

Column 33

From the Bench and Beyond

Retired Judge Janice P. Dreiling

Oklahoma's New Immigration Law: Part 3

When one reads House Bill 1804 (the Oklahoma Taxpayer and Citizen Protection Act of 2007), passed overwhelmingly by the Oklahoma Legislature this year, it does not require a rocket scientist to discern its message. The message is, if you are an illegal immigrant living in Oklahoma, get out!

And, if you shelter or transport an illegal immigrant, beware of criminal felony charges (as discussed in last week's column)!

Section 4 of HB 1804 deals with driver's licenses and other documents for identification, including nondriver identification cards. In a nutshell, Section 4 states that driver's licenses and other legal identification documents shall only be issued to United States citizens, nationals and permanent legal resident aliens.

Interestingly, the language of the bill includes birth certificates. It seems to say that a birth certificate can only be issued to a United States citizen, national or permanent legal resident. It has always been my understanding that regardless of the circumstances if a baby is born within the boundaries of the United States, that baby is a United States citizen. I have to wonder if the intent of the Oklahoma Legislature in HB 1804 includes the position that a birth certificate cannot be issued for a baby born in Oklahoma if the baby's parents are illegal immigrants.

Section 4 does provide certain exceptions: If a person applying for a driver's license (or other legal identification document) presents valid evidence of an unexpired immigrant or nonimmigrant visa status for admission into the U.S., or a pending or approved application for asylum in the U.S., or admission into the U.S. in refugee status, or a pending or approved application for temporary protected status in the U.S., or approved deferred action status, or a pending application for adjustment of status to legal permanent residence status or conditional resident status, then an Oklahoma driver's license (or other legal identification card) may be issued or renewed up to one year.

To be renewed again, the applicant is required to furnish documentation that the status by which the applicant qualified for the driver's license (or other identification) has been extended by the U.S. Citizenship and Immigration Services or other authorized agency of the U.S. Department of Homeland Security.

And, then, there is Section 5. I'm sure every county sheriff and chief of police in Oklahoma is groaning over this addition (effective November 1) to their responsibilities. Section 5 requires that "a reasonable effort shall be made to determine the citizenship status" of every person arrested for a felony or DUI who is confined "for any period" in jail.

If the arrestee cannot provide verification of United States citizenship or that he/she has been legally admitted to the U.S., law enforcement must verify the status of

the arrestee within 48 hours through communication with the Law Enforcement Support Center of the Department of Homeland Security.

If lawful immigration status cannot be verified, the jailer is required to notify the Department of Homeland Security that an illegal alien is incarcerated in the jailer's detention facility.

Section 5 further states that for the purpose of setting bond, "it shall be a rebuttable presumption that a person whose citizenship status has been verified to be a foreign national who has not been lawfully admitted to the United States is at risk of flight." It would seem to go without saying that a person whose status cannot be verified one way or the other is also to be presumed as a flight risk.

The obvious consequence is that illegal immigrants will be held in county jails on substantial bonds pending the disposition of their felony or DUI charges and/or until they are removed by federal authorities for the purpose of deportation.

Of course, DUI is a misdemeanor unless a person has a prior DUI conviction (in which case, the person is charged with DUI as a felony). Why the Oklahoma Legislature singled out DUI as the only misdemeanor charge for which law enforcement is required to go through the above procedure (if citizenship is questioned) is not clear in reading HB 1804. It is interesting that the misdemeanors assault and battery, domestic abuse, and possession of marijuana (all of which become felonies after a misdemeanor conviction) do not trigger the above requirements.

In a recent conversation, one man commented HB 1804 "is simply unenforceable." Perhaps. Nevertheless, it becomes law November 1, 2007.