

Senate Bill 136

By: Senators Douglas of the 17th, Rogers of the 21st, Chance of the 16th, Staton of the 18th, Hawkins of the 49th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
2 general provisions pertaining to penal institutions, so as to require the Department of
3 Corrections and the State Board of Pardons and Paroles to participate in the United States
4 Immigration and Customs Enforcement Rapid Removal of Eligible Parolees Accepted for
5 Transfer (REPAT) Program or similar federal deportation program; to provide for legislative
6 intent; to provide for parole release conditioned on deportation; to provide for an expedited
7 procedure for the deportation of certain alien prisoners; to provide for waiver of a violator's
8 extradition; to provide for conditions of parole; to provide for parole revocation for a
9 violation of parole conditions or United States immigration laws; to amend Code Section
10 42-9-43.1 of the Official Code of Georgia Annotated, relating to citizenship status of a
11 prisoner and deportation, so as to authorize conditional deportation parole release; to provide
12 for related matters; to repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 It is the intent of the General Assembly to ensure that aliens subject to deportation are not
16 released from prison into the Georgia community. It is further the intent of this legislative
17 body to reduce the costs and expenses of operating state prisons by reducing the number of
18 criminal aliens incarcerated in the Georgia penal system and expedite the deportation process
19 of such prisoners. Moreover, Georgia should adopt a procedure for the rearrest and
20 revocation of parole of any criminal alien who reenters the United States in violation of a
21 parole conditioned on deportation. Therefore, state agencies are hereby required to take part
22 in Immigration and Customs Enforcement Rapid Removal of Eligible Parolees Accepted for
23 Transfer (REPAT) Program funded and operated by the United States government and shall
24 take all measures to fully cooperate and communicate with state, local, and federal agencies
25 for the implementation of such program.

SECTION 2.

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Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to general provisions relating to penal institutions, is amended by adding a new Code section to read as follows:

"42-1-11.1.

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

(1) 'Department' means the Department of Corrections.

(2) 'Board' means the State Board of Pardons and Paroles.

(b) The department and board shall establish a process and agreements among multiple state, local, and federal agencies for the implementation of the United States Immigration and Customs Enforcement Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) Program or similar federal program, by whatever name, for the purpose of deporting aliens in the state prison system who are eligible for deportation.

(c) The department shall include as a part of the prisoner intake process a procedure to identify aliens eligible for deportation. The identity and information regarding aliens eligible for deportation shall be provided expeditiously to the board. The board shall then consider such inmate for a parole conditioned on deportation. Alien prisoners who would otherwise be ineligible for parole shall not become eligible by reason of eligibility for deportation.

(d) The department shall coordinate with the federal authorities to determine immigration status and eligibility for removal. Upon acceptance into the federal deportation program, the board shall establish a tentative release date for the alien to be transferred into federal custody. Following approval for conditional deportation parole from the board, the department shall obtain the final removal order. No tentative parole release date shall be set for any date prior to the effective date of a final deportation removal order.

(e) No tentative parole release date based on a parole conditioned on deportation shall be set until the prisoner is otherwise eligible for parole. No tentative parole release date shall be set for any date prior to the effective date of a final deportation removal order.

(f) The board shall provide notice and obtain acknowledgment in writing that notice was given to each alien who is eligible for parole conditioned on deportation that illegal reentry into the United States shall require the return of such alien to the custody of the department to complete the remainder of his or her court-imposed sentence. Prior to granting parole conditioned on deportation, the alien must also make a knowing, voluntary, and intelligent waiver in writing of all rights of extradition and right to a parole revocation hearing which would challenge the alien's parole revocation and return to the department to complete the remainder of his or her sentence in the event such alien violates a condition of parole. Any

62 such alien who is convicted of an offense in this state after returning to this country shall
 63 serve the entire remainder of his or her sentence without parole.
 64 (g) An alien prisoner may not under any circumstances receive the benefit of parole
 65 conditioned on deportation if the federal authorities determine that the alien's removal is
 66 not reasonably foreseeable.
 67 (h) The department shall maintain exclusive control and responsibility for the custody and
 68 transportation of alien prisoners to and from federal facilities."

69 **SECTION 3.**

70 Code Section 42-9-43.1 of the Official Code of Georgia Annotated, relating to citizenship
 71 status of a prisoner and deportation, is amended as follows:

72 "42-9-43.1.

73 (a) In determining whether to grant parole the board shall be authorized to make inquiry
 74 into whether the prisoner is lawfully present in the United States under federal law.

75 (b) If the board determines that the prisoner is not lawfully present in the United States,
 76 the board shall be authorized to make inquiry into whether the prisoner would be legally
 77 subject to deportation from the United States while on parole.

78 (c) If the board determines that the prisoner would be legally subject to deportation from
 79 the United States while on parole, the board may:

80 (1) Consider the interest of the state in securing certain and complete execution of its
 81 judicial sentences in criminal cases;

82 (2) Be authorized to consider the likelihood that deportation may intervene to frustrate
 83 that state interest if parole is granted; and

84 (3) Where appropriate, be authorized to decline to grant parole in furtherance of the state
 85 interest in certain and complete execution of sentences.

86 (d) Any grant of parole to an alien prisoner who is subject to deportation shall be
 87 conditioned upon the deportation of such prisoner pursuant to a final removal order and a
 88 further condition that such prisoner abide by the deportation order and all immigration laws
 89 of the United States."

90 **SECTION 4.**

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