House Bill 915
By: Representatives Singleton of the 71st, Tarvin of the 2nd, Turner of the 21st, Pullin of the 131st, Cooke of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to enact the "Georgia Anti-Sanctuary Act"; to provide for a short title; to provide for legislative findings and intent; to provide for definitions; to prohibit sanctuary policies; to require cooperation with federal immigration authorities; to impose duties regarding federal immigration detainers; to provide penalties for failing to comply with federal immigration detainers; to require correctional facilities to enter into agreements for reimbursement of costs; to provide for complaints of violations; to provide for the Attorney General to investigate violations and bring enforcement suits; to provide for jurisdiction and venue; to provide for remedies; to provide for civil penalties; to provide for the Attorney General to defend suits against certain entities under certain circumstances; to provide for a duty to report and whistle-blower protections; to provide for a private civil cause of action for injury or death arising out of sanctuary policies; to provide for waiver of sovereign and governmental immunity; to provide for trial by jury; to provide for reasonable costs and attorneys' fees; to require written law enforcement policies; to provide for implementation; to prohibit discrimination; to provide for severability; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

CHAPTER 36A

This chapter shall be known and may be cited as the 'Georgia Anti-Sanctuary Act.'
50-36A-2.  
(a) The General Assembly finds that it is an important state interest that state and local governmental entities and their officials have an affirmative duty to all citizens and other persons lawfully present in the United States to assist the federal government in the enforcement of federal immigration laws within this state, including their compliance with federal immigration detainers.  
(b) The General Assembly further finds that in the interest of public safety and adherence to federal law this state support federal immigration enforcement efforts and ensure that such efforts are not impeded or thwarted by state or local laws, policies, practices, procedures, or customs.  
(c) It is the intent of the General Assembly that state and local governmental entities and their officials who encourage persons unlawfully present in the United States to locate within this state or who shield such persons from personal responsibility for their unlawful actions should be held accountable.  

50-36A-3.  
As used in this chapter, the term:  
(1) 'Federal immigration agency' means the United States Department of Justice and the United States Department of Homeland Security, a division within such an agency, including United States Immigration and Customs Enforcement and United States Customs and Border Protection, any successor agency, and any other federal agency charged with the enforcement of immigration law.  
(2) 'Immigration detainer' means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law, including detainers issued pursuant to 8 U.S.C. Sections 1226 and 1357 along with a warrant described in subparagraph (B) of this paragraph. For purposes of this paragraph, an immigration detainer is deemed facially sufficient if:  
(A)(i) The federal immigration agency's official form is complete and indicates on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law; or  
(ii) The federal immigration agency's official form is incomplete and fails to indicate on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law, but is supported by an affidavit, order, or other official documentation that indicates that the
federal immigration agency has probable cause to believe that the person to be
detained is a removable alien under federal immigration law; and

(B) The federal immigration agency supplies with its detention request a Form I-200
Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a
successor warrant or other warrant authorized by federal law.

(3) 'Inmate' means a person in the custody of a law enforcement agency.

(4) 'Law enforcement agency' means an agency in this state charged with enforcement
of federal, state, county, or municipal laws or with managing custody of detained persons
in this state and includes, but is not limited to, municipal police departments, sheriff's
offices, county and state police departments, state college and university police
departments, county correctional agencies, and the Department of Corrections.

(5) 'Local governmental entity' means any county, municipality, or other political
subdivision of this state.

(6) 'Sanctuary policy' means a law, policy, practice, procedure, or custom, formal or
informal, written or unwritten, adopted or allowed by a state entity or local governmental
entity which prohibits or impedes a law enforcement agency from complying with 8
U.S.C. Section 1373 or which prohibits or impedes a law enforcement agency from
communicating or cooperating with a federal immigration agency so as to limit such law
enforcement agency in or prohibit the agency from:

(A) Complying with an immigration detainer, including, but not limited to, requiring
a judicial warrant or other judicial order prior to complying with an immigration
detainer;

(B) Complying with a request from a federal immigration agency to notify the agency
before the release of an inmate or detainee in the custody of the law enforcement
agency;

(C) Providing a federal immigration agency access to an inmate for interview;

(D) Participating in any program or agreement authorized under Section 287 of the
federal Immigration and Nationality Act, 8 105 U.S.C. Section 1357; or

(E) Providing a federal immigration agency with an inmate's incarceration status or
release date.

(7) 'State entity' means the State of Georgia or any office, board, bureau, commission,
department, branch, division, or institution thereof, including institutions within the
University System of Georgia, the Technical College System of Georgia, and all other
public postsecondary educational institutions in the state.
50-36A-4.

(a) A state entity, local governmental entity, or law enforcement agency shall not adopt or have in effect a sanctuary policy.

(b) A sanctuary policy that is in effect on or after July 1, 2020, violates the public policy of this state and shall be repealed on or before September 1, 2020.

50-36A-5.

(a) A law enforcement agency shall use best efforts to support the enforcement of federal immigration law. This subsection shall apply to an official, representative, agent, or employee of the entity or agency only when he or she is acting within the scope of his or her official duties or within the scope of his or her employment.

(b) Except as otherwise expressly prohibited by federal law, a state entity, local governmental entity, or law enforcement agency, or an employee, an agent, or a representative of the entity or agency, may not prohibit or in any way restrict a law enforcement agency from taking any of the following actions with respect to information regarding a person's immigration status:

1. Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency for purposes of this chapter;
2. Recording and maintaining the information for purposes of this chapter;
3. Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for purposes of this chapter;
4. Using the information to comply with an immigration detainer; or
5. Using the information to confirm the identity of a person who is detained by a law enforcement agency.

(c)(1) For purposes of this subsection, the term 'applicable criminal case' means a criminal case in which:

A. The judgment requires the defendant to be confined in a secure correctional facility; and
B. The judge:
   i. Indicates in the record that the defendant is subject to an immigration detainer; or
   ii. Otherwise indicates in the record that the defendant is subject to a transfer into federal custody.

(2) In an applicable criminal case, when the judge sentences a defendant who is the subject of an immigration detainer to confinement, the judge shall issue an order requiring the secure correctional facility in which the defendant is to be confined to reduce the defendant's sentence by a period of not more than 12 days on the facility's
determination that the reduction in sentence will facilitate the seamless transfer of the
defendant into federal custody.

(3) If the information specified in subparagraph (c)(1)(B) is not available at the time the
sentence is pronounced in the case but is received by a law enforcement agency
afterward, the law enforcement agency shall notify the judge who shall issue the order
described by paragraph (2) of this subsection as soon as the information becomes
available.

(4) When a county correctional facility, municipal correctional facility, or the
Department of Corrections receives verification from a federal immigration agency that
a person subject to an immigration detainer is in the law enforcement agency's custody,
such facility may securely transport the person to a federal facility in this state or to
another point of transfer to federal custody outside the jurisdiction of such law
enforcement agency. A law enforcement agency shall transfer a person who is subject
to an immigration detainer and is confined in a secure correctional facility to the custody
of a federal immigration agency not earlier than 12 days before his or her release date.
A law enforcement agency shall obtain judicial authorization before securely transporting
such person to a point of transfer outside of this state.

50-36A-6.

(a) A law enforcement agency that has custody of a person subject to an immigration
detainer issued by a federal immigration agency shall:

(1) Provide notice to the judge authorized to grant or deny the person's release on bail
or bond that the person is subject to an immigration detainer;

(2) Record in the person's case file that the person is subject to an immigration detainer;
and

(3) Upon determining that the immigration detainer is in accordance with paragraph (2)
of Code Section 50-36A-3, comply with the requests made in the immigration detainer.

(b) A law enforcement agency that has custody of a person subject to an immigration
detainer issued by a federal immigration agency shall not require a judicial warrant or other
judicial order prior to complying with the requests made in the immigration detainer.

(c) A law enforcement agency is not required to perform a duty imposed by subsection (a)
of this Code section with respect to a person who is transferred to the custody of the agency
by another law enforcement agency if the transferring agency performed that duty before
the transfer.

(d) A judge who receives notice that a person is subject to an immigration detainer shall
cause the fact to be recorded in the court record, regardless of whether the notice is
received before or after a judgment in the case.
It shall be illegal for a person who is a sheriff, chief of police, warden, constable, or otherwise has primary authority for administering a correctional facility who has custody of a person subject to an immigration detainer to knowingly fail to comply with the requests made in an immigration detainer. A violation of this Code section shall be a misdemeanor of a high and aggravated nature.

50-36A-7.

(a) Each county correctional facility, municipal correctional facility, and the Department of Corrections shall enter into an agreement or agreements with a federal immigration agency for temporarily housing persons who are the subject of immigration detainers and for the payment of the costs of housing and detaining those persons.

(b) A compliant agreement includes any contract between a correctional facility and a federal immigration agency for housing or detaining persons subject to immigration detainers, such as basic ordering agreements, agreements authorized by Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. Section 1357, or successor agreements and other similar agreements authorized by federal law.

50-36A-8.

(a) Any person, including a federal agency, may file a complaint with the Attorney General alleging that a state entity, local governmental entity, or law enforcement agency has violated or is violating this chapter if the person offers evidence to support such an allegation. The person shall include with the complaint any evidence the person has in support of the complaint.

(b) A state entity, local governmental entity, or law enforcement agency for which the Attorney General has received a complaint pursuant to this Code section shall comply with any document requests, including a request for supporting documents, from the Attorney General relating to the complaint.

(c) If the Attorney General determines that a complaint filed against a state entity, local governmental entity, or law enforcement agency is valid, the Attorney General may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in the Superior Court of Fulton County or in a county in which the principal office of the entity or agency is located to compel the entity or department that is suspected of violating this chapter to comply.

(d) If a court finds a state entity, local governmental entity, or law enforcement agency has violated this chapter, the court shall immediately enjoin the violation. The court shall have
continuing jurisdiction over the parties and subject matter and may enforce its orders with
the initiation of contempt proceedings as provided by law.

(e) An order approving a consent decree or granting any relief under this Code section
shall include written findings of fact that describe with specificity the existence and nature
of the violation.

(f) In an appeal of a suit brought under this Code section, the appellate court shall render
its final order or judgment with the least possible delay.

50-36A-10.

(a) In addition to any other penalty or remedy provided by law, a state entity, local
governmental entity, or law enforcement agency that is found by a court to have
intentionally violated a provision of this chapter shall be subject to a civil penalty in an
amount of not less than:

(1) One thousand dollars and not more than $1,500.00 for the first violation; and

(2) Twenty-five thousand dollars and not more than $25,500.00 for each subsequent
violation.

(b) On and after September 1, 2020, each day of a continuing violation shall constitute a
separate violation for the civil penalty under this Code section.

(c) The court hearing an action brought under Code Section 50-36A-9 against a state
entity, local governmental entity, or law enforcement agency shall determine the amount
of the civil penalty under this Code section.

(d) A civil penalty collected under this Code section shall be deposited to the credit of the

(e) Sovereign immunity and governmental immunity of state entities, local governmental
entities, and law enforcement agencies is expressly waived to the extent of liability created
by this Code section.

50-36A-11.

(a) The Attorney General shall defend a local governmental entity or law enforcement
agency in any action in any court if:

(1) The executive head or governing body, as applicable, of the local governmental entity
or law enforcement agency requests the Attorney General’s assistance in the defense; and

(2) The Attorney General determines that the cause of action arises out of a claim
involving the local governmental entity’s or law enforcement agency’s good faith
compliance with an immigration detainer.

(b) If the Attorney General defends a local governmental entity or law enforcement agency
under this Code section, the state shall be liable for the expenses, costs, judgment, or
settlement of the claims arising out of the representation. The Attorney General may settle
or compromise any and all such claims.
(c) The state shall not be liable for any expenses, costs, judgments, or settlements of any
claims against a local governmental entity or law enforcement agency that is not
represented by the Attorney General under this Code section.

50-36A-12.
(a) An official, representative, agent, or employee of a state entity, local governmental
entity, or law enforcement agency shall promptly report a known or probable violation of
this chapter to the Attorney General.
(b) A state entity, local governmental entity, or law enforcement agency shall not retaliate,
as defined by paragraph (5) of subsection (a) of Code Section 45-1-4, against any official,
representative, agent, or employee for complying with subsection (a) of this Code section.
(c) All provisions of Code Section 45-1-4 shall apply to an official, representative, agent,
or employee of a state entity, local governmental entity, or law enforcement agency who
is retaliated against, as defined by paragraph (5) of subsection (a) of Code Section 45-1-4,
by any official, representative, agent, or employee because he or she complied with
subsection (a) of this Code section.

(a) A person injured by the tortious acts or omissions of a person unlawfully present in the
United States, or the personal representative of a person killed by the tortious acts or
omissions of a person unlawfully present in the United States, shall have a cause of action
for damages against a state entity, local governmental entity, or law enforcement agency
upon proof by the preponderance of the evidence of:
(1) The existence of a sanctuary policy by such state entity, local governmental entity,
or law enforcement agency; and
(2) A failure to comply with this chapter resulting in such person having access to the
person injured or killed when the tortious acts or omissions occurred.
(b) Sovereign immunity and governmental immunity of state entities, local governmental
entities, or law enforcement agencies is expressly waived to the extent of liability created
by this Code section.
(c) Trial by jury shall be a matter of right in an action brought under this Code section.
(d) The court in an action brought under this Code section may award reasonable costs and
attorneys' fees to the prevailing party.
50-36A-14. On or before September 1, 2020, every law enforcement agency shall:

(1) Formalize in writing any unwritten, informal policies relating to the enforcement of immigration laws; and

(2) Update the agency's policies to be consistent with this chapter, to require each officer or other employee of the law enforcement agency to fully comply with this chapter, and to prohibit an officer or other employee of the law enforcement agency from preventing law enforcement agency personnel from fully complying with this chapter.

50-36A-15. (a) This chapter shall be implemented in a manner consistent with federal laws and regulations governing immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(b) A state entity, local governmental entity, or law enforcement agency, or a person employed by or otherwise under the direction or control of a state entity, local governmental entity, or law enforcement agency, shall not base its actions under this chapter on the gender, race, color, religion, language, national origin, or physical disability of a person except to the extent authorized by the United States Constitution, the Constitution of the State of Georgia, or federal law.

(c) The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. This Act shall become effective on July 1, 2020.

SECTION 3. All laws and parts of laws in conflict with this Act are repealed.