

CRS Report for Congress

Immigration: Frequently Asked Questions on the State Criminal Alien Assistance Program (SCAAP)

January 25, 2007

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Prepared for Members and
Committees of Congress

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Summary

The State Criminal Alien Assistance Program (SCAAP) is a formula grant program that provides financial assistance to states and localities for correctional officer salary costs incurred for incarcerating “undocumented criminal aliens.” Currently, SCAAP funds do not cover all of the costs for incarcerating immigrants or foreign nationals. The program is administered by the Office of Justice Programs’ Bureau of Justice Assistance, which is located in the Department of Justice, in conjunction with the Department of Homeland Security. Between FY1997 and FY2005, a total of approximately \$4.1 billion has been distributed to states in SCAAP funding.

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162), which reauthorized SCAAP through FY2011, authorized appropriation levels at \$750 million for FY2006, \$850 million for FY2007, and \$950 million for FY2008-FY2011, and stipulated that SCAAP funds could only be used for correctional purposes. Additionally, several bills were introduced in the 109th Congress to address SCAAP reauthorization, expand the program and limit its availability to border states. Other bills that would have reauthorized SCAAP included S. 188, H.R. 557, and H.R. 820. Notably, H.R. 820 would have limited SCAAP funding to northern and southern border states and those states having one of the five largest populations of unauthorized immigrants.

The Comprehensive Immigration Reform Act of 2006 (S. 2611) also contained provisions related to SCAAP and reimbursement for criminal alien costs. S. 2611 as passed by the Senate, would have required the Secretary of the Department of Homeland Security to reimburse states and localities for costs associated with detaining and processing undocumented criminal aliens, and authorized appropriations for the program.

This report will be updated as warranted by legislative, funding, or policy developments.

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Immigration: Frequently Asked Questions on the State Criminal Alien Assistance Program (SCAAP)

What Is SCAAP?

The State Criminal Alien Assistance Program (SCAAP) was created by §20301 of the Violent Crime Control and Law Enforcement Act of 1994,¹ and is currently codified in §241(I) of the Immigration and Nationality Act (INA). The program is administered by the Bureau of Justice Assistance (BJA), which is part of the Department of Justice's (DOJ) Office of Justice Programs (OJP). The Department of Homeland Security (DHS) aids BJA in administering the program. SCAAP is designed to reimburse states and localities for correctional officers' salary costs incurred for incarcerating "undocumented criminal aliens." The Immigration and Nationality Act defines the term "undocumented criminal alien" in the context of SCAAP to mean an alien who

- (3)(A) has been convicted of a felony or two or more misdemeanors; and
- (I) entered the United States without inspection or at any time or place other than as designated by the Attorney General;
 - (ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or
 - (iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under Section 248, or to comply with the conditions of any such status.²

Who Is Eligible to Receive SCAAP Payments?

Any state or locality that incurred costs for incarcerating "undocumented criminal aliens" is eligible to apply for SCAAP funding. Currently, this includes all 50 states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and more than 3,000 counties and cities. In order for states and localities to qualify for SCAAP reimbursement, aliens under their jurisdiction must have at least one felony or two misdemeanor convictions under state or local law and be incarcerated for at least four consecutive days.

Although the program is intended to compensate states and localities for correctional officers' salary costs, funds provided through SCAAP payments until

¹ P.L. 103-322.

² 8 U.S.C. §1231(i)(3).

recently have been unrestricted and could be used for any lawful purpose. In some instances, SCAAP funds were used for projects such as interoperable communications systems, inmate medical care, and construction. In many instances, funds were used for the jurisdiction's criminal justice system or jails.

What Are the Award Criteria?

The criteria for the amount of SCAAP funds received have evolved over time. Prior to FY2003, the criteria were based on factors such as average cost per inmate multiplied by the number of eligible inmates and the total number of foreign-born inmates claimed. In many cases, this resulted in reimbursement for ineligible aliens such as naturalized citizens and legal permanent residents (LPRs). The formula is determined administratively by DOJ. In FY2005, the SCAAP reimbursement formula was determined through a multi-step process, as follows:

- DOJ determined a per diem rate per inmate using a combination of correctional officers' annual salary costs and the total number of all inmate days. The average inmate per diem for FY2005 was \$29.98;
- Immigration and Customs Enforcement (ICE) in DHS analyzed applicant inmate records submitted by the applicants, and provided BJA with a report reflecting the number of eligible, ineligible, unknown, and invalid inmates;
- The number of inmate days and a percentage of unknown days were totaled, then multiplied by the applicant's per diem rate. The percentage used for unknown dates was determined by a sliding scale developed by ICE. This scale gave credit to each jurisdiction by type. Cities were credited at 60%, states at 65%, and counties at 80% of their unknown inmate days. The result was considered the correctional officers' salary costs for the reporting period;
- The value of each applicant's correctional officers' salary costs associated with its eligible and credited unknown inmate days were totaled. This value reflected the maximum allowable reimbursement; and
- Finally, the values were compared with the annual appropriation and a percentage factor was developed. The percentage factor was applied uniformly to all jurisdictions. The reimbursement factor for FY2005 SCAAP awards was approximately 33%.

What Is the Funding Level for SCAAP?

Funding for SCAAP has been appropriated by Congress annually since 1995. Levels of funding for the program have fluctuated from \$400 million in FY2001, \$250 million in FY2003, to \$405 million in FY2006. As in previous years, the Administration's FY2007 budget did not request funding for this program.

How Much Money Have the States Received in SCAAP Awards?

From FY1997 to FY2005, SCAAP reimbursements totaled approximately \$4.1 billion. As **Table 1** illustrates, California historically has received the largest annual awards, having received over \$1.7 billion since the program's inception. Arizona, Illinois, New York, and Texas have consistently received larger awards as well, with smaller awards going to states such as Alaska, Mississippi, North Dakota, and the U.S. territories.

What Legislation was Introduced During the 109th Congress?

Authorization for SCAAP expired in October 2004, and several bills were introduced to reauthorize SCAAP and provide funding through FY2011. On November 22, 2005, the President signed the Science, State, Justice, Commerce and other Related Agencies Appropriations Act of 2006 (P.L. 109-108), which appropriated \$405 million for FY2006 SCAAP funding. Then on January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162), which reauthorized SCAAP through FY2011, authorizing appropriations at \$750 million for FY2006, \$850 million for FY2007, and \$950 million for FY2008-FY2011, and stipulated that SCAAP funds be used for correctional purposes only.

In addition, P.L. 109-162 required DOJ's Inspector General to conduct a study of "sanctuary cities or states" that have received SCAAP funding. The study was to determine the number of criminal offenses committed by aliens who have been released by states and localities without being referred to DHS for removal from the United States; the number of aliens released due to the states' or localities' lack of detention space or funds; and a list of all sanctuary cities and a copies of any written sanctuary policies.³

Section 218 of S. 2611, as passed by the Senate would have amended SCAAP to include reimbursement for costs associated with detaining and processing aliens for participating states and localities. The covered costs would have included indigent defense; criminal prosecutions; autopsies; translators and interpreters ; and court costs. Appropriations for these costs would have been authorized at \$400 million for each fiscal year from FY2007-FY2012, and appropriations for SCAAP would have been authorized at escalating levels through FY2012.

³ In January 2007, DOJ's Inspector General released the report entitled *Cooperation of SCAAP Recipients In The Removal of Criminal Aliens From the United States* as required by P. L. 109-162, See [<http://www.usdoj.gov/oig/reports/OJP/a0707/final.pdf>].

Other bills that would have made changes to SCAAP similar to those in S. 2611 included S. 188/H.R. 557, H.R. 193 and H.R. 820. These bills would have made changes to the program similar to S. 2611. H.R. 193 would have also expanded SCAAP to include not only convicted aliens, but aliens charged with a felony or two misdemeanors. H.R. 820 would have amended SCAAP to limit reimbursement to states sharing a border with Canada or Mexico, or states having larger populations of unauthorized aliens. It is unclear at this time if legislation pertaining to SCAAP will be introduced in the 110th Congress.

Table 1. SCAAP Awards by State: FY1997-FY2005

| State | FY1997 | FY1998 | FY1999 | FY2000 | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | Total |
|----------------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|---------------|---------------|-----------------|
| Alabama | \$251,629 | \$461,016 | \$450,037 | \$384,085 | \$334,040 | \$317,951 | \$109,483 | \$71,952 | \$58,938 | \$2,380,193 |
| Alaska | \$879,277 | \$1,420,652 | \$1,372,640 | \$265,995 | \$494,888 | \$331,460 | \$1,040 | \$33,417 | \$26,553 | \$4,825,922 |
| Arizona | \$14,144,497 | \$15,119,469 | \$15,904,509 | \$18,117,905 | \$23,814,068 | \$24,183,895 | \$9,325,574 | \$9,083,367 | \$256,029 | \$129,949,313 |
| Arkansas | \$147,110 | \$170,828 | \$173,955 | \$214,006 | \$318,863 | \$392,912 | \$165,629 | \$195,972 | \$14,370,489 | \$16,149,764 |
| California | \$223,375,340 | \$244,405,706 | \$237,970,184 | \$240,784,042 | \$225,683,084 | \$220,241,046 | \$95,304,541 | \$111,899,215 | \$121,110,638 | \$1,720,773,796 |
| Colorado | \$3,974,019 | \$8,830,452 | \$9,072,084 | \$7,933,462 | \$8,246,560 | \$11,191,319 | \$4,394,361 | \$5,791,648 | \$5,009,986 | \$64,443,891 |
| Connecticut | \$2,446,619 | \$3,183,654 | \$3,076,060 | \$2,237,030 | \$1,778,579 | \$1,590,639 | \$802,045 | \$900,356 | \$779,697 | \$16,794,679 |
| Delaware | \$400,494 | \$508,690 | \$491,498 | \$202,591 | \$211,983 | \$228,963 | \$140,799 | \$131,263 | \$132,951 | \$2,449,232 |
| District of Columbia | \$793,088 | \$1,438,252 | \$1,389,646 | \$5,051,620 | \$780,571 | \$449,547 | \$88,517 | \$44,472 | \$81,762 | \$10,117,475 |
| Florida | \$20,404,126 | \$22,424,476 | \$21,674,445 | \$30,279,180 | \$28,623,740 | \$27,956,315 | \$11,188,630 | \$14,267,545 | \$15,455,194 | \$192,273,651 |
| Georgia | \$3,356,465 | \$4,178,256 | \$4,037,051 | \$3,429,152 | \$3,400,246 | \$4,199,593 | \$1,833,595 | \$2,191,187 | \$1,861,952 | \$28,487,497 |
| Guam | \$0 | \$0 | \$201,251 | \$0 | \$0 | \$282,630 | \$0 | \$0 | \$204,042 | \$687,923 |
| Hawaii | \$619,406 | \$1,366,794 | \$1,320,602 | \$693,832 | \$454,637 | \$325,683 | \$125,831 | \$171,317 | \$195,595 | \$5,273,697 |
| Idaho | \$751,046 | \$1,282,869 | \$1,254,301 | \$910,736 | \$1,138,652 | \$1,254,382 | \$604,530 | \$699,690 | \$607,237 | \$8,503,443 |
| Illinois | \$8,931,548 | \$14,568,149 | \$14,075,811 | \$9,811,412 | \$14,396,351 | \$15,788,246 | \$5,476,520 | \$3,338,261 | \$7,539,603 | \$93,925,901 |
| Indiana | \$555,569 | \$605,283 | \$1,051,917 | \$717,901 | \$993,131 | \$925,170 | \$428,234 | \$471,650 | \$399,860 | \$6,148,715 |
| Iowa | \$671,760 | \$938,796 | \$907,068 | \$852,754 | \$806,377 | \$1,640,776 | \$467,103 | \$673,314 | \$477,057 | \$7,435,005 |
| Kansas | \$793,371 | \$1,311,101 | \$1,266,792 | \$1,618,764 | \$1,329,405 | \$1,559,101 | \$624,943 | \$757,840 | \$630,531 | \$9,891,848 |
| Kentucky | \$144,174 | \$185,970 | \$248,086 | \$167,347 | \$243,779 | \$195,519 | \$66,378 | \$232,297 | \$236,959 | \$1,720,509 |
| Louisiana | \$802,011 | \$777,465 | \$752,585 | \$742,606 | \$259,990 | \$316,449 | \$136,677 | \$180,003 | \$127,453 | \$4,095,239 |
| Maine | \$133,209 | \$186,215 | \$179,922 | \$148,731 | \$290,227 | \$266,963 | \$85,545 | \$50,676 | \$69,199 | \$1,410,687 |
| Maryland | \$2,774,657 | \$3,205,339 | \$3,098,374 | \$1,101,344 | \$2,554,163 | \$2,878,552 | \$2,071,715 | \$2,597,252 | \$2,090,970 | \$22,372,366 |
| Massachusetts | \$10,105,699 | \$25,770,257 | \$25,909,882 | \$14,921,272 | \$10,548,800 | \$13,121,495 | \$7,949,202 | \$6,991,154 | \$7,237,615 | \$122,555,376 |
| Michigan | \$2,182,632 | \$3,999,411 | \$3,866,284 | \$2,922,627 | \$2,536,786 | \$2,900,950 | \$1,209,417 | \$1,719,837 | \$1,325,797 | \$22,663,741 |
| Minnesota | \$1,547,690 | \$2,351,008 | \$2,297,111 | \$2,607,523 | \$1,524,930 | \$1,835,712 | \$1,465,361 | \$1,782,759 | \$1,327,202 | \$16,739,296 |
| Mississippi | \$101,009 | \$48,820 | \$47,171 | \$43,903 | \$144,936 | \$199,224 | \$26,727 | \$40,160 | \$25,579 | \$677,529 |
| Missouri | \$821,890 | \$910,088 | \$877,317 | \$830,002 | \$646,203 | \$897,654 | \$386,938 | \$479,348 | \$416,546 | \$6,265,986 |

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| State | FY1997 | FY1998 | FY1999 | FY2000 | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | Total |
|----------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------------|
| Montana | \$45,928 | \$48,651 | \$47,007 | \$25,875 | \$63,184 | \$43,225 | \$28,201 | \$2,792 | \$11,374 | \$316,237 |
| Nebraska | \$567,651 | \$882,135 | \$852,451 | \$780,215 | \$1,198,700 | \$699,769 | \$755,876 | \$1,072,982 | \$976,315 | \$7,786,094 |
| Nevada | \$2,889,636 | \$3,834,425 | \$3,704,838 | \$1,909,146 | \$4,543,847 | \$4,333,739 | \$2,761,068 | \$3,591,704 | \$4,363,186 | \$31,931,589 |
| New Hampshire | \$458,702 | \$572,327 | \$552,985 | \$351,286 | \$260,936 | \$366,323 | \$159,718 | \$207,721 | \$173,978 | \$3,103,976 |
| New Jersey | \$11,029,863 | \$12,364,126 | \$12,940,717 | \$15,440,674 | \$11,749,542 | \$10,944,836 | \$5,507,306 | \$7,901,622 | \$6,236,118 | \$94,114,804 |
| New Mexico | \$2,455,551 | \$1,031,316 | \$1,083,414 | \$1,318,315 | \$1,672,821 | \$2,331,916 | \$1,482,546 | \$678,399 | \$1,086,188 | \$13,140,466 |
| New York | \$94,486,422 | \$96,418,950 | \$93,166,922 | \$114,278,560 | \$94,768,921 | \$97,164,970 | \$43,799,041 | \$56,995,435 | \$42,814,813 | \$733,894,034 |
| North Carolina | \$2,471,153 | \$3,890,768 | \$3,758,622 | \$665,120 | \$3,611,314 | \$5,262,180 | \$2,552,349 | \$3,673,894 | \$3,725,191 | \$29,610,591 |
| North Dakota | \$20,065 | \$130,531 | \$126,119 | \$2,248 | \$19,069 | \$26,004 | \$8,661 | \$25,345 | \$36,927 | \$394,969 |
| Ohio | \$955,171 | \$1,373,575 | \$1,343,947 | \$1,475,550 | \$939,853 | \$1,211,474 | \$688,865 | \$868,204 | \$747,959 | \$9,604,598 |
| Oklahoma | \$1,208,839 | \$1,417,121 | \$1,369,229 | \$1,225,790 | \$1,525,286 | \$1,020,718 | \$799,797 | \$819,995 | \$748,673 | \$10,135,448 |
| Oregon | \$5,315,574 | \$7,906,663 | \$7,629,422 | \$4,972,603 | \$6,814,968 | \$6,528,641 | \$3,182,206 | \$1,341,763 | \$4,474,199 | \$48,166,039 |
| Pennsylvania | \$5,974,561 | \$5,252,832 | \$5,151,511 | \$4,306,272 | \$2,273,565 | \$2,683,207 | \$1,266,741 | \$1,693,912 | \$1,400,056 | \$30,002,657 |
| Puerto Rico | \$407,718 | \$1,265,548 | \$1,222,778 | \$1,250,510 | \$632,034 | \$683,254 | \$374,631 | \$158,903 | \$319,429 | \$6,314,805 |
| Rhode Island | \$1,195,698 | \$1,497,608 | \$1,446,996 | \$1,649,030 | \$3,216,989 | \$1,794,449 | \$614,869 | \$760,584 | \$863,995 | \$13,040,218 |
| South Carolina | \$899,664 | \$1,065,822 | \$1,029,751 | \$873,493 | \$889,885 | \$963,588 | \$298,985 | \$432,428 | \$408,782 | \$6,862,398 |
| South Dakota | \$40,595 | \$43,057 | \$41,602 | \$81,730 | \$70,533 | \$80,294 | \$52,123 | \$124,516 | \$83,214 | \$617,664 |
| Tennessee | \$173,212 | \$272,677 | \$265,865 | \$59,962 | \$273,331 | \$293,726 | \$243,227 | \$474,948 | \$451,609 | \$2,508,557 |
| Texas | \$39,448,874 | \$53,078,110 | \$58,941,600 | \$57,262,334 | \$45,270,617 | \$51,677,007 | \$20,950,723 | \$24,740,836 | \$26,453,985 | \$377,824,086 |
| Utah | \$2,550,417 | \$3,935,700 | \$3,802,690 | \$2,713,913 | \$2,188,992 | \$2,256,785 | \$1,124,101 | \$1,385,961 | \$1,288,270 | \$21,246,829 |
| Vermont | \$0 | \$138,631 | \$133,946 | \$32,032 | \$53,792 | \$40,546 | \$24,412 | \$32,118 | \$14,437 | \$469,914 |
| Virgin Islands | \$541,016 | \$652,948 | \$630,881 | \$0 | \$620,185 | \$945,868 | \$350,908 | \$408,132 | \$269,825 | \$4,419,763 |
| Virginia | \$4,007,805 | \$1,414,662 | \$3,455,717 | \$6,099,707 | \$5,328,910 | \$6,487,119 | \$1,770,301 | \$2,793,365 | \$2,615,423 | \$33,973,009 |
| Washington | \$11,523,873 | \$14,435,106 | \$14,478,854 | \$5,576,121 | \$13,679,341 | \$8,173,908 | \$3,627,398 | \$4,300,435 | \$3,548,103 | \$79,343,139 |
| West Virginia | \$32,560 | \$25,016 | \$24,171 | \$17,644 | \$9,343 | \$16,809 | \$5,607 | \$5,824 | \$6,495 | \$143,469 |
| Wisconsin | \$2,059,850 | \$2,591,571 | \$2,537,347 | \$3,672,572 | \$3,422,914 | \$3,508,625 | \$2,982,127 | \$2,194,993 | \$1,890,073 | \$24,860,072 |
| Wyoming | \$168,967 | \$223,382 | \$215,833 | \$219,435 | \$0 | \$160,919 | \$108,874 | \$121,529 | \$79,074 | \$1,298,013 |
| Total | \$492,037,700 | \$575,412,274 | \$572,921,798 | \$573,249,959 | \$536,653,861 | \$545,172,045 | \$239,999,996 | \$281,604,292 | \$287,143,125 | \$4,104,136,112 |

Source: CRS representation of SCAAP award data compiled by the Department of Justice, Bureau of Justice Assistance.

Note: Data provided by DOJ does not reconcile differences between appropriations and total awards.