

The Senate Committee on Judiciary offered the following substitute to HB 231:

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 provide for requirements for bail hearings to consider on the record the impact of  
3 lawful presence in the United States; to amend Title 42 of the Official Code of Georgia  
4 Annotated, relating to penal institutions, so as to require sheriffs, jailers, and deputies to  
5 honor immigration detainer requests; to provide for sheriffs, jailers, and deputies to inquire  
6 into the existence of an immigration detainer request in certain circumstances; to provide for  
7 definitions; to provide for related matters; to provide for an effective date; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
12 amended in Article 1 of Chapter 6, relating to general provisions for bonds and  
13 recognizances, in Code Section 17-6-1, relating to when offenses bailable, procedure,  
14 schedule of bails, and appeal bonds, by revising subsection (e) as follows:

15 "(e)(1) A court shall be authorized to release a person on bail if the court finds, and  
16 articulates on the record, that the person:

- 17 (A) Poses no significant risk of fleeing from the jurisdiction of the court or failing to  
18 appear in court when required;
- 19 (B) Poses no significant threat or danger to any person, to the community, or to any  
20 property in the community;
- 21 (C) Poses no significant risk of committing any felony pending trial; and
- 22 (D) Poses no significant risk of intimidating witnesses or otherwise obstructing the  
23 administration of justice.
- 24 (2) When determining bail, as soon as possible, the court shall consider and articulate on  
25 the record:
- 26 (A) The accused's financial resources and other assets, including whether any such  
27 assets are jointly controlled;
- 28 (B) The accused's earnings and other income;
- 29 (C) The accused's financial obligations, including obligations to dependents;
- 30 (D) The impact of the accused's 'lawful presence' or status as an 'illegal alien,' as those  
31 terms are defined in subsection (a) of Code Section 42-4-14, on the bail factors  
32 enumerated in paragraph (1) of this subsection;
- 33 (E) The purpose of bail; and
- 34 ~~(E)~~(F) Any other factor the court deems appropriate.
- 35 (3) If the person is charged with a serious violent felony and has already been convicted  
36 of a serious violent felony, or of an offense under the laws of any other state or of the  
37 United States which offense if committed in this state would be a serious violent felony,  
38 there shall be a rebuttable presumption that no condition or combination of conditions  
39 will reasonably assure the appearance of the person as required or assure the safety of any  
40 other person or the community. As used in this subsection, the term 'serious violent  
41 felony' means a serious violent felony as defined in Code Section 17-10-6.1.
- 42 (4) A bond set for any offense by an elected judge, an appointed judge filling the  
43 vacancy of an elected judge, or judge sitting by designation that purports a dollar amount

44 shall be executed in the full-face amount of such bond through secured means as provided  
45 for in Code Section 17-6-4 or 17-6-50 or shall be executed by use of property as approved  
46 by the sheriff in the county where the offense was committed.

47 (5) Notwithstanding any other provision of law, nothing in this Code section shall  
48 prohibit a duly sworn sheriff from releasing an inmate from custody in cases of medical  
49 emergency with the consent of the judge in the county in which he or she presides."

50

## SECTION 2.

51 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
52 by revising Code Section 42-4-14, relating to "illegal alien" defined and determination of  
53 nationality and verification of lawful admission of person confined in a jail facility, as  
54 follows:

55 "42-4-14.

56 (a) As used in this Code section, the term:

57 (1) 'Illegal ~~illegal~~ alien' means a person who is verified by the federal government to be  
58 present in the United States in violation of the federal immigration law Immigration and  
59 Nationality Act.

60 (2) 'Immigration detainer request' means a notice that the United States Department of  
61 Homeland Security issues to federal, state, and local law enforcement agencies to inform  
62 those agencies that United States Immigration and Customs Enforcement intends to  
63 assume custody of an individual detained by those agencies once that individual is no  
64 longer subject to the arresting agency's detention. Such term may include a request for  
65 information about an individual's impending release and may also include a request for  
66 federal, state, or local law enforcement agencies to maintain custody of an illegal alien  
67 who would otherwise be released for a period not to exceed 48 hours so as to provide  
68 time for United States Immigration and Customs Enforcement to assume custody after  
69 its preliminary assessment of deportability.

70 (3) 'Lawful presence' means a person who is authorized by the federal government to be  
71 present in the United States.

72 To the extent any definition in this subsection conflicts with federal law, such definition  
73 shall be construed to have the same meaning as provided under federal immigration law.

74 (b) When any person is confined, for any period, in the jail of a county or municipality or  
75 a jail operated by a regional jail authority in compliance with Article 36 of the Vienna  
76 Convention on Consular Relations, a reasonable effort shall be made to determine the  
77 nationality of the person so confined.

78 (c) Except as provided in subsection (d) of this Code section, a sheriff, jailer, or deputy  
79 shall inquire of each individual taken into custody their immigration status. When there  
80 is a reasonable basis to believe, based on the facts presented to such sheriff, jailer, or  
81 deputy, that said individual is an illegal alien or is in the country without authorization,  
82 such sheriff, jailer, or deputy shall query the relevant federal data base within 24 hours of  
83 booking to discover whether there exists an immigration detainer request for said  
84 individual. ~~When any foreign national is confined, for any period, in a county or municipal~~  
85 ~~jail, a reasonable effort shall be made to verify that such foreign national has been lawfully~~  
86 ~~admitted to the United States and if lawfully admitted, that such lawful status has not~~  
87 ~~expired. If verification of lawful status cannot be made from documents in the possession~~  
88 ~~of the foreign national, verification shall be made within 48 hours through a query to the~~  
89 ~~Law Enforcement Support Center (LESC) of the United States Department of Homeland~~  
90 ~~Security or other office or agency designated by the federal government. If the foreign~~  
91 ~~national is determined to be an illegal alien, the keeper of the jail or other officer shall~~  
92 ~~notify the United States Department of Homeland Security, or other office or agency~~  
93 ~~designated for notification by the federal government.~~

94 (d) A sheriff, jailer, or deputy shall not be required to perform a duty imposed by  
95 subsection (b) or (c) of this Code section with respect to an individual who has provided  
96 verified proof that he or she is a citizen or national of the United States or otherwise is

97 authorized by the federal government to be present in the United States. Such proof may  
98 include, but shall not be limited to:

99 (1) A driver's license or identification card issued pursuant to Chapter 5 of Title 40; or

100 (2) Government issued identification issued by the federal government or another state.

101 (e) All sheriffs, jailers, and deputies having custody of an individual who is the subject of  
102 an immigration detainer request shall:

103 (1) As soon as practicable after the commencement of such custody, notify such  
104 individual that United States Immigration and Customs Enforcement intends to assume  
105 custody of him or her after being otherwise released from custody by the federal, state,  
106 or local law enforcement agency that initially detained him or her; and

107 (2) Maintain custody of the individual subject to the immigration detainer request for a  
108 period not to exceed 48 hours beyond the time when the individual would have otherwise  
109 been released from custody by the federal, state, or local law enforcement agency that  
110 initially detained him or her.

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

115 ~~(e)~~(g) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures  
116 used to comply with the provisions of this Code section.

117 (h) The provisions of this Code section shall be implemented in a manner consistent with  
118 federal laws governing immigration and civil rights."

119 **SECTION 3.**

120 This Act shall become effective upon its approval by the Governor or upon its becoming law  
121 without such approval.

122

**SECTION 4.**

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