

By: Perry, et al.

S.B. No. 4

A BILL TO BE ENTITLED  
AN ACT

relating to the enforcement by certain state and local governmental entities and campus police departments of state and federal laws governing immigration and to related duties of certain law enforcement and judicial entities in the criminal justice system; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0216 to read as follows:

Sec. 101.0216. LIABILITY OF STATE, COUNTY, OR MUNICIPALITY FOR FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST.

(a) Except as provided by Subsection (d), a state criminal justice agency, county, or municipality that releases from custody a person who is the subject of an immigration detainer request issued by United States Immigration and Customs Enforcement is liable for damages resulting from a felony committed by the person in this state within 10 years following the person's release if:

- (1) the state criminal justice agency, county, or municipality did not detain the person as requested;
- (2) the person was not a citizen of the United States at the time of release; and
- (3) the attorney general has petitioned the chief justice of the supreme court to convene the special three-judge district court under Section 752.055 to hear an action brought under that section against the county or municipality.

(a-1) An immigration detainer request described by Subsection (a) is presumed to be valid, regardless of whether the detainer is written or verbal.

(b) This section does not create liability for damages that a person who is subject to an immigration detainer request sustains following the person's release by a state criminal justice agency, county, or municipality.

(c) Sovereign immunity of the state and governmental immunity of a county and municipality to suit is waived and abolished to the extent of liability created by this section.

(d) A state criminal justice agency, county, or municipality is not liable under Subsection (a) for damages incurred after United States Immigration and Customs Enforcement subsequently detains the person described by that subsection.

(e) In this section, "state criminal justice agency" has the meaning assigned by Section 752.051, Government Code.

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.251 and 2.252 to read as follows:

Art. 2.251. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (a) A peace officer may not stop a motor vehicle or conduct a search of a business or residence solely to enforce a federal law relating to aliens, immigrants, or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.), unless the officer is acting:

- (1) at the request of, or providing assistance to, an appropriate federal law enforcement officer; or
- (2) under the terms of an agreement between the law enforcement agency employing the officer and the federal government under which the agency receives delegated authority to enforce

federal law relating to aliens, immigrants, or immigration.

(b) A peace officer may arrest an alien not lawfully present in the United States only if the officer is acting under the authority granted under Article 2.13.

Art. 2.252. DUTIES RELATED TO IMMIGRATION DETAINER REQUESTS. (a) A law enforcement agency that has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement shall comply with, honor, and fulfill any request made in the detainer request and in any other instrument provided by the federal government.

(b) A law enforcement agency shall presume an immigration detainer request is based on probable cause and is otherwise valid, regardless of whether the detainer request is written or verbal.

(c) Notwithstanding Subsection (b), a law enforcement agency is not required to perform a duty imposed by Subsection (a) with respect to a person who has provided proof that the person is a citizen of the United States.

SECTION 3. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.039 to read as follows:

Art. 42.039. COMPLETION OF SENTENCE IN FEDERAL CUSTODY.

(a) This article applies only to a criminal case in which:

(1) the judgment requires the defendant to be confined in a secure correctional facility; and

(2) the defendant is subject to an immigration detainer request.

(b) In a criminal case described by Subsection (a), the judge shall, at the time of pronouncement of a sentence of confinement, issue an order requiring the secure correctional facility in which the defendant is to be confined and all appropriate government officers, including a sheriff, a warden, or members of the Board of Pardons and Paroles, as appropriate, to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. In the absence of an order issued under this article, a facility or officer acting under exigent circumstances may perform the transfer after making the determination described by this subsection. This subsection applies only if appropriate officers of the federal government consent to the transfer of the defendant into federal custody under the circumstances described by this subsection.

(c) If the applicable information described by Subsection (a)(2) is not available at the time sentence is pronounced in the case, the judge shall issue the order described by Subsection (b) as soon as the information becomes available. The judge retains jurisdiction for the purpose of issuing an order under this article.

(d) For purposes of this article, "secure correctional facility" has the meaning assigned by Section 1.07, Penal Code.

SECTION 4. Section 22A.001(a), Government Code, is amended to read as follows:

(a) The attorney general may petition the chief justice of the supreme court to convene a special three-judge district court in any suit:

(1) filed in a district court in this state in which this state or a state officer or agency is a defendant in a claim that:

(A) ~~[(1)]~~ challenges the finances or operations of this state's public school system; or

(B) ~~[(2)]~~ involves the apportionment of

districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts; or

(2) involving an alleged violation of Section 752.053 by a local entity, state criminal justice agency, or campus police department of an institution of higher education.

SECTION 5. Chapter 752, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS BY LOCAL ENTITIES, STATE CRIMINAL JUSTICE AGENCIES, AND CAMPUS POLICE DEPARTMENTS

Sec. 752.051. DEFINITIONS. In this subchapter:

(1) "Campus police department" means a law enforcement agency of an institution of higher education.

(2) "Immigration detainer request" means a federal government request to a local entity, state criminal justice agency, or campus police department to maintain temporary custody of an alien. The term includes verbal and written requests, including a United States Department of Homeland Security Form I-247 document or a similar or successor form.

(3) "Immigration laws" means the laws of this state or federal law relating to aliens, immigrants, or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(4) "Institution of higher education" means:

(A) an institution of higher education as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(5) "Lawful detention" means the detention of an individual by a local entity, state criminal justice agency, or campus police department for the investigation of a criminal offense. The term excludes a detention if the sole reason for the detention is that the individual:

(A) is a victim of or witness to a criminal offense; or

(B) is reporting a criminal offense.

(6) "Local entity" means:

(A) the governing body of a municipality, county, or special district or authority, subject to Section 752.052;

(B) an officer or employee of or a division, department, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and

(C) a district attorney or criminal district attorney.

(7) "Policy" includes a formal, written rule, order, ordinance, or policy and an informal, unwritten policy.

(8) "State criminal justice agency" means a state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to a school district or open-enrollment charter school. This subchapter does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) Subject to Subsection (c), this subchapter does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health and Safety Code, or a hospital district created

under a general or special law authorized by Article IX, Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under the following applicable federal or state laws:

- (1) 42 U.S.C. Section 1395dd;
- (2) 42 U.S.C. Section 1396b(v);
- (3) Subchapter C, Chapter 61, Health and Safety Code;
- (4) Chapter 81, Health and Safety Code; and
- (5) Section 311.022, Health and Safety Code.

(c) Subsection (b) does not exclude the application of this subchapter to a commissioned peace officer employed by or commissioned by a hospital or hospital district otherwise subject to Subsection (b).

(d) This subchapter does not apply to the public health department of a local entity.

(e) This subchapter does not apply to a commissioned peace officer employed or contracted by a religious organization during the officer's employment with the organization or while the officer is performing the contract.

Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION ENFORCEMENT. (a) A local entity, state criminal justice agency, or campus police department shall not:

- (1) adopt, enforce, or endorse a policy under which the entity, agency, or department prohibits or discourages the enforcement of immigration laws;
- (2) by consistent actions prohibit or discourage the enforcement of immigration laws; or
- (3) for an entity that is a law enforcement agency, for an agency, or for a department, by consistent actions intentionally violate Article 2.252, Code of Criminal Procedure.

(b) In compliance with Subsection (a), a local entity, state criminal justice agency, or campus police department shall not prohibit or discourage a person who is a commissioned peace officer described by Article 2.12, Code of Criminal Procedure, a corrections officer, a booking clerk, a magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity, agency, or department from doing any of the following:

- (1) inquiring into the immigration status of a person under a lawful detention or under arrest;
- (2) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth:
  - (A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, or another relevant federal agency;
  - (B) maintaining the information; or
  - (C) exchanging the information with another local entity, state criminal justice agency, or campus police department or a federal or state governmental entity;

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

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

Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity, a

state criminal justice agency, a campus police department, or a person employed by or otherwise under the direction or control of the entity, agency, or department may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the United States Constitution or Texas Constitution.

Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Any person, including the federal government, may file a complaint with the attorney general if the person offers evidence to support an allegation that a local entity, state criminal justice agency, or campus police department is violating Section 752.053. The person must include with the complaint the evidence the person has that supports the complaint.

(b) A local entity, state criminal justice agency, or campus police department for which the attorney general has received a complaint under Subsection (a) shall comply with a document request, including a request for supporting documents, from the attorney general related to the complaint.

(c) If the attorney general determines that a complaint filed under Subsection (a) against a local entity, state criminal justice agency, or campus police department is valid, the attorney general shall, not later than the 10th day after the date of the determination, provide written notification to the entity, agency, or department that:

(1) the complaint has been filed;

(2) the attorney general has determined that the complaint is valid;

(3) the attorney general is authorized to file an action to enjoin the violation if the entity, agency, or department does not come into compliance with the requirements of Section 752.053 on or before the 90th day after the date the notification is provided; and

(4) the entity and each entity that is under the jurisdiction of the local entity, agency, or department will be denied state grant funds for the state fiscal year following the year in which a final judicial determination in an action brought under Subsection (e) is made.

(d) Not later than the 30th day after the day a local entity, state criminal justice agency, or campus police department receives written notification under Subsection (c), the entity, agency, or department shall provide the attorney general with a copy of:

(1) the entity's, agency's, or department's written policies related to immigration enforcement actions;

(2) each immigration detainer request received by the entity, agency, or department from the United States Department of Homeland Security; and

(3) each response sent by the entity, agency, or department for a detainer request described by Subdivision (2).

(e) If the attorney general determines that a complaint filed under Subsection (a) is valid, the attorney general may petition the chief justice of the supreme court to convene the special three-judge district court described by Chapter 22A to hear a petition for a writ of mandamus or other appropriate equitable relief to compel the local entity, state criminal justice agency, or campus police department that is violating Section 752.053 to comply with that section. The court shall be convened in Travis County or the county in which the principal office of the entity, agency, or department is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) An appeal of a suit brought under Subsection (e) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

Sec. 752.0555. CIVIL PENALTY. (a) A local entity, state criminal justice agency, or campus police department that violates Section 752.053 is subject to a civil penalty in an amount:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$25,000 and not more than \$25,500 for each subsequent violation.

(b) Each day of a continuing violation of Section 752.053 constitutes a separate violation for the civil penalty under this section.

(c) The three-judge district court that hears an action brought under Section 752.055 against the local entity, state criminal justice agency, or campus police department shall determine the amount of the civil penalty under this section.

(d) A civil penalty collected under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

(e) Governmental immunity of a county and municipality to suit is waived and abolished to the extent of liability created by this section.

Sec. 752.0556. CRIMINAL OFFENSE. (a) An elected official of a municipality, county, or special district or authority, or an individual who is appointed by the governing body of a municipality, county, or special district or authority, who intentionally or knowingly violates Section 752.053 commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 752.056. DENIAL OF STATE GRANT FUNDS; DATABASE.

(a) A local entity, including each entity under the jurisdiction of the local entity, a state criminal justice agency, or a campus police department may not receive state grant funds if the local entity, agency, or department violates Section 752.053.

(b) Except as provided by Subsection (c), state grant funds for a local entity, state criminal justice agency, or campus police department shall be denied beginning with the state fiscal year following the year in which a final judicial determination in an action brought under Section 752.055 is made that the local entity, agency, or department has intentionally violated Section 752.053. State grant funds shall continue to be denied until reinstated under Section 752.057.

(c) State grant funds for the provision of wearable body protective gear used for law enforcement purposes may not be denied under this section.

(d) The comptroller shall adopt rules to implement this section uniformly among the state agencies from which state grant funds are distributed to local entities, state criminal justice agencies, and campus police departments.

(e) The attorney general shall develop and maintain a database listing each local entity, state criminal justice agency, and campus police department for which a final judicial determination described by Subsection (b) has been made. The attorney general shall post the database on the attorney general's Internet website.

Sec. 752.057. REINSTATEMENT OF STATE GRANT FUNDS.

(a) Except as provided by Subsection (b), not earlier than the

first anniversary of the date of a final judicial determination that a local entity, state criminal justice agency, or campus police department has intentionally violated Section 752.053, the entity, agency, or department may petition the chief justice of the supreme court to convene the special three-judge district court described by Chapter 22A to hear an action against the attorney general seeking a declaratory judgment regarding the entity's, agency's, or department's compliance with Section 752.053.

(b) A local entity, state criminal justice agency, or campus police department may petition for the reinstatement of state grant funds under Subsection (a) before the date described by that subsection if the person who was the chief executive of the entity, agency, or department at the time of the violation of Section 752.053 is removed from office.

(c) A local entity, state criminal justice agency, or campus police department that brings an action described by Subsection (a) shall comply with a document request, including a request for supporting documents, from the attorney general related to the action.

(d) If the court renders a declaratory judgment declaring that the local entity, state criminal justice agency, or campus police department is in compliance with Section 752.053, state grant funds for the entity, agency, or department shall be reinstated beginning with the first day of the month following the month in which the declaratory judgment was rendered.

(e) A local entity, state criminal justice agency, or campus police department may not bring an action described by Subsection (a) more than twice in one 12-month period.

(f) A party is not entitled to recover any attorney's fees in an action described by Subsection (a).

Sec. 752.058. COMMUNITY OUTREACH POLICY. (a) Each law enforcement agency that is subject to the requirements of this subchapter may adopt a written policy requiring the agency to perform community outreach activities to educate the public that a person employed by or otherwise under the direction or control of the agency may not inquire into the immigration status of a detained person if the detention occurred solely because the person:

- (1) is a victim of or witness to a criminal offense; or
- (2) is reporting a criminal offense.

(b) A policy adopted under this section must include outreach to victims of:

- (1) family violence, as that term is defined by Section 71.004, Family Code, including those receiving services at family violence centers under Chapter 51, Human Resources Code; and
- (2) sexual assault, including those receiving services under a sexual assault program, as those terms are defined by Section 420.003.

SECTION 6. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 7. Not later than January 1, 2018, each law enforcement agency subject to this Act 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 Act and to include:

(A) provisions prohibiting an agency officer or employee from preventing agency personnel from taking immigration enforcement actions described by Section 752.053, Government Code, as added by this Act; and

(B) provisions requiring each agency officer or employee to comply with Articles 2.251 and 2.252, Code of Criminal Procedure, as added by this Act, if applicable.

SECTION 8. Section 101.0216, Civil Practice and Remedies Code, as added by this Act, applies only with respect to the release of a person from custody on or after the effective date of this Act.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.