

IN THE SENATE

SENATE BILL NO. 1039

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IMMIGRATION COOPERATION AND ENFORCEMENT ACT; AMENDING TI-  
2 TLE 18, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 90, TITLE 18, IDAHO  
3 CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR COOP-  
4 ERATION WITH FEDERAL AUTHORITIES, TO PROVIDE FOR COOPERATION WITH IM-  
5 MIGRATION DETAINERS, TO PROVIDE FOR THE CRIME OF UNLAWFUL PRESENCE OF  
6 A DANGEROUS ILLEGAL ALIEN, TO PROVIDE FOR THE CRIME OF SMUGGLING A DAN-  
7 GEROUS ILLEGAL ALIEN, TO PROVIDE FOR SENTENCING ENHANCEMENT, TO PROVIDE  
8 FOR DETERMINATION OF ALIENAGE UPON CONFINEMENT, TO PROVIDE FOR CONDI-  
9 TIONS OF RELEASE OF AN ILLEGAL ALIEN FROM CONFINEMENT, TO PROVIDE FOR  
10 THE AUTHORITY TO TRANSPORT ILLEGAL ALIENS, TO PROVIDE IMMUNITY, AND TO  
11 PROVIDE INTERPRETATION; AND DECLARING AN EMERGENCY.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended  
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
16 ter 90, Title 18, Idaho Code, and to read as follows:

17 CHAPTER 90  
18 IMMIGRATION COOPERATION AND ENFORCEMENT ACT

19 18-9001. SHORT TITLE. This chapter shall be known and may be cited as  
20 the "Immigration Cooperation and Enforcement Act."

21 18-9002. DEFINITIONS. As used in this chapter:

22 (1) "Custodial authority" means the director of the department of cor-  
23 rection, county sheriffs, city chiefs of police, and any of their subordi-  
24 nates with the power to confine or detain a person under color of law.

25 (2) "Dangerous crime" means:

26 (a) A violation of section 18-905 (aggravated assault defined), 18-907  
27 (aggravated battery defined), 18-909 (assault with intent to commit  
28 a serious felony defined), 18-911 (battery with intent to commit a  
29 serious felony defined), 18-1401 (burglary defined), 18-1508 (lewd  
30 and lascivious conduct), 18-2403(2)(e) (extortion), 18-2501 (rescu-  
31 ing prisoners), 18-2505 (escape by one charged with or convicted of a  
32 felony), 18-2506 (escape by one charged with or convicted of a misde-  
33 meanor), 18-4003 (degrees of murder), 18-4006 (manslaughter), 18-4015  
34 (assault with intent to murder), 18-4501 (kidnapping defined), 18-5001  
35 (mayhem defined), 18-6101 (rape defined), 18-6501 (robbery defined),  
36 37-2732(a) (delivery, manufacture or possession of a controlled sub-  
37 stance with intent to deliver), or 37-2732B (trafficking), Idaho Code;

38 (b) Any offense for which an extended term of imprisonment can be im-  
39 posed under section 19-2520B, Idaho Code;

1 (c) Any offense requiring sex offender registration as set forth in  
2 section 18-8304, Idaho Code;

3 (d) The commission of a felony on the grounds of a correctional facility  
4 located in this state; or

5 (e) Any attempt or conspiracy to commit any of the crimes listed in this  
6 subsection.

7 (3) "Dangerous illegal alien" means an illegal alien who has previously  
8 been convicted or found guilty, by judgment or withheld judgment, of a dan-  
9 gerous crime in this state, or of a crime that would constitute a dangerous  
10 crime if the offense had been committed in this state and the person could  
11 have been punished under the laws of this state for commission of a dangerous  
12 crime.

13 (4) "DHS" means the United States department of homeland security and  
14 its subordinate agencies and divisions.

15 (5) "Illegal alien" means a person eighteen (18) years of age or older  
16 who is verified by the federal government to be present in the United States  
17 in violation of the federal immigration and nationality act, 8 U.S.C., and  
18 federal rules promulgated in accordance therewith.

19 (6) "Immigration detainer" means a notice or other documentation is-  
20 sued by United States immigration and customs enforcement requesting that a  
21 custodial authority or law enforcement official maintain temporary custody  
22 of an illegal alien, including a DHS form I-247 document or a similar succes-  
23 sor form.

24 (7) "Law enforcement official" means all state, county, and local law  
25 enforcement officers, prosecuting attorneys, and city attorneys.

26 18-9003. COOPERATION WITH FEDERAL AUTHORITIES. (1) To the extent au-  
27 thorized by federal law, law enforcement officials shall be authorized to  
28 send, receive, and maintain information relating to the immigration status  
29 of dangerous illegal aliens for public safety purposes. Except as provided  
30 by federal law, law enforcement officials shall not be prohibited from re-  
31 ceiving or maintaining information relating to the immigration status of any  
32 dangerous illegal alien or sending or exchanging such information with other  
33 federal, state, or local law enforcement agencies for official public safety  
34 purposes.

35 (2) Law enforcement officials shall not be prohibited from entering  
36 into memorandums of understanding, agreements, and memorandums of agreement  
37 with the United States department of justice, DHS, or any other federal law  
38 enforcement agency for the purpose of enforcing federal immigration laws as  
39 against dangerous illegal aliens, including section 287(g) of the federal  
40 illegal immigration reform and immigrant responsibility act of 1996, P.L.  
41 104-208, or a similar federal program.

42 (3) Except as provided by federal law, no law enforcement official  
43 shall be prohibited from utilizing available federal resources, including  
44 databases, equipment, grant funds, training, or participation in incentive  
45 programs for any public safety purpose related to the enforcement of federal  
46 immigration laws as against dangerous illegal aliens.

47 18-9004. COOPERATION WITH IMMIGRATION DETAINERS. Where a custodial  
48 authority has custody of a person in a correctional facility, state reha-

1     bilitation center, penitentiary, prison, county jail, or city jail, and  
2     the person is subject to an immigration detainer, the custodial authority  
3     shall comply with, honor, and fulfill any reasonable request made in the  
4     immigration detainer as long as it does not impose undue burden or expense  
5     on the custodial authority or law enforcement officials and shall inform the  
6     person identified in the immigration detainer that the person is being held  
7     pursuant to such immigration detainer.

8           18-9005.   UNLAWFUL PRESENCE OF A DANGEROUS ILLEGAL ALIEN. (1) The crime  
9     of unlawful presence of a dangerous illegal alien is committed when a danger-  
10    ous illegal alien enters, remains in, or is found in the state of Idaho.

11           (2) A law enforcement official shall not be prohibited from making an  
12    arrest of any dangerous illegal alien found in Idaho.

13           (3) Whoever commits the crime of unlawful presence of a dangerous ille-  
14    gal alien upon a first offense shall be guilty of a misdemeanor and impris-  
15    oned for not more than six (6) months, fined not more than one thousand dol-  
16    lars (\$1,000), or both.

17           (4) Whoever commits the crime of unlawful presence of a dangerous il-  
18    legal alien upon a second or subsequent offense shall be guilty of a felony  
19    and imprisoned for not less than one (1) year and not more than two (2) years,  
20    fined not more than ten thousand dollars (\$10,000), or both.

21           (5) The provisions of this section shall not apply to a dangerous ille-  
22    gal alien as long as the person is a necessary witness, as a victim or oth-  
23    erwise, to a crime of domestic violence, rape, sexual exploitation, sexual  
24    assault, murder, manslaughter, assault, battery, human trafficking, kid-  
25    napping, false imprisonment, involuntary servitude, fraud in foreign labor  
26    contracting, blackmail, extortion, or witness tampering.

27           18-9006.   SMUGGLING A DANGEROUS ILLEGAL ALIEN. (1) The crime of smug-  
28    gling a dangerous illegal alien is committed when a person knowingly and  
29    willfully transports into this state, for the first time, a dangerous ille-  
30    gal alien that the person knows, or reasonably should know, is a dangerous  
31    illegal alien.

32           (2) A person commits a separate offense for each individual transported  
33    into this state in violation of the provisions of this section.

34           (3) Whoever commits the crime of smuggling a dangerous illegal alien  
35    shall be guilty of a felony and imprisoned for not less than one (1) year  
36    and not more than two (2) years, fined not more than ten thousand dollars  
37    (\$10,000), or both.

38           (4) The provisions of this section shall not apply if the defendant is  
39    a necessary witness to or victim of a crime of domestic violence, rape, sex-  
40    ual exploitation, sexual assault, murder, manslaughter, assault, battery,  
41    human trafficking, kidnapping, false imprisonment, involuntary servitude,  
42    fraud in foreign labor contracting, blackmail, extortion, or witness tam-  
43    pering where the referenced crime occurred during the defendant's act of  
44    transporting the dangerous illegal alien.

45           18-9007.   SENTENCING ENHANCEMENT. Any person eighteen (18) years of  
46    age or older that is convicted of a violation of a dangerous crime, committed  
47    while the person is an illegal alien, shall be sentenced to an extended term

1 of imprisonment. The extended term of imprisonment required in this section  
2 shall be computed by adding five (5) years of imprisonment to the term of  
3 sentence otherwise imposed, and the first five (5) years of imprisonment  
4 shall be fixed and determinate. The extended term provided in this section  
5 shall not be imposed unless the fact of the person's status as an illegal  
6 alien while committing the crime is separately charged in the information  
7 or indictment and admitted by the accused or found to be true by the trier of  
8 fact at the trial of the substantive crime. The provisions of this section  
9 shall apply even in those cases where the person's status as an illegal alien  
10 is an element of the offense. The limitations set forth in section 19-2520E,  
11 Idaho Code, shall not apply to the extended term required by this section.

12 18-9008. DETERMINATION OF ALIENAGE UPON CONFINEMENT. (1) Following  
13 entry of a judgment of conviction for a criminal offense, the immigration  
14 status of any person eighteen (18) years of age or older shall be determined  
15 by the custodial authority whenever any person is processed for confinement  
16 in any correctional facility, state rehabilitation center, penitentiary,  
17 prison, county jail, or city jail. If it is determined that the person is an  
18 illegal alien, then the custodial authority shall notify DHS of the identity  
19 of the person so confined and the place of confinement. Such notification  
20 shall be provided within forty-eight (48) hours of the person being placed  
21 in confinement.

22 (2) A person's immigration status shall be considered confirmed as not  
23 an illegal alien if the person provides:

- 24 (a) A valid Idaho driver's license;  
25 (b) A valid Idaho identification card;  
26 (c) A valid United States passport;  
27 (d) Any valid driver's license or identification card issued by a state  
28 or district or territory of the United States, provided the issuing  
29 authority limits issuance of the foregoing to persons who demonstrate  
30 lawful presence in the United States;  
31 (e) Any valid identification card issued by the United States, includ-  
32 ing those issued by the department of defense, provided the issuing  
33 authority limits issuance of the foregoing to persons who demonstrate  
34 lawful presence in the United States; or  
35 (f) Any other information sufficiently reliable to demonstrate the  
36 identity of the confined person and the person's lawful presence in the  
37 United States.

38 18-9009. CONDITIONS OF RELEASE OF ILLEGAL ALIEN FROM CONFINEMENT. Following entry of a judgment of conviction for a criminal offense,  
39 no person eighteen (18) years of age or older that is known to be an ille-  
40 gal alien shall be released from confinement in any correctional facility,  
41 state rehabilitation center, penitentiary, prison, county jail, or city  
42 jail prior to the person's completion of his sentence unless the custodial  
43 authority first obtains written confirmation from DHS that DHS will take  
44 custody of the person upon release and deport the person from the United  
45 States. The provisions of this section shall apply to any fixed or inde-  
46 terminate confinement but shall not apply to temporary confinement under  
47 alternate sentencing programs such as work release, inmate labor detail,  
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1 a scheduled sentence program, or similar programs. The provisions of this  
2 section shall apply to any release from confinement as part of probation,  
3 parole, or supervised release after a judgment of conviction is entered.

4 18-9010. AUTHORITY TO TRANSPORT ILLEGAL ALIENS. Following entry of a  
5 judgment of conviction for a criminal offense, if a custodial authority has  
6 verification that a person is an illegal alien, then the custodial authority  
7 shall be authorized to securely transport such illegal alien to a federal fa-  
8 cility in this state or to any other temporary point of detention and to rea-  
9 sonably detain such illegal alien when authorized by a federal law immigra-  
10 tion detainer or federal arrest warrant.

11 18-9011. IMMUNITY. A law enforcement official or custodial authority  
12 acting in good faith to carry out duties or activities allowed by this chap-  
13 ter shall have immunity from damages or liability from such actions.

14 18-9012. INTERPRETATION. (1) The provisions of this chapter relating  
15 to immigration terminology and definitions shall be construed to have the  
16 same meanings as provided under federal immigration law, unless otherwise  
17 defined in this chapter.

18 (2) The provisions of this chapter shall be construed and implemented  
19 in a manner consistent with federal laws and regulations, and interpretive  
20 case law, governing immigration and civil rights.

21 SECTION 2. An emergency existing therefor, which emergency is hereby  
22 declared to exist, this act shall be in full force and effect on and after its  
23 passage and approval.