

By: Perry

S.B. No. 4

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the enforcement by certain governmental entities of  
3 state and federal laws governing immigration and to the duties of  
4 law enforcement agencies concerning certain arrested persons.

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

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is  
7 amended by adding Articles 2.251, 2.252, and 2.253 to read as  
8 follows:

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

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

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

21 (b) A peace officer may arrest an undocumented person only  
22 if the officer is acting under the authority granted under Article  
23 2.13.

24 Art. 2.252. DUTIES RELATED TO CERTAIN ARRESTED PERSONS.

1 (a) If a person is arrested and is unable to provide proof of the  
2 person's lawful presence in the United States, not later than 48  
3 hours after the person is arrested and before the person is released  
4 on bond, a law enforcement agency performing the booking process  
5 shall:

6 (1) review any information available from the federal  
7 Priority Enforcement Program operated by United States Immigration  
8 and Customs Enforcement or a successor program; and

9 (2) if information obtained under Subdivision (1)  
10 reveals that the person is not a citizen or national of the United  
11 States and is unlawfully present in the United States according to  
12 the terms of the federal Immigration and Nationality Act (8 U.S.C.  
13 Section 1101 et seq.):

14 (A) provide notice of that fact to the judge or  
15 magistrate authorized to grant or deny the person's release on bail  
16 under Chapter 17; and

17 (B) record that fact in the person's case file.

18 (b) A law enforcement agency is not required to perform a  
19 duty imposed by Subsection (a) with respect to a person who is  
20 transferred to the custody of the agency by another law enforcement  
21 agency if the transferring agency performed that duty before  
22 transferring custody of the person.

23 (c) A judge or magistrate who receives notice of a person's  
24 immigration status under this article shall record that status in  
25 the court record.

26 Art. 2.253. DUTIES RELATED TO IMMIGRATION DETAINER. (a) A  
27 law enforcement agency that has custody of a person subject to an

1 immigration detainer issued by United States Immigration and  
2 Customs Enforcement shall:

3 (1) provide to the judge or magistrate authorized to  
4 grant or deny the person's release on bail under Chapter 17 notice  
5 that the person is subject to an immigration detainer;

6 (2) record in the person's case file that the person is  
7 subject to an immigration detainer; and

8 (3) comply with, honor, and fulfill the requests made  
9 in the detainer.

10 (b) A law enforcement agency is not required to perform a  
11 duty imposed by Subsection (a)(1) or (2) with respect to a person  
12 who is transferred to the custody of the agency by another law  
13 enforcement agency if the transferring agency performed that duty  
14 before transferring custody of the person.

15 (c) A judge or magistrate who receives notice that a person  
16 is subject to a detainer under this article shall record that fact  
17 in the court record, regardless of whether the notice is received  
18 before or after a judgment in the case.

19 SECTION 2. Chapter 42, Code of Criminal Procedure, is  
20 amended by adding Article 42.039 to read as follows:

21 Art. 42.039. RELEASE INTO FEDERAL CUSTODY. (a) This  
22 article applies only to a criminal case in which:

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

25 (2) the judge:

26 (A) indicates in the record under Article 2.253  
27 that the defendant is subject to an immigration detainer; or

1           (B) otherwise indicates in the record that the  
2 defendant is subject to a transfer into federal custody.

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 to reduce the  
7 defendant's sentence by a period of not more than seven days on the  
8 facility's determination that the reduction in sentence will  
9 facilitate the seamless transfer of the defendant into federal  
10 custody.

11           (c) If the applicable information described by Subsection  
12 (a)(2)(A) or (B) is not available at the time sentence is pronounced  
13 in the case, the judge shall issue the order described by Subsection  
14 (b) as soon as the information becomes available.

15           (d) For purposes of Subsection (b), "secure correctional  
16 facility" has the meaning assigned by Section 1.07, Penal Code.

17           SECTION 3. Subtitle C, Title 11, Local Government Code, is  
18 amended by adding Chapter 364 to read as follows:

19           CHAPTER 364. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS

20           Sec. 364.001. DEFINITIONS. In this chapter:

21           (1) "Immigration detainer" means a United States  
22 Department of Homeland Security Form I-247 or a similar or  
23 successor form that requests a local entity to maintain temporary  
24 custody of an alien for the federal government.

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

1 seq.).

2 (3) "Lawful detention" means the detention of an  
3 individual by a local entity for the investigation of a criminal  
4 offense. The term excludes a detention if the sole reason for the  
5 detention is that the individual:

6 (A) is a victim of or witness to a criminal  
7 offense; or

8 (B) is reporting a criminal offense.

9 (4) "Local entity" means:

10 (A) the governing body of a municipality, county,  
11 or special district or authority, subject to Sections 364.002(a)  
12 and (b);

13 (B) an officer or employee of or a division,  
14 department, or other body that is part of a municipality, county, or  
15 special district or authority, including a sheriff, municipal  
16 police department, municipal attorney, or county attorney; and

17 (C) a district attorney or criminal district  
18 attorney.

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

21 Sec. 364.002. APPLICABILITY OF CHAPTER. (a) This chapter  
22 does not apply to a school district or open-enrollment charter  
23 school. This chapter does not apply to the release of information  
24 contained in education records of an educational agency or  
25 institution, except in conformity with the Family Educational  
26 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

27 (b) This chapter does not apply to a hospital or hospital

1 district created under Subtitle C or D, Title 4, Health and Safety  
2 Code, or a hospital district created under a general or special law  
3 authorized by Article IX, Texas Constitution, to the extent that  
4 the hospital or hospital district is providing access to or  
5 delivering medical or health care services as required under the  
6 following applicable federal or state laws:

7 (1) 42 U.S.C. Section 1395dd;

8 (2) 42 U.S.C. Section 1396b(v);

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

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

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

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

15 Sec. 364.003. LOCAL GOVERNMENT POLICY REGARDING  
16 IMMIGRATION ENFORCEMENT. (a) A local entity shall not adopt,  
17 enforce, or endorse a policy under which the entity prohibits or  
18 discourages the enforcement of immigration laws.

19 (b) In compliance with Subsection (a), a local entity shall  
20 not prohibit or discourage a person who is a commissioned peace  
21 officer described by Article 2.12, Code of Criminal Procedure, a  
22 corrections officer, a booking clerk, a magistrate, or a district  
23 attorney, criminal district attorney, or other prosecuting  
24 attorney and who is employed by or otherwise under the direction or  
25 control of the entity from doing any of the following:

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

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

4           (A) sending the information to or requesting or  
5 receiving the information from United States Citizenship and  
6 Immigration Services or United States Immigration and Customs  
7 Enforcement, including information regarding a person's place of  
8 birth;

9           (B) maintaining the information; or

10           (C) exchanging the information with another  
11 local entity or a federal or state governmental entity;

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

15           (4) permitting a federal immigration officer to enter  
16 and conduct enforcement activities at a municipal or county jail to  
17 enforce federal immigration laws.

18           Sec. 364.004. DISCRIMINATION PROHIBITED. A local entity or  
19 a person employed by or otherwise under the direction or control of  
20 the entity may not consider race, color, language, or national  
21 origin while enforcing immigration laws except to the extent  
22 permitted by the United States Constitution or Texas Constitution.

23           Sec. 364.005. COMPLAINT; EQUITABLE RELIEF. (a) Any  
24 person, including the federal government, may file a complaint with  
25 the attorney general if the person offers evidence to support an  
26 allegation that a local entity has adopted, enforced, or endorsed a  
27 policy under which the entity prohibits or discourages the

1 enforcement of immigration laws or that the entity, by consistent  
2 actions, prohibits or discourages the enforcement of those laws.  
3 The person must include with the complaint the evidence the person  
4 has that supports the complaint.

5 (b) A local entity for which the attorney general has  
6 received a complaint under Subsection (a) shall comply with a  
7 document request, including a request for supporting documents,  
8 from the attorney general related to the complaint.

9 (c) If the attorney general determines that a complaint  
10 filed under Subsection (a) against a local entity is valid, the  
11 attorney general shall, not later than the 10th day after the date  
12 of the determination, provide written notification to the entity  
13 that:

14 (1) the complaint has been filed;

15 (2) the attorney general has determined that the  
16 complaint is valid;

17 (3) the attorney general is authorized to file an  
18 action to enjoin the violation if the entity does not come into  
19 compliance with the requirements of Section 364.003 on or before  
20 the 90th day after the date the notification is provided; and

21 (4) the entity will be denied state grant funds for the  
22 state fiscal year following the year in which a final judicial  
23 determination in an action brought under Subsection (e) is made.

24 (d) Not later than the 30th day after the day a local entity  
25 receives written notification under Subsection (c), the local  
26 entity shall provide the attorney general with a copy of:

27 (1) the entity's written policies related to

1 immigration enforcement actions;

2 (2) each immigration detainer received by the entity  
3 from the United States Department of Homeland Security; and

4 (3) each response sent by the entity for a detainer  
5 described by Subdivision (2).

6 (e) If the attorney general determines that a complaint  
7 filed under Subsection (a) against a local entity is valid, the  
8 attorney general may file a petition for a writ of mandamus or apply  
9 for other appropriate equitable relief in a district court in  
10 Travis County or in a county in which the principal office of the  
11 entity is located to compel the entity that adopts, enforces, or  
12 endorses a policy under which the local entity prohibits or  
13 discourages the enforcement of immigration laws or that, by  
14 consistent actions, prohibits or discourages the enforcement of  
15 those laws to comply with Section 364.003. The attorney general may  
16 recover reasonable expenses incurred in obtaining relief under this  
17 subsection, including court costs, reasonable attorney's fees,  
18 investigative costs, witness fees, and deposition costs.

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

24 Sec. 364.006. DENIAL OF STATE GRANT FUNDS. (a) A local  
25 entity may not receive state grant funds if the entity adopts,  
26 enforces, or endorses a policy under which the entity prohibits or  
27 discourages the enforcement of immigration laws or, by consistent

1 actions, prohibits or discourages the enforcement of immigration  
2 laws.

3 (b) State grant funds for a local entity shall be denied for  
4 the state fiscal year following the year in which a final judicial  
5 determination in an action brought under Section 364.005 is made  
6 that the entity has intentionally prohibited or discouraged the  
7 enforcement of immigration laws.

8 (c) The comptroller shall adopt rules to implement this  
9 section uniformly among the state agencies from which state grant  
10 funds are distributed to a municipality or county.

11 (d) A local entity that has not violated Section 364.003 may  
12 not be denied state grant funds, regardless of whether the entity is  
13 a part of another entity that is in violation of that section.

14 SECTION 4. Not later than January 1, 2018, each local 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 364.003, Local Government  
23 Code, as added by this Act; and

24 (B) provisions requiring each agency officer or  
25 employee to comply with Articles 2.251, 2.252, and 2.253, Code of  
26 Criminal Procedure, as added by this Act, if applicable.

27 SECTION 5. This Act takes effect immediately if it receives

S.B. No. 4

1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2017.