

Why Wisconsin Lawmakers Should Oppose LRB 2771/5

LRB 2771/5 makes it illegal for a state or local agency to prohibit an employee from inquiring whether an individual seeking services from that agency has lawful immigration status. It also makes it illegal for an agency to prohibit its employees from reporting immigrants, who are seeking public services, to federal immigration authorities. This law is misguided and bad policy. It will hinder government agencies from doing their jobs, and will lead to a loss of resources, potential legal liability, and expensive lawsuits. The social costs are high as well. The law undermines the safety and health of Wisconsin residents and alienates immigrants who contribute significantly to the safety and economic well-being of Wisconsin.

LRB 2771/5 makes it illegal for state and local agencies to exercise their discretion and prioritize their work.

LRB 2771/5 is a thinly veiled attempt to coerce state and local agencies, particularly local law enforcement (LEAs), into enforcing federal immigration law instead of allowing agencies to exercise their discretion and do their job. This law strips away an agency's ability to make important policy choices—policy choices that can make an agency's job easier, and that the agency, in its expertise, deems to be in the best interest of Wisconsin.

LRB 2771/5 strips away local law enforcement's discretion, hinders its ability to protect the community, and threatens the safety of all Wisconsinites.

For example, LRB 2771/5 will prohibit LEAs from forbidding their officers from asking whether an individual is lawfully present in the U.S., and from reporting those individuals to immigration. This will make it harder for LEAs to do their job.

Many LEA leaders recognize that a person's immigration status is irrelevant to their crime-fighting duties. They also recognize that immigrants play a vital role in creating safe communities. It is well documented that immigrants commit fewer crimes than native-born individuals.¹ Immigrants also have comparable rates of crime victimization. LEAs need immigrants to come forward and report crimes, act as witnesses, and cooperate in criminal investigations. Because of this many departments, particularly those who protect areas with large populations of immigrants, opt to prioritize working with, and not alienating, the immigrant community.²

Many Immigrants fear interacting with law enforcement when they perceive a risk of being separated from their families and deported.³ This fear "is not confined to immigrants."⁴ When the roles of police and federal immigration officials are conflated—as when an agency cannot prohibit inquiry into an

¹ See Jason L. Riley, Commentary, *The Mythical Connection Between Immigrants and Crime*, THE WALL STREET J. (Jul. 14, 2015) ("The data show that 'for every ethnic group without exception, incarceration rates among young men are lowest for immigrants,' . . . 'This holds true especially for the Mexicans, Salvadorans, and Guatemalans who make up the bulk of the undocumented population.'), <http://www.wsj.com/articles/the-mythical-connection-between-immigrants-and-crime-1436916798>,

² Michael John Garcia and Kate M. Manuel, Congressional Research Service, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement* (Jul. 10, 2015), <http://www.fas.org/sgp/crs/homesec/R43457.pdf/>.

³ See NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT (UNIV. OF ILL. 2013) https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁴ See *id.*

individual's immigration status—the risk of deportation is abundantly clear. A lack of witnesses and victims to report crime and assist in criminal investigations makes law enforcement's job harder, if not impossible, and threatens the safety of *all* Wisconsinites.

LRB 2771/5 further undermines community trust by fostering racial profiling

Prohibiting agencies from forbidding their employees from inquiring about an individual's immigration status encourages racial profiling. It is difficult to conceive of a legitimate way to determine whether a person may be undocumented. Officers and government employees who opt to question an individual on their immigration status are likely to rely on the physical appearance and language skills of that person. Relying on such factors clearly opens the door for abuse and racial profiling. In Maricopa County, Arizona, for instance, officers routinely targeted Latino community members in order to inquire about their immigration status and advance an immigration enforcement agenda—efforts that diverted resources from and neglected important criminal investigations.⁵ As a result the county faced an investigation from the Department of Justice and millions of dollars in legal fees.⁶ More importantly, agencies that engage in racial profiling lose credibility and the trust of the community.

LRB 2771/5 undermines the public health and well-being of Wisconsin and leaves state and local agencies vulnerable to civil rights lawsuits

In addition to fostering racial profiling, LRB 2771/5 law flies in the face of diligent State and Federal efforts to eliminate access barriers, faced by qualified individuals who come from immigrant families, to critical benefit programs. With this in mind, federal agencies specifically advise against unnecessary inquiries about a person's immigration status because it deters eligible persons from applying for the benefits they desperately need.⁷ Not only will this disproportionately affect already vulnerable low-income families, this deterrence implicates public health and safety concerns. People who lack access to medical care and nutrition undermine the public's health.

Moreover, an agency that allows unnecessary inquiries into an individual's immigration status and deters would-be applicants from accessing government benefit programs violates Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin. Agencies that violate federal law may lose federal funds and leave themselves open to legal liability and costly litigation.

State and local agencies State and local agencies face sanctions and a loss of revenue by failing to comply with the law

LRB 2771/5 creates a private right of action for any individual who simply *believes* an agency is prohibiting the inquiry into, or reporting of, an individual's immigration status. This portion of the proposed law leaves the agency vulnerable to lawsuits, and will result in wasted resources to defend those lawsuits. Moreover, under LRB 2771/5 an agency can lose shared revenue payments of up to \$5,000 per day if found to violate the law, even inadvertently.

Conclusion

⁵ http://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁶ Susanna Capelouto, *Racial Profiling Costs Arizona County \$22 million*, CNN.COM (Jan. 3, 2014), <http://www.cnn.com/2014/01/03/us/racial-profiling-payments/>.

⁷ <http://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/triagency-letter/index.html>

Wisconsin needs laws that promote the well-being and safety of its residents. This law not only fails on both counts, but affirmatively harms Wisconsinites by hindering the government's ability to do its job and diverting much-needed resources, and leaving state and local agencies vulnerable to legal liability and litigation costs, and the loss of the community's trust.