



**Legislative Bulletin.....September 21, 2006**

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$0

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 3

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

**H.R. 4830 — Border Tunnel Prevention Act — *as introduced* (Dreier, R-CA)**

**Order of Business:** The bill is scheduled for consideration on Thursday, September 21, 2006, subject to a closed rule (H.Res. [1018](#)).

**Summary:** H.R. 4830 would provide for prison terms for individuals who construct illegal tunnels or passages crossing U.S. international borders. The specific provisions of the bill are as follows:

- Provides up to a 20-year prison sentence for anyone who knowingly constructs or finances the construction of an unlawful tunnel or passage that crosses the international border between the U.S. and another country;
- Provides for up to a 10-year prison sentence for anyone who recklessly permits the construction of a tunnel or passage (crossing international borders) on land that the person owns or controls;

- Provides for double the penalty that would otherwise be imposed for anyone who uses a tunnel or passage to unlawfully smuggle an alien, goods, controlled substances, weapons of mass destruction, or a terrorist organization member into the U.S.; and
- Directs the U.S. Sentencing Commission to:
  - ensure that sentencing guidelines reflect the “serious nature” of the offenses described in 18 U.S.C 554, and the need for aggressive and appropriate law enforcement; and
  - account for aggravating or mitigating circumstances that might justify exceptions.

**Committee Action:** H.R. 4830 was introduced on March 1, 2006, and referred to the Committee on the Judiciary, which took no official action.

**Administration Policy:** A Statement of Administration Policy was unavailable at the time of publication.

**Cost to Taxpayers:** A CBO score of H.R. 4830 is unavailable, but the bill does not authorize new expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?:** As noted above, the bill establishes new federal crimes and provides for additional mandatory minimum sentences.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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## **H.R. 6094 — Community Protection Act of 2006 — *as introduced*** **(Sensenbrenner, R-WI)**

**Order of Business:** The bill is scheduled for consideration on Thursday, September 21, 2006, subject to a closed rule (H.Res. [1018](#)).

**Summary:** H.R. 6094 would make a number of revisions to current law enhancing the Department of Homeland Security’s (DHS) ability to detain illegal aliens in a variety of circumstances, and strengthens provisions in current law regarding the removal of criminal aliens and detention and removal of alien gang members (similar to provisions included in the House-passed Border Protection bill, H.R. 4437). The specific provisions of the bill are as follows:

## **Title I – Dangerous Alien Detention Act**

- Makes DHS, instead of the Attorney General, responsible for enforcing immigration enforcement issues. U.S. Citizenship and Immigration Services (USCIS) is under the authority of DHS since the passage of the Homeland Security Act in 2002 (P.L. 107-296);
- Stipulates, upon a removal order for an illegal alien, that the current 90-day removal period does not begin until the alien is in DHS custody, and further stipulates that the 90-day period is temporarily suspended if the alien is transferred to another government agency (and resumes once the alien back in DHS custody);
- Allows the 90-day removal period to be extended and the alien to remain in custody, if the alien fails or refuses to cooperate with efforts to establish his identity or conspires to prevent his removal (similar to current law but adds the additional requirements to be cooperative in DHS' efforts for removal);
- Allows DHS to detain an alien who was granted a stay of removal by a court, the Board of Immigration Appeals, or an immigration court and is subject to an administrative final order of removal;
- Allows DHS, while holding an alien beyond the 90-day removal period, to implement the following additional restrictions on the alien's activities:
  - 1) to prevent the alien from absconding;
  - 2) for the "protection of the community;" or
  - 3) for other purposes related to the enforcement of immigration laws.
- Clarifies existing law to allow DHS to detain an illegal alien, whom DHS determines is a public risk or likely will not comply with removal (from the U.S.), indefinitely until the alien is removed (subject to certain limitations defined in current law);
- Allows, at the discretion of the DHS Secretary, an alien being detained to be paroled if he is an applicant for admission, but also provides that the alien must be returned to custody if the alien violates parole or his removal becomes "reasonably foreseeable;"
- Establishes a detention removal process, for aliens who "fully cooperative with removal," to determine whether the alien should be detained or released on conditions pending removal;
- Prohibits the DHS Secretary from delegating authority to make or renew a certification (to extend an alien's detention) below the level of Assistant Secretary for Immigration and Customs Enforcement;
- Allows DHS, at the Secretary's discretion, to continue to detain an alien for an additional 90 days beyond the initial 90-day removal period (and allows for certain extensions);
- Allows DHS, at the Secretary's discretion, to continue to detain an alien beyond the 90-day removal period and until he is removed:
  - A) if DHS determines that there is "significant likelihood" that the alien:
    - 1) will be removed in the reasonably foreseeable future; or
    - 2) would have been removed but for the alien's failure to cooperate;
  - B) if DHS and the Department of Health & Human Services (HHS) determine that the alien has a highly contagious disease that poses a public safety threat (also provides for 6-month renewals, allowing the alien to submit evidence to the contrary);
  - C) if the Secretary of State states in writing that release of the alien is likely to have serious adverse foreign policy consequences for the U.S.;

- D) if release of the alien would the national security of the U.S. (possibly based on classified, sensitive, or national security information);
- E) if the release of the alien would threaten the safety of the community or any person, conditions of release cannot be expected to ensure community safety, *and* the alien either has been convicted of an aggravated felony or has committed a violent crime.
- Allows DHS to detain aliens beyond the 90-day removal period and without any limitations if: 1) the alien has entered the U.S. illegally and 2) the alien has not been present in the U.S. continually for the past two years. Thus, the above-mentioned additional restrictions placed on DHS in holding aliens beyond the 90-day removal period would not be in effect;
- Provides that judicial review of any action or decision for the provisions of this Act is to be available exclusively in habeas corpus (required court appearance of the defendant to consider the charge against him) proceedings instituted in the U.S. District Court for the District of Columbia, and only if the alien has exhausted all other administrative remedies;
- Amends 8 U.S.C. 1226 (regarding apprehension and detention of aliens) to allow an alien to be detained by DHS under this section, without limitation, until the alien is subject to an administratively final order of removal; and
- Applies a severability clause to all provisions of this Act. The clause states:
  - “If any provision of this title, or any amendment made by this title, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this title, and of the amendments made by this title, and the application of the provisions and of the amendments made by this title to any other person or circumstance, shall not be affected by such holding.”

## **Title II – Criminal Alien Removal Act**

- Allows DHS to issue an order of removal (in lieu of removal proceedings) for an alien who:
  - has not been admitted or paroled;
  - has not been found to have a credible fear of persecution (per procedures under section 235(b)(1)(B)); and
  - is not eligible for a waiver of inadmissibility or relief from removal.
- Provides that the provisions of Title II will take effect on the enactment date of this Act, but do not apply to aliens who are in removal proceedings (under section 240 of the Immigration and Nationality Act) as of that date.

## **Title III – Alien Gang Removal Act**

- Provides that an alien is inadmissible (and therefore cannot receive a visa or be admitted into the U.S.) if:
  - the alien has been removed (under section 237(a)(2)(F)); or
  - the consular office or DHS has reason to believe that the alien is a) a member of a criminal street gang and has conspired to commit a gang crime or any other unlawful activity, or b) is a member of a criminal street gang designated under section 219A (listing specific gangs in the U.S. Code);
- Provides specific definitions for terms such as “gang crime” and “criminal street gang” for this section of the code;

- Provides that an alien is deportable who a) is a member of a criminal street gang and is convicted of committing or conspiring to commit a gang crime or 2) is determined by DHS to be a member of a criminal street gang under section 219A;
- Provides procedures that allow DHS to designate a group or association as a criminal street gang, requires prior notification to Congress for each designation, and provides for review of designations and a petition process for groups that have been defined as a criminal street gang; and
- Provides for mandatory detention for those individuals DHS determines to be members of a criminal street gang (according to certain stipulations), and prohibits those aliens from receiving asylum or temporary protected status.

**Additional Background:** According to the House Judiciary Committee, “in Zadvydas v. Davis and Clark v. Martinez, the Supreme Court ruled that under current law, aliens ordered removed cannot be detained for more than six months if they cannot not be removed for any reason. DHS has had no choice but to release back onto our streets many hundreds of criminal aliens as a result of the decisions. Jonathan Cohn, Deputy Assistant Attorney General, has testified that ‘the government is [now] required to release numerous rapists, child molesters, murderers, and other dangerous illegal aliens into our streets. . . . [V]icious criminal aliens are now being set free within the U.S.’ This title is based on a provision from H.R. 4437 that allows DHS to detain beyond six months dangerous aliens under orders of removal who cannot be removed in a number of situation...”

**Committee Action:** H.R. 6094 was introduced on September 19, 2006, and referred to the Committee on the Judiciary, which took no official action.

**Administration Policy:** A Statement of Administration Policy was unavailable at the time of publication.

**Cost to Taxpayers:** A CBO score of H.R. 6094 is unavailable, but the bill does not authorize new expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?:** As noted above, the bill modifies and expands current law with regard to alien detention and removal.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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## **H.R. 6095 — Immigration Law Enforcement Act of 2006 — *as introduced* (Sensenbrenner, R-WI)**

**Order of Business:** The bill is scheduled for consideration on Thursday, September 21, 2006, subject to a closed rule (H.Res. [1018](#)).

**Summary:** The bill explicitly provides that state and local law enforcement personnel have the authority to apprehend and detain (or transfer to federal custody) illegal aliens in the U.S. while enforcing U.S. immigration laws in the course of carrying out routine duties. The bill modifies existing law regarding alien smuggling and criminal alien removal, and would end the practice of “catch and release” with illegal aliens. The specific provisions of the bill are as follows:

### **Title I – State and Local Law Enforcement Cooperation in Immigration Law Enforcement**

- Explicitly states and reaffirms the existing inherent authority of states and law enforcement personnel of a state (or a political subdivision) to investigate, identify, apprehend, arrest, detain, or transfer to federal custody, aliens in the U.S. for the purposes of assisting in the enforcement of the immigration laws of the U.S. in the course of carrying out routine duties. This is identical to a Rep. Norwood amendment, which was adopted by a vote of [237-180](#) on H.R. 4437, the House-passed Border Protection bill.

### **Title II – Alien Smuggler Prosecution Act**

- States a number of congressional finding, including:
  - “Alien smuggling is a lucrative business. Each year, criminal organizations that smuggle or traffic in persons are estimated to generate \$9,500,000,000 in revenue worldwide;
  - “Alien smuggling frequently involves dangerous and inhumane conditions for smuggled aliens. Migrants are frequently abused or exploited, both during their journey and upon reaching the United States. Consequently, aliens smuggled into the United States are at significant risk of physical injury, abuse, and death;
  - “Notwithstanding that alien smuggling poses a risk to the United States as a whole, uniform guidelines for the prosecution of smuggling offenses are not employed by the various United States attorneys. Understanding that border-area United States attorneys face an overwhelming workload, a lack of sufficient prosecutions by certain United States attorneys has encouraged additional smuggling, and demoralized Border Patrol officers charged with enforcing our anti-smuggling laws.”
- States the sense of Congress that that the Attorney General should adopt (within 3 months after enactment) uniform guidelines for the prosecution of smuggling offenses to be followed by each United States attorney in the U.S.; and
- Requires the Department of Justice to employ at least 20 new attorneys in the pool of United States attorneys employed to prosecute cases regarding alien smuggling (subject to the availability of appropriations) for each year in FY08-FY13.

### **Title III – Ending Catch and Release Act**

- Establishes additional requirements that courts must adhere to when a court has determined that prospective relief should be granted for an alien (against the government

in a civil action regarding the enforcement of immigration laws). In other words, if an alien is being held for an immigration violation and files for “relief” (reversal or a lessening of the requirements or penalties of the violation), the relief granted under the new provisions must be narrowly tailored. Under this provision, the court must:

- limit the relief to the minimum necessary to correct the violation of law;
  - adopt the least intrusive means to correction the violation of law;
  - minimize the impact on national security, border security, immigration enforcement, and public safety; and
  - provide a specific date that the relief expires (which must not be later than the earliest date necessary for the government to remedy the violation); in other words, not allowing any additional time of relief for the alien than is absolutely necessary.
- Provides that preliminary injunctive relief must expire on the date that is 90 days after it was initiated (unless certain conditions are met);
- Requires courts to “promptly” rule on the government’s motion to vacate, modify, dismiss or terminate an order granting prospective relief regarding immigration violations;
- Provides that the government’s motion to vacate or otherwise terminate an order granting prospective relief be automatically effective within 15 days (from the date it was filed), unless the court acts to deny the government’s motion within that 15-day timeframe; thus, unless the court acts to deny the government’s motion, it will automatically go into effect in 15 days (and continue in effect until the court acts).

**Additional Background:** Regarding Title III, according to the House Judiciary Committee, “DHS is subject to injunctions entered as much as 30 years ago that impact its ability to enforce the immigration laws. DHS is using expedited removal to expeditiously remove other non-Mexican illegal immigrants who are apprehended along the Southern border in order to end the policy of catch and release.” The Committee states that Title III “would result in the end of the Salvadoran injunction by establishing requirements under which courts can order prospective relief in immigration cases, and by requiring courts to promptly rule on government motions to vacate, modify, dissolve, or otherwise terminate orders granting prospective relief in immigration cases and stay orders granting such relief.”

**Committee Action:** H.R. 6095 was introduced on September 19, 2006, and referred to the Committee on the Judiciary, which took no official action.

**Administration Policy:** A Statement of Administration Policy was unavailable at the time of publication.

**Cost to Taxpayers:** A CBO score of H.R. 6095 is unavailable, but the bill does not authorize new expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?:** As noted above, the bill provides additional regulations and procedures courts must follow when granting relief to aliens who have violated U.S. immigration laws.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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