

House Bill 1083

By: Representatives Petrea of the 166th, Williamson of the 115th, Ehrhart of the 36th, Jones of the 91st, Mathiak of the 73rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to require a peace officer to take certain actions upon verification that a suspect is an
3 illegal alien; to change provisions relating to bail schedules and the release of individuals
4 upon their own recognizance; to require the prosecuting attorney in certain cases to take
5 certain actions to determine whether the person to be sentenced has legal status to be present
6 in the United States and to take certain actions if such person does not have legal status to
7 be present in the United States; to clarify and require certain actions by the Department of
8 Corrections, sheriffs, municipal custodial officers, the State Board of Pardons and Paroles,
9 and the Department of Community Supervision regarding persons who do not have legal
10 status to be present in the United States; to provide for completion of confinement in federal
11 custody for certain persons sentenced to confinement and subject to an immigration detainer
12 request; to amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating
13 to general provisions regarding law enforcement officers and agencies, so as to provide for
14 requirements for the custody of persons subject to an immigration detainer request; to
15 provide for criteria for the inquiry of nationality or immigration status for victims of and
16 witnesses to criminal offenses; to provide for community outreach activities; to require that
17 local law enforcement agencies share certain data with federal agencies; to amend Chapter 80
18 of Title 36 of the Official Code of Georgia Annotated, relating to general provisions
19 regarding local government, so as to prohibit political subdivisions from preventing certain
20 employees from making certain immigration status inquiries or data requests; to provide for
21 a complaint process for allegations of violations by political subdivisions; to provide for
22 duties of the Attorney General; to provide for a civil penalty upon a finding by the superior
23 court; to provide for exceptions; to amend Title 42 of the Official Code of Georgia
24 Annotated, relating to penal institutions, so as to prohibit release from confinement persons
25 who are illegal aliens under certain circumstances; to require the State Board of Pardons and
26 Paroles to consider certain factors if a prisoner would be legally subject to deportation from
27 the United States while on parole; to amend Article 1 of Chapter 15 of Title 45 of the Official
28 Code of Georgia Annotated, relating to general provisions regarding the Attorney General,

29 so as to require that the Attorney General defend political subdivisions for claims involving
 30 the political subdivision's good faith compliance with an immigration detainer request; to
 31 amend Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating
 32 to state tort claims, so as to waive the defense of sovereign immunity for certain claims
 33 involving a political subdivision's failure to comply with certain laws regarding immigration
 34 status and data; to provide for a definition; to provide for related matters; to repeal
 35 conflicting laws; and for other purposes.

36 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

37 **SECTION 1.**

38 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 39 amended by revising subsections (e) and (g) of Code Section 17-5-100, relating to
 40 investigation of illegal alien status, as follows:

41 "(e) If during the course of the investigation into such suspect's identity, a peace officer
 42 receives verification that such suspect is an illegal alien, then such peace officer shall notify
 43 and transfer all information gained from the investigation to the prosecuting attorney with
 44 jurisdiction over the alleged criminal offense and further may take any other action
 45 authorized by state and federal law, including, but not limited to, detaining such suspected
 46 illegal alien, securely transporting such suspect to any authorized federal or state detention
 47 facility, or notifying the United States Department of Homeland Security or successor
 48 agency. Nothing in this Code section shall be construed to hinder or prevent a peace
 49 officer or law enforcement agency from arresting or detaining any criminal suspect on
 50 other criminal charges."

51 "(g) A peace officer, prosecuting attorney, or government official or employee, and their
 52 employing governmental entity, acting in good faith to carry out any provision of this Code
 53 section, shall have immunity from damages or liability from such actions."

54 **SECTION 2.**

55 Said title is further amended by revising paragraph (1) of subsection (f) of Code Section
 56 17-6-1, relating to where offenses are bailable, procedure, bail schedules, and appeal bonds,
 57 as follows:

58 "(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided
 59 in this subsection, the judge of any court of inquiry may by written order establish a
 60 schedule of bails and unless otherwise ordered by the judge of any court, an accused shall
 61 be released from custody upon posting bail as fixed in the schedule; provided, however,

62 that such schedule shall not mandate releasing an accused on his or her own recognizance
 63 before being brought before a judge of a court of inquiry."

64 **SECTION 3.**

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

67 "17-10-1.3.

68 (a)(1) Prior to sentencing for a felony, misdemeanor of a high and aggravated nature, or
 69 driving under the influence of alcohol, drugs, or other intoxicating substances as provided
 70 for in Article 15 of Chapter 6 of Title 40, the prosecuting attorney shall verify whether
 71 the person to be sentenced has legal status to be present in the United States under federal
 72 law and, if not, whether United States Immigration and Customs Enforcement has placed
 73 a detainer on him or her. If the prosecuting attorney determines that such person does not
 74 have legal status to be present in the United States, the prosecuting attorney shall
 75 immediately notify the United States Department of Homeland Security or other
 76 department or agency designated for such notification by the federal government, the
 77 sheriff or municipal custodial officer, the Department of Corrections, the State Board of
 78 Pardons and Paroles, or the Department of Community Supervision or probation provider
 79 who is to receive custody of, or supervision over, such person.

80 (2) Upon receiving notification pursuant to paragraph (1) of this subsection, the:

81 (A) Sheriff or municipal custodial officer at least 72 hours prior to such person's
 82 release from custody, or as soon as reasonably practical if such person will be held for
 83 less than 72 hours, shall notify United States Immigration and Customs Enforcement
 84 of the person's anticipated release;

85 (B) Department of Corrections shall comply with Code Section 42-1-11.1;

86 (C) State Board of Pardons and Paroles, prior to the person's release from parole, shall
 87 comply with Code Section 42-1-11.1; and

88 (D) Department of Community Supervision or probation provider under Article 6 of
 89 Chapter 8 of Title 42, as applicable, at least 72 hours prior to such person's release from
 90 probation supervision, shall notify United States Immigration and Customs
 91 Enforcement of the last known permanent address of such person and the date of
 92 conclusion of his or her term of probation.

93 (b) In determining whether to probate all or any part of any sentence of confinement in any
 94 felony, misdemeanor, or ordinance violation case, the sentencing court shall be authorized
 95 to make inquiry into inquire whether the person to be sentenced is lawfully has legal status
 96 to be present in the United States under federal law.

97 ~~(b)~~(c) If the court determines that the person to be sentenced ~~is not lawfully~~ does not have
 98 legal status to be present in the United States, the court shall ~~be authorized to make inquiry~~
 99 ~~into~~ inquire whether the person to be sentenced would be legally subject to deportation
 100 from the United States while serving a probated sentence.

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

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

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

107 (3) ~~Where~~ When appropriate, decline to probate a sentence in furtherance of the state
 108 interest in certain and complete execution of sentences.

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

112 SECTION 4.

113 Said title is further amended in Article 1 of Chapter 10, relating to procedure for sentencing
 114 and imposition of punishment, by adding a new Code section to read as follows:

115 "17-10-21.

116 (a) As used in this Code section, the term 'immigration detainer request' means a written
 117 request issued by United States Immigration and Customs Enforcement, any other federal
 118 agency, or any successor agency, providing notification that it seeks custody of an alien,
 119 along with a signed administrative or other warrant indicating that there is probable cause
 120 that the subject of the request is an alien who is subject to removal from the United States.

121 (b) This Code section shall apply to criminal cases in which the sentence requires
 122 confinement in jails or correctional institutions of counties or of this state and the defendant
 123 is subject to an immigration detainer request.

124 (c) In any case described in subsection (b) of this Code section, the jail or correctional
 125 institution of a county or of this state shall have the defendant serve in federal confinement
 126 or under federal supervision the final portion of his or her sentence, not to exceed a period
 127 of seven days, following the jail's or correctional institution's determination that the change
 128 in the place of confinement will facilitate the seamless transfer of the defendant into federal
 129 custody. This subsection shall only apply if appropriate officers of the federal government
 130 consent to the transfer of the defendant into federal custody under the circumstances
 131 described by this Code section."

SECTION 5.

132
133 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general
134 provisions regarding law enforcement officers and agencies, is amended by adding three new
135 Code sections to read as follows:

136 "35-1-23.

137 (a) As used in this Code section, the term 'immigration detainer request' means a written
138 request issued by United States Immigration and Customs Enforcement, any other federal
139 agency, or any successor agency, providing notification that it seeks custody of an alien,
140 along with a signed administrative or other warrant indicating that there is probable cause
141 that the subject of the request is an alien who is subject to removal from the United States.

142 (b) A law enforcement agency that has custody of a person subject to an immigration
143 detainer request shall:

144 (1) Comply with, honor, and fulfill any request made in the detainer request provided by
145 the federal government; and

146 (2) Inform the person that he or she is being held pursuant to an immigration detainer
147 request.

148 (c) A law enforcement agency is not required to perform a duty imposed by subsection (a)
149 of this Code section with respect to a person who has provided proof that he or she is a
150 citizen of the United States or that such person has lawful immigration status in the United
151 States.

152 35-1-24.

153 (a) As used in this Code section, the term 'family violence' shall have the same meaning
154 as provided for in Code Section 19-13-1.

155 (b)(1) In the course of investigating an alleged criminal offense, a law enforcement
156 officer may inquire as to the nationality or immigration status of a victim or witness to
157 the offense only if the officer determines that the inquiry is necessary to investigate the
158 offense or provide the victim or witness with information about federal visas designed
159 to protect individuals providing assistance to law enforcement.

160 (2) Paragraph (1) of this subsection shall not prevent a law enforcement officer from
161 conducting a separate investigation of any other alleged criminal offense or inquiring as
162 to the nationality or immigration status of a victim of or witness to a criminal offense if
163 the officer has probable cause to believe that the victim or witness has engaged in specific
164 conduct constituting a separate criminal offense.

165 (c) Each law enforcement agency that is subject to the requirements of Code Section
166 36-80-23.1 may adopt a written policy requiring that such agency perform community
167 outreach activities to educate the public of the fact that a law enforcement officer employed

168 by the agency may not inquire into the immigration status of a victim of or witness to an
 169 alleged criminal offense unless the officer determines that the inquiry is necessary to
 170 investigate the offense or to provide the victim or witness with information about federal
 171 visas designed to protect individuals providing assistance to law enforcement. A policy
 172 adopted under this Code section shall include outreach to victims of family violence and
 173 sexual offenses provided for under Chapter 6 of Title 16.

174 35-1-25.

175 No state, county, or local law enforcement agency shall withhold or restrict any data from
 176 federal agencies on persons arrested or detained by the state, county, or local law
 177 enforcement agency, including, but not limited to data regarding nationality or immigration
 178 status."

179 **SECTION 6.**

180 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
 181 provisions regarding local government, is amended by adding a new Code section to read as
 182 follows:

183 "36-80-23.1.

184 (a) No political subdivision of this state, including any county, consolidated government,
 185 municipality, authority, school district, commission, board, or any other local public body
 186 corporate, governmental unit, or political subdivision, shall prohibit or materially limit a
 187 person who is employed by or otherwise under the direction or control of the political
 188 subdivision, including but not limited to any law enforcement officer, from doing any of
 189 the following:

190 (1) Inquiring into the immigration status of a person under a lawful detention or under
 191 arrest;

192 (2) With respect to information relating to the immigration status, lawful or unlawful, of
 193 any person under a lawful detention or under arrest, including information regarding the
 194 person's place of birth:

195 (A) Sending the information to or requesting or receiving the information from United
 196 States Citizenship and Immigration Services, United States Immigration and Customs
 197 Enforcement, or another relevant federal agency;

198 (B) Maintaining the information; or

199 (C) Exchanging the information with another local entity, law enforcement agency, or
 200 federal or state governmental entity;

201 (3) Assisting or cooperating with a federal immigration officer as reasonable or
 202 necessary, including providing enforcement assistance; or

203 (4) Permitting a federal immigration officer to enter and conduct enforcement activities
204 at a jail to enforce federal immigration laws.

205 (b) No political subdivision of this state or any person employed by or otherwise under the
206 direction or control of such political subdivision shall consider race, color, religion,
207 language, or national origin while enforcing immigration laws except as permitted by the
208 United States Constitution or the Georgia Constitution.

209 (c)(1) Any person residing in the jurisdiction of a political subdivision may file a
210 complaint with the Attorney General if the person asserts facts supporting an allegation
211 that such political subdivision has violated this Code section. The person must include
212 a sworn statement with the complaint stating that to the best of the person's knowledge,
213 all of the facts asserted in the complaint are true and correct.

214 (2) If the Attorney General determines that a complaint filed under this subsection is
215 valid, the Attorney General may file a petition for a writ of mandamus or apply for other
216 appropriate equitable relief in the superior court of the county in which the principal
217 office of the entity or department is located to compel the entity or department that is
218 suspected of violating this Code section to comply with this Code section.

219 (3) A political subdivision that is found by a court of law as having intentionally violated
220 this Code section shall be subject to a civil penalty in an amount not less than \$1,000.00
221 and not more than \$1,500.00 for the first violation and not less than \$25,000.00 and not
222 more than \$25,500.00 for each subsequent violation. Each day of a continuing violation
223 shall constitute a separate violation for the civil penalty under this Code section. The
224 court that hears an action brought under this Code section shall determine the amount of
225 the civil penalty under this subsection.

226 (d) This Code section shall not apply to:

227 (1) A public health department or a hospital to the extent that the hospital is providing
228 access to or delivering medical or health care services as required under 42 U.S.C.
229 Section 1395dd or 42 U.S.C. Section 1396b(v) or any law enforcement officer employed
230 by a hospital during such officer's employment;

231 (2) Any law enforcement officer employed or contracted by a religious organization
232 during such officer's employment with the organization or while such officer is
233 performing the contract; or

234 (3) The release of information contained in educational records or an educational agency
235 or institution, except in conformity with the Family Educational Rights and Privacy Act
236 of 1974, 20 U.S.C. Section 1232g."

237 **SECTION 7.**

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

242 "(d) Nothing in this Code section shall be construed to deny a person bond or from being
 243 released from confinement when such person is otherwise eligible for release; provided,
 244 however, that upon verification that any person confined in a jail is an illegal alien, the
 245 county or municipal jailer as provided for in Code Section 42-4-1 shall notify the United
 246 States Department of Homeland Security or other department or agency designated for
 247 such notification by the federal government and such person may shall be detained,
 248 arrested, ~~and~~ or transported as authorized by state and federal law."

249 **SECTION 8.**

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

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

- 254 (1) Consider the interest of the state in securing certain and complete execution of its
 255 judicial sentences in criminal cases;
- 256 (2) Consider the likelihood that deportation may intervene to frustrate that state interest
 257 if parole is granted; and
- 258 (3) Where appropriate, decline to grant parole in furtherance of the state interest in
 259 certain and complete execution of sentences."

260 **SECTION 9.**

261 Article 1 of Chapter 15 of Title 45 of the Official Code of Georgia Annotated, relating to
 262 general provisions regarding the Attorney General, is amended by adding a new Code section
 263 to read as follows:

264 "45-15-21.

265 (a) The Attorney General shall defend any political subdivision of this state, including any
 266 county, consolidated government, municipality, authority, school district, commission,
 267 board, or any other local public body corporate, governmental unit, or political subdivision
 268 in any action in any court if:

- 269 (1) The executive head or governing body, as applicable, of the political subdivision
 270 requests the Attorney General's assistance; and

271 (2) The Attorney General determines that the cause of action arises out of a claim
272 involving the political subdivision's good faith compliance with an immigration detainer
273 request.

274 (b) If the Attorney General defends a political subdivision under subsection (a) of this
275 Code section, the state shall be liable for the expenses, costs, judgment, or settlement of the
276 claims arising out of the representation. The Attorney General may settle or compromise
277 any and all claims described in paragraph (2) of subsection (a) of this Code section. The
278 state may not be liable for any expenses, costs, judgments, or settlements of any claims
279 against a local entity not being represented by the Attorney General."

280 **SECTION 10.**

281 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to
282 state tort claims, is amended by adding a new Code section to read as follows:

283 "50-21-38.

284 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
285 or third-party claim brought in the courts of this state by an aggrieved person seeking
286 injunctive relief or costs against this state or any political subdivision thereof under Code
287 Section 36-80-23.1. This Code section shall not be construed to alter or amend any other
288 waiver of sovereign immunity provided by law."

289 **SECTION 11.**

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