

BILL ANALYSIS

C.S.S.B. 4
By: Perry
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised about the extent to which certain entities are cooperating with the federal government in the enforcement of immigration laws. C.S.S.B. 4 seeks to address these concerns and increase cooperation by, among other things, prohibiting the applicable entities from adopting or enforcing a measure under which those entities prohibit the enforcement of state or federal immigration laws or, as demonstrated by pattern or practice, the enforcement of those immigration laws.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 4 amends the Government Code to prohibit a campus police department of a public, private, or independent institution of higher education or a local entity, defined by the bill, among other terms, as the governing body of or any other body that is part of a municipality, county, or special district or authority or an officer or employee of such a body whose primary duties involve the oversight or management of, or controlling the direction of, other officers or employees of the body from adopting or enforcing a measure under which such a department or local entity prohibits the enforcement of state or federal immigration laws or from prohibiting, as demonstrated by pattern or practice, the enforcement of those immigration laws. The bill's provisions relating to such enforcement by applicable local entities and campus police departments expressly do not apply to a school district or open-enrollment charter school; to the release of information contained in educational records of an educational agency or institution, except in conformity with the federal Family Educational Rights and Privacy Act of 1974; to a hospital or hospital district created under Health and Safety Code provisions relating to local hospitals or hospital districts, a hospital owned or operated by such an institution of higher education, or a hospital district created under general or special law authorized by the Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under specified applicable federal or state laws; to the public health department of such a local entity; or to a commissioned peace officer employed or contracted by a religious organization during the officer's employment with the organization or while the officer is performing the contract. The bill specifies that such inapplicability to the described hospitals and hospital districts excludes the application of the bill's provisions regarding the enforcement of state and federal immigration laws by such local entities and

campus police departments to a commissioned peace officer employed by such a hospital or hospital district during the officer's employment or commissioned by the hospital or hospital district.

C.S.S.B. 4 prohibits such a local entity or campus police department from having a pattern or practice of prohibiting persons who are employed by or otherwise under the direction or control of the entity or department from doing any of the following: inquiring into the immigration status of an arrested person; with respect to information relating to the immigration status, lawful or unlawful, of any arrested person, including information regarding a person's place of birth, sending the information to or requesting or receiving the information from U.S. Citizenship and Immigration Services or U.S. Immigration and Customs Enforcement (ICE), maintaining the information, or exchanging the information with another local entity or campus police department or a federal or state governmental entity; if requested by a federal immigration officer, assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws. The bill prohibits a local entity, campus police department, or person employed by or otherwise under the direction or control of such an entity or department from considering race, color, religion, language, or national origin while enforcing state or federal immigration laws except to the extent permitted by the United States Constitution or the Texas Constitution.

C.S.S.B. 4 establishes a complaint process by which any citizen residing in the jurisdiction of such a local entity or any citizen enrolled at or employed by such an institution of higher education may file a complaint with the attorney general, contingent on the person asserting facts supporting an allegation that the entity or the institution's campus police department has violated the bill's provisions relating to policies regarding immigration enforcement. The bill authorizes the attorney general to file a petition for a writ of mandamus or apply for other appropriate equitable relief to compel compliance with those bill provisions if the attorney general determines that such a complaint is valid and sets out provisions relating to such a filing or application. The bill authorizes the attorney general to recover reasonable expenses incurred in obtaining such relief and provides for an appeal of a suit brought for relief. The bill subjects a local entity or campus police department that intentionally violates the bill's provisions relating to policies regarding immigration enforcement to a civil penalty, sets out provisions related to such a penalty, the amount of such a penalty, and the deposit of such a penalty to the compensation to victims of crime fund, and waives and abolishes sovereign immunity of the state and governmental immunity of a county and municipality to suit to the extent of liability created by these bill provisions regarding the civil penalty.

C.S.S.B. 4 provides for the adoption of a written policy regarding community outreach activities by an applicable law enforcement agency to educate the public that a peace officer may not inquire into the immigration status of a victim of or witness to an alleged criminal offense except under certain circumstances and requires such a policy to include outreach to victims of family violence and sexual assault. The bill requires the criminal justice division in the governor's office to establish and administer a competitive grant program to provide financial assistance to counties and municipalities to offset costs related to enforcing state and federal immigration laws or complying with, honoring, or fulfilling immigration detainer requests. The bill requires the division to establish eligibility criteria for grant applicants, grant application procedures, criteria for evaluating grant applications and awarding grants, guidelines related to grant amounts, and procedures for monitoring the use of a grant awarded under the grant program and ensuring compliance with any conditions of the grant. The bill authorizes the division to use any revenue available for the grant program.

C.S.S.B. 4 requires the attorney general to defend a local entity, as defined by the bill, in any action in any court if the entity's executive head or governing body, as applicable, requests the

attorney general's assistance in the defense and the attorney general determines that the cause of action arises out of a claim involving the local entity's good-faith compliance with an immigration detainer request as required by the bill's Code of Criminal Procedure provisions regarding an applicable law enforcement agency's duties related to immigration detainer requests. The bill authorizes the attorney general to settle or compromise any and all such claims. The bill makes the state liable for the expenses, costs, judgment, or settlement of the claims arising out of the representation but establishes that the state may not be liable for any expenses, costs, judgments, or settlements of any claims against a local entity not being represented by the attorney general under these provisions.

C.S.S.B. 4 amends the Code of Criminal Procedure to require a law enforcement agency that has custody of a person subject to an immigration detainer request issued by ICE to comply with, honor, and fulfill any request made in the detainer request provided by the federal government and inform the person that the person is being held pursuant to an immigration detainer request issued by ICE. A law enforcement agency is not required to perform such an imposed duty with respect to a person who has provided proof that the person is a United States citizen.

C.S.S.B. 4 requires the judge in a criminal case in which the judgment requires the defendant to be confined in a secure correctional facility and in which the defendant is subject to an immigration detainer request to issue an order at the time of pronouncement of a sentence of confinement requiring the secure correctional facility in which the defendant is to be confined and all appropriate government officers, including a sheriff, a warden, or members of the Board of Pardons and Paroles, as appropriate, to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. The bill authorizes a facility or officer acting under exigent circumstances to perform the transfer in the absence of such an order after making the requisite determination. The bill specifies that these provisions apply only if appropriate officers of the federal government consent to the transfer of the defendant into federal custody under such described circumstances. The bill requires the judge, if the applicable information described by the bill regarding a defendant subject to an immigration detainer request is not available at the time sentence is pronounced in the case, to issue the order as soon as the information becomes available and the bill establishes that the judge retains jurisdiction for the purpose of issuing such an order.

C.S.S.B. 4 establishes that a surety may not be relieved of the surety's undertaking before forfeiture on account of delivering to the sheriff of the county in which the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in federal custody if the accused is in federal custody to determine whether the accused is lawfully present in the United States. The bill limits the authority of a peace officer to inquire as to the nationality or immigration status of a victim of or witness to an alleged criminal offense the officer is in the course of investigating to instances in which the officer determines that the inquiry is necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement. That limitation expressly does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense or from inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.

C.S.S.B. 4 amends the Penal Code to create the Class A misdemeanor offense of failure to comply with an immigration detainer request for a person who is a sheriff, chief of police, or constable, or a person who otherwise has primary authority for administering a jail, who has custody of a person subject to an immigration detainer request issued by ICE and who knowingly fails to comply with the detainer request. It is an express exception to the application of such an offense that the person who was subject to the detainer request had previously

provided proof that the person was a United States citizen.

C.S.S.B. 4 amends the Local Government Code to specify that, for purposes of the provision establishing that the conviction of a county officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal of that officer from office, the term "a misdemeanor involving official misconduct" includes the misdemeanor Penal Code offense of failure to comply with an immigration detainer request, as created by the bill.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 4 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0216 to read as follows:

Sec. 101.0216. LIABILITY OF STATE, COUNTY, OR MUNICIPALITY FOR FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST.

(a) Except as provided by Subsection (d), a state criminal justice agency, county, or municipality that releases from custody a person who is the subject of an immigration detainer request issued by United States Immigration and Customs Enforcement is liable for damages resulting from a felony committed by the person in this state within 10 years following the person's release if:

(1) the state criminal justice agency, county, or municipality did not detain the person as requested;

(2) the person was not a citizen of the United States at the time of release; and

(3) the attorney general has petitioned the chief justice of the supreme court to convene the special three-judge district court under Section 752.055 to hear an action brought under that section against the county or municipality.

(a-1) An immigration detainer request described by Subsection (a) is presumed to be valid, regardless of whether the detainer is written or verbal.

(b) This section does not create liability for

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

damages that a person who is subject to an immigration detainer request sustains following the person's release by a state criminal justice agency, county, or municipality.

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

(d) A state criminal justice agency, county, or municipality is not liable under Subsection (a) for damages incurred after United States Immigration and Customs Enforcement subsequently detains the person described by that subsection.

(e) In this section, "state criminal justice agency" has the meaning assigned by Section 752.051, Government Code.

No equivalent provision.

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.251 and 2.252 to read as follows:

Art. 2.251. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (a) A peace officer may not stop a motor vehicle or conduct a search of a business or residence solely to enforce a federal law relating to aliens, immigrants, or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.), unless the officer is acting:

(1) at the request of, or providing assistance to, an appropriate federal law enforcement officer; or

(2) under the terms of an agreement between the law enforcement agency employing the officer and the federal government under which the agency receives delegated authority to enforce federal law relating to aliens, immigrants, or immigration.

(b) A peace officer may arrest an alien not lawfully present in the United States only if the officer is acting under the authority granted under Article 2.13.

Art. 2.252. DUTIES RELATED TO

ARTICLE 2. DUTIES OF LAW ENFORCEMENT AGENCIES AND JUDGES

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

No equivalent provision.

Art. 2.251. DUTIES RELATED TO

IMMIGRATION DETAINER REQUESTS.

(a) A law enforcement agency that has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement shall comply with, honor, and fulfill any request made in the detainer request and in any other instrument provided by the federal government.

(b) A law enforcement agency shall presume an immigration detainer request is based on probable cause and is otherwise valid, regardless of whether the detainer request is written or verbal.

(c) Notwithstanding Subsection (b), a law enforcement agency is not required to perform a duty imposed by Subsection (a) with respect to a person who has provided proof that the person is a citizen of the United States.

SECTION 3. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.039 to read as follows.

Art. 42.039. COMPLETION OF SENTENCE IN FEDERAL CUSTODY.

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

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

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

(b) In a criminal case described by Subsection (a), the judge shall, at the time of pronouncement of a sentence of confinement, issue an order requiring the secure correctional facility in which the defendant is to be confined and all appropriate government officers, including a sheriff, a warden, or members of the Board of Pardons and Paroles, as appropriate, to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. In the absence of an order issued under this article, a facility or officer acting

IMMIGRATION DETAINER REQUESTS.

(a) A law enforcement agency that has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement shall:

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

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

(b) A law enforcement agency is not required to perform a duty imposed by Subsection (a) with respect to a person who has provided proof that the person is a citizen of the United States.

SECTION 2.02. Substantially the same as engrossed version.

under exigent circumstances may perform the transfer after making the determination described by this subsection. This subsection applies only if appropriate officers of the federal government consent to the transfer of the defendant into federal custody under the circumstances described by this subsection.

(c) If the applicable information described by Subsection (a)(2) is not available at the time sentence is pronounced in the case, the judge shall issue the order described by Subsection (b) as soon as the information becomes available. The judge retains jurisdiction for the purpose of issuing an order under this article.

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

SECTION 4. Section 22A.001(a), Government Code, is amended to read as follows:

(a) The attorney general may petition the chief justice of the supreme court to convene a special three-judge district court in any suit:

(1) filed in a district court in this state in which this state or a state officer or agency is a defendant in a claim that:

(A) ~~[(1)]~~ challenges the finances or operations of this state's public school system; or

(B) ~~[(2)]~~ involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts; or

(2) involving an alleged violation of Section 752.053 by a local entity, state criminal justice agency, or campus police department of an institution of higher education.

No equivalent provision.

SECTION 5. 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, STATE CRIMINAL JUSTICE AGENCIES, AND

No equivalent provision.

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

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 detainer request" means a federal government request to a local entity, state criminal justice agency, or campus police department to maintain temporary custody of an alien. The term includes verbal and written requests, including a United States Department of Homeland Security Form I-247 document or a similar or successor form.

(3) "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.).

(4) "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 higher education as defined by Section 61.003, Education Code.

(5) "Lawful detention" means the detention of an individual by a local entity, state criminal justice agency, or campus police department for the investigation of a criminal offense. The term excludes a detention if the sole reason for the detention is that the individual:
(A) is a victim of or witness to a criminal offense; or
(B) is reporting a criminal offense.

(6) "Local entity" means:
(A) the governing body of a municipality, county, or special district or authority, subject to Section 752.052;
(B) an officer or employee of or a division, department, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and

Sec. 752.051. DEFINITIONS. In this subchapter:

(1). Same as engrossed version.

(See SECTION 1.02 at Sec. 772.0073(a)(2) below.)

(2). Same as engrossed version.

No equivalent provision.

(4) "Local entity" means:
(A) the governing body of a municipality, county, or special district or authority, subject to Section 752.052;
(B) a division, department, or other body, including a municipal police department or a sheriff's department, that is part of a municipality, county, or special district or authority, subject to Section 752.052; and
(C) an officer or employee, including a sheriff, municipal attorney, or county

attorney, of a division, department, or other body described by Paragraph (B) whose primary duties involve the oversight or management of, or controlling the direction of, other officers or employees of the division, department, or other body.

(C) a district attorney or criminal district attorney.

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

(8) "State criminal justice agency" means a state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 752.052. APPLICABILITY OF SUBCHAPTER.

(a) This subchapter does not apply to a school district or open-enrollment charter school. This subchapter does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) Subject to Subsection (c), this subchapter does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health and Safety Code, or a hospital district created under a general or special law authorized by Article IX, Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under the following applicable federal or state laws:

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

No equivalent provision.

No equivalent provision.

Sec. 752.052. APPLICABILITY OF SUBCHAPTER.

(d). Same as engrossed version.

(a) This subchapter does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health and Safety Code, a hospital owned or operated by an institution of higher education, or a hospital district created under a general or special law authorized by Article IX, Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under the following applicable federal or state laws:

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

(c) Subsection (b) does not exclude the application of this subchapter to a commissioned peace officer employed by or commissioned by a hospital or hospital district otherwise subject to Subsection (b).

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

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

Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION ENFORCEMENT.

(a) A local entity, state criminal justice agency, or campus police department shall not:

(1) adopt, enforce, or endorse a policy under which the entity, agency, or department prohibits or discourages the enforcement of immigration laws;

(2) by consistent actions prohibit or discourage the enforcement of immigration laws; or

(3) for an entity that is a law enforcement agency, for an agency, or for a department, by consistent actions intentionally violate Article 2.252, Code of Criminal Procedure.

(b) In compliance with Subsection (a), a local entity, state criminal justice agency, or campus police department shall not prohibit or discourage a person who is a commissioned peace officer described by Article 2.12, Code of Criminal Procedure, a corrections officer, a booking clerk, a magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity, agency, or department from doing any of the following:

(1) inquiring into the immigration status of a person under a lawful detention or under arrest;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or

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

(1) employed by a hospital or hospital district during the officer's employment; or

(2) commissioned by a hospital or hospital district.

(e). Same as engrossed version.

(c). Same as engrossed version.

Sec. 752.053. POLICY REGARDING IMMIGRATION ENFORCEMENT.

(a) A local entity or campus police department may not:

(1) adopt or enforce an ordinance, order, rule, policy, or other measure under which the entity or department prohibits the enforcement of immigration laws; or

(2) as demonstrated by pattern or practice, prohibit the enforcement of immigration laws.

(b) In compliance with Subsection (a), a local entity or campus police department may not have a pattern or practice of prohibiting persons who are

employed by or otherwise under the direction or control of the entity or department from doing any of the following:

(1) inquiring into the immigration status of an arrested person;

(2) with respect to information, including information regarding a person's place of birth, relating to the immigration status,

under arrest, including information regarding the person's place of birth:

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

(B) maintaining the information; or

(C) exchanging the information with another local entity, state criminal justice agency, or campus police department or a federal or state governmental entity;

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

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws. Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity, a state criminal justice agency, a campus police department, or a person employed by or otherwise under the direction or control of the entity, agency, or department may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the United States Constitution or Texas Constitution.

Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Any person, including the federal government,

may file a complaint with the attorney general if the person offers evidence to support an allegation that a local entity, state criminal justice agency, or campus police department is violating Section 752.053. The person must include with the complaint the evidence the person has that supports the complaint.

(b) A local entity, state criminal justice agency, or campus police department for which the attorney general has received a complaint under Subsection (a) shall comply with a document request, including a request for supporting documents, from the attorney general related to the complaint.

(c) If the attorney general determines that a

lawful or unlawful, of any arrested person:

(A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services or United States Immigration and Customs Enforcement;

(B) maintaining the information; or

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

(3) if requested by a federal immigration officer, assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws. Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity, campus police department, or a person employed by or otherwise under the direction or control of the entity or department may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the United States Constitution or Texas Constitution.

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

No equivalent provision.

No equivalent provision.

complaint filed under Subsection (a) against a local entity, state criminal justice agency, or campus police department is valid, the attorney general shall, not later than the 10th day after the date of the determination, provide written notification to the entity, agency, or department that:

- (1) the complaint has been filed;
- (2) the attorney general has determined that the complaint is valid;
- (3) the attorney general is authorized to file an action to enjoin the violation if the entity, agency, or department does not come into compliance with the requirements of Section 752.053 on or before the 90th day after the date the notification is provided; and
- (4) the entity and each entity that is under the jurisdiction of the local entity, agency, or department will be denied state grant funds for the state fiscal year following the year in which a final judicial determination in an action brought under Subsection (e) is made.

(d) Not later than the 30th day after the day a local entity, state criminal justice agency, or campus police department receives written notification under Subsection (c), the entity, agency, or department shall provide the attorney general with a copy of:

- (1) the entity's, agency's, or department's written policies related to immigration enforcement actions;
- (2) each immigration detainer request received by the entity, agency, or department from the United States Department of Homeland Security; and
- (3) each response sent by the entity, agency, or department for a detainer request described by Subdivision (2).

(e) If the attorney general determines that a complaint filed under Subsection (a) is valid, the attorney general may petition the chief justice of the supreme court to convene the special three-judge district court described by Chapter 22A to hear a petition for a writ of mandamus or other appropriate equitable relief to compel the local entity, state criminal justice agency, or campus police department that is violating Section 752.053 to comply with that section. The court shall be convened in Travis County or the county in which the principal office of the entity, agency, or department is

No equivalent provision.

(b) If the attorney general determines that a complaint filed under Subsection (a) against a local entity or campus police department is valid, the attorney general may file a

petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the entity or department is located to compel the entity or department that is suspected of violating Section 752.053 to comply with that section. The attorney general may recover

located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

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

Sec. 752.0555. CIVIL PENALTY. (a) A local entity, state criminal justice agency, or campus police department that violates Section 752.053 is subject to a civil penalty in an amount:

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

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

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

(c) The three-judge district court that hears an action brought under Section 752.055 against the local entity, state criminal justice agency, or campus police department shall determine the amount of the civil penalty under this section.

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

(e) Governmental immunity of a county and municipality to suit is waived and abolished to the extent of liability created by this section.

Sec. 752.0556. CRIMINAL OFFENSE. (a) An elected official of a municipality, county, or special district or authority, or an individual who is appointed by the governing body of a municipality, county, or special district or authority, who intentionally or knowingly violates Section 752.053 commits an offense.

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

Sec. 752.056. DENIAL OF STATE

reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(c). Same as engrossed version.

Sec. 752.056. CIVIL PENALTY. (a) A local entity or campus police department that intentionally violates Section 752.053 is subject to a civil penalty in an amount:

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

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

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

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

(d). Same as engrossed version.

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

No equivalent provision. (But see SECTION 5.02 at Sec. 39.07, Penal Code, below.)

No equivalent provision.

GRANT FUNDS; DATABASE.

Sec. 752.057. REINSTATEMENT OF STATE GRANT FUNDS.

Sec. 752.058. COMMUNITY OUTREACH POLICY. (a) Each law enforcement agency that is subject to the requirements of this subchapter may adopt a written policy requiring the agency to perform community outreach activities to educate the public that a person employed by or otherwise under the direction or control of the agency may not inquire into the immigration status of a detained person if the detention occurred solely because the person:

- (1) is a victim of or witness to a criminal offense; or
- (2) is reporting a criminal offense.

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

- (1) family violence, as that term is defined by Section 71.004, Family Code, including those receiving services at family violence centers under Chapter 51, Human Resources Code; and
- (2) sexual assault, including those receiving services under a sexual assault program, as those terms are defined by Section 420.003.

No equivalent provision.

(See Sec. 752.051(2) above.)

No equivalent provision.

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

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

(b). Same as engrossed version.

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

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

- (1) "Criminal justice division" means the criminal justice division established under Section 772.006.
- (2) "Immigration detainer request" means a federal government request to a local entity to maintain temporary custody of an alien, including a United States Department of Homeland Security Form I-247 document or a similar or successor form.
- (3) "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.).
- (4) "Local entity" means a municipality or

county.

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

(1) enforcing immigration laws; or

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

(c) The criminal justice division shall establish:

(1) eligibility criteria for grant applicants;

(2) grant application procedures;

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

(4) guidelines related to grant amounts; and

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

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

No equivalent provision.

ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

No equivalent provision.

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

Sec. 402.0241. DEFENSE OF LOCAL ENTITIES IN SUITS RELATED TO IMMIGRATION DETAINER REQUESTS.

(a) In this section, "local entity" has the meaning assigned by Section 752.051.

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

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

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

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

against a local entity not being represented by the attorney general under Subsection (b).

No equivalent provision.

ARTICLE 4. SURETY BOND

No equivalent provision.

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

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

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

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

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

(B) ~~in~~ the custody of any state; ~~or~~

(C) ~~in~~ any county of this state.

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

No equivalent provision.

ARTICLE 5. PROHIBITED CONDUCT BY SHERIFF OR CONSTABLE

No equivalent provision.

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

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

No equivalent provision. *(But see SECTION 5 at Sec. 752.0556, Government Code, above.)*

SECTION 5.02. Chapter 39, Penal Code, is amended by adding Section 39.07 to read as follows:

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

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

- (2) knowingly fails to comply with the detainer request.
- (b) An offense under this section is a Class A misdemeanor.
- (c) It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had previously provided proof that the person was a citizen of the United States.

No equivalent provision.

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

No equivalent provision.

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

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

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

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

- (1) conducting a separate investigation of any other alleged criminal offense; or
- (2) inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.

No equivalent provision.

ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

SECTION 6. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining

SECTION 7.01. Same as engrossed version.

applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 7. Not later than January 1, 2018, each law enforcement agency subject to this Act shall:

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

(2) update the agency's policies to be consistent with this Act and to include:

(A) provisions prohibiting an agency officer or employee from preventing agency personnel from taking immigration enforcement actions described by Section 752.053, Government Code, as added by this Act; and

(B) provisions requiring each agency officer or employee to comply with Articles 2.251 and 2.252, Code of Criminal Procedure, as added by this Act, if applicable.

SECTION 8. Section 101.0216, Civil Practice and Remedies Code, as added by this Act, applies only with respect to the release of a person from custody on or after the effective date of this Act.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

No equivalent provision.

No equivalent provision.

SECTION 7.02. Same as engrossed version.