

109TH CONGRESS
1ST SESSION

H. R. 4360

To enforce law and order by establishing a program to authorize, fund, and otherwise assist local Sheriffs' offices in designated counties to provide a second line of defense alongside and in close cooperation with the United States Customs Border Protection (CBP) and Immigration and Customs Enforcement, to conduct law enforcement operations in their counties along the southern international border of the United States, and to prevent lawlessness in border areas.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2005

Mr. CULBERSON (for himself, Mr. REYES, Mr. BONILLA, Mr. CUELLAR, Mr. SMITH of Texas, Mr. MCCAUL of Texas, Mr. ADERHOLT, Mr. ALEXANDER, Mr. BISHOP of Utah, Mr. BRADY of Texas, Mr. BROWN of South Carolina, Mr. BURGESS, Mr. BURTON of Indiana, Mr. CARTER, Mr. DEAL of Georgia, Mr. DUNCAN, Mr. GOHMERT, Mr. GOODE, Ms. GRANGER, Mr. HALL, Mr. HAYWORTH, Mr. HUNTER, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mr. LEWIS of Kentucky, Mr. MARCHANT, Mr. NEUGEBAUER, Mr. POE, Mr. ROYCE, Mr. SESSIONS, Mr. TANCREDO, and Mr. THORNBERRY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To enforce law and order by establishing a program to authorize, fund, and otherwise assist local Sheriffs' offices in designated counties to provide a second line of defense alongside and in close cooperation with the United States Customs Border Protection (CBP) and Immigration and Customs Enforcement, to conduct law enforcement operations in their counties along the southern international

border of the United States, and to prevent lawlessness in border areas.

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.**

4 This Act may be cited as the “Border Law Enforce-
5 ment Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that:

8 (1) Federal officials do not have sufficient man-
9 power or resources to prevent criminals, terrorists,
10 and foreign nationals who have entered the United
11 States illegally from engaging in criminal activity.
12 Local and State law enforcement officials are being
13 overwhelmed by growing lawlessness along our
14 southern international border.

15 (2) There is a rapidly growing number of armed
16 and dangerous criminals, violent gang members,
17 drug smugglers, and potential terrorists entering the
18 United States illegally over our southern inter-
19 national border. These criminals are becoming in-
20 creasingly well organized, trained and equipped, and
21 in recent months a trend is developing which indi-
22 cates that the level of violence and the volume of
23 criminal activity along the Rio Grande is rapidly es-
24 calating to the level of open warfare between law en-

1 enforcement officials and organized criminal narco-ter-
2 rorists.

3 (3) Federal and State law enforcement officials
4 have identified an alarming increase in the number
5 of foreign nationals from countries with known con-
6 nections to terrorist organizations who are hiding
7 among an immense and rapidly growing number of
8 foreign nationals who are entering the United States
9 illegally.

10 (4) The United States is at war with terrorist
11 criminal organizations and with individuals from for-
12 eign nations who are fanatically committed to the
13 destruction of the United States, who have repeat-
14 edly demonstrated their ability and willingness to
15 hide their true identities and their evil purposes, and
16 who may enter and move about the United States il-
17 legally and use sneak attacks and any criminal
18 means or method available to them to cause the
19 mass destruction of human life in the United States.

20 (5) The peace, security, and well being of the
21 people of the United States are being placed at
22 grave risk by the inability or unwillingness of Fed-
23 eral officials to protect our international borders and
24 prevent individuals from entering and remaining in
25 the United States illegally during our war on terror-

1 ists. The lawlessness along our southern inter-
2 national border is unacceptable, and presents a clear
3 and present danger to the nation.

4 **SEC. 3. DESIGNATED COUNTY LAW ENFORCEMENT ASSIST-**
5 **ANCE PROGRAM.**

6 (a) AUTHORITY AND STATEMENTS OF POLICY.—

7 (1) The Congress recognizes that elected State
8 and local law enforcement officials are directly ac-
9 countable to State and local voters. Therefore, by
10 passage of this Act, Congress reaffirms the residual
11 full sovereign authority of the States to protect the
12 lives, safety, and property of the people within their
13 jurisdiction by preventing and punishing criminal ac-
14 tivity, subject only to judicial enforcement of min-
15 imum Federal standards of due process and equal
16 protection under the 14th Amendment.

17 (2) This Act authorizes the Sheriffs in des-
18 ignated counties adjacent to the southern inter-
19 national border area, who are the highest locally
20 elected law enforcement authority in those areas, to
21 coordinate law enforcement operations in support of
22 personnel of United States Customs and Border
23 Protection and Immigration and Customs Enforce-
24 ment, to conduct law enforcement operations in the
25 interior areas in their counties, including the areas

1 on and adjacent to the international border, to en-
2 sure, as determined by Federal law enforcement offi-
3 cials, that individuals detained or taken into custody
4 by the Sheriff are lawfully present in the United
5 States, and to otherwise authorize Sheriffs to as-
6 sume full and final sovereign authority to enforce
7 criminal laws and to protect the peace, safety, and
8 security of all persons and property in their coun-
9 ties.

10 (3) The Congress finds that the rapidly esca-
11 lating lawlessness on our Nation’s southern inter-
12 national border and interior areas adjacent to the
13 international border, and the inability of Federal of-
14 ficials to control this lawlessness, make the provi-
15 sions of this Act reaffirming full sovereign power to
16 enforce criminal law in State and local officials nec-
17 essary “to execute the Laws of the Union” and “to
18 insure domestic Tranquility, provide for the common
19 defense” and to “promote the general Welfare”.
20 Federal officials are directed to implement, enforce,
21 and carry out vigorously and promptly the intent of
22 Congress as expressed in this Act.

23 (b) ESTABLISHMENT OF PROGRAM.—

24 (1) IN GENERAL.—A Designated County Law
25 Enforcement Assistance program is hereby estab-

1 lished jointly within the Department of Justice and
2 the Department of Homeland Security in order to
3 provide immediate and long term financial assistance
4 and authorization for the law enforcement oper-
5 ations of Sheriffs in counties adjacent to the south-
6 ern international border of the United States.

7 (2) DESIGNATED COUNTIES ADJACENT TO THE
8 SOUTHERN BORDER OF THE UNITED STATES DE-
9 FINED.—In this Act, the term “designated counties
10 adjacent to the southern international border of the
11 United States” includes a county any part of which
12 is within 25 miles of the southern international bor-
13 der of the United States.

14 (c) AUTHORITY.—

15 (1) IN GENERAL.—Any Sheriff or coalition or
16 group of Sheriffs from designated counties adjacent
17 to the southern international border of the United
18 States is authorized to perform the following duties
19 or functions, and shall be promptly paid for the
20 costs of performing such duties or functions by the
21 Attorney General or the Secretary of Homeland Se-
22 curity for any local or State funds previously ex-
23 pended or proposed to be spent by that Sheriff or
24 coalition or group of Sheriffs.

1 (A) To conduct law enforcement operations
2 in the interior areas of their counties on and
3 adjacent to the southern international border of
4 the United States in order to enforce criminal
5 laws, prevent and punish criminal activity, and
6 protect the lives, property, and security of the
7 people within the jurisdiction of the Sheriff.

8 (B) To transfer aliens detained or in the
9 custody of the Sheriff who are not lawfully
10 present in the United States to appropriate
11 Federal law enforcement officials.

12 (C) To enforce State and Federal laws re-
13 lating to controlled substance trafficking and
14 enforce other State and Federal criminal laws
15 (other than Federal immigration laws, except as
16 provided pursuant to a written agreement en-
17 tered into with the Secretary of Homeland Se-
18 curity relating to the investigation, apprehen-
19 sion, or detention of aliens in the United States
20 (including the transportation of such aliens
21 across State lines to detention centers) under
22 section 287(g) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1357(g))) in interior areas
24 of their counties on and adjacent to the south-
25 ern international border of the United States.

1 (2) PAYMENT OF COSTS.—Payment of costs
2 under paragraph (1) shall include payment—

3 (A) for costs of equipping, training, and
4 otherwise controlling the operation and deploy-
5 ment of Sheriffs, deputy Sheriffs, reserve dep-
6 uty Sheriffs, officers, and corrections officers,
7 as well as the costs of paying overtime to such
8 officials engaged in duties relating to activities
9 authorized by this Act or necessary to protect
10 the lives, safety, and property of persons in
11 their counties; and

12 (B) for costs of detaining, housing, and
13 transporting aliens who are not lawfully present
14 in the United States or who have unlawfully en-
15 tered the United States at a location other than
16 a port of entry and who are taken into custody
17 by the Sheriff.

18 (3) LIMITATION TO FUTURE COSTS.—In no
19 case shall payment be made under this section for
20 costs incurred before the date of the enactment of
21 this Act.

22 (4) ADVANCE PAYMENT OF COSTS.—The Attor-
23 ney General shall make an advance payment under
24 this section upon a certification of anticipated costs
25 for which payment may be made under this section,

1 but in no case shall such an advance payment cover
2 a period of costs of longer than 3 months.

3 (d) DESIGNATED COUNTY LAW ENFORCEMENT AC-
4 COUNT.—

5 (1) SEPARATE ACCOUNT.—Reimbursement or
6 pre-payment under subsection (c) shall be made
7 promptly from funds deposited into a separate ac-
8 count in the Treasury of the United States to be en-
9 titled the “Designated County Law Enforcement Ac-
10 count”.

11 (2) AVAILABILITY OF FUNDS.—All deposits into
12 the Designated County Law Enforcement Account
13 shall remain available until expended to the Attorney
14 General to carry out the provisions of this Act.

15 (3) PROMPTLY DEFINED.—For purposes of this
16 Act, the term “promptly” means within 60 days.

17 (e) FUNDS FOR THE DESIGNATED COUNTY LAW EN-
18 FORCEMENT ACCOUNT.—Only funds designated, author-
19 ized, or appropriated by Congress may be deposited or
20 transferred to the Designated County Law Enforcement
21 Account. The Designated County Law Enforcement Ac-
22 count is authorized to receive up to \$100 million per year.

23 (f) USE OF FUNDS.—

24 (1) IN GENERAL.—Funds provided under this
25 section shall be payable directly to participating

1 Sheriff's offices and may be used for the duties and
2 functions described in subsection (c)(1), including
3 the costs of personnel (such as overtime pay and
4 costs for reserve deputies), costs of training of such
5 personnel, equipment, and, subject to paragraph (2),
6 the construction, maintenance, and operation of de-
7 tention facilities to detain aliens who are unlawfully
8 present in the United States. For purposes of this
9 Act, an alien who is unlawfully present in the United
10 States shall be deemed to be a Federal prisoner be-
11 ginning upon determination by Federal law enforce-
12 ment officials that such alien is unlawfully present
13 in the United States, and such alien shall, upon such
14 determination, be deemed to be in Federal custody.
15 In order for costs to be eligible for payment, the
16 Sheriff making such application shall personally cer-
17 tify under oath that all costs submitted in the appli-
18 cation for reimbursement or advance payment meet
19 the requirements of this section and are reasonable
20 and necessary, and such certification shall be subject
21 to all State and Federal laws governing statements
22 made under oath, including the penalties of perjury,
23 removal from office, and prosecution under State
24 and Federal law.

1 (2) LIMITATION.—Not more than 20 percent of
2 the amount of funds provided under this section may
3 be used for the construction or renovation of deten-
4 tion or similar facilities.

5 (g) DISPOSITION AND DELIVERY OF DETAINED
6 ALIENS.—All aliens detained or taken into custody by a
7 Sheriff under this Act and with respect to whom Federal
8 law enforcement officials determine are unlawfully present
9 in the United States, shall be immediately delivered to
10 Federal law enforcement officials. In accordance with sub-
11 section (f)(1), an alien who is in the custody of a Sheriff
12 shall be deemed to be a Federal prisoner and in Federal
13 custody.

14 **SEC. 4. REGULATIONS; EFFECTIVE DATE; AUDIT; SUPPLE-**
15 **MENTAL FUNDING.**

16 (a) REGULATIONS.—The Attorney General and the
17 Secretary of Homeland Security shall jointly issue, on an
18 interim final basis, regulations not later than 60 days
19 after the date of the enactment of this Act—

20 (1) governing the distribution of funds under
21 this Act for all reasonable and necessary costs and
22 other expenses incurred or proposed to be incurred
23 by a Sheriff or coalition or group of Sheriffs under
24 this Act; and

1 (2) providing uniform standards that all other
2 Federal law enforcement officials shall follow to co-
3 operate with such Sheriffs and to otherwise imple-
4 ment the requirements of this Act.

5 (b) EFFECTIVE DATE.—The provisions of this Act
6 shall take effect on its enactment. The promulgation of
7 any regulations under subsection (a) is not a necessary
8 precondition to the immediate deployment or work of
9 Sheriffs personnel or corrections officers as authorized by
10 this Act. Any reasonable and necessary expenses or costs
11 authorized by this Act and incurred by such Sheriffs after
12 the date of the enactment of this Act but prior to the date
13 of the promulgation of such regulations are eligible for re-
14 imbursement under the terms and conditions of this Act.

15 (c) AUDIT.—All funds paid out under this Act are
16 subject to audit by the Inspector General of the Depart-
17 ment of Justice and abuse or misuse of such funds shall
18 be vigorously investigated and prosecuted to the full extent
19 of Federal law.

20 (d) SUPPLEMENTAL FUNDING.—All funds paid out
21 under this Act must supplement, and may not supplant,
22 State or local funds used for the same or similar purposes.

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