

109TH CONGRESS  
1ST SESSION

# H. R. 3776

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2005

Mrs. MYRICK (for herself and Mr. MCINTYRE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Improved Federal sharing of immigration information.  
 Sec. 3. State and local reporting of immigration information.  
 Sec. 4. DWI and immigration information in the National Criminal Information Center.  
 Sec. 5. State and local enforcement of Federal immigration laws.  
 Sec. 6. Detention and deportation of aliens for driving while intoxicated (DWI).  
 Sec. 7. Federal detention facilities.

1 **SEC. 2. IMPROVED FEDERAL SHARING OF IMMIGRATION**  
 2 **INFORMATION.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-  
 4 rity shall share with the Attorney General immigration in-  
 5 formation.

6 (b) IMPROVED OPERATION OF FEDERAL IMMIGRA-  
 7 TION DATABASES.—

8 (1) REPORT.—Not later than 90 days after the  
 9 date of the enactment of this Act, the Secretary and  
 10 the Attorney General shall jointly submit to Con-  
 11 gress a report on improving performance of Federal  
 12 immigration databases to ensure the prompt entry of  
 13 immigration information into such databases.

14 (2) COMPATIBILITY.—Such report shall contain  
 15 recommendations to improve the compatibility  
 16 among Federal immigration databases in order to—

17 (A) improve data entry, including elimi-  
 18 nating of data entry backlogs;

19 (B) increase efficiency; and

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

4 (3) PROGRESS.—Such report shall include in-  
5 formation on the progress that has been made with  
6 respect to the elimination of data entry backlogs in  
7 such databases and any additional resources re-  
8 quired to eliminate such backlogs.

9 (c) DEFINITIONS.—For purposes of this section and  
10 section 3:

11 (1) The term “DWI” means driving while in-  
12 toxicated and includes similar motor vehicle viola-  
13 tions.

14 (2) The term “Federal immigration database”  
15 means each of the following:

16 (A) The database of the LESC insofar as  
17 it relates to immigration information.

18 (B) The database of the NCIC insofar as  
19 it relates to immigration information.

20 (C) Any other database containing immi-  
21 gration information identified by the Secretary  
22 of Homeland Security.

23 (3) The term “immigration information” means  
24 information specified by the Secretary of Homeland  
25 Security, in consultation with the Attorney General,

1 relating to immigration, including illegal immigra-  
2 tion.

3 (4) The term “LESC” means the Law Enforce-  
4 ment Support Center.

5 (5) The term “NCIC” means the National  
6 Criminal Information Center.

7 (6) The term “Secretary” means the Secretary  
8 of Homeland Security.

9 **SEC. 3. STATE AND LOCAL REPORTING OF IMMIGRATION**  
10 **INFORMATION.**

11 (a) REQUIREMENT.—

12 (1) IN GENERAL.—Subject to subsection (c),  
13 the director of each State and local law enforcement  
14 agency shall collect and report to the Secretary such  
15 immigration and DWI information and collected in  
16 the course of the director’s normal duties, and in  
17 such form and manner, as the Secretary may specify  
18 for entry into Federal immigration databases.

19 (2) CONDITION OF RECEIPT OF SCAAP FUND-  
20 ING.—If the director of a State or local law enforce-  
21 ment agency does not collect and report information  
22 in accordance with paragraph (1), such State or  
23 local law enforcement agency shall be ineligible to  
24 receive funding under the State Criminal Alien As-

1 assistance Program under section 241(i) of the Immi-  
2 gration and Nationality Act (8 U.S.C. 1231(i)).

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

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

12 (c) EXEMPTION FROM STATE AND LOCAL REPORT-  
13 ING OF IMMIGRATION INFORMATION.—State and local law  
14 enforcement agencies are not required to collect and report  
15 immigration information relating to individuals who assist  
16 law enforcement agencies in the performance of their du-  
17 ties, including as an informant, witness or in other similar  
18 capacity.

19 **SEC. 4. DWI AND IMMIGRATION INFORMATION IN THE NA-**  
20 **TIONAL CRIMINAL INFORMATION CENTER.**

21 (a) INCLUSION.—DWI and immigration information  
22 in the NCIC—

23 (1) shall appear as a flag on the wants/war-  
24 rants page of the NCIC; 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 on the wants/warrants page  
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. 5. 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” and in-  
15                   serting “shall” the first place it appears;

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

23                   (3) by striking paragraph (9) and redesignating  
24                   paragraph (10) as paragraph (9).

25           (b) EFFECTIVE DATES.—

1           (1) REQUIREMENT FOR AGREEMENT.—The  
2           amendments made by paragraphs (1) and (3) of  
3           subsection (a) shall take effect on such date (not  
4           later than 1 year after the date of the enactment of  
5           this Act) as the Secretary of Homeland Security  
6           shall specify.

7           (2) PAYMENT FOR TRAINING COSTS.—The  
8           amendment made by subsection (a)(2) shall take ef-  
9           fect on the first day of the first fiscal year beginning  
10          after the date of the enactment of this Act.

11 **SEC. 6. DETENTION AND DEPORTATION OF ALIENS FOR**  
12 **DRIVING WHILE INTOXICATED (DWI).**

13          (a) IN GENERAL.—Section 236 of the Immigration  
14 and Nationality Act (8 U.S.C. 1226) is amended—

15           (1) in subsection (c)(1)—

16                (A) in subparagraph (C), by striking “or”  
17                at the end;

18                (B) in subparagraph (D), by adding “or”  
19                at the end; and

20                (C) by inserting after subparagraph (D)  
21                the following new subparagraph:

22                   “(E) is deportable on any grounds and is  
23                   apprehended for driving while intoxicated, driv-  
24                   ing under the influence, or similar violation of  
25                   State law (as determined by the Secretary of

1 Homeland Security) by a State or local law en-  
2 forcement officer covered under an agreement  
3 under section 287(g),”;

4 (2) by redesignating subsection (e) as sub-  
5 section (f); and

6 (3) by inserting after subsection (d) the fol-  
7 lowing new subsection:

8 “(e) DRIVING WHILE INTOXICATED.—If a State or  
9 local law enforcement officer apprehends an individual for  
10 an offense described in subsection (c)(1)(E) and the offi-  
11 cer has reasonable ground to believe that the individual  
12 is an alien—

13 “(1) the officer shall verify with the databases  
14 of the Federal Government, including the National  
15 Criminal Information Center and the Law Enforce-  
16 ment Support Center, whether the individual is an  
17 alien and whether such alien is unlawfully present in  
18 the United States; and

19 “(2) if any such database—

20 “(A) indicates that the individual is an  
21 alien unlawfully present in the United States—

22 “(i) an officer covered under an agree-  
23 ment under section 287(g) is authorized to  
24 issue a Federal detainer to maintain the  
25 alien in custody in accordance with such

1 agreement until the alien is convicted for  
2 such offense or the alien is transferred to  
3 Federal custody;

4 “(ii) the officer is authorized to trans-  
5 port the alien to a location where the alien  
6 can be transferred to Federal custody and  
7 shall be removed from the United States in  
8 accordance with applicable law; and

9 “(iii) the Secretary of Homeland Se-  
10 curity shall reimburse the State and local  
11 law enforcement agencies involved for the  
12 costs of transporting aliens when such  
13 transportation is not done in the course of  
14 their normal duties; or

15 “(B) indicates that the individual is an  
16 alien but is not unlawfully present in the  
17 United States, the officer shall take the alien  
18 into custody for such offense in accordance with  
19 State law and shall promptly notify the Sec-  
20 retary of Homeland Security of such apprehen-  
21 sion and maintain the alien in custody pending  
22 a determination by the Secretary with respect  
23 to any action to be taken by the Secretary  
24 against such alien.”.

25 (b) DEPORTATION FOR DWI.—

1           (1) IN GENERAL.—Section 237(a)(2) of such  
2 Act (8 U.S.C. 1227(a)(2)) is amended by adding at  
3 the end the following new subparagraph:

4                   “(F) DRIVING WHILE INTOXICATED.—Any  
5 alien who is convicted of driving while intoxi-  
6 cated, driving under the influence, or similar  
7 violation of State law (as determined by the  
8 Secretary of Homeland Security), or who re-  
9 fuses in violation of State law to submit to a  
10 Breathalyzer test or other test for the purpose  
11 of determining blood alcohol content is deport-  
12 able and shall be deported.”.

13           (2) EFFECTIVE DATE.—The amendment made  
14 by paragraph (1) shall apply to violations or refusals  
15 occurring after the date of the enactment of this  
16 Act.

17           (c) SHARING OF INFORMATION BY MOTOR VEHICLE  
18 ADMINISTRATORS REGARDING DWI CONVICTIONS AND  
19 REFUSALS.—Each State motor vehicle administrator  
20 shall—

21                   (1) share with the Secretary of Homeland Secu-  
22 rity information relating to any alien who has a con-  
23 viction or refusal described in section 237(a)(2)(F)  
24 of the Immigration and Nationality Act;

1           (2) share such information with other State  
2           motor vehicle administrators through the Drivers Li-  
3           cense Agreement of the American Association of  
4           Motor Vehicle Administrators; and

5           (3) enter such information into the NCIC in a  
6           timely manner.

7   **SEC. 7. FEDERAL DETENTION FACILITIES.**

8           (a) **REPORT ON CURRENT ALLOCATION FORMULA;**  
9           **RECOMMENDATIONS FOR STOP-GAP MEASURES.**—Not  
10          later than 90 days after the date of the enactment of this  
11          Act, the Secretary of Homeland Security shall submit to  
12          Congress a report describing the formula for allocation of  
13          Federal detention facilities for aliens under section 241(g)  
14          of the Immigration and Nationality Act (8 U.S.C.  
15          1231(g)). The Secretary shall include in such report rec-  
16          ommendations for measures for the temporary expansion  
17          of State and local jails to detain increased numbers of ille-  
18          gal aliens pending construction or expansion of Federal  
19          detention facilities.

20          (b) **NEW CONSTRUCTION IN HIGH CONCENTRATION**  
21          **AREAS.**—In accordance with such section, the Secretary  
22          shall ensure that, to the greatest extent practicable, con-  
23          struction of new detention facilities is undertaken in or  
24          near areas in which the Secretary has determined that  
25          there is a high concentration of illegal aliens.

1       (c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as necessary  
3 to carry out this section.

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