

SENATE BILL NO. 389
INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PEACE OFFICER MAY ENFORCE THE PROVISIONS OF FEDERAL CRIMINAL IMMIGRATION LAW."

WHEREAS, there are an estimated 8 million to 10 million illegal aliens in the United States who have violated federal civil or criminal immigration laws by acts such as entering the United States illegally or remaining in the United States in violation of the terms of their visa; and

WHEREAS, there are approximately 450,000 "alien absconders" in the United States, these being individuals who have had their day in immigration court and have been ordered by the federal government to leave the United States but have ignored the order to leave; and

WHEREAS, U.S. Immigration and Customs Enforcement of the U.S. Department of Homeland Security has only approximately 2,000 interior enforcement agents in the United States whose duty it is to enforce U.S. immigration laws other than at the U.S. borders, meaning that the ratio of illegal aliens to interior enforcement agents is 5,000 to 1; and

WHEREAS, there are approximately 800,000 state and local law enforcement officers in the United States who, if they were to assist in the enforcement of U.S. immigration laws, would be a force multiplier for the enforcement of those laws; and

WHEREAS, the Ninth Circuit U.S. Court of Appeals held, in *Gonzales v. Peoria*, 722 F.2d 468 (1983), that state and local law enforcement officers may arrest violators of the federal Immigration and Nationality Act, as long as state law does not prohibit the arrest; and

WHEREAS, on February 5, 1996, the Office of Legal Counsel of the U.S. Department of Justice released a legal opinion concluding that, unless prevented from doing so by state law, state and local law enforcement officers may, upon reasonable suspicion, stop and question and, upon probable cause, arrest an alien for violation of a federal criminal immigration law and may have that same authority for confirmed violations of federal civil immigration law as well; and

WHEREAS, the Legislature believes that because of the overwhelming numbers of illegal aliens in the United States and the difficulty that the federal government has in dealing with those numbers, state law authorizing the stop and questioning of individuals who may be illegal aliens, and the arrest of illegal aliens, should be clear so that if state or local law enforcement agencies have the resources to assist federal immigration

officers, they should be legally able to provide that assistance under state law.

THEREFORE, the Legislature intends, in the enactment of [section 1], that Montana statutes clearly provide that the enforcement of federal criminal immigration laws by Montana peace officers be allowed by state law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Enforcement of federal criminal immigration law -- authority of peace officer to stop, question, detain, and arrest. (1) A peace officer may stop an individual for a reasonable period of time for questioning concerning a possible violation of a federal criminal immigration law if the peace officer has a reasonable suspicion that the individual has violated a federal criminal immigration law. A peace officer who has lawfully stopped an individual for questioning or to make an arrest who has a reasonable suspicion that the individual may have violated a federal criminal immigration law may question the individual concerning the individual's compliance with federal criminal immigration law.

(2) A peace officer who has lawfully stopped an individual for questioning or to make an arrest may inquire into the immigration status of the individual if the peace officer has a reasonable suspicion that the individual may have violated a federal criminal immigration law.

(3) A peace officer who has lawfully stopped an individual for questioning concerning a possible violation of a federal criminal immigration law may detain the individual for a reasonable period of time in order to determine, with the assistance of federal authorities, whether the individual is in violation of a federal criminal immigration law.

(4) A peace officer may arrest an individual if the officer has probable cause to believe that the individual has violated a federal criminal immigration law, including the responsibility, under 8 U.S.C. 1304(e), of every alien 18 years of age and older to carry with the alien at all times the alien's certificate of alien registration or alien receipt card, the violation of which is a federal misdemeanor.

(5) This section is not a limitation upon state enforcement of federal civil immigration law within the state, if allowed under federal and state law.

(6) A peace officer, or state or local law enforcement agency, may seek reimbursement for costs of incarceration of an alien pursuant to this section.

(7) As used in this section, "a reasonable time" means a period of time as provided by law or a period of time that is reasonable under the circumstances.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, and the provisions of Title 46, chapter 6, apply to [section 1].

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