

Fiscal Note

Bill # HCR 2060

TITLE: ~~lawful presence; e-verify program; penalties NOW:~~ border; benefits; fentanyl; illegal entry

SPONSOR: Toma

STATUS: Senate Engrossed

PREPARED BY: Mitch Wenzel

Description

If approved by voters in the 2024 General Election, HCR 2060 would do the following:

- Establishes new state misdemeanor and felony crimes associated with international border crossings not at official ports of entry;
- Permits a judge to issue an Order for Return for individuals in Arizona without lawful presence;
- Requires state or local law enforcement to transport individuals charged or convicted of illegal entry to a port of entry if ordered;
- Gives immunity to any state or local government entity, official, or employee from civil liability for damages arising from enforcing laws related to illegal entry or orders to return to foreign nation;
- Requires the Arizona Department of Corrections (ADC) to accept individuals arrested or convicted of illegal entry if the local law enforcement agency where the individual is charged lacks capacity;
- Makes it a felony for any persons who are not lawfully present in the United States to submit false documents to qualify for public benefits;
- Requires agencies administering public benefits to utilize the Systematic Alien Verification for Entitlements Program (SAVE);
- Makes it a crime for persons who are not lawfully present in the United States to submit false documents to an employer to evade detection of employment eligibility under the E-Verify program;
- Establishes a felony charge and enhanced sentencing requirements for the sale of fentanyl if the fentanyl causes the death of another person.

Estimated Impact

We anticipate that the resolution would result in different fiscal impacts:

- State and local law enforcement spending would increase in terms of costs associated with arrest, prosecution, and incarceration.
- State and local public benefit and education spending could decline, but state and local governments could incur higher administrative costs.
- Reduced levels of immigration would reduce state and local tax collections.

The magnitude of the impacts would depend on 1) how many individuals are detained under the resolution and 2) how the resolution would affect the number of individuals in Arizona without lawful presence. Based on our research, we have not identified reliable estimates of either of these factors. Given the lack of definitive data, any projections should be viewed with skepticism.

If approved by the voters, the timing of impacts is uncertain as the state border crime component of the resolution would become effective after Texas's SB 4 or similar legislation from another state is legally enforceable for 60 consecutive days.

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The JLBC's counterpart in Texas, the Legislative Budget Board (LBB) staff, prepared a fiscal note on SB 4. LBB's findings are similar to our own. They concluded that "the fiscal implications of the bill cannot be determined due to a lack of data to estimate the prevalence of conduct outlined in the bill's provisions that would be subject to criminal penalties."

Analysis

State and Local Law Enforcement Impacts

The resolution's list of revised criminal penalties and new criminal penalties would result in additional state and local law enforcement costs. The penalties are as follows:

- Submitting false documents to a state or local agency that administers public benefits – class 6 felony (minimum 6 months, maximum 1.5 years);
- Submitting false documents to an employer under the E-Verify program – class 1 misdemeanor for the 1st offense (maximum 6 months); class 6 felony for 2nd and subsequent offenses (minimum 6 months, maximum 1.5 years)
- Selling lethal fentanyl – class 2 felony (minimum 9 years, maximum 15 years);
- Crossing the international border except at official ports of entry – class 1 misdemeanor for the 1st offense (maximum 6 months); class 6 felony for the 2nd and subsequent offenses (minimum 6 months, maximum 1.5 year).
- Refusing to comply with order to return to a foreign nation – class 4 felony (minimum 1.5 years, maximum 3 years);

The Department of Public Safety (DPS) has attempted to quantify potential increase in the number of arrests associated with border crossings. DPS estimates that they "contacted" 1,800 persons without lawful presence in calendar year 2023. Given that DPS represents 8% of all certified peace officers in the state, the department assumes 22,800 individuals would be contacted by law enforcement statewide.

The new crime of crossing the border outside of ports of entry, however, requires that law enforcement either observe the crossing, have video evidence of the crossing, or any other constitutionally sufficient indicia of probable cause. DPS' "contacts" would appear to cover more circumstances than border crossings. But the DPS estimates would understate the number of potential "HCR 2060" arrests by excluding the new crimes relating to either false documents or fentanyl sales.

To determine the maximum number of potential new arrests associated with border crossings, we would need information on how many individuals enter Arizona from Mexico without being apprehended. We cannot know that figure since no arrest was made.

Apprehension

Based on their 1,800 contacts, DPS estimates their annual costs under HCR 2060 at \$3.8 million. DPS further extrapolated their experience to an overall state and local total apprehension cost of \$41 million.

The annual DPS cost of \$3.8 million consists of three components:

- 1) The department estimates \$1.4 million in arrest and processing costs based on an average of 3.5 hours of personnel costs per unauthorized person that is contacted. DPS states this estimate accounts for equipment, support, and supervision costs.
- 2) The department also estimates \$1.9 million in transportation costs to return individuals to the nearest port of entry with Mexico.
- 3) DPS estimates \$0.5 million to conduct criminal history record checks for each individual that is arrested, which includes fingerprinting, taking biometric measures, and receiving a criminal history check. This cost assumes the department will need to check the records of all 22,800 unauthorized persons statewide, as the department currently conducts such activities for all arrestees on behalf of the state.

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Local Prosecution

The resolution would result in added workload for local public attorneys and public defenders related to the prosecution of HCR 2060 crimes. The Arizona County Supervisors Association (CSA) noted that there could be costs for judicial proceedings, including an increase of demand for interpreter services for non-English speaking individuals, transportation of detainees to and from court hearings, and courtroom maintenance (e.g., security, utilities, maintenance). CSA did not quantify this potential impact. In addition, we contacted the Administrative Office of the Courts and they were not able to provide an estimated fiscal impact.

Incarceration

The new criminal offenses will eventually lead to higher incarceration costs at the Arizona Department of Corrections (ADC) and at the county level. If local governments do not have available beds for individuals arrested or detained, the resolution requires ADC to accept these persons in their facilities.

If the resolution were approved and became effective in the next 6 months, ADC estimates its cost to be \$16.6 million in FY 2025. They estimate their costs to grow to \$178.0 million in FY 2029.

ADC's estimate assumes a population increase 1,823, consistent with the number of annual DPS encounters with individuals without legal status. ADC reports that this population increase will exceed their current capacity by the end of FY 2027 and require the department to seek additional beds. The cost of these additional beds is not included in ADC's cost estimate.

ADC's cost estimate has several challenges. First, the ADC estimate is based on the DPS contact data that is not necessarily a good proxy for the number of individuals arrested and detained under HCR 2060. Second, apprehended individuals may choose to return to their home country rather than be jailed or imprisoned in this country. Third, the ADC estimate appears to assume the population increase will compound each year, suggesting that individuals would spend more than a year in ADC custody. The resolution, however, would make illegal entry a class 1 misdemeanor for the first offense, punishable by a maximum of 6 months. Fourth, the ADC estimate does not appear to address the issue of counties referring individuals to ADC facilities if there is insufficient capacity in their own jails.

State and Local Public Benefit and Education Spending

Public Benefits Administrative Costs

State and local public benefit agencies would be required to use the federal SAVE system to verify eligibility for their programs. The program is administered by the U.S Citizenship and Immigration Services and state and local agencies would have to pay a fee for each SAVE verification case. In federal fiscal year (FFY) 2024, the non-federal agency user fee is \$1.00 per case and will incrementally increase to \$3.10 in FFY 2028. Additionally, SAVE charges a minimum monthly service charge of \$25 per month in which a user agency submits at least one initial verification request.

Statute defines public benefits as any welfare, health, disability, public or assisted housing, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or eligible family by an agency of a State or local government. At the state level, the following type of state benefit programs would be subject to the resolution's SAVE requirements: the state's Medicaid programs in Arizona Health Care Cost Containment System (AHCCCS) and the Department of Economic Security (DES), the Department of Health Services (DHS), the Unemployment Insurance (UI) program, and certain Department of Health Services and Arizona Department of Housing programs.

At the state level, AHCCCS and DES currently process applicants through the SAVE program for the purposes of enrolling applicants in public welfare programs. We are not aware of an estimate of the number of SAVE verifications that other state agencies would need to conduct.

Counties currently do not utilize the SAVE Program for administering public benefits which would likely increase administrative expenses for training personnel, updating systems, and potentially hiring additional staff to manage the verification process. CSA did not provide an estimate of the counties' costs for SAVE verifications.

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Public Benefit and K-12 Spending

To the extent that the resolution reduces the number of individuals without lawful presence in the state, there may be less demand for participation in state and local programs. We do not expect AHCCCS or DES Medicaid caseload reductions as they already use SAVE. Many other public benefit programs are not necessarily entitlement programs. As a result, lower program participation would not automatically translate into program savings since spending would not automatically decline.

Arizona public schools are required to enroll children regardless of immigration status. The Arizona Department of Education's K-12 Basic State Aid entitlement formula is based on school enrollment. If the resolution reduces the level of immigration, K-12 enrollment could decline which would reduce General Fund basic state aid payments.

State and Local Tax Collections

Reduced immigration levels could also reduce state and local tax collections. The most direct impact would be lower transaction privilege tax (TPT) collections at the state and local level. Individuals without lawful presence may also pay income tax withholding in some circumstances.

Other Estimates

The Grand Canyon Institute (GCI)

GCI reported the resolution may cost a total of \$325 million per year for state-level border enforcement and incarceration costs. Of that total, GCI estimates the border enforcement cost to be \$185 million. Their methodology was to prorate Texas' total border enforcement expenditures of \$825 million for the FY 2021-2023 Biennial Budget to Arizona's shorter border for a single year. We would need additional information before commenting on how Texas' entire border enforcement budget can be compared to the incremental costs associated with HCR 2060.

The remaining \$140 million for Arizona incarceration costs is associated with the E-Verify prosecutions. Under current law, individuals are not prosecuted for submitting false documents to the E-Verify system, but HCR 2060 would permit such prosecutions. GCI assumes that the E-Verify provision could result in as many as 9,000 potential convictions at an average daily per capita incarceration cost of \$85. The 9,000 estimate is based on E-Verify's current non-verification rate of 1% of total submissions. However, neither current law nor the resolution would require employers to report non-confirmations under the E-Verify system to law enforcement.

The resolution also allows judges to dismiss pending charges and order the individual to return to the foreign nation from which the person entered or attempted to enter the United States. This may potentially lower the amount of individuals incarcerated and decrease the cost estimate.

The Federation for American Immigration Reform (FAIR)

A 2023 report and supporting material by FAIR estimated that there are 610,000 individuals in Arizona without lawful presence. FAIR estimates that they cost the state \$3.2 billion annually. The 610,000 figure includes unaccompanied immigrant minors, temporary protected status recipients, and DACA beneficiaries. In terms of the 610,000 population, FAIR estimates that Arizona spends \$1.36 billion for their education, \$631.3 million for their justice-related and incarceration and the remaining \$1.2 billion for other programs such as healthcare and public assistance. We are not aware of how FAIR derived the Arizona-specific estimates since the report only provides information on the nationwide methodology and not the state's portion. We do not have information on how HCR 2060 would affect the magnitude of the FAIR expenditure estimates.

Local Government Impact

These impacts are addressed throughout the Analysis section above.