

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

AS PASSED SENATE

**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 Supervision 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 **SECTION 1.**

15 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
16 amended by revising subsections (e) and (g) of Code Section 17-5-100, relating to
17 investigation of 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 "(g) A peace officer, prosecuting attorney, or government official or employee, and their
29 employing governmental entity, acting in good faith to carry out any provision of this
30 Code section, shall have immunity from damages or liability from such actions."

31 **SECTION 2.**

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

34 "17-10-1.3.

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

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

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

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

50 (B) Seventy-two hours prior to such person's release from custody, or as soon as
51 reasonably practical if such person is held for less than 72 hours, the sheriff or
52 municipal custodial officer must notify United States Immigration and Customs
53 Enforcement of the anticipated release;

54 (C) Prior to release on probation or parole, the State Board of Pardons and Paroles
55 must comply with Code Section 42-1-11.1; and

56 (D) Seventy-two hours prior to such person's release from probation supervision, the
57 Department of Community Supervision or probation provider under Article 6 of
58 Chapter 8 of Title 42 must notify United States Immigration and Customs Enforcement
59 of the last known permanent address of such person and the date of conclusion of such
60 person's term of probation.

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

65 ~~(b)(c)~~ (c) If the court determines that the person to be sentenced is not lawfully present in the
 66 United States, the court shall ~~be authorized to make inquiry into~~ inquire whether the person
 67 to be sentenced would be legally subject to deportation from the United States while
 68 serving a probated sentence.

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

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

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

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

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

80 SECTION 3.

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

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

90 SECTION 4.

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

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

- 95 (1) Consider the interest of the state in securing certain and complete execution of its
96 judicial sentences in criminal cases;
- 97 (2) Consider the likelihood that deportation may intervene to frustrate that state interest
98 if parole is granted; and
- 99 (3) Where appropriate, decline to grant parole in furtherance of the state interest in
100 certain and complete execution of sentences."

101 **SECTION 5.**

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