

By: Howard of Fort Bend

H.B. No. 4485

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the identification of certain defendants as foreign
3 nationals who were not lawfully admitted to the United States or
4 whose lawful status has expired and to their release on bail.

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

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Article 2.245 to read as follows:

8 Art. 2.245. SHERIFF OR OTHER OFFICER TO DETERMINE
9 IMMIGRATION STATUS OF CERTAIN DEFENDANTS. (a) In this section,
10 "intoxication offense" means an offense under Section 49.04, 49.05,
11 49.06, or 49.065, Penal Code.

12 (b) The sheriff or any other officer in charge of a
13 correctional facility in which a defendant is confined awaiting
14 trial for a felony or an intoxication offense shall immediately, on
15 receiving the defendant, make a reasonable effort to determine the
16 defendant's citizenship status.

17 (c) If the sheriff or other officer has reason to believe
18 the defendant is a foreign national, the sheriff or officer shall
19 make a reasonable effort to verify that:

20 (1) the defendant has been lawfully admitted to the
21 United States; and

22 (2) if lawfully admitted, the defendant's lawful
23 status has not expired.

24 (d) If the sheriff or other officer cannot verify the

1 defendant's immigration status under Subsection (c) from documents
2 in the defendant's possession, the sheriff or other officer, not
3 later than 48 hours after the defendant is received at the
4 correctional facility, shall contact the Law Enforcement Support
5 Center of the United States Department of Homeland Security, or
6 other office or agency designated for that purpose by the
7 Department of Homeland Security, to verify the defendant's
8 immigration status.

9 (e) The sheriff or other officer shall notify the judge or
10 magistrate authorized to grant or deny the defendant's release on
11 bail under Chapter 17 and the Department of Homeland Security if the
12 sheriff or officer determines that:

13 (1) the defendant was not lawfully admitted to the
14 United States; or

15 (2) although lawfully admitted, the defendant's lawful
16 status has expired.

17 (f) The Commission on Jail Standards shall prepare and issue
18 guidelines and procedures to ensure compliance with this section.

19 SECTION 2. Chapter 17, Code of Criminal Procedure, is
20 amended by adding Article 17.153 to read as follows:

21 Art. 17.153. BAIL FOR CERTAIN IMMIGRANTS. If under Article
22 2.245 a sheriff or other officer notifies a judge or magistrate that
23 a defendant was not lawfully admitted to the United States or that,
24 although lawfully admitted, the defendant's lawful status has
25 expired, there is a rebuttable presumption at any proceeding before
26 the judge or magistrate concerning the defendant's release on bail
27 that the defendant is at risk of flight.

1 SECTION 3. Article 2.245, Code of Criminal Procedure, as
2 added by this Act, applies only to a defendant admitted to a
3 correctional facility on or after the effective date of this Act. A
4 defendant admitted to a correctional facility before the effective
5 date of this Act is covered by the law in effect on the date the
6 defendant was admitted, and the former law is continued in effect
7 for that purpose.

8 SECTION 4. This Act takes effect September 1, 2009.