

House Bill 1349

By: Representatives Manning of the 32nd, Reece of the 21st, Lunsford of the 85th, Post 2, and Rogers of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
2 sentences and punishment for criminal offenses, so as to provide for enhanced punishment
3 of illegal aliens convicted of certain violent or sex related crimes; to amend Chapter 1 of
4 Title 35 of the Official Code of Georgia Annotated, relating to general duties of law
5 enforcement officers and agencies, so as to encourage state and local law enforcement
6 officers and agencies to assist federal officers in the enforcement of immigration laws; to
7 provide training for such law enforcement officers; to provide immunity for law enforcement
8 officers and agencies; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentences and
12 punishment for criminal offenses, is amended by adding a new Code Section 17-10-7.1 to
13 read as follows:

14 "17-10-7.1.

15 (a) As used in this Code section, the term:

16 (1) 'Crime of violence' means any criminal offense which during the commission causes
17 injury to another person or to an animal, no matter how slight the injury, and no matter
18 whether the injury is visible. Emotional injury is considered an injury under this Code
19 section.

20 (2) 'Criminal offense' means any act or omission which under the law subjects any
21 person to potential incarceration of one day or more in prison upon conviction.

22 (3) 'Illegal alien' means an alien who is found within this state who is not a United States
23 citizen and who is not authorized to be in the United States. This includes, but is not
24 limited to, those who enter the United States without proper documentation, those who
25 are smuggled into the United States, those who stay in the United States beyond the date

1 listed on their visas, and those who are in the United States having fraudulently obtained
2 a visa or other documentation to enter the United States.

3 (4) 'Sexual offense' means any criminal offense involving sex, the prospect of sex, or
4 deviant behavior associated with sex. These offenses include, but are not limited to, rape,
5 child molestation, lewd acts with a child, prostitution, pimping, and solicitation for
6 prostitution.

7 (b) It shall be unlawful for an illegal alien to be present within the state unless that person
8 is in the custody of a law enforcement officer.

9 (c) It shall be unlawful for an illegal alien to commit a criminal offense while within this
10 state.

11 (d) Notwithstanding any provision to the contrary, any illegal alien who commits a felony
12 criminal offense, including a crime of violence or sexual offense within this state shall be
13 punished as follows:

14 (1) If the criminal offense is punishable by less than one year in prison, then the offense
15 shall be punishable by one year in prison, and the court shall sentence the illegal alien to
16 one year in prison upon conviction;

17 (2) If the criminal offense is punishable by one year or more in prison, then the offense
18 shall be punishable as for the underlying criminal offense; however, the sentence imposed
19 shall be at least one year in prison;

20 (3) The imposition of any sentence under this Code section shall not be probated,
21 suspended, or deferred except as expressly provided in this Code section; and

22 (4) If the illegal alien is eligible for punishment under any Code section that increases
23 the criminal punishment for any lawful reason, then that Code section shall be used to
24 determine the maximum sentence with the exception that, notwithstanding any provision
25 to the contrary, no portion of the sentence shall be probated, suspended, or deferred as
26 provided in paragraph (3) of this subsection.

27 (e) The sentence may only be suspended by the court upon the following conditions:

28 (1) No person was actually injured by the criminal offense, no matter how slight the
29 injury;

30 (2) All financial restitution has been paid to the victim or victims, or insurers of the
31 victim or victims, of the criminal offense prior to sentencing;

32 (3) The illegal alien is not a criminal reentrant into the United States; and

33 (4) The illegal alien does not have a criminal history.

34 If the illegal alien meets all four of the criterial enumerated above, then the court may, in
35 its sound discretion, order that service of the sentence may be suspended upon the illegal
36 alien being taken into the custody of the federal government for the purpose of deporting
37 that illegal alien from the United States.

1 (f) An illegal alien in the custody of the Department of Corrections shall not be eligible
2 for early parole for the purpose of deportation from the United States unless the illegal
3 alien meets the criteria enumerated in subsection (e) of this Code section.

4 (g) It shall be prima-facie evidence that the accused is an illegal alien if any person
5 employed by the United States government shall testify that the accused is not legally in
6 the United States. The accused can defend against this allegation by providing original
7 documents to the prosecutor showing the accused's legal status in the United States.
8 However, these documents are only admissible in court in defense of the accused if the
9 original documents are presented to the prosecution for authentication ten days or more
10 before the trial of the matter is set to begin.

11 (h) A person arrested for an offense listed in this Code section shall not be eligible for
12 bond unless and until the federal authorities charged with investigating illegal immigration
13 have been notified as provided in subsection (i) of this Code section and have interviewed
14 the accused and determined that the accused is legally in the United States, that the accused
15 and the criminal offense meet all the criteria enumerated in subsection (e) of this Code
16 section, and the accused posts a bond with a commercial bail bonding company for both
17 the criminal offense and with the federal government before being released. Further, the
18 law enforcement agency holding the accused shall obtain and secure the accused's
19 passport, visa, or other original travel related papers prior to releasing the accused and
20 maintain them as evidence until the conclusion of the matter. Further, the court may, in its
21 sound discretion to avoid burdensome cost to taxpayers, authorize the release of the
22 accused to the federal government for deportation on other grounds prior to the conclusion
23 of criminal prosecution at the request of or with the consent of the federal government if
24 the accused and the criminal offense meet the criteria of subsection (e) of this Code section.

25 (i) Immediately upon arrest and incarceration for any offense, the arresting officer shall
26 notify the appropriate federal authorities charged with investigating illegal immigration
27 with the vital information for any person who does not provide the arresting officer or
28 booking officer with a social security number and a place of birth within the United States.
29 Even if those items of information are provided to the officer, the officer may still verify
30 the person's residency status with the federal authorities if he or she has any reason to
31 believe the information is false. Failure to comply with this provision shall subject the
32 officer to the contempt powers of the court but shall not be used by the accused in any
33 other way.

34 (j) Should an illegal alien be deported or flee from the United States prior to the
35 commencement or conclusion of prosecution, the court shall immediately issue a no bond
36 bench warrant for that person even if the matter has not yet been indicted, and the time
37 period for commencement of prosecution as otherwise defined in Georgia law shall be

1 tolled or suspended until the illegal alien is taken into custody by a law enforcement agency
 2 located in the United States and the prosecuting agency charged with the prosecution has
 3 been notified of the illegal alien's capture.

4 (k) The state shall have the right to appeal any court order or parole notice entered under
 5 this Code section purporting to release the accused or sentencing the accused, in the Court
 6 of Appeals or the Supreme Court without the permission of the trial court. This shall be
 7 a direct appeal as of right by the state, not requiring a petition for certiorari before the
 8 appropriate appellate court. Pending the outcome of the appeal by the state, the order under
 9 appeal shall be stayed."

10 SECTION 2.

11 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general duties
 12 of law enforcement officers and agencies, is amended by adding a new Code Section 35-1-15
 13 to read as follows:

14 "35-1-15.

15 (a) As used in this Code section, the term 'illegal alien' means an alien who:

16 (1) Entered the United States without inspection or at any time or place other than that
 17 designated by the secretary of the United States Department of Homeland Security;

18 (2) Was admitted as a nonimmigrant and who, at the time the alien was taken into
 19 custody by the state or a political subdivision of the state, had failed to:

20 (A) Maintain the nonimmigrant status in which the alien was admitted or to which it
 21 was changed under Section 248 of the Immigration and Nationality Act, 8 U.S.C.
 22 Section 1184; or

23 (B) Comply with the conditions of any such status;

24 (3) Was admitted as an immigrant and has subsequently failed to comply with the
 25 requirements of that status; or

26 (4) Failed to depart the United States under a voluntary departure agreement or under a
 27 final order of removal.

28 (b) Law enforcement personnel of a state or local law enforcement agency of this state
 29 have the inherent authority of a sovereign entity to apprehend, arrest, detain, or transfer to
 30 federal custody illegal aliens in this state in the enforcement of the immigration laws of the
 31 United States. State and local law enforcement personnel are directed to assist or cooperate
 32 with federal immigration law enforcement officers in the course of carrying out the federal
 33 officers' law enforcement duties.

34 (c) The United States Department of Homeland Security is encouraged to make training
 35 of state and local law enforcement officers regarding illegal aliens available through as
 36 many means as possible, including residential training at federal facilities, on-site training

1 held at state or local police agencies or facilities, on-line training courses by computer,
2 teleconferencing, and videotape, or the digital video display of a training course or courses.

3 This training may include the preparation and distribution of a manual to train state or local
4 law enforcement personnel in the investigation, identification, apprehension, arrest,
5 detention, and transfer to federal custody of aliens in the United States, including the
6 transportation of such aliens across state lines to detention centers, and identification of
7 fraudulent documents and an immigration enforcement pocket guide for law enforcement
8 personnel of a state or political subdivision of a state to provide a quick reference for such
9 personnel in the course of duty. The United States Department of Homeland Security shall
10 be responsible for any costs that may be incurred in establishing the training programs,
11 training manual, and pocket guide under this subsection.

12 (d) Nothing in this Code section or any other provision of law shall be construed as
13 making any immigration related training a requirement for, or prerequisite to, any state or
14 local law enforcement officer exercising that officer's inherent authority to apprehend,
15 arrest, detain, or transfer to federal custody illegal aliens during the normal course of
16 carrying out his or her law enforcement duties.

17 (e) Notwithstanding any other provision of law, a law enforcement officer of a state or
18 local law enforcement agency shall be immune, to the same extent as a federal law
19 enforcement officer, from personal liability arising out of the enforcement of any
20 immigration law, provided that the officer is acting within the scope of the officer's official
21 duties.

22 (f) Notwithstanding any other provision of law, a state or local law enforcement agency
23 shall be immune from any claim for money damages based on federal, state, or local civil
24 rights law for an incident arising out of the enforcement of any immigration law, except to
25 the extent that the law enforcement officer of that agency, whose action the claim involves,
26 committed a violation of federal, state, or local criminal law in the course of enforcing such
27 immigration law.

28 (g) State and local law enforcement agencies shall provide to the United States Department
29 of Homeland Security the following information on each alien apprehended in the
30 jurisdiction of the state or locality who is believed to be in violation of an immigration law
31 of the United States:

32 (1) The alien's name;

33 (2) The alien's address or place of residence;

34 (3) A physical description of the alien;

35 (4) The date, time, and location of the encounter with the alien and reason for stopping,
36 detaining, apprehending, or arresting the alien;

- 1 (5) If applicable, the alien's driver's license number and the state of issuance of such
2 license;
- 3 (6) If applicable, the type of any other identification document issued to the alien, any
4 designation number contained on the identification document, and the issuing entity for
5 the identification document;
- 6 (7) If applicable, the license plate number, make, and model of any automobile registered
7 to, or driven by, the alien;
- 8 (8) A photo of the alien, if available or readily obtainable; and
- 9 (9) The alien's fingerprints, if available or readily obtainable."

10 **SECTION 3.**

11 All laws and parts of laws in conflict with this Act are repealed.