

SECTION 103.
VERIFICATION OF STATUS OF CERTAIN PRISONERS.¹

IRLI Comment: Local law enforcement agencies routinely detain more removable aliens than the federal government. Section 103 imposes a uniform statewide verification requirement for all foreigners arrested for a crime. Uniform systematic verification laws are an essential component of an effective and nondiscriminatory cooperative enforcement program. Most state constitutions prohibit absolute prohibitions against bail. The rebuttable presumption approach in Section 103 allows state magistrates to consider the high rates of non-appearance by illegal aliens granted bail in state cases within the Eight Amendment prohibition against excessive bail.

(A) When a person has been charged with a felony, or for driving under the influence under [code §§ xx], [or for boating under the influence under code §§ xx], and is confined for any period in a jail or other detention center or facility, a reasonable effort shall be made to determine the citizenship status of that person.

(B) If the prisoner is a foreign national, the entity confining the person shall make a reasonable effort to verify that the prisoner is lawfully present in the United States under federal immigration law and, if lawfully admitted, that such lawful status has not expired. If a determination of citizenship cannot be made from documents in the possession of the prisoner, verification of immigration status shall be requested no later than 48 hours after the beginning of the confinement in paragraph (a) through a query to the United States Department of Homeland Security. Upon verification that the person is not lawfully present in the United States, the entity shall notify the United States Department of Homeland Security of the detention status of the prisoner, and confirm whether or not a federal immigration detainer has been requested for the alien. Such report shall be a public record.

(C) For the purpose of determining the conditions for issuance of bond, it shall be a rebuttable presumption that a prisoner whose immigration status has been verified pursuant to paragraph (B) to be a foreign national who is not lawfully present in the United States, is at risk of flight.

(D) The [state] Department of Justice shall have the authority to adopt rules pursuant to the ##### Administrative Procedure Act [code §§ xx] to implement the provisions of this section.

¹ OK HB 1804 § 5.