

Came 14

offers the following

substitute to SB 452:

*Rules Approved
3/27
6:45 pm meeting*

A BILL TO BE ENTITLED
AN ACT

To amend Title 17 and Title 42 of the Official Code of Georgia Annotated, relating to criminal procedure and penal institutions, respectively, so as to require a peace officer to take certain actions upon verification that a suspect is an illegal alien; to change provisions relating to bail schedules and the release of individuals upon their own recognizance; to require the sentencing court in any felony or misdemeanor case to take certain actions to determine whether the person to be sentenced is lawfully present in the United States and if not that certain actions be taken; to clarify and require certain actions by the Department of Corrections, sheriffs, municipal custodial officers, the State Board of Pardons and Paroles, and the Department of Community Supervision regarding persons not lawfully present in the United States; to require the commissioner of corrections to report certain information regarding the immigration status and home countries of persons who are confined under the authority of the Department of Corrections; to prohibit release from confinement persons who are illegal aliens under certain circumstances; to require the State Board of Pardons and Paroles to consider certain factors if a prisoner would be legally subject to deportation from the United States while on parole; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Senate language

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by revising subsections (e) and (g) of Code Section 17-5-100, relating to investigation of illegal alien status, as follows:

"(e) If during the course of the investigation into such suspect's identity, a peace officer receives verification that such suspect is an illegal alien, then such peace officer shall notify and transfer all information gained from the investigation to the prosecuting attorney with jurisdiction over the alleged criminal offense and further may take any other action authorized by state and federal law, including, but not limited to, detaining such suspected

27 illegal alien, securely transporting such suspect to any authorized federal or state detention
 28 facility, or notifying the United States Department of Homeland Security or successor
 29 agency. Nothing in this Code section shall be construed to hinder or prevent a peace
 30 officer or law enforcement agency from arresting or detaining any criminal suspect on
 31 other criminal charges."

32 "(g) A peace officer, prosecuting attorney, or government official or employee, and their
 33 employing governmental entity, acting in good faith to carry out any provision of this Code
 34 section, shall have immunity from damages or liability from such actions."

35 **SECTION 2.**

36 Said title is further amended by revising paragraph (1) of subsection (f) of Code Section
 37 17-6-1, relating to where offenses are bailable, procedure, bail schedules, and appeal bonds,
 38 as follows:

39 "(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided
 40 in this subsection, the judge of any court of inquiry may by written order establish a
 41 schedule of bails and unless otherwise ordered by the judge of any court, ~~a person~~
 42 ~~charged with committing any offense~~ an accused shall be released from custody upon
 43 posting bail as fixed in the schedule; provided, however, that such schedule shall not
 44 mandate releasing an accused on his or her own recognizance before being brought
 45 before a judge of a court of inquiry."

46 **SECTION 3.**

47 Said title is further amended by revising Code Section 17-10-1.3, relating to factoring into
 48 sentencing determinations citizenship status of convict, as follows:

49 "17-10-1.3.

50 (a)(1) Prior to sentencing, the prosecuting attorney shall inquire and determine whether
 51 the person to be sentenced is lawfully present in the United States under federal law and,
 52 if not, whether United States Immigration and Customs Enforcement has placed a
 53 detainer on him or her. If the prosecuting attorney determines that such person is not
 54 lawfully present in the United States, the prosecuting attorney shall immediately notify
 55 the United States Department of Homeland Security or other department or agency
 56 designated for such notification by the federal government, the sheriff or municipal
 57 custodial officer, the Department of Corrections, the State Board of Pardons and Paroles,
 58 or the Department of Community Supervision or probation provider who is to receive
 59 custody of, or supervision over, such person.

60 (2) Upon receiving notification pursuant to paragraph (1) of this subsection, the:

Detainer

61 (A) Sheriff or municipal custodial officer at least 72 hours prior to such person's
 62 release from custody, or as soon as reasonably practical if such person will be held for
 63 less than 72 hours, shall notify United States Immigration and Customs Enforcement
 64 of the person's anticipated release;

65 (B) Department of Corrections shall comply with Code Section 42-1-11.1;

66 (C) State Board of Pardons and Paroles, prior to the person's release from parole, shall
 67 comply with Code Section 42-1-11.1; and

68 (D) Department of Community Supervision or probation provider under Article 6 of
 69 Chapter 8 of Title 42, as applicable, at least 72 hours prior to such person's release from
 70 probation supervision, shall notify United States Immigration and Customs
 71 Enforcement of the last known permanent address of such person and the date of
 72 conclusion of his or her term of probation.

73 (b) In determining whether to probate all or any part of any sentence of confinement in any
 74 felony; ~~or misdemeanor, or ordinance violation~~ case, the sentencing court shall be
 75 authorized to ~~make inquiry into~~ inquire whether the person to be sentenced is lawfully
 76 present in the United States under federal law.

77 ~~(b)(c)~~ If the court determines that the person to be sentenced is not lawfully present in the
 78 United States, the court shall ~~be authorized to make inquiry into~~ inquire whether the person
 79 to be sentenced would be legally subject to deportation from the United States while
 80 serving a probated sentence.

81 ~~(c)(d)~~ If the court determines that the person to be sentenced would be legally subject to
 82 deportation from the United States while serving a probated sentence, the court may:

83 (1) Consider the interest of the state in securing certain and complete execution of its
 84 judicial sentences in criminal and quasi-criminal cases;

85 (2) Consider the likelihood that deportation may intervene to frustrate that state interest
 86 if probation is granted; and

87 (3) ~~Where~~ When appropriate, decline to probate a sentence in furtherance of the state
 88 interest in certain and complete execution of sentences.

89 ~~(d)(e)~~ This Code section shall apply with respect to a judicial determination as to whether
 90 to suspend all or any part of a sentence of confinement in the same manner as this Code
 91 section applies to determinations with respect to probation."

92 SECTION 4.

93 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 94 by adding a new Code section to read as follows:

95 "42-1-11.3.

96 The commissioner shall, on the official website used by the department, publish a report
 97 on the immigration status and home countries of inmates who are not United States citizens
 98 and who are confined under the authority of the department and the percentage of the total
 99 population in confinement composed of persons who are not citizens of the United States.
 100 Such report shall be first published on October 1, 2018, and every 90 days thereafter;
 101 provided, however, that if the ninetieth day falls on a state holiday or Saturday or Sunday,
 102 then such publication shall occur by the next business day."

103 SECTION 5.

104 Said title is further amended by revising subsection (d) of Code Section 42-4-14, relating to
 105 "Illegal alien" defined and determination of nationality of person charged with felony and
 106 confined in a jail facility, as follows:

107 "(d) Nothing in this Code section shall be construed to deny a person bond or from being
 108 released from confinement when such person is otherwise eligible for release; provided,
 109 however, that upon verification that any person confined in a jail is an illegal alien, the
 110 county or municipal jailer as provided for in Code Section 42-4-1 shall notify the United
 111 States Department of Homeland Security or other department or agency designated for
 112 such notification by the federal government and such person may shall be detained,
 113 arrested, and or transported as authorized by state and federal law."

114 SECTION 6.

115 Said title is further amended by revising subsection (c) of Code Section 42-9-43.1, relating
 116 to citizenship status of prisoner and deportation, as follows:

117 "(c) If the board determines that the prisoner would be legally subject to deportation from
 118 the United States while on parole, the board may shall:

- 119 (1) Consider the interest of the state in securing certain and complete execution of its
 120 judicial sentences in criminal cases;
- 121 (2) Consider the likelihood that deportation may intervene to frustrate that state interest
 122 if parole is granted; and
- 123 (3) Where appropriate, decline to grant parole in furtherance of the state interest in
 124 certain and complete execution of sentences."

125 SECTION 7.

126 All laws and parts of laws in conflict with this Act are repealed.