

By: Perry, et al.
(Geren, Workman)

S.B. No. 4

Substitute the following for S.B. No. 4:

By: Geren

C.S.S.B. No. 4

A BILL TO BE ENTITLED

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

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

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

10 SECTION 1.01. Chapter 752, Government Code, is amended by
11 adding Subchapter C to read as follows:

12 SUBCHAPTER C. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS BY
13 LOCAL ENTITIES AND CAMPUS POLICE DEPARTMENTS

14 Sec. 752.051. DEFINITIONS. In this subchapter:

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

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

21 (3) "Institution of higher education" means:

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

24 (B) a private or independent institution of

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

2 (4) "Local entity" means:

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

5 (B) a division, department, or other body,
6 including a municipal police department or a sheriff's department,
7 that is part of a municipality, county, or special district or
8 authority, subject to Section 752.052; and

9 (C) an officer or employee, including a sheriff,
10 municipal attorney, or county attorney, of a division, department,
11 or other body described by Paragraph (B) whose primary duties
12 involve the oversight or management of, or controlling the
13 direction of, other officers or employees of the division,
14 department, or other body.

15 Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) This
16 subchapter does not apply to a hospital or hospital district
17 created under Subtitle C or D, Title 4, Health and Safety Code, a
18 hospital owned or operated by an institution of higher education,
19 or a hospital district created under a general or special law
20 authorized by Article IX, Texas Constitution, to the extent that
21 the hospital or hospital district is providing access to or
22 delivering medical or health care services as required under the
23 following applicable federal or 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 (b) Subsection (a) excludes the application of this
3 subchapter to a commissioned peace officer:

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

6 (2) commissioned by a hospital or hospital district.

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

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

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

19 Sec. 752.053. POLICY REGARDING IMMIGRATION ENFORCEMENT.

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

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

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

26 (b) In compliance with Subsection (a), a local entity or
27 campus police department may not have a pattern or practice of

1 prohibiting persons who are employed by or otherwise under the
2 direction or control of the entity or department from doing any of
3 the following:

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

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

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

13 (B) maintaining the information; or

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

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

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

24 Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity,
25 campus police department, or a person employed by or otherwise
26 under the direction or control of the entity or department may not
27 consider race, color, religion, language, or national origin while

1 enforcing immigration laws except to the extent permitted by the
2 United States Constitution or Texas Constitution.

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

12 (b) If the attorney general determines that a complaint
13 filed under Subsection (a) against a local entity or campus police
14 department is valid, the attorney general may file a petition for a
15 writ of mandamus or apply for other appropriate equitable relief in
16 a district court in Travis County or in a county in which the
17 principal office of the entity or department is located to compel
18 the entity or department that is suspected of violating Section
19 752.053 to comply with that section. The attorney general may
20 recover reasonable expenses incurred in obtaining relief under this
21 subsection, including court costs, reasonable attorney's fees,
22 investigative costs, witness fees, and deposition costs.

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

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

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

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

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

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

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

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

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

1 determines that the inquiry is necessary to:

2 (1) investigate the offense; or

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

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

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

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

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

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

18 (1) "Criminal justice division" means the criminal
19 justice division established under Section 772.006.

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

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

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

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

5 (1) enforcing immigration laws; or

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

8 (c) The criminal justice division shall establish:

9 (1) eligibility criteria for grant applicants;

10 (2) grant application procedures;

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

13 (4) guidelines related to grant amounts; and

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

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

19 ARTICLE 2. DUTIES OF LAW ENFORCEMENT AGENCIES AND JUDGES

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

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

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

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

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

7 SECTION 2.02. Chapter 42, Code of Criminal Procedure, is
8 amended by adding Article 42.039 to read as follows:

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

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

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

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

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

1 determination described by this subsection. This subsection
2 applies only if appropriate officers of the federal government
3 consent to the transfer of the defendant into federal custody under
4 the circumstances described by this subsection.

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

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

13 ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

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

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

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

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

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

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

1 investigating an alleged criminal offense, a peace officer may
2 inquire as to the nationality or immigration status of a victim of
3 or witness to the offense only if the officer determines that the
4 inquiry is necessary to:

5 (1) investigate the offense; or

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

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

10 (1) conducting a separate investigation of any other
11 alleged criminal offense; or

12 (2) inquiring as to the nationality or immigration
13 status of a victim of or witness to a criminal offense if the
14 officer has probable cause to believe that the victim or witness has
15 engaged in specific conduct constituting a separate criminal
16 offense.

17 ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

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

26 SECTION 7.02. This Act takes effect immediately if it
27 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.