under current law, a person may be eligible for reduced confinement time converted to community supervision time if they are incarcerated for a crime other than a specified violent crime, the sentencing court deems the person eligible, and the person successfully completed a Department of Corrections (DOC) substance use treatment program.

¹ "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform," Wisconsin Policy Forum (June 2018), <https://wispolicyforum.org/research/a-fresh-start-wisconsins-atypical-expungement-law-and-options-for-reform/>.

² "Convictions bar Wisconsinites from many jobs, making re-entry 'a real struggle,'" Wisconsin Watch (May 29, 2021), <https://wisconsinwatch.org/2021/05/convictions-bar-wisconsinites-from-many-jobs-making-re-entry-a-real-struggle/>.

SB-170 expands this existing program to eligible individuals who complete an employment readiness training program. If the individual petitions the sentencing court to determine eligibility to participate in an employment readiness training program and the court determines the individual is eligible to participate, completion of the program provides the incentive of converting confinement time to community supervision time provided that they have served at least two-thirds of their confinement time of a bifurcated sentence prior to their release to community supervision.

Under the bill, Wisconsin would join Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, and West Virginia in authorizing a reduction of confinement time for completion of vocation or educational training programs.³ The ACLU of Wisconsin appreciates the Study Committee's work and strongly urges committee members to support this legislation.

ACLU-WI Opposes SB-384

There are roughly 159,000 immigrants living in Wisconsin who are not yet U.S. citizens—many have been living here for years or even decades.⁴ Their immigration status runs from permanent resident, DREAMER, refugee, to holders of work and student visas, as well as those who are undocumented. They work in a wide variety of jobs, including being the backbone of the state's dairy and farming industry. They live in communities throughout Wisconsin and are our neighbors, friends and family members. And all of them run the risk of being deported through some contact with the criminal justice system. In addition to exacerbating Wisconsin's jail-to-deportation pipeline,⁵ SB-384 would invite racial profiling and ultimately undermine public safety by diminishing immigrant communities' trust in law enforcement.

Similar to Arizona's "show me your papers" law that inspired it, SB-384 would create a scheme requiring local law enforcement officers to verify the immigration status of individuals stopped by police and cited, arrested, or charged, regardless of the nature of the allegations, functionally compelling all people in the state of Wisconsin, citizens and non-citizens alike, to carry identification documents on them at all times, just in case they are cited by police officers and asked to prove their citizenship or immigration status.

³ "Good Time and Earned Time Policies for People in State Prisons," National Conference of State Legislatures (December 2020), <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Final-Sentence-Credit-50-State-Chart-2020.pdf>.

⁴ "immigration Data Profile for State of Wisconsin," Migration Policy Institute, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI>.

⁵ "Report: Wisconsin's Jail-to-Deportation Pipeline," ACLU of Wisconsin (August 25, 2022), <https://www.aclu-wi.org/en/publications/report-wisconsins-jail-deportation-pipeline>.

SB-384 would require law enforcement officers to verify the immigration status of anyone who is arrested for or charged with any crime or cited for any civil infraction that may result in the imposition of a forfeiture. As the bill is written, the basis for the arrest or citation triggering SB-384's verification requirements could include allegations of disorderly conduct, truancy, underage drinking, or not wearing a seat belt. For context, municipal court statistics published by the Wisconsin Court System estimate a total of 390,004 municipal citations for civil infractions were issued in 2022 alone.⁶ The Wisconsin Department of Justice Uniform Crime Reporting Data indicates 190,300 arrests were made across the state in 2022.⁷

If an officer alleges that a person is not lawfully present based on reasonable suspicion, and the person cannot provide documentary proof of lawful presence, the officer must attempt to verify the person's immigration status with the federal government. Even if someone who is stopped by police has one of the acceptable forms of identification, local law enforcement officers are not trained to identify the validity of the items outlined in Section 1 of the bill.

While the text of the bill states, "A law enforcement officer may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the U.S. and Wisconsin Constitutions," in practice SB-384 would absolutely invite racial profiling. Law enforcement might find a reason to stop people for minor infractions based on the way they look, and then demand to see their papers. Alternatively, enforcement may stop them for an unbiased reason and then, based on appearance or accent, demand their papers and decide to subject them to a lengthy investigation of their immigration status.

By telling police officers to investigate the citizenship or immigration status of anyone they stop when they have "reasonable suspicion," the law invites police officers to rely on stereotypes when determining who is and who is not in the country lawfully. Police officers are put in the position of relying on race, ethnicity, or accent to decide whose status to investigate.

Ultimately, SB-384 undermines public safety by diminishing trust in law enforcement by immigrants and others who may be presumed to be "foreign." Immigrants will not come forward with vital information about crimes for fear that they or their family members will be subject to detention and investigation. Everyone's safety, including citizens', is put in jeopardy when victims and witnesses don't feel safe coming forward with critical information about crimes committed against them, their families, or members of the larger community. Police depend on the cooperation and trust of these communities to ensure public safety. If enacted,

⁶ "Municipal court statistics," Wisconsin Court System, <https://www.wicourts.gov/publications/statistics/municipal/municipalstats.htm>.

⁷ "UCR Arrest Data," Wisconsin Department of Justice, <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data>.

the bill would prohibit local law enforcement agencies and communities from maintaining policies that prioritize public safety and welfare over immigration enforcement.

ACLU-WI Opposes SB-789

Under current law, a government official or agency may charge a fee to a requester of public records for the actual, necessary, and direct cost incurred to locate, if the cost exceeds \$50, copy, and mail public records in response to the request. Under the ruling in the 2012 Wisconsin Supreme Court case *Milwaukee Journal Sentinel v. City of Milwaukee*, state public records law does not allow an authority to impose fees on a requester for the costs of redacting information from a record.⁸ As the opinion in the case highlighted, fees related to obtaining public records impacts access:

This case is not about a direct denial of public access to records, but the issue in the present case directly implicates the accessibility of government records. The greater the fee imposed on a requester of a public record, the less likely the requester will be willing and able to successfully make a record request. Thus, the imposition of fees limits and may even serve to deny access to government records. In interpreting the Public Records Law, we must be cognizant that the legislature's preference is for “complete public access” and that the imposition of costs, as a practical matter, inhibits access.⁹

The opinion also included text of the Wisconsin Public Records Law “Declaration of Policy”¹⁰ in its entirety.

SB-789 would authorize law enforcement and corrections agencies to charge a requester a fee for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded video content disclosed in response to a public records request to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law. While enactment of this proposal would change the law interpreted in the case above, it would not change the reality that additional imposition of fees limits and may even serve to deny access to government records in the possession of law enforcement and corrections agencies.

Records—including reports and body camera footage—containing evidence of officer misconduct, disciplinary records, or officer use of force or other critical incidents are implicated by SB-789. While the proliferation of police worn body cameras was intended to increase transparency and accountability, especially in circumstances when an individual is killed by law enforcement, a recent investigation by Pro Publica found that release of footage had not occurred over a year after the incident in the

⁸ *Milwaukee Journal Sentinel v. City of Milwaukee*, 341 Wis.2d 607 (2012).

⁹ *Id.* at 613.

¹⁰ Wis. Stat. § 19.31.

vast majority of cases.¹¹ In some circumstances, the video was available but at a cost prohibitive fee.

In Wisconsin, one detective explicitly acknowledged that excessive fees are used as a tactic to deter public requests for police records. In an email he stated, “He said that trying to fight the release of the personnel file would be a waste of time/money and it’s rarely successful. He said many departments combat the issue by charging a high price to fill those requests, so maybe that’s something to look at in the future.”¹²

Lack of transparency and police accountability creates further distrust in law enforcement, making community engagement with law enforcement more fraught and less effective. Ultimately, proposals like SB-789 could allow law enforcement to shirk their obligation to be publicly accountable, and further erode the belief that police protect communities rather than their only their own.

¹¹ Umar Farooq, “Body Cameras Were Sold as a Tool of Police Reform. Ten Years Later, Most of the Footage is Kept From Public View,” Pro Publica (December 18, 2023),

<https://www.propublica.org/article/body-camera-videos-police-killings-remain-hidden-from-public>.

¹² Isiah Holmes, “Internal email suggests Tosa PD use high fees to ‘combat’ record requests,” Wisconsin Examiner (November 23, 2020), <https://wisconsinexaminer.com/2020/11/23/internal-email-suggest-tosa-pd-use-high-fees-to-combat-records-requests/>.