A BILL TO BE ENTITLED

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
higher education as defined by Section 61.003, Education Code.

(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.

Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (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
(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.

(c) 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.

(d) 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 educational 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).

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

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, 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.

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

(c) An appeal of a suit brought under Subsection (b) 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. 752.056. 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) 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) 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.

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) 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.

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.).
"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.

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:

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:

(1) 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 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. 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 subsection, a facility or officer acting 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.

ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

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).

ARTICLE 4. SURETY BOND

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.
ARTICLE 5. PROHIBITED CONDUCT BY SHERIFF OR CONSTABLE

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.

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.

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

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.

ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

SECTION 7.01. 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 applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 7.02. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each
C.S.S.B. No. 4

1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, this Act takes effect September 1, 2017.