

CRS Report for Congress

Received through the CRS Web

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

May 23, 2006

Karma Ester
Information Research Specialist
Knowledge Services Group

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

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.

Several bills have been introduced in the 109th Congress to address SCAAP reauthorization, expanding the program and limiting its availability to border states. 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 appropriation levels at \$750 million for FY2006, \$850 million for FY2007, and \$950 million for FY2008-FY2011, and stipulating that SCAAP funds may only be used for correctional purposes. Other bills that would have reauthorized SCAAP include 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/S. 2612) also contains provisions related to SCAAP and reimbursement for criminal alien costs. S. 2611/S. 2612 would require the Secretary of the Department of Homeland Security to reimburse states and localities for costs associated with detaining and processing undocumented criminal aliens. The covered costs would include indigent defenses, criminal prosecutions, autopsies, translators and interpreters, and court costs. The bills would also authorize appropriations for these processing costs at \$400 million for FY2007-FY2012. Additionally, appropriations for compensation under SCAAP would be authorized at such sums as necessary for FY2007, \$750 million for FY2008, \$950 million for FY2009, and \$950 million for FY2010-FY2012.

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

Contents

What Is SCAAP?	1
Who Is Eligible to Receive SCAAP Payments?	1
What Are the Award Criteria?	2
What Is the Funding Level for SCAAP?	2
How Much Money Have the States Received in SCAAP Awards?	3
What Legislation Has Been Introduced During the 109 th Congress?	3

List of Tables

Table 1. SCAAP Awards by State: FY1997-FY2005	5
-----------------------------------------------------	---

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 Has Been 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 stipulating that SCAAP funds may only be used for correctional purposes.

In addition, P.L. 109-162 requires DOJ's Inspector General to conduct a study of "sanctuary cities or states" that have received SCAAP funding. The study is 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, and the number of aliens released due to the states' or localities' lack of detention space or funds. The study is also to include a list of all sanctuary cities and a copy of any written policy regarding sanctuary. The study is due no later than January 5, 2007.

Recently, several immigration-related bills containing SCAAP provisions have been introduced in the Senate. In March 2006, the Senate Judiciary Committee amended and approved an immigration bill drafted by Committee Chairman Arlen Specter, which was introduced as S.Amdt. 3192 to S. 2454.³ On April 7, 2006, Senator Specter with Senators Chuck Hagel and Mel Martinez introduced the Comprehensive Immigration Reform Act (S. 2611/S. 2612). Floor debate on S. 2611 began on May 15, 2006, while S. 2612 was referred to the Senate Judiciary Committee.

S. 2611/S. 2612 and S.Amdt. 3192 would require the Secretary of DHS to reimburse states and localities for costs associated with detaining and processing

³ S. 2454 was introduced by Sen. William Frist on Mar. 16, 2006, and was the subject of floor debate between Mar. 30 and Apr. 7, 2006. For further information on these and other immigration related proposals introduced in the Senate, see CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, by Andorra Bruno et al.

undocumented criminal aliens. The covered costs include (1) indigent defense; (2) criminal prosecution; (3) autopsies; (4) translators and interpreters; and (5) court costs. In addition, the bills would authorize appropriations for these processing costs at \$400 million for FY2007-FY2012. Additionally, appropriations for compensation under SCAAP would be authorized at such sums as necessary for FY2007, \$750 million for FY2008, \$950 million for FY2009, and \$950 million for FY2010-FY2012.

Other bills were introduced that would have reauthorized the SCAAP program. The SCAAP Reauthorization Act of 2005 (S. 188/H.R. 557) would have reauthorized SCAAP through FY2011, authorizing funds at such sums as necessary for FY2005, \$750 million for FY2006, \$850 million for FY2007, and \$950 million for FY2008-FY2011. S. 188, introduced by Senator Dianne Feinstein, was reported favorably to the full Senate on March 17, 2005. H.R. 557 was introduced by Representative Jim Kolbe on February 2, 2005.

On January 4, 2005, Representative Linda Sanchez introduced H.R. 193, which would amend the criteria for SCAAP eligibility to include not only convicted aliens but also those charged with a felony or two or more misdemeanors. H.R. 820, introduced by Representative Peter King on February 15, 2005, would limit the number of states eligible to receive reimbursement to those states sharing a land border with Canada or Mexico, or states having one of the five largest populations of unauthorized immigrants.

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

CRS-6

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