By: Perez of El Paso H.B. No. 736

A BILL TO BE ENTITLED

AN ACT

relating to the liability of a person operating a detention facility in this state for the death of or injury to an individual in custody and for the failure to maintain and disclose custody records; providing a civil cause of action.

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

SECTION 1. Subtitle C, Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 156 to read as follows:

CHAPTER 156. DETENTION FACILITY CUSTODY LIABILITY

Sec. 156.001. DEFINITIONS. In this chapter:

(1) "Child" means an individual younger than 18 years of age.

(2) "Custody" means the restriction of an individual's liberty by an operator at a detention facility, whether or not the restriction is imposed in connection with a criminal charge or conviction.

(3) "Detention facility" means a building or structure, or a portion of a building or structure, located in this state in which one or more individuals are held in custody, including a facility operated under a contract or other agreement with a governmental entity.

(4) "Operator" means a person that operates or manages a detention facility or that provides custodial, medical, mental health, or security services at a detention facility. The term does

not include the United States, an agency of the United States, or an officer or employee of the United States acting within the scope of that person's employment.

(5) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

Sec. 156.002. APPLICABILITY; CONSTRUCTION. (a) This chapter applies to a detention facility located in this state, including a detention facility located on land that is subject to the exclusive jurisdiction of the United States, to the extent permitted by 28 U.S.C. Section 5001 or other federal law.

(b) This chapter does not apply to the United States, an agency of the United States, or an officer or employee of the United States acting within the scope of that person's employment.

(c) This chapter does not create a cause of action against the United States and does not purport to waive the sovereign immunity of the United States.

(d) A duty imposed by this chapter is a duty of each person that operates a detention facility, without regard to whether the person is a governmental entity.

Sec. 156.003. DUTY OF CARE. An operator owes to each individual in custody at a detention facility operated by the operator a duty to exercise ordinary care to:

(1) provide necessary medical care, mental health care, and medication;

(2) provide adequate food, water, sanitation, hygiene, ventilation, heating, cooling, and shelter;

(3) protect the individual from violence, sexual

abuse, and self-harm;

(4) supervise the individual and conduct welfare checks at reasonable intervals; and

(5) maintain conditions that do not present a substantial risk of serious harm to the individual's health or safety.

Sec. 156.004. LIABILITY FOR DEATH OR SERIOUS BODILY INJURY. (a) An operator is liable for damages for the death of or serious bodily injury to an individual in custody at a detention facility operated by the operator if the operator's breach of a duty under Section 156.003 was a proximate cause of the death or injury.

(b) A claimant who prevails in an action under this section may recover actual damages, including damages for mental anguish, and, on a finding of gross negligence, exemplary damages.

Sec. 156.005. CUSTODY RECORDS; CONTACT BETWEEN FAMILY MEMBERS. (a) An operator shall create and maintain, for each individual taken into custody at a detention facility operated by the operator, a record that includes:

(1) the individual's name and date of birth;

(2) the date, time, and place the individual was taken into custody at the facility;

(3) the name and, if known, the location of each adult and each child who was taken into custody with the individual or who was in the individual's care when the individual was taken into custody; and

(4) the date, time, and destination of each transfer of the individual from the facility.

(b) An operator may not transfer a child from a detention facility to a location outside this state unless, before the transfer, the operator records the identity and last known location of each adult who was taken into custody with the child and provides that information and notice of the transfer to the attorney general and, if known, to a parent or legal guardian of the child.

(c) On request, an operator shall disclose the information maintained under Subsection (a) to the individual who is the subject of the record, the individual's attorney, a parent or legal guardian of a child who is the subject of the record, or a court.

(d) An operator shall permit a child in custody at a detention facility to communicate, not less than once in each 24-hour period, with each adult who was taken into custody with the child, unless a court has ordered otherwise.

(e) An operator shall retain a record required by this section for not less than seven years after the date the individual is released or transferred.

Sec. 156.006. LIABILITY FOR LOSS OF CONTACT BETWEEN FAMILY MEMBERS. An operator is liable for damages to an individual who is or was in custody at a detention facility operated by the operator, and to a child who was taken into custody with that individual, if the operator fails to comply with Section 156.005 and the failure was a proximate cause of the loss of contact between the individual and the child or of the inability of either to determine the other's location.

Sec. 156.007. CIVIL ACTION. (a) An action under this chapter may be brought by:

(1) an individual who is or was in custody at the detention facility;

(2) a parent, child, spouse, sibling, or legal guardian of an individual who is or was in custody at the detention facility; or

(3) the personal representative of the estate of a deceased individual who was in custody at the detention facility.

(b) In addition to damages recoverable under Section 156.004, a claimant who prevails in an action for a violation of Section 156.005 is entitled to recover the greater of actual damages or $10,000 for each violation.

(c) A court shall award court costs and reasonable attorney's fees to a claimant who prevails in an action under this chapter.

(d) A court may grant injunctive relief to prevent or remedy a violation of this chapter.

(e) An action under this chapter must be brought not later than four years after the date the cause of action accrues.

(f) An action under this chapter may be brought in a district court in the county in which the detention facility is located or in which the claimant resides.

Sec. 156.008. DEFENSES; LIMITATIONS. (a) It is not a defense to an action under this chapter that the operator acted under a contract or other agreement with a governmental entity, except to the extent the operator establishes that the specific conduct that is the basis of the claim was directed by the United States under authority validly conferred and that the operator

exercised no discretion with respect to that conduct.

(b) Compliance with a standard adopted by a governmental entity is not a defense to an action under this chapter if the operator knew or reasonably should have known that the standard was insufficient to satisfy a duty under Section 156.003.

(c) A provision of a contract, agreement, or other instrument that waives or limits liability under this chapter is void as against public policy.

Sec. 156.009. CUMULATIVE REMEDIES. The remedies provided by this chapter are in addition to any other remedy provided by law.

Sec. 156.010. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 2. Chapter 156, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2027.