

Q&A GUIDE TO STATE IMMIGRATION LAWS

WHAT YOU NEED TO KNOW IF YOUR STATE IS CONSIDERING
ARIZONA SB1070-TYPE LEGISLATION

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The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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WHY DO I NEED THIS GUIDE?

In April 2010, Arizona governor Jan Brewer signed the Support Our Law Enforcement and Safe Neighborhoods Act, a tough new immigration law widely known as SB1070. One year after passage of the law, both opponents and proponents are still attempting to assess its impact on the residents of Arizona—native-born U.S. citizens and immigrants alike. Furthermore, despite criticism of SB1070 from Republicans, Democrats, police officials, [religious leaders](#), and civil-rights leaders, legislators in many states have introduced or are considering introducing [similar legislation](#).¹

While Congress has repeatedly struggled with and failed to pass comprehensive immigration reform, state and local governments have increasingly responded with immigration measures of their own. According to the Immigration Policy Project of the [National Conference of State Legislators \(NCSL\)](#), in 2005 state legislators introduced approximately 300 immigration-related bills, of which about 50 became law. In 2006, 500 bills were considered, and 84 became law. In 2007, 1,562 bills were introduced, and 240 became law. By 2009, 1,500 bills were introduced in 46 states, and 333 became law. In 2010, state legislators in 47 states enacted 346 immigration-related laws and resolutions, 13 more than in 2009.² While many of these laws sought to deter illegal immigration by targeting unauthorized immigrants, a significant percentage were positive, providing additional support for English-language learning and integration efforts, or urging Congress to pass comprehensive immigration reform. However, passage of SB1070 and the immediate popularity of copycat legislation are both likely to increase the pressure on legislators to support restrictionist measures in 2011.

SB1070 and other immigration-related state legislation represent, among other things, a growing frustration with our broken immigration system. The courts will decide the constitutionality of the various laws, and time will answer many questions about their impact. In the short term, there is plenty of evidence to suggest that the enforcement-only strategy which SB1070 and other copycat laws adopt—whether attempted at the federal or state level—does not solve the immigration problem.

This guide provides key answers to basic questions about state immigration-related laws—from the substance of the legislation and myths surrounding the debate to the legal and fiscal implications. As other states contemplate legislation similar to SB1070, knowing the answers to these basic questions is critically important in furthering a rational discussion.

WHAT IS SB1070?

SB1070 declares that “the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona.” In other words, the provisions of the bill are designed to eliminate illegal immigration in the state through the use of state and local law-enforcement actions. “Attrition through enforcement” has been promoted by restrictionist groups like the Center for Immigration Studies and the Immigration Reform Law Institute ([credited with drafting the bill](#)) as a way to oppose comprehensive immigration reform. These groups are central to similar state and local anti-immigration efforts around the country.

As passed, SB1070:

- Explicitly requires state and local law-enforcement officials to inquire about immigration status during any lawful stop, detention, or arrest.
- Makes it a misdemeanor to fail to carry proper immigration documents with a maximum fine of \$100 and up to 20 days in jail for the first violation and up to 30 days in jail for a subsequent violation.
- Makes it illegal for unauthorized immigrants to solicit work in any public space.
- Authorizes local police to make an arrest without a warrant of any person they believe is “removable from the United States.”
- Makes it a misdemeanor to attempt to hire day laborers if the driver is impeding the normal flow of traffic.
- Makes it illegal for a worker to get into a car if it is impeding traffic.
- Makes it unlawful for any person to transport, move, conceal, harbor, or shield from detection any unauthorized immigrant if the person knows or recklessly disregards the fact that the immigrant is in the U.S. illegally.
- Mandates the impoundment of any vehicle used to transport, move, conceal, harbor, or shield an unauthorized immigrant.
- Allows officers to detain a person to make inquiries into immigration status if the person cannot produce valid documents.
- Mandates that an officer may not release someone from custody until immigration status has been verified.
- Prohibits cities, towns, and counties from having any policy in place that limits the investigation of violations of federal immigration laws. Many localities have “community policing policies” that enhance trust and cooperation between police

and immigrant communities by not asking people who have not been arrested, including victims and witnesses to crimes, for their documents.

- Allows private citizens to sue state law-enforcement agencies if the private citizens believe law enforcement is not enforcing federal immigration laws to their liking.

Q: What is the current status of the law?

A: On July 28, 2010, the day before SB1070 was scheduled to go into effect, a federal district court issued a preliminary injunction. On April 11, 2011, the U.S. Court of Appeals for the Ninth Circuit [upheld the preliminary injunction](#) stopping the enforcement of the following four provisions of SB1070:

- Explicitly requiring state and local law-enforcement officials to inquire about immigration status during any lawful stop, detention, or arrest.
- Making it a misdemeanor to fail to carry proper immigration documents with a maximum fine of \$100 and up to 20 days in jail for the first violation and up to 30 days in jail for a subsequent violation.
- Making it illegal for unauthorized immigrants to solicit work in any public space.
- Authorizing local police to make an arrest without a warrant of any person they believe is “removable from the United States.”

Q: What are the next steps?

A: Backers of SB1070 have [already vowed](#) to take the case to the Supreme Court. However, because one judge dissented from the Ninth Circuit’s ruling, Arizona almost certainly will ask for the case to first be reargued before a larger panel of Ninth Circuit judges. If that request fails, and if the Supreme Court declines to step in, the case will be returned to the trial judge in Phoenix to determine whether the temporary injunction should become permanent.

FOR MORE INFORMATION, SEE IPC’S [Q&A GUIDE TO ARIZONA’S NEW IMMIGRATION LAW](#) AND OUR [RESOURCE PAGE](#), WHICH INCLUDES ADDITIONAL INFORMATION AND MATERIALS ABOUT SB1070.

DEBUNKING THE MYTHS BEHIND STATE IMMIGRATION LAWS

THE RELATIONSHIP BETWEEN STATE LAWS AND FEDERAL LAWS

Q: Don't these laws simply mirror federal law?

A: Laws such as SB1070 go well beyond federal law, copying the words of certain immigration statutes, but imposing new and often more severe penalties than the federal law. This creates difficult and complex jurisdictional issues, as the federal government has been given the exclusive power to regulate immigration law, especially civil immigration law. Thus, even if local police arrest every unauthorized person in the state, it is still up to the federal government to ultimately charge them, put them in immigration proceedings, and if necessary, deport them. In other words, laws that create new state crimes only mirror federal law in their language, not in their effect. Even federal-state partnerships, such as 287(g) agreements, only give trained law-enforcement officers the authority to assist in enforcing federal civil immigration law—carrying out the consequences (penalties, relief, removal) remains a federal responsibility. Thus, the Arizona law heaps new punishments on people without actually solving the underlying immigration issue; what one immigration law expert has called using an “[iron fist](#)” toward immigrants in order to force the federal government to deport people.³

In the order enjoining various provisions of SB1070, the federal district court stated that “Congress has created and refined a complex and detailed statutory framework regulating immigration.”⁴ Instead of simply mirroring federal law, the judge found that SB1070 “will divert resources from the federal government’s other responsibilities and priorities.”⁵

The Ninth Circuit Court of Appeals [agreed](#), stating that “Congress has created a comprehensive and carefully calibrated scheme—and has authorized the Executive to promulgate extensive regulations—for adjudicating and enforcing civil removability.” The court elaborated, saying that “we are simply not persuaded that Arizona has the authority to unilaterally transform state and local law enforcement officers into a state-controlled DHS force to carry out its declared policy of attrition.”⁶

Furthermore, the Ninth Circuit stated that SB1070 would have undermined the central role of the federal government in immigration enforcement:

The law subverts Congress’ intent that systematic state immigration enforcement will occur under the direction and close supervision of the [executive branch]...the mandatory nature of Section 2(B)’s immigration status checks is inconsistent with the discretion Congress vested in the [executive branch] to supervise and direct State officers in their immigration work according to federally-determined priorities.⁷

Q: But if you don't have papers, you are probably here illegally and the federal government is going to want to deport you anyway, so what's the harm?

A: The law opens the door to intrusive questioning of anyone if there is a suspicion that the individual may be here illegally. Most U.S. citizens do not carry their passports, and the lack of such documentation could subject people to lengthy questioning, and possibly arrest or detention, if they cannot persuade an officer that they are in the U.S. legally. In particular, critics fear that persons who are Hispanic or dark-skinned, who have accents, or otherwise appear "different" are more likely to face racial profiling given the demographics of illegal immigration.

Determining whether or not someone is in the country unlawfully is not as simple as checking a database. Under the civil immigration system, most people are entitled to appear before an immigration judge before they are officially determined to be here illegally and in the process they have the right to challenge that determination, apply for relief from removal (such as asylum), and have their day in court. SB1070-type laws circumvent that process, potentially punishing people for being here illegally based solely on the determination of a state law-enforcement officer or a federal agency before a full determination has been made.

The federal district court agreed, finding that SB1070 "imposes an unacceptable burden on lawfully-present aliens":

Legal residents will certainly be swept up by [the provision requiring that you carry your papers], particularly when the impacts of the provisions pressuring law enforcement agencies to enforce immigration laws are considered. Certain categories of people with transitional status and foreign visitors from countries that are part of the Visa Waiver Program will not have readily available documentation of their authorization to remain in the United States, thus potentially subjecting them to arrest or detention.⁸

IMMIGRANTS AND CRIME

Q: Don't illegal immigrants cause crime?

A: Unauthorized immigration is not associated with higher crime rates.

- Although the unauthorized immigrant population roughly *tripled* in size to more than 11 million from 1990 to 2008, [data](#) from the Bureau of Justice Statistics indicates that the violent crime rate in the United States *declined* by 37.7 percent during this time and the property crime rate fell by 36.7 percent.⁹

- The decline in crime rates was not just national, but also occurred in border cities and other cities with large immigrant populations such as San Diego, El Paso, Los Angeles, New York, Chicago, and Miami.¹⁰

Q: But surely there is a rise in border crime related to illegal immigration?

A: Border cities are not necessarily prone to higher crime due simply to their location. As a [story](#) in *Reason Magazine* describes, El Paso, Texas—which is a relatively poor and heavily Latino city that is home to many unauthorized immigrants—is among the safest big cities in the United States, even though it is next door to the violence-ridden Mexican city of Ciudad Juarez.¹¹

ENFORCEMENT-ONLY LAWS AND COMMUNITY SAFETY

Q: Won't strong state immigration enforcement make American communities safer and help police catch serious criminals?

A: No, because immigrants are not responsible for high crime rates. In fact, laws like SB1070 could make communities less safe because immigrants—legal and unauthorized—will be fearful of reporting crimes to the police or coming forward as victims or witnesses. When immigrants fear that the police will arrest them or their family members for immigration violations, the trust between the police and the community is eroded, and community policing is more difficult. This makes entire communities less safe.

Moreover, judging from the example of Maricopa County under Sheriff Joe Arpaio, SB1070-like laws can divert law-enforcement resources away from investigating and solving more serious crimes.

- The [East Valley Tribune](#) found that, as Sheriff Arpaio has diverted his department's resources to immigration enforcement, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.¹²
- Despite the time and energy spent on immigration enforcement, the [East Valley Tribune](#) found that Sheriff Arpaio has had little success in building cases against violent immigrant offenders or those at the top of smuggling rings.¹³
- In 2006-2007, Maricopa County sheriff's deputies arrested 578 illegal immigrants in the course of traffic stops, and—of those—498 faced a single charge of conspiracy to smuggle themselves.¹⁴

Q: Are new laws needed to give police the authority to arrest immigrants?

A: No. The police have always had the authority to arrest immigrants for crimes they commit. If a police officer sees an immigrant commit a crime (such as theft or murder)

or suspects that an immigrant has committed a crime, that police officer can arrest that immigrant for that crime. When expressly permitted by federal statute, local police may, under specified circumstances, arrest noncitizens for criminal violations of the immigration laws, such as reentering the United States after previously being deported. Furthermore, the police have always had the ability to contact ICE and inquire about an arrestee's immigration status, and many prisons and jails have an ICE presence so that immigrants can be identified and placed into removal proceedings.

However, state and local police have been limited in their authority to enforce civil violations of immigration law, such as working without authorization or failing to carry documents. There are special programs that police can already use to get additional authority; for example police may enter into 287(g) agreements with ICE, which gives them the authority to enforce civil violations of immigration laws.

Q: Do law-enforcement officials support laws like SB1070?

A: According to police officials, laws like Arizona's will make it more difficult for police officers to do their jobs.

Many top law-enforcement officials have opposed SB1070, including the Arizona Association of Chiefs of Police. They say that the law will harm their ability to protect the community and alienate police officers from the communities they serve. The law will also force police officers to devote scarce resources to investigating immigrants' status rather than solving serious crimes.

➤ **Arizona Association of Chiefs of Police (AACOP)**

"The provisions of the bill remain problematic and will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner. While AACOP recognizes immigration as a significant issue in Arizona, we remain strong in our belief that it is an issue most appropriately addressed at the federal level."¹⁵

➤ **Sheriff Clarence Dupnik, Pima County, AZ**

"...in the past few weeks Arizona became a model for the rest of the country of what not to do. I have an enormous amount of respect for the men and women of my department... But no one can tell them what an illegal immigrant looks like and when it is ok to begin questioning a person along those lines. This law puts them in a no-win situation: They will be forced to offend and anger someone who is perhaps a citizen or here legally when they ask to see his papers—or be accused of nonfeasance because they do not. Law enforcement did not ask for and does not need this new tool. What we do need is assistance from the federal government in the form of effective strategies to secure the border. Additionally, the federal government must take up this issue in the form of comprehensive immigration reform policy."¹⁶

- **Chief Robert Davis, San Jose, CA, president of the Major Cities Chiefs Association** “[Regarding the Arizona legislation, the Major Cities Chiefs Association stands by its policy that] immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities.”¹⁷
- **Sergeant Brian Soller, Mesa, AZ; President, Mesa Lodge, Fraternal Order of Police** “If we’re getting hammered with calls, is a misdemeanor [trespassing by an illegal immigrant] more important than a stabbing or shooting? No. The problem with this law is that it’s an unfunded mandate and could eat up a lot of manpower and cost a lot of money.”¹⁸

Q: What impact could SB1070-like legislation have on federal immigration enforcement resources?

A: These laws could [jeopardize the federal government’s ability](#) to set priorities for federal immigration enforcement and could divert scarce federal resources away from finding dangerous criminals throughout the United States, focusing instead on detaining and deporting non-violent immigrants from those states that pass legislation.

SB1070-like laws put a tremendous strain on ICE’s resources and reduce their effectiveness in enforcing immigration laws. One result of such laws is to inundate DHS with requests to determine the immigration status of individuals police have arrested for suspicion of being unlawfully present. If ICE determines that the individual is indeed unlawfully present, ICE would be expected to take custody of him/her and place him/her in deportation proceedings. In other words, individual states would supply ICE with a huge number of people to deal with—most of them charged with or convicted of very minor offenses. While proponents of the law would say that this is the very purpose of the law, it actually strains ICE’s resources and harms their ability to target noncitizens who pose a terrorist threat or a threat to the community.

THE FINANCIAL COST OF SB1070-LIKE STATE IMMIGRATION LAWS

Q: What will it cost states to implement an Arizona-type law?

A: Implementation of SB1070-like laws will be very expensive at a time when all states are already struggling financially. Based on Arizona’s experience, we can begin to estimate the costs to the states.

- While there was no fiscal analysis on how much SB1070 would cost Arizona, a [fact sheet](#) produced by Yuma County Sheriff Ralph E. Ogden in response to similar legislation proposed in 2006 provides some quantifiable data.¹⁹ Yuma County is one of Arizona’s 15 counties, with a population of about 200,000. The 2006 fact sheet estimates the costs of a similar [bill](#) which would have authorized the police to arrest unauthorized immigrants on trespassing charges if they were simply present in the state. It shows a staggering potential cost to Yuma County law-enforcement

agencies from the moment of arrest to the point of conviction, sentencing, and incarceration.²⁰

➤ The Sheriff estimated that:

- Law-enforcement agencies would spend between \$775,880 and \$1,163,820 in processing expenses;
- Jail costs would be between \$21,195,600 and \$96,086,720;
- Attorney and staff fees would be \$810,067-\$1,620,134;
- Additional detention facilities would have to be built at unknown costs.
- In addition, the Superior Court, Justice Courts, Juvenile Courts, and Municipal Courts would realize increased costs for additional court staff, interpreters, administrative staff, and pre-trial services.²¹
- Multiplying this among all 15 counties means the costs of implementing SB1070 could rise into the hundreds of millions of dollars for the state.

Q: What other costs could states incur?

A: States could experience a major blow to tourism and conventions. After Arizona passed SB1070, major groups and associations cancelled events and conventions in the state. A report by the [Center for American Progress](#) (CAP) estimates that Arizona will lose \$45 million in lodging revenue alone. When losses to food and beverage, entertainment, in-town transportation, and retail sales are included, the estimated combined loss of conference attendee spending rises to \$141 million.²² Arizona was eventually forced to spend \$250,000 for a marketing campaign to help improve its image after SB1070 was enacted.²³

Many states that considered SB1070-type laws in early 2010 backed off once they received cost estimates for such legislation.²⁴ In Indiana, state police said they would have to spend \$5 million to train for and enforce the law.²⁵ Similar estimates were given in Tennessee, where the General Assembly Fiscal Review Committee found that it would increase expenditures by \$3 million for the first year and \$1.8 million every year after that.²⁶ Perhaps most telling was Kentucky, where a copycat bill died after an estimate showed it would cost the state \$89 million per year to enforce.²⁷

- A 2011 [report](#) by Dr. Raul Hinojosa-Ojeda and Marshall Fitz found that deporting all of the unauthorized immigrants in Arizona would decrease total employment by 17.2 percent, eliminate 581,000 jobs for immigrants and native-born workers alike, shrink the state economy by \$48.8 billion, and reduce state tax revenues by 10.1 percent.²⁸
- A report by veteran journalist Jeffrey Kaye found a [state of confusion](#) among law enforcement as to how SB1070 would be implemented. Kaye detailed divisions among law-enforcement officials—both in how to train law-enforcement officers,

how to enforce and implement the law, and conflicts as to whether the law is an efficient way to protect Arizona.

- A [study released](#) in July 2007 by the University of Arizona's Udall Center for Studies in Public Policy concluded that economic output would drop annually by at least \$29 billion, or 8.2 percent, if all non-citizens, which include unauthorized workers, were removed from Arizona's workforce. About 14 percent of the state's 2.6 million workers are foreign-born, and about two-thirds to three-fourths of non-citizens are unauthorized.²⁹

Q: How much will the litigation cost?

- In Arizona, [seven lawsuits](#) were filed to stop implementation of SB1070, and other states are likely to see numerous lawsuits against similar legislation. At the end of February 2011, Arizona had [already spent](#) more than \$1.5 million defending SB1070.³⁰ Other states and localities that passed anti-immigrant legislation and ordinances in the past have been caught up in costly litigation to defend their laws. For example:
 - **Fremont, Nebraska** recently passed a ban on hiring or renting property to unauthorized immigrants, yet is having trouble implementing the law because of litigation costs. Officials estimated that defending the law would cost the state an average of \$1 million per year in legal fees, and as a result, Fremont taxpayers could face a potential 18 percent increase in property taxes.³¹
 - **Farmers Branch, Texas** has already spent about \$3.2 million to defend itself since September 2006, when it launched the first of three ordinances. The city has budgeted \$623,000 for legal expenses through the rest of the fiscal year related to the ordinance defense. Legal costs could exceed \$5 million by the end of the fiscal year.³²
 - **Hazleton, Pennsylvania's** insurance carrier [is asking](#) a federal judge to rule that it is not responsible for nearly \$2.4 million in attorney fees being sought by the plaintiffs who successfully challenged the city's Illegal Immigration Relief Act.³³
 - **Riverside, New Jersey** rescinded an ordinance that penalized renting to or employing unauthorized immigrants after the town of 8,000 accumulated \$82,000 in legal fees.³⁴

IS COPYCAT LEGISLATION NEEDED?

Q: Isn't it time for states to take matters into their own hands?

A: *No.* While people are understandably frustrated over the failure of the federal government to fix our broken immigration system, creating a patchwork of potentially unconstitutional, costly, and confusing laws is not an answer. A poll conducted by [Politico](#) shows that people don't necessarily want states to jump into the fray as much as they want solutions. While 23% of respondents supported states taking action, 61% supported passing comprehensive immigration reform through Congress.³⁵ A [CNN poll](#) showed that while 55% of Americans favor SB1070, an astounding 81% supported a plan that would legalize unauthorized immigrants if they had a job and paid back taxes.³⁶

Q: But the federal government hasn't done anything, has it?

A: For more than two decades, the U.S. government has tried without success to stamp out unauthorized immigration through enforcement efforts at the border and in the interior of the country without fundamentally reforming the broken immigration system that spurs unauthorized immigration in the first place. Ironically, while billions upon billions of dollars have been poured into enforcement, the number of unauthorized immigrants in the United States has increased dramatically.

- On August 13, 2010, President Obama signed into law a \$600 million bill focused on border security. The bill provides \$175.9 million for additional Border Patrol agents, \$50 million for additional ICE agents, \$14 million for additional border fencing, \$32 million for unmanned aerial vehicles on the border, and \$30 million for law-enforcement activities targeted at reducing violence along the southwest border.³⁷
- The annual budget of the U.S. Border Patrol stood at \$3.0 billion in Fiscal Year (FY) 2009—a nine-fold increase since FY 1992. The number of Border Patrol agents stationed along the southwest border with Mexico grew to 16,974 in FY 2009—a nearly five-fold increase since FY 1992.
- Yet the unauthorized-immigrant population of the United States has tripled in size, from roughly 3.5 million in 1990 to 11.9 million in 2008.

Q: What is the solution?

A: If we want to avoid creating a patchwork of potentially unconstitutional laws that attempt to regulate national immigration policy state-by-state, then we must fix our broken immigration system. States are legitimately frustrated, but a patchwork of enforcement-only laws fails to provide a solution. The [problems](#) are complex, but there are [real solutions](#). It is time for Congress and the President to propose comprehensive solutions that recognize the complexity and balance needed for an orderly and fair immigration system. A comprehensive approach to immigration reform recognizes that

illegal immigration will never be stopped solely by building fences and putting the National Guard on the border. It requires addressing the reasons people come to the U.S.—to work, to be with family, to build a new life—by ensuring that we have a legal immigration system that meets the demands of our economy and our families; that requires people who are here without authorization to register, pay taxes, and learn English; and that uses smart workplace, border, and interior-enforcement strategies to enforce our laws.

Endnotes

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