

Column 32

From the Bench and Beyond

Retired District Judge Janice P. Dreiling

Oklahoma's New Immigration Law: Part 2

In seeking to modify behavior deemed detrimental to society, legislative bodies often create new crimes. In other words, "bad behavior" is discouraged by criminalizing the bad behavior and attaching a penalty for conviction of the bad behavior.

The "Oklahoma Taxpayer and Citizen Protection Act of 2007", a 16 page (single-spaced) bill, of which 14 pages are NEW law (as opposed to amending existing law), includes two descriptions of behaviors that will comprise two new felonies as of November 1, 2007.

Section 3 of House Bill 1804, co-sponsored by all three local legislators Sen. Ford, Rep. Sears, and Rep. Martin), contains the following language:

(1) "It shall be unlawful for ANY PERSON to transport, move, or attempt to transport in the State of Oklahoma any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, in furtherance of the illegal presence of the alien in the United States."

(2) "It shall be unlawful for ANY PERSON to conceal, harbor, or shelter from detection any alien in any place within the State of Oklahoma, including ANY BUILDING OR MEANS OF TRANSPORTATION, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law."

It is fair to conclude the above words mean that any person who transports or provides shelter for an illegal immigrant on or after November 1, 2007, can be arrested, prosecuted, and convicted of a felony. Possible punishment? HB 1804 sets punishment at "not less than one year" in prison and/or "not less than a \$1,000" fine.

It is noteworthy there is no maximum prison term or maximum fine provided in the bill. Therefore, a given jury could recommend anything in excess of one year and/or in excess of \$1,000 fine, and a judge could impose such a sentence.

Think about the words. Any person who transports or shelters knowing OR IN RECKLESS DISREGARD OF THE FACT THAT THE ALIEN HAS COME TO, ENTERED, OR REMAINED in the United States in violation of law. So, you don't have to really KNOW the person you were transporting or sheltering was an illegal immigrant if you should have known.

At this point, it also should be noted that Section 8 of HB 1804 (Section 8 deals with public and private benefits) seems to say that no person providing EMERGENCY shelter, medical care, or disaster relief could be charged with the above new felonies as long as such services are "short-term" and approved by the Attorney General of the United States. Whether the words in Section 8 protect the operators of homeless shelters from being prosecuted under the new felonies is not entirely clear.

On the other hand, hotel operators and landlords generally place themselves at risk of prosecution under the new felonies if they provide shelter knowing or in reckless disregard of the fact the person seeking shelter is an illegal immigrant.

Similarly, an employer who provides shelter to employees and/or transports employees places himself/herself at risk of prosecution under the new felonies if the employer provides shelter or transportation knowing or in reckless disregard of the fact the employee is an illegal immigrant.

What about a school bus driver? A church bus driver? A real estate agent selling a house? What about a church providing shelter to a family?

And what should each of us look for in order to make sure we are not in reckless disregard of the fact someone we encounter is not an illegal immigrant? A person who looks Hispanic or Asian? A person who does not speak English or not speak it very well? A person paying cash for shelter or transportation? Nothing in HB 1804 speaks to what exactly “reckless disregard” might mean. Legally, without further clarification from the Legislature, “reckless disregard” would become a question of fact to be determined by a jury or a judge.

In the Gospel of Luke (10:29) the lawyer asks Jesus, “and who is my neighbor?” If you believe your neighbor includes illegal immigrants and their children, and you act on that belief by providing them with transportation or shelter, you could be arrested when HB 1804 (the Oklahoma Taxpayer and Citizen Protection Act of 2007) becomes law November 1.

Next week, Section 4 (driver’s licenses and identification cards) will be covered.