

The House Committee on Public Safety and Homeland Security offers the following substitute to SB 452:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 and Title 42 of the Official Code of Georgia Annotated, relating to
2 criminal procedure and penal institutions, respectively, so as to clarify actions that a peace
3 officer may take upon verification that a suspect is an illegal alien; to change provisions
4 relating to bail schedules and the release of individuals upon their own recognizance; to
5 require a court in sentencing a defendant convicted of a felony to take certain actions when
6 a defendant is not lawfully present in the United States; to clarify and require certain actions
7 by the Department of Corrections, sheriffs, municipal custodial officers, the State Board of
8 Pardons and Paroles, the Department of Community Supervision, and other probation
9 providers regarding persons not lawfully present in the United States; to require the
10 commissioner of corrections to report certain information regarding the immigration status
11 and home countries of persons who are confined under the authority of the Department of
12 Corrections; to require the State Board of Pardons and Paroles to consider certain factors if
13 a prisoner would be legally subject to deportation from the United States while on parole; to
14 provide for related matters; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

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

20 "(e) If during the course of the investigation into such suspect's identity, a peace officer
21 receives verification that such suspect is an illegal alien, then such peace officer may take
22 any action authorized by state and federal law, including, but not limited to, notifying and
23 transferring all information gained from the investigation to the prosecuting attorney with
24 jurisdiction over the alleged criminal violation, detaining such suspected illegal alien,
25 securely transporting such suspect to any authorized federal or state detention facility, or
26 notifying the United States Department of Homeland Security or successor agency.

27 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law
 28 enforcement agency from arresting or detaining any criminal suspect on other criminal
 29 charges."

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

33 **SECTION 2.**

34 Said title is further amended by revising paragraph (1) of subsection (f) of Code Section
 35 17-6-1, relating to where offenses are bailable, procedure, bail schedules, and appeal bonds,
 36 as follows:

37 "(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided
 38 in this subsection, the judge of any court of inquiry may by written order establish a
 39 schedule of bails and unless otherwise ordered by the judge of any court, ~~a person~~
 40 ~~charged with committing any offense~~ an accused shall be released from custody upon
 41 posting bail as fixed in the schedule; provided, however, that such schedule shall not
 42 mandate releasing an accused on his or her own recognizance before being brought
 43 before a judge of a court of inquiry."

44 **SECTION 3.**

45 Said title is further amended by revising subsection (c) of Code Section 17-6-12, relating to
 46 discretion of court to release person charged with crime on own recognizance only and the
 47 failure of such person to appear for trial, as follows:

48 "(c) Except as provided in subsection (b) of this Code section and in addition to other laws
 49 regarding the release of an accused person, the judge of any court having jurisdiction over
 50 a person charged with committing an offense against the criminal laws of this state,
 51 inclusive of offenses that are violations of local ordinances, shall have authority, in his or
 52 her sound discretion and in appropriate cases, to authorize the release of the person upon
 53 his or her own recognizance only."

54 **SECTION 4.**

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

57 "17-10-1.3.

58 (a)(1) When sentencing a defendant convicted of a felony, the court shall inquire and
 59 determine whether the defendant is lawfully present in the United States under federal
 60 law and, if not, whether the United States Immigration and Customs Enforcement has

61 placed a detainer on him or her. If the court determines that such defendant is not
 62 lawfully present in the United States, the court shall order the prosecuting attorney or
 63 other designee to immediately notify the United States Department of Homeland Security
 64 or other department or agency designated for such notification by the federal government.

65 (2) When the court determines that such defendant is not lawfully present in the United
 66 States or that the United States Immigration and Customs Enforcement has placed a
 67 detainer on such defendant, the court shall order the prosecuting attorney or other
 68 designee to immediately notify the:

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

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

74 (C) State Board of Pardons and Paroles that prior to the defendant's release from
 75 parole, it shall comply with Code Section 42-1-11.1; and

76 (D) Department of Community Supervision or probation provider under Article 6 of
 77 Chapter 8 of Title 42, as applicable, that 72 hours prior to such defendant's release from
 78 probation supervision it shall notify the United States Immigration and Customs
 79 Enforcement of the last known permanent address of such defendant and the date of
 80 conclusion of his or her term of probation.

81 (b) In determining whether to probate all or any part of any sentence of confinement in any
 82 felony, misdemeanor, or ordinance violation case, the sentencing court shall be authorized
 83 to make inquiry into inquire whether the person to be sentenced is lawfully present in the
 84 United States under federal law.

85 ~~(b)~~(c) If the court determines that the person to be sentenced is not lawfully present in the
 86 United States, the court shall be authorized to make inquiry into inquire whether the person
 87 to be sentenced would be legally subject to deportation from the United States while
 88 -serving a probated sentence.

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

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

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

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

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

100 **SECTION 5.**

101 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 102 by adding a new Code section to read as follows:

103 "42-1-11.3.

104 The commissioner shall, on the official website used by the department, publish a report
 105 on the immigration status and home countries of inmates who are not United States citizens
 106 and who are confined under the authority of the department and the percentage of the total
 107 population in confinement composed of persons who are not citizens of the United States.
 108 Such report shall be first published on October 1, 2018, and every 90 days thereafter;
 109 provided, however, that if the ninetieth day falls on a state holiday or Saturday or Sunday,
 110 then such publication shall occur by the next business day."

111 **SECTION 6.**

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

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

116 (1) Consider the interest of the state in securing certain and complete execution of its
 117 judicial sentences in criminal cases;

118 (2) Consider the likelihood that deportation may intervene to frustrate that state interest
 119 if parole is granted; and

120 (3) Where appropriate, decline to grant parole in furtherance of the state interest in
 121 certain and complete execution of sentences."

122 **SECTION 7.**

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