

By: Perry, et al.

S.B. No. 4

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement by certain state and local governmental
3 entities and campus police departments of state and federal laws
4 governing immigration and to related duties of certain law
5 enforcement and judicial entities in the criminal justice system;
6 providing civil and criminal penalties.

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

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

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

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

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

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

23 (3) the attorney general has petitioned the chief
24 justice of the supreme court to convene the special three-judge

1 district court under Section 752.055 to hear an action brought
2 under that section against the county or municipality.

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

6 (b) This section does not create liability for damages that
7 a person who is subject to an immigration detainer request sustains
8 following the person's release by a state criminal justice agency,
9 county, or municipality.

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

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

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

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

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

27 (1) at the request of, or providing assistance to, an

1 appropriate federal law enforcement officer; or

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

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

9 Art. 2.252. DUTIES RELATED TO IMMIGRATION DETAINER
10 REQUESTS. (a) A law enforcement agency that has custody of a
11 person subject to an immigration detainer request issued by United
12 States Immigration and Customs Enforcement shall comply with,
13 honor, and fulfill any request made in the detainer request and in
14 any other instrument provided by the federal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 SECTION 5. Chapter 752, Government Code, is amended by
19 adding Subchapter C to read as follows:

20 SUBCHAPTER C. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS BY
21 LOCAL ENTITIES, STATE CRIMINAL JUSTICE AGENCIES, AND CAMPUS POLICE
22 DEPARTMENTS

23 Sec. 752.051. DEFINITIONS. In this subchapter:

24 (1) "Campus police department" means a law enforcement
25 agency of an institution of higher education.

26 (2) "Immigration detainer request" means a federal
27 government request to a local entity, state criminal justice

1 agency, or campus police department to maintain temporary custody
2 of an alien. The term includes verbal and written requests,
3 including a United States Department of Homeland Security Form
4 I-247 document or a similar or successor form.

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

9 (4) "Institution of higher education" means:

10 (A) an institution of higher education as defined
11 by Section 61.003, Education Code; or

12 (B) a private or independent institution of
13 higher education as defined by Section 61.003, Education Code.

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

19 (A) is a victim of or witness to a criminal
20 offense; or

21 (B) is reporting a criminal offense.

22 (6) "Local entity" means:

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

25 (B) an officer or employee of or a division,
26 department, or other body that is part of a municipality, county, or
27 special district or authority, including a sheriff, municipal

1 police department, municipal attorney, or county attorney; and

2 (C) a district attorney or criminal district
3 attorney.

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

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

10 Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) This
11 subchapter does not apply to a school district or open-enrollment
12 charter school. This subchapter does not apply to the release of
13 information contained in education records of an educational agency
14 or institution, except in conformity with the Family Educational
15 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

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

24 (1) 42 U.S.C. Section 1395dd;

25 (2) 42 U.S.C. Section 1396b(v);

26 (3) Subchapter C, Chapter 61, Health and Safety Code;

27 (4) Chapter 81, Health and Safety Code; and

1 (5) Section 311.022, Health and Safety Code.

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

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

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

12 Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION
13 ENFORCEMENT. (a) A local entity, state criminal justice agency,
14 or campus police department shall not:

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

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

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

23 (b) In compliance with Subsection (a), a local entity, state
24 criminal justice agency, or campus police department shall not
25 prohibit or discourage a person who is a commissioned peace officer
26 described by Article 2.12, Code of Criminal Procedure, a
27 corrections officer, a booking clerk, a magistrate, or a district

1 attorney, criminal district attorney, or other prosecuting
2 attorney and who is employed by or otherwise under the direction or
3 control of the entity, agency, or department from doing any of the
4 following:

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

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

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

15 (B) maintaining the information; or

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

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

22 (4) permitting a federal immigration officer to enter
23 and conduct enforcement activities at a jail to enforce federal
24 immigration laws.

25 Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity, a
26 state criminal justice agency, a campus police department, or a
27 person employed by or otherwise under the direction or control of

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

5 Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Any
6 person, including the federal government, may file a complaint with
7 the attorney general if the person offers evidence to support an
8 allegation that a local entity, state criminal justice agency, or
9 campus police department is violating Section 752.053. The person
10 must include with the complaint the evidence the person has that
11 supports the complaint.

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

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

23 (1) the complaint has been filed;

24 (2) the attorney general has determined that the
25 complaint is valid;

26 (3) the attorney general is authorized to file an
27 action to enjoin the violation if the entity, agency, or department

1 does not come into compliance with the requirements of Section
2 752.053 on or before the 90th day after the date the notification is
3 provided; and

4 (4) the entity and each entity that is under the
5 jurisdiction of the local entity, agency, or department will be
6 denied state grant funds for the state fiscal year following the
7 year in which a final judicial determination in an action brought
8 under Subsection (e) is made.

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

13 (1) the entity's, agency's, or department's written
14 policies related to immigration enforcement actions;

15 (2) each immigration detainer request received by the
16 entity, agency, or department from the United States Department of
17 Homeland Security; and

18 (3) each response sent by the entity, agency, or
19 department for a detainer request described by Subdivision (2).

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

1 County or the county in which the principal office of the entity,
2 agency, or department is located. The attorney general may recover
3 reasonable expenses incurred in obtaining relief under this
4 subsection, including court costs, reasonable attorney's fees,
5 investigative costs, witness fees, and deposition costs.

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

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

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

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

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

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

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

1 Procedure.

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

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

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

12 Sec. 752.056. DENIAL OF STATE GRANT FUNDS; DATABASE.

13 (a) A local entity, including each entity under the jurisdiction
14 of the local entity, a state criminal justice agency, or a campus
15 police department may not receive state grant funds if the local
16 entity, agency, or department violates Section 752.053.

17 (b) Except as provided by Subsection (c), state grant funds
18 for a local entity, state criminal justice agency, or campus police
19 department shall be denied beginning with the state fiscal year
20 following the year in which a final judicial determination in an
21 action brought under Section 752.055 is made that the local entity,
22 agency, or department has intentionally violated Section 752.053.
23 State grant funds shall continue to be denied until reinstated
24 under Section 752.057.

25 (c) State grant funds for the provision of wearable body
26 protective gear used for law enforcement purposes may not be denied
27 under this section.

1 (d) The comptroller shall adopt rules to implement this
2 section uniformly among the state agencies from which state grant
3 funds are distributed to local entities, state criminal justice
4 agencies, and campus police departments.

5 (e) The attorney general shall develop and maintain a
6 database listing each local entity, state criminal justice agency,
7 and campus police department for which a final judicial
8 determination described by Subsection (b) has been made. The
9 attorney general shall post the database on the attorney general's
10 Internet website.

11 Sec. 752.057. REINSTATEMENT OF STATE GRANT FUNDS.

12 (a) Except as provided by Subsection (b), not earlier than the
13 first anniversary of the date of a final judicial determination
14 that a local entity, state criminal justice agency, or campus
15 police department has intentionally violated Section 752.053, the
16 entity, agency, or department may petition the chief justice of the
17 supreme court to convene the special three-judge district court
18 described by Chapter 22A to hear an action against the attorney
19 general seeking a declaratory judgment regarding the entity's,
20 agency's, or department's compliance with Section 752.053.

21 (b) A local entity, state criminal justice agency, or campus
22 police department may petition for the reinstatement of state grant
23 funds under Subsection (a) before the date described by that
24 subsection if the person who was the chief executive of the entity,
25 agency, or department at the time of the violation of Section
26 752.053 is removed from office.

27 (c) A local entity, state criminal justice agency, or campus

1 police department that brings an action described by Subsection (a)
2 shall comply with a document request, including a request for
3 supporting documents, from the attorney general related to the
4 action.

5 (d) If the court renders a declaratory judgment declaring
6 that the local entity, state criminal justice agency, or campus
7 police department is in compliance with Section 752.053, state
8 grant funds for the entity, agency, or department shall be
9 reinstated beginning with the first day of the month following the
10 month in which the declaratory judgment was rendered.

11 (e) A local entity, state criminal justice agency, or campus
12 police department may not bring an action described by Subsection
13 (a) more than twice in one 12-month period.

14 (f) A party is not entitled to recover any attorney's fees
15 in an action described by Subsection (a).

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

23 (1) is a victim of or witness to a criminal offense; or

24 (2) is reporting a criminal offense.

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

27 (1) family violence, as that term is defined by

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

6 SECTION 6. It is the intent of the legislature that every
7 provision, section, subsection, sentence, clause, phrase, or word
8 in this Act, and every application of the provisions in this Act to
9 each person or entity, are severable from each other. If any
10 application of any provision in this Act to any person, group of
11 persons, or circumstances is found by a court to be invalid for any
12 reason, the remaining applications of that provision to all other
13 persons and circumstances shall be severed and may not be affected.

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

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

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

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

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

27 SECTION 8. Section 101.0216, Civil Practice and Remedies

1 Code, as added by this Act, applies only with respect to the release
2 of a person from custody on or after the effective date of this Act.

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