

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

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

21 "CHAPTER 36A

22 50-36A-1.

23 This chapter shall be known and may be cited as the 'Georgia Anti-Sanctuary Act.'

24 50-36A-2.

25 (a) The General Assembly finds that it is an important state interest that state and local
 26 governmental entities and their officials have an affirmative duty to all citizens and other
 27 persons lawfully present in the United States to assist the federal government in the
 28 enforcement of federal immigration laws within this state, including their compliance with
 29 federal immigration detainers.

30 (b) The General Assembly further finds that in the interest of public safety and adherence
 31 to federal law this state support federal immigration enforcement efforts and ensure that
 32 such efforts are not impeded or thwarted by state or local laws, policies, practices,
 33 procedures, or customs.

34 (c) It is the intent of the General Assembly that state and local governmental entities and
 35 their officials who encourage persons unlawfully present in the United States to locate
 36 within this state or who shield such persons from personal responsibility for their unlawful
 37 actions should be held accountable.

38 50-36A-3.

39 As used in this chapter, the term:

40 (1) 'Federal immigration agency' means the United States Department of Justice and the
 41 United States Department of Homeland Security, a division within such an agency,
 42 including United States Immigration and Customs Enforcement and United States
 43 Customs and Border Protection, any successor agency, and any other federal agency
 44 charged with the enforcement of immigration law.

45 (2) 'Immigration detainer' means a facially sufficient written or electronic request issued
 46 by a federal immigration agency using that agency's official form to request that another
 47 law enforcement agency detain a person based on probable cause to believe that the
 48 person to be detained is a removable alien under federal immigration law, including
 49 detainers issued pursuant to 8 U.S.C. Sections 1226 and 1357 along with a warrant
 50 described in subparagraph (B) of this paragraph. For purposes of this paragraph, an
 51 immigration detainer is deemed facially sufficient if:

52 (A)(i) The federal immigration agency's official form is complete and indicates on
 53 its face that the federal immigration official has probable cause to believe that the
 54 person to be detained is a removable alien under federal immigration law; or

55 (ii) The federal immigration agency's official form is incomplete and fails to indicate
 56 on its face that the federal immigration official has probable cause to believe that the
 57 person to be detained is a removable alien under federal immigration law, but is
 58 supported by an affidavit, order, or other official documentation that indicates that the

- 59 federal immigration agency has probable cause to believe that the person to be
60 detained is a removable alien under federal immigration law; and
- 61 (B) The federal immigration agency supplies with its detention request a Form I-200
62 Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a
63 successor warrant or other warrant authorized by federal law.
- 64 (3) 'Inmate' means a person in the custody of a law enforcement agency.
- 65 (4) 'Law enforcement agency' means an agency in this state charged with enforcement
66 of federal, state, county, or municipal laws or with managing custody of detained persons
67 in this state and includes, but is not limited to, municipal police departments, sheriff's
68 offices, county and state police departments, state college and university police
69 departments, county correctional agencies, and the Department of Corrections.
- 70 (5) 'Local governmental entity' means any county, municipality, or other political
71 subdivision of this state.
- 72 (6) 'Sanctuary policy' means a law, policy, practice, procedure, or custom, formal or
73 informal, written or unwritten, adopted or allowed by a state entity or local governmental
74 entity which prohibits or impedes a law enforcement agency from complying with 8
75 U.S.C. Section 1373 or which prohibits or impedes a law enforcement agency from
76 communicating or cooperating with a federal immigration agency so as to limit such law
77 enforcement agency in or prohibit the agency from:
- 78 (A) Complying with an immigration detainer, including, but not limited to, requiring
79 a judicial warrant or other judicial order prior to complying with an immigration
80 detainer;
- 81 (B) Complying with a request from a federal immigration agency to notify the agency
82 before the release of an inmate or detainee in the custody of the law enforcement
83 agency;
- 84 (C) Providing a federal immigration agency access to an inmate for interview;
- 85 (D) Participating in any program or agreement authorized under Section 287 of the
86 federal Immigration and Nationality Act, 8 105 U.S.C. Section 1357; or
- 87 (E) Providing a federal immigration agency with an inmate's incarceration status or
88 release date.
- 89 (7) 'State entity' means the State of Georgia or any office, board, bureau, commission,
90 department, branch, division, or institution thereof, including institutions within the
91 University System of Georgia, the Technical College System of Georgia, and all other
92 public postsecondary educational institutions in the state.

93 50-36A-4.

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

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

98 50-36A-5.

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

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

108 (1) Sending the information to or requesting, receiving, or reviewing the information
 109 from a federal immigration agency for purposes of this chapter;

110 (2) Recording and maintaining the information for purposes of this chapter;

111 (3) Exchanging the information with a federal immigration agency or another state
 112 entity, local governmental entity, or law enforcement agency for purposes of this chapter;

113 (4) Using the information to comply with an immigration detainer; or

114 (5) Using the information to confirm the identity of a person who is detained by a law
 115 enforcement agency.

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

118 (A) The judgment requires the defendant to be confined in a secure correctional
 119 facility; and

120 (B) The judge:

121 (i) Indicates in the record that the defendant is subject to an immigration detainer; or

122 (ii) Otherwise indicates in the record that the defendant is subject to a transfer into
 123 federal custody.

124 (2) In an applicable criminal case, when the judge sentences a defendant who is the
 125 subject of an immigration detainer to confinement, the judge shall issue an order
 126 requiring the secure correctional facility in which the defendant is to be confined to
 127 reduce the defendant's sentence by a period of not more than 12 days on the facility's

128 determination that the reduction in sentence will facilitate the seamless transfer of the
 129 defendant into federal custody.

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

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

145 50-36A-6.

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

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

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

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

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

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

161 (d) A judge who receives notice that a person is subject to an immigration detainer shall
 162 cause the fact to be recorded in the court record, regardless of whether the notice is
 163 received before or after a judgment in the case.

164 50-36A-7.

165 It shall be illegal for a person who is a sheriff, chief of police, warden, constable, or
166 otherwise has primary authority for administering a correctional facility who has custody
167 of a person subject to an immigration detainer to knowingly fail to comply with the
168 requests made in an immigration detainer. A violation of this Code section shall be a
169 misdemeanor of a high and aggravated nature.

170 50-36A-8.

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

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

180 50-36A-9.

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

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

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

196 (d) If a court finds a state entity, local governmental entity, or law enforcement agency has
197 violated this chapter, the court shall immediately enjoin the violation. The court shall have

198 continuing jurisdiction over the parties and subject matter and may enforce its orders with
199 the initiation of contempt proceedings as provided by law.

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

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

205 50-36A-10.

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

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

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

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

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

218 (d) A civil penalty collected under this Code section shall be deposited to the credit of the
219 Georgia Crime Victims Emergency Fund established under Code Section 17-15-9.

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

223 50-36A-11.

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

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

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

231 (b) If the Attorney General defends a local governmental entity or law enforcement agency
232 under this Code section, the state shall be liable for the expenses, costs, judgment, or

233 settlement of the claims arising out of the representation. The Attorney General may settle
234 or compromise any and all such claims.

235 (c) The state shall not be liable for any expenses, costs, judgments, or settlements of any
236 claims against a local governmental entity or law enforcement agency that is not
237 represented by the Attorney General under this Code section.

238 50-36A-12.

239 (a) An official, representative, agent, or employee of a state entity, local governmental
240 entity, or law enforcement agency shall promptly report a known or probable violation of
241 this chapter to the Attorney General.

242 (b) A state entity, local governmental entity, or law enforcement agency shall not retaliate,
243 as defined by paragraph (5) of subsection (a) of Code Section 45-1-4, against any official,
244 representative, agent, or employee for complying with subsection (a) of this Code section.

245 (c) All provisions of Code Section 45-1-4 shall apply to an official, representative, agent,
246 or employee of a state entity, local governmental entity, or law enforcement agency who
247 is retaliated against, as defined by paragraph (5) of subsection (a) of Code Section 45-1-4,
248 by any official, representative, agent, or employee because he or she complied with
249 subsection (a) of this Code section.

250 50-36A-13.

251 (a) A person injured by the tortious acts or omissions of a person unlawfully present in the
252 United States, or the personal representative of a person killed by the tortious acts or
253 omissions of a person unlawfully present in the United States, shall have a cause of action
254 for damages against a state entity, local governmental entity, or law enforcement agency
255 upon proof by the preponderance of the evidence of:

256 (1) The existence of a sanctuary policy by such state entity, local governmental entity,
257 or law enforcement agency; and

258 (2) A failure to comply with this chapter resulting in such person having access to the
259 person injured or killed when the tortious acts or omissions occurred.

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

263 (c) Trial by jury shall be a matter of right in an action brought under this Code section.

264 (d) The court in an action brought under this Code section may award reasonable costs and
265 attorneys' fees to the prevailing party.

266 50-36A-14.

267 On or before September 1, 2020, every law enforcement agency shall:

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

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

274 50-36A-15.

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

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

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

288 **SECTION 2.**

289 This Act shall become effective on July 1, 2020.

290 **SECTION 3.**

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