

REFERENCE TITLE: illegal aliens; enforcement; trespassing

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HCR 2039**

Introduced by  
Representatives Pearce, Barnes, Burges, Farnsworth, Groe, Kavanagh,  
Murphy, Yarbrough, Senators Burns, Johnson: Representatives Biggs, Boone,  
Crump, McComish, Robson, Weiers J, Senators Harper, Verschoor

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO  
ILLEGAL ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the  
2 Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,  
4 the following measure, relating to illegal alien enforcement and trespass, is  
5 enacted to become valid as a law if approved by the voters and on  
6 proclamation of the Governor:

7 AN ACT

8 AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY  
9 ADDING ARTICLE 8; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED  
10 STATUTES, BY ADDING SECTION 13-1509; RELATING TO ILLEGAL ALIENS.

11 Be it enacted by the Legislature of the State of Arizona:

12 Section 1. Title 11, chapter 7, Arizona Revised Statutes,  
13 is amended by adding article 8, to read:

14 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

15 11-1051. Cooperation and assistance in enforcement of  
16 immigration laws

17 A. ALL OFFICIALS, AGENCIES AND PERSONNEL OF THIS STATE  
18 AND COUNTIES, CITIES AND TOWNS OF THIS STATE SHALL FULLY COMPLY  
19 WITH AND, TO THE FULL EXTENT PERMITTED BY LAW, ASSIST IN THE  
20 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS OF THE UNITED STATES.  
21 FOR EVERY ARREST MADE BY SUCH OFFICIALS, AGENCIES AND PERSONNEL,  
22 THE CITIZENSHIP OF THE PERSON SHALL BE DETERMINED. IF THE  
23 PERSON WHO IS ARRESTED IS AN ALIEN, THE PERSON'S IMMIGRATION  
24 STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO  
25 8 UNITED STATES CODE SECTION 1373(c). IF THE PERSON IS AN ALIEN  
26 WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES AND THIS STATE OR  
27 A LOCAL GOVERNMENTAL ENTITY ELECTS NOT TO PROSECUTE THE PERSON  
28 FOR A VIOLATION OF STATE OR LOCAL LAW, THE PERSON SHALL BE  
29 TRANSFERRED TO THE CUSTODY OF THE UNITED STATES IMMIGRATION AND  
30 CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER  
31 PROTECTION. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED  
32 STATES IS ACQUITTED OF ANY VIOLATION OF STATE OR LOCAL LAW, IS  
33 DISCHARGED FROM IMPRISONMENT OR PAYS ANY FINE IMPOSED, THE ALIEN  
34 IMMEDIATELY SHALL BE TRANSFERRED TO THE CUSTODY OF THE UNITED  
35 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT. IF THE UNAUTHORIZED  
36 ALIEN IS CONVICTED OF A CRIME, THE ALIEN MUST COMPLETE THE FULL  
37 SENTENCE BEFORE BEING RELEASED TO THE CUSTODY OF THE UNITED  
38 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES  
39 CUSTOMS AND BORDER PROTECTION.

40 B. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS, AGENCIES  
41 OR PERSONNEL OF THIS STATE AND COUNTIES, CITIES AND TOWNS OF  
42 THIS STATE MAY NOT BE PROHIBITED OR IN ANY WAY RESTRICTED FROM  
43 SENDING, RECEIVING OR MAINTAINING INFORMATION RELATING TO THE  
44 IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR

1 EXCHANGING THAT INFORMATION WITH ANY OTHER FEDERAL, STATE OR  
2 LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL PURPOSES:

3 1. DETERMINATION OF ELIGIBILITY FOR ANY FEDERAL, STATE OR  
4 LOCAL PUBLIC BENEFIT, SERVICE OR LICENSE THAT IS RESTRICTED IN  
5 WHOLE OR IN PART ON THE BASIS OF IMMIGRATION STATUS.

6 2. VERIFICATION OF ANY CLAIM OF LEGAL DOMICILE IF LEGAL  
7 DOMICILE IS REQUIRED BY LAW OR CONTRACT.

8 3. CONFIRMATION OF THE IDENTITY OF ANY PERSON WHO IS  
9 DETAINED.

10 C. ANY LAW ENFORCEMENT AGENCY IN THIS STATE THAT ADOPTS  
11 OR IMPLEMENTS ANY POLICY PREVENTING OR LIMITING ITS OFFICERS  
12 FROM INQUIRING INTO THE IMMIGRATION STATUS OF ANY PERSON OR  
13 REPORTING TO THE FEDERAL GOVERNMENT AN ALIEN WHO IS UNLAWFULLY  
14 PRESENT IN THE UNITED STATES SHALL BE INELIGIBLE FOR ANY STATE  
15 FUNDING. A LAW ENFORCEMENT AGENCY IS DEEMED TO BE IN VIOLATION  
16 OF THIS SUBSECTION IF THE ATTORNEY GENERAL OR A COUNTY ATTORNEY  
17 DETERMINES THAT A VIOLATION HAS OCCURRED.

18 Sec. 2. Title 13, chapter 15, Arizona Revised Statutes,  
19 is amended by adding section 13-1509, to read:

20 13-1509. Trespassing by illegal aliens; assessment;  
21 classification

22 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, IT IS  
23 UNLAWFUL FOR A PERSON WHO IS A CITIZEN OF ANY COUNTRY OTHER THAN  
24 THE UNITED STATES TO ENTER INTO OR BE ON ANY PUBLIC OR PRIVATE  
25 LAND IN THIS STATE IF, AT THE TIME OF THE COMMISSION OF THE  
26 OFFENSE, THE PERSON IS IN VIOLATION OF 8 UNITED STATES CODE  
27 SECTION 1325.

28 B. FOR A FIRST OFFENSE, THE ARRESTING AUTHORITY HAS  
29 DISCRETION TO TRANSFER THE PERSON TO THE FEDERAL AGENCY WITH  
30 JURISDICTION OR REFER THE PERSON FOR PROSECUTION.

31 C. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR,  
32 EXCEPT THAT A SECOND OR SUBSEQUENT VIOLATION IS A CLASS 4  
33 FELONY. THE COURT SHALL SENTENCE A PERSON WHO IS CONVICTED OF A  
34 VIOLATION OF THIS SECTION TO IMPRISONMENT FOR NOT LESS THAN THE  
35 PRESUMPTIVE SENTENCE AUTHORIZED BY LAW. THE PERSON IS NOT  
36 ELIGIBLE FOR SUSPENSION OR COMMUTATION OF SENTENCE OR RELEASE ON  
37 ANY BASIS UNTIL THE SENTENCE IMPOSED IS SERVED. THE SENTENCE  
38 SHALL RUN CONSECUTIVELY TO ANY OTHER SENTENCE IMPOSED ON THE  
39 PERSON AND TO ANY UNDISCHARGED TERM OF IMPRISONMENT OF THE  
40 PERSON.

41 D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW,  
42 THE COURT SHALL ORDER THE PERSON TO PAY JAIL COSTS AND AN  
43 ADDITIONAL ASSESSMENT IN THE FOLLOWING AMOUNTS:

44 1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.

1           2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS  
2 SUBSECTION IF THE PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT  
3 PURSUANT TO THIS SUBSECTION.

4           E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN  
5 SUBSECTION D OF THIS SECTION AND REMIT THE ASSESSMENTS TO THE  
6 DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL ESTABLISH A SPECIAL  
7 SUBACCOUNT FOR THE MONIES IN THE ACCOUNT ESTABLISHED FOR THE  
8 GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION  
9 APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO  
10 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND  
11 IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS  
12 RELATING TO ILLEGAL IMMIGRATION.

13           F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, IF THE  
14 PERSON VIOLATES THIS SECTION WHILE IN POSSESSION OF ANY OF THE  
15 FOLLOWING, THE VIOLATION IS A CLASS 2 FELONY:

- 16           1. A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.
- 17           2. PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING  
18 OF METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.
- 19           3. A DEADLY WEAPON AS DEFINED IN SECTION 13-3101 OR A  
20 DANGEROUS INSTRUMENT AS DEFINED IN SECTION 13-105.
- 21           4. PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN  
22 ACT OF TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.

23           Sec. 3. Intent

24           The requirements and obligations of this measure shall be  
25 implemented in a manner fully consistent with federal law  
26 regulating immigration and protecting the civil rights of  
27 citizens and aliens, including compliance with the federal cases  
28 of United States v. Di Re, 332 U.S. 581 (1948), United States v.  
29 Janik, 723 F.2d 537 (7th Cir. 1983) and United States v.  
30 Salinas-Calderon, 728 F.2d 1298 (10th Cir. 1984) and compliance  
31 with 8 United States Code section 1644.

32           Sec. 4. Severability

33           If any provision of this measure or its application to any  
34 person or circumstance is held invalid, the invalidity does not  
35 affect other provisions or applications of this measure that can  
36 be given effect without the invalid provision or application,  
37 and to this end the provisions of this measure are severable.

38           2. The Secretary of State shall submit this proposition to the voters  
39 at the next general election as provided by article IV, part 1, section 1,  
40 Constitution of Arizona.