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Denial of bail to entrants pushed

Courts unsure how to interpret Proposition 100

By Daniel Scarpinato

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PHOENIX — Seven months after voters overwhelmingly approved Proposition 100, which denies bail to illegal entrants charged with felonies, the Legislature is poised to ensure that judges and courts don't get around the law.

Last week, the House tentatively approved a bill that spells out that a judge needs to believe only that there is "probable cause" the defendant is here illegally in order to deny bail — rather than applying a higher standard as some judges do.

Legislators pushing the bill, which is up for a final House vote early this week, say they want the court to consider any evidence, even hearsay, when deciding if someone is illegal.

But Pima County officials say the legislative action may fall short of addressing the real issue courts are struggling with — not how much evidence they need, but what kind.

"I think the judges agree here what they should consider," said Deputy Pima County Attorney Kellie Johnson. "It's been more of what form the evidence should take."

For example, if defendants tell law enforcement they are here illegally, a judge must decide whether to accept that statement or require the officer to appear in court. That can drag out the process and cost taxpayers more money.

"It's not crystal clear right now," said Jan Kearney, presiding judge of Pima County Superior Court.

The bill is sponsored by Sen. Linda Gray, R-Glendale.

Proposition 100 received a 78 percent voter approval last November, amending the Arizona Constitution to deny bail to illegal entrants charged with serious crimes — specifically class 1, 2, 3 or 4 felonies.

But legislators, primarily Republicans, have been upset by how courts are handling the situation. Though Pima County continues to ask defendants their legal status, lawmakers were rattled by a memo in Maricopa County that instructed staff to stop asking legal status after the passage of the measure.

"I think it is alarming that we would play this game with public safety," said Rep. Russell Pearce, R-Mesa.

That prompted an administrative order from Arizona Chief Justice Ruth McGregor, who suggested the Legislature clarify the standard of proof needed to deny bail.

Democrats concerned

Democrats are concerned that the change would go too far, and that Spanish speaking U.S. citizens could get caught in the process.

State Rep. Pete Rios, D-Hayden, said people could be considered illegal and denied bail because of the color of their skin or because they speak Spanish.

If the bill passes, "we as the judicial system are going to treat them differently than other U.S. citizens," Rios

said Thursday.

Rios supported an amendment proposed by Rep. David Lujan, D-Phoenix, that would have required a "preponderance of evidence" rather than apply "probable cause."

Johnson said people are not being denied bail based on language or appearance.

"I have not seen that happen," she said. "There has to be some indication at the initial appearance that you have violated immigration laws — something more than all you speak is Spanish."

Kearney agreed.

"I can't imagine that you could hypothesize that because someone is a Spanish speaker they must be illegal," she said.

Cost to taxpayers figured

In Pima County — where the initiative passed with 70 percent of the vote — Proposition 100 could cost taxpayers nearly \$3 million a year.

Officials estimate that additional hearings will cost \$500,000 to \$750,000. Incarcerating illegal entrants could cost as much as \$2 million a year.

And those costs could rise, said the county administrator, Chuck Huckelberry, if the legislative changes result in more people being denied bail. He calls the initiative an "unfunded mandate."

"Somebody has to pay," Huckelberry said. "Unfortunately, as with most initiatives, we have to pay for it out of local property taxes."

Kearney said she supports legislative action because of the financial burden the hearings are having on the county.

Gray has been trying to call attention to the issue for some time.

Last month, she received an assurance from Senate President Tim Bee on the floor of the Senate that the issue would be dealt with in exchange for a "yes" vote from her and other Republicans for Bee's budget package.

The House has already approved identical language as part of the chamber's \$10.6 billion budget.

Gray says she'd be happy with either measure making its way through the Legislature. She says judges are ignoring the law. And while Gray says she doesn't "buy" Rios' arguments about U.S. citizens getting caught in the system, Rios intends to introduce an amendment on the House floor to require a higher standard of evidence.

● Contact reporter Daniel Scarpinato at 307-4339 or dscarpinato@azstarnet.com.

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