

AN ACT

relating to the enforcement by campus police departments and certain local governmental entities of state and federal laws governing immigration and to related duties and liability of certain persons in the criminal justice system; providing a civil penalty; creating a criminal offense.

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

ARTICLE 1. POLICIES OF AND GRANT PROGRAMS FOR LOCAL ENTITIES AND
CAMPUS POLICE DEPARTMENTS

SECTION 1.01. 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 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 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.).

(3) "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

1 higher education as defined by Section 61.003, Education Code.

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

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

9 (B) is reporting a criminal offense.

10 (5) "Local entity" means:

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

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

17 (C) a district attorney or criminal district
18 attorney.

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

21 Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) This
22 subchapter does not apply to a hospital or hospital district
23 created under Subtitle C or D, Title 4, Health and Safety Code, a
24 federally qualified health center as defined in Section 31.017,
25 Health and Safety Code, a hospital owned or operated by an
26 institution of higher education, or a hospital district created
27 under a general or special law authorized by Article IX, Texas

1 Constitution, to the extent that the hospital or hospital district
2 is providing access to or delivering medical or health care
3 services as required under the following applicable federal or
4 state laws:

- 5 (1) 42 U.S.C. Section 1395dd;
- 6 (2) 42 U.S.C. Section 1396b(v);
- 7 (3) Subchapter C, Chapter 61, Health and Safety Code;
- 8 (4) Chapter 81, Health and Safety Code; and
- 9 (5) Section 311.022, Health and Safety Code.

10 (b) Subsection (a) excludes the application of this
11 subchapter to a commissioned peace officer:

- 12 (1) employed by a hospital or hospital district during
13 the officer's employment; or
- 14 (2) commissioned by a hospital or hospital district.

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

19 (d) This subchapter does not apply to a school district or
20 open-enrollment charter school, including a peace officer employed
21 or contracted by a district or charter school during the officer's
22 employment with the district or charter school or while the officer
23 is performing the contract. This subchapter does not apply to the
24 release of information contained in educational records of an
25 educational agency or institution, except in conformity with the
26 Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
27 Section 1232g).

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

3 (f) This subchapter does not apply to:

4 (1) a community center as defined by Section [571.003](#),
5 Health and Safety Code; or

6 (2) a local mental health authority as defined by
7 Section [531.002](#), Health and Safety Code.

8 Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION
9 ENFORCEMENT. (a) A local entity or campus police department may
10 not:

11 (1) adopt, enforce, or endorse a policy under which
12 the entity or department prohibits or materially limits the
13 enforcement of immigration laws;

14 (2) as demonstrated by pattern or practice, prohibit
15 or materially limit the enforcement of immigration laws; or

16 (3) for an entity that is a law enforcement agency or
17 for a department, as demonstrated by pattern or practice,
18 intentionally violate Article 2.251, Code of Criminal Procedure.

19 (b) In compliance with Subsection (a), a local entity or
20 campus police department may not prohibit or materially limit a
21 person who is a commissioned peace officer described by Article
22 [2.12](#), Code of Criminal Procedure, a corrections officer, a booking
23 clerk, a magistrate, or a district attorney, criminal district
24 attorney, or other prosecuting attorney and who is employed by or
25 otherwise under the direction or control of the entity or
26 department from doing any of the following:

27 (1) inquiring into the immigration status of a person

1 under a lawful detention or under arrest;

2 (2) with respect to information relating to the
3 immigration status, lawful or unlawful, of any person under a
4 lawful detention or under arrest, including information regarding
5 the person's place of birth:

6 (A) sending the information to or requesting or
7 receiving the information from United States Citizenship and
8 Immigration Services, United States Immigration and Customs
9 Enforcement, or another relevant federal agency;

10 (B) maintaining the information; or

11 (C) exchanging the information with another
12 local entity or campus police department or a federal or state
13 governmental entity;

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

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

20 (c) Notwithstanding Subsection (b)(3), a local entity or
21 campus police department may prohibit persons who are employed by
22 or otherwise under the direction or control of the entity or
23 department from assisting or cooperating with a federal immigration
24 officer if the assistance or cooperation occurs at a place of
25 worship.

26 Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity,
27 campus police department, or a person employed by or otherwise

1 under the direction or control of the entity or department may not
2 consider race, color, religion, language, or national origin while
3 enforcing immigration laws except to the extent permitted by the
4 United States Constitution or Texas Constitution.

5 Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Any
6 citizen residing in the jurisdiction of a local entity or any
7 citizen enrolled at or employed by an institution of higher
8 education may file a complaint with the attorney general if the
9 person asserts facts supporting an allegation that the entity or
10 the institution's campus police department has violated Section
11 752.053. The citizen must include a sworn statement with the
12 complaint stating that to the best of the citizen's knowledge, all
13 of the facts asserted in the complaint are true and correct.

14 (b) If the attorney general determines that a complaint
15 filed under Subsection (a) against a local entity or campus police
16 department is valid, the attorney general may file a petition for a
17 writ of mandamus or apply for other appropriate equitable relief in
18 a district court in Travis County or in a county in which the
19 principal office of the entity or department is located to compel
20 the entity or department that is suspected of violating Section
21 752.053 to comply with that section.

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

27 Sec. 752.056. CIVIL PENALTY. (a) A local entity or campus

1 police department that is found by a court of law as having
2 intentionally violated Section 752.053 is subject to a civil
3 penalty in an amount:

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

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

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

11 (c) The court that hears an action brought under Section
12 752.055 against the local entity or campus police department shall
13 determine the amount of the civil penalty under this section.

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

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

21 Sec. 752.0565. REMOVAL FROM OFFICE. (a) For purposes of
22 Section 66.001, Civil Practice and Remedies Code, a person holding
23 an elective or appointive office of a political subdivision of this
24 state does an act that causes the forfeiture of the person's office
25 if the person violates Section 752.053.

26 (b) The attorney general shall file a petition under Section
27 66.002, Civil Practice and Remedies Code, against a public officer

1 to which Subsection (a) applies if presented with evidence,
2 including evidence of a statement by the public officer,
3 establishing probable grounds that the public officer engaged in
4 conduct described by Subsection (a). The court in which the
5 petition is filed shall give precedence to proceedings relating to
6 the petition in the same manner as provided for an election contest
7 under Section 23.101.

8 (c) If the person against whom an information is filed based
9 on conduct described by Subsection (a) is found guilty as charged,
10 the court shall enter judgment removing the person from office.

11 Sec. 752.057. COMMUNITY OUTREACH POLICY. (a) Each law
12 enforcement agency that is subject to the requirements of this
13 subchapter may adopt a written policy requiring the agency to
14 perform community outreach activities to educate the public that a
15 peace officer may not inquire into the immigration status of a
16 victim of or witness to an alleged criminal offense unless, as
17 provided by Article 2.13, Code of Criminal Procedure, the officer
18 determines that the inquiry is necessary to:

19 (1) investigate the offense; or
20 (2) provide the victim or witness with information
21 about federal visas designed to protect individuals providing
22 assistance to law enforcement.

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

25 (1) family violence, as that term is defined by
26 Section 71.004, Family Code, including those receiving services at
27 family violence centers under Chapter 51, Human Resources Code; and

1 (2) sexual assault, including those receiving
2 services under a sexual assault program, as those terms are defined
3 by Section 420.003.

4 SECTION 1.02. Subchapter A, Chapter 772, Government Code,
5 is amended by adding Section 772.0073 to read as follows:

6 Sec. 772.0073. ENFORCEMENT OF IMMIGRATION LAW GRANT
7 PROGRAM. (a) In this section:

8 (1) "Criminal justice division" means the criminal
9 justice division established under Section 772.006.

10 (2) "Immigration detainer request" means a federal
11 government request to a local entity to maintain temporary custody
12 of an alien, including a United States Department of Homeland
13 Security Form I-247 document or a similar or successor form.

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

18 (4) "Local entity" means a municipality or county.

19 (b) The criminal justice division shall establish and
20 administer a competitive grant program to provide financial
21 assistance to local entities to offset costs related to:

22 (1) enforcing immigration laws; or

23 (2) complying with, honoring, or fulfilling
24 immigration detainer requests.

25 (c) The criminal justice division shall establish:

26 (1) eligibility criteria for grant applicants;

27 (2) grant application procedures;

1 (3) criteria for evaluating grant applications and
2 awarding grants;

3 (4) guidelines related to grant amounts; and

4 (5) procedures for monitoring the use of a grant
5 awarded under this section and ensuring compliance with any
6 conditions of the grant.

7 (d) The criminal justice division may use any revenue
8 available for purposes of this section.

9 ARTICLE 2. DUTIES OF LAW ENFORCEMENT AGENCIES AND JUDGES

10 SECTION 2.01. Chapter 2, Code of Criminal Procedure, is
11 amended by adding Article 2.251 to read as follows:

12 Art. 2.251. DUTIES RELATED TO IMMIGRATION DETAINER
13 REQUESTS. (a) A law enforcement agency that has custody of a
14 person subject to an immigration detainer request issued by United
15 States Immigration and Customs Enforcement shall:

16 (1) comply with, honor, and fulfill any request made
17 in the detainer request provided by the federal government; and

18 (2) inform the person that the person is being held
19 pursuant to an immigration detainer request issued by United States
20 Immigration and Customs Enforcement.

21 (b) A law enforcement agency is not required to perform a
22 duty imposed by Subsection (a) with respect to a person who has
23 provided proof that the person is a citizen of the United States or
24 that the person has lawful immigration status in the United States,
25 such as a Texas driver's license or similar government-issued
26 identification.

27 SECTION 2.02. Chapter 42, Code of Criminal Procedure, is

1 amended by adding Article 42.039 to read as follows:

2 Art. 42.039. COMPLETION OF SENTENCE IN FEDERAL CUSTODY.

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

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

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

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

25 (c) If the applicable information described by Subsection
26 (a)(2) is not available at the time sentence is pronounced in the
27 case, the judge shall issue the order described by Subsection (b) as

1 soon as the information becomes available. The judge retains
2 jurisdiction for the purpose of issuing an order under this
3 article.

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

6 ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

7 SECTION 3.01. Subchapter B, Chapter 402, Government Code,
8 is amended by adding Section 402.0241 to read as follows:

9 Sec. 402.0241. DEFENSE OF LOCAL ENTITIES IN SUITS RELATED
10 TO IMMIGRATION DETAINER REQUESTS. (a) In this section, "local
11 entity" has the meaning assigned by Section 752.051.

12 (b) The attorney general shall defend a local entity in any
13 action in any court if:

14 (1) the executive head or governing body, as
15 applicable, of the local entity requests the attorney general's
16 assistance in the defense; and

17 (2) the attorney general determines that the cause of
18 action arises out of a claim involving the local entity's
19 good-faith compliance with an immigration detainer request
20 required by Article 2.251, Code of Criminal Procedure.

21 (c) If the attorney general defends a local entity under
22 Subsection (b), the state is liable for the expenses, costs,
23 judgment, or settlement of the claims arising out of the
24 representation. The attorney general may settle or compromise any
25 and all claims described by Subsection (b)(2). The state may not be
26 liable for any expenses, costs, judgments, or settlements of any
27 claims against a local entity not being represented by the attorney

1 general under Subsection (b).

2 ARTICLE 4. SURETY BOND

3 SECTION 4.01. Article 17.16, Code of Criminal Procedure, is
4 amended by amending Subsection (a) and adding Subsection (a-1) to
5 read as follows:

6 (a) A surety may before forfeiture relieve the surety of the
7 surety's undertaking by:

8 (1) surrendering the accused into the custody of the
9 sheriff of the county where the prosecution is pending; or

10 (2) delivering to the sheriff of the county in which
11 the prosecution is pending and to the office of the prosecuting
12 attorney an affidavit stating that the accused is incarcerated in:

13 (A) federal custody, subject to Subsection
14 (a-1);

15 (B) [~~in~~] the custody of any state; [~~r~~] or

16 (C) [~~in~~] any county of this state.

17 (a-1) For purposes of Subsection (a)(2), the surety may not
18 be relieved of the surety's undertaking if the accused is in federal
19 custody to determine whether the accused is lawfully present in the
20 United States.

21 ARTICLE 5. PROHIBITED CONDUCT BY SHERIFF OR CONSTABLE

22 SECTION 5.01. Section 87.031, Local Government Code, is
23 amended by adding Subsection (c) to read as follows:

24 (c) For purposes of Subsection (a), "a misdemeanor
25 involving official misconduct" includes a misdemeanor under
26 Section 39.07, Penal Code.

27 SECTION 5.02. Chapter 39, Penal Code, is amended by adding

1 Section 39.07 to read as follows:

2 Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER
3 REQUEST. (a) A person who is a sheriff, chief of police, or
4 constable or a person who otherwise has primary authority for
5 administering a jail commits an offense if the person:

6 (1) has custody of a person subject to an immigration
7 detainer request issued by United States Immigration and Customs
8 Enforcement; and

9 (2) knowingly fails to comply with the detainer
10 request.

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

12 (c) It is an exception to the application of this section
13 that the person who was subject to an immigration detainer request
14 described by Subsection (a)(1) had provided proof that the person
15 is a citizen of the United States or that the person has lawful
16 immigration status in the United States, such as a Texas driver's
17 license or similar government-issued identification.

18 ARTICLE 6. INQUIRY BY PEACE OFFICER REGARDING IMMIGRATION OR
19 NATIONALITY OF CRIME VICTIM OR WITNESS

20 SECTION 6.01. Article 2.13, Code of Criminal Procedure, is
21 amended by adding Subsections (d) and (e) to read as follows:

22 (d) Subject to Subsection (e), in the course of
23 investigating an alleged criminal offense, a peace officer may
24 inquire as to the nationality or immigration status of a victim of
25 or witness to the offense only if the officer determines that the
26 inquiry is necessary to:

27 (1) investigate the offense; or

1 (2) provide the victim or witness with information
2 about federal visas designed to protect individuals providing
3 assistance to law enforcement.

4 (e) Subsection (d) does not prevent a peace officer from:

5 (1) conducting a separate investigation of any other
6 alleged criminal offense; or

7 (2) inquiring as to the nationality or immigration
8 status of a victim of or witness to a criminal offense if the
9 officer has probable cause to believe that the victim or witness has
10 engaged in specific conduct constituting a separate criminal
11 offense.

12 ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

13 SECTION 7.01. It is the intent of the legislature that every
14 provision, section, subsection, sentence, clause, phrase, or word
15 in this Act, and every application of the provisions in this Act to
16 each person or entity, are severable from each other. If any
17 application of any provision in this Act to any person, group of
18 persons, or circumstances is found by a court to be invalid for any
19 reason, the remaining applications of that provision to all other
20 persons and circumstances shall be severed and may not be affected.

21 SECTION 7.02. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 4 passed the Senate on February 8, 2017, by the following vote: Yeas 20, Nays 10; and that the Senate concurred in House amendments on May 3, 2017, by the following vote: Yeas 20, Nays 11.

Secretary of the Senate

I hereby certify that S.B. No. 4 passed the House, with amendments, on April 27, 2017, by the following vote: Yeas 94, Nays 53, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor