

Senate Bill 452

By: Senators Stone of the 23rd, Anderson of the 24th, Mullis of the 53rd, Albers of the 56th, Heath of the 31st and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 17 and Title 42 of the Official Code of Georgia Annotated, relating to  
2 criminal procedure and penal institutions, respectively, so as to require a peace officer to take  
3 certain actions upon verification that a suspect is an illegal alien; to require the sentencing  
4 court in any felony, misdemeanor, or ordinance violation case to take certain actions to  
5 determine whether the person to be sentenced is lawfully present in the United States and if  
6 not that certain actions be taken; to clarify and require certain actions by the Department of  
7 Corrections, sheriffs, municipal custodial officers, the State Board of Pardons and Paroles,  
8 and the Department of Community Service regarding persons not lawfully present in the  
9 United States; to prohibit release from confinement persons who are illegal aliens under  
10 certain circumstances; to require the State Board of Pardons and Paroles to consider certain  
11 factors if a prisoner would be legally subject to deportation from the United States while on  
12 parole; to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
16 amended by revising subsection (e) of Code Section 17-5-100, relating to investigation of  
17 illegal alien status, as follows:

18 "(e) If during the course of the investigation into such suspect's identity, a peace officer  
19 receives verification that such suspect is an illegal alien, then such peace officer ~~may~~ shall  
20 take any action authorized by state and federal law, including, but not limited to, notifying  
21 and transferring all information gained from the investigation to the prosecuting attorney  
22 with jurisdiction over the alleged criminal violation, detaining such suspected illegal alien,  
23 securely transporting such suspect to any authorized federal or state detention facility, or  
24 notifying the United States Department of Homeland Security or successor agency.  
25 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law

26 enforcement agency from arresting or detaining any criminal suspect on other criminal  
27 charges."

28 **SECTION 2.**

29 Said title is further amended by revising Code Section 17-10-1.3, relating to factoring into  
30 sentencing determinations citizenship status of convict, as follows:

31 "17-10-1.3.

32 (a)(1) The sentencing court in any felony, misdemeanor, or ordinance violation case shall  
33 inquire and determine at the time of sentencing whether the person to be sentenced is  
34 lawfully present in the United States under federal law and, if not, whether United States  
35 Immigration and Customs Enforcement has placed a detainer on the person to be  
36 sentenced.

37 (2) If the sentencing court in any felony, misdemeanor, or ordinance violation case  
38 determines that the person to be sentenced is not lawfully present in the United States, the  
39 sentencing court shall immediately notify the United States Department of Homeland  
40 Security or other department or agency designated for notification by the federal  
41 government.

42 (3) If the sentencing court in any felony, misdemeanor, or ordinance violation case  
43 determines that the person to be sentenced is not lawfully present in the United States or  
44 that United States Immigration and Customs Enforcement has placed a detainer on such  
45 person, it shall be required that:

46 (A) The Department of Corrections must comply with Code Section 42-1-11.1;

47 (B) Seventy-two hours prior to such person's release from custody, the sheriff or  
48 municipal custodial officer must notify United States Immigration and Customs  
49 Enforcement of the anticipated release;

50 (C) Prior to release on probation or parole, the State Board of Pardons and Paroles  
51 must comply with Code Section 42-11-11.1; and

52 (D) Seventy-two hours prior to such person's release from probation supervision, the  
53 Department of Community Service must notify United States Immigration and Customs  
54 Enforcement of the last known permanent address of such person and the date of  
55 conclusion of such person's term of probation.

56 (b) In determining whether to probate all or any part of any sentence of confinement in any  
57 felony, misdemeanor, or ordinance violation case, the sentencing court shall ~~be authorized~~  
58 to ~~make inquiry into~~ inquire whether the person to be sentenced is lawfully present in the  
59 United States under federal law.

60 ~~(b)(c)~~ (c) If the court determines that the person to be sentenced is not lawfully present in the  
61 United States, the court shall ~~be authorized to make inquiry into~~ inquire whether the person

62 to be sentenced would be legally subject to deportation from the United States while  
63 serving a probated sentence.

64 ~~(c)~~(d) If the court determines that the person to be sentenced would be legally subject to  
65 deportation from the United States while serving a probated sentence, the court may:

66 (1) Consider the interest of the state in securing certain and complete execution of its  
67 judicial sentences in criminal and quasi-criminal cases;

68 (2) Consider the likelihood that deportation may intervene to frustrate that state interest  
69 if probation is granted; and

70 (3) Where appropriate, decline to probate a sentence in furtherance of the state interest  
71 in certain and complete execution of sentences.

72 ~~(d)~~(e) This Code section shall apply with respect to a judicial determination as to whether  
73 to suspend all or any part of a sentence of confinement in the same manner as this Code  
74 section applies to determinations with respect to probation."

75 **SECTION 3.**

76 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
77 by revising subsection (d) of Code Section 42-4-14, relating to "Illegal alien" defined and  
78 determination of nationality of person charged with felony and confined in a jail facility, as  
79 follows:

80 "(d) Nothing in this Code section shall be construed to deny a person bond or from being  
81 released from confinement when such person is otherwise eligible for release; provided,  
82 however, that upon verification that any person confined in a jail is an illegal alien, such  
83 person ~~may~~ shall be detained, arrested, and transported as authorized by state and federal  
84 law."

85 **SECTION 4.**

86 Said title is further amended by revising subsection (c) of Code Section 42-9-43.1, relating  
87 to citizenship status of prisoner and deportation, as follows:

88 "(c) If the board determines that the prisoner would be legally subject to deportation from  
89 the United States while on parole, the board ~~may~~ shall:

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

92 (2) Consider the likelihood that deportation may intervene to frustrate that state interest  
93 if parole is granted; and

94 (3) Where appropriate, decline to grant parole in furtherance of the state interest in  
95 certain and complete execution of sentences."

96

**SECTION 5.**

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