

PROPOSITION 100
HOUSE CONCURRENT RESOLUTION 2028
bail; undocumented immigrants

ANALYSIS BY LEGISLATIVE COUNCIL

The Arizona Constitution provides that all persons who are charged with a crime are eligible for bail, subject to certain exceptions. Bail is not allowed for any person who is charged with a crime if the court finds proof that the person committed the crime is evident or the presumption that the person committed the crime is great and the charged crime is one of the following:

1. A capital offense (an offense punishable by death), sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age.
2. A felony offense committed when the person charged is already admitted to bail on a separate felony charge.
3. A felony offense if the person charged poses a substantial danger to any other person or the community and no condition of release will reasonably assure the safety of the other person or community.

Proposition 100 would amend the Arizona Constitution to additionally prohibit bail for any person who is charged with a serious felony offense (as determined by the Legislature) if the person charged entered or remained in the United States illegally and the court finds proof that the person committed the crime is evident or the presumption that the person committed the crime is great.

In 2006, the Legislature enacted legislation to specify that class 1, 2, 3 and 4 felony offenses would constitute the "serious felony" offenses for which a person who has entered or remained in the United States illegally shall be denied bail. That legislation does not become effective unless Proposition 100 is enacted.