

Senate Bill 569

By: Senators Strickland of the 17th, Anavitarte of the 31st, Gooch of the 51st, Tillery of the 19th, Kennedy of the 18th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to provide for requirements for bail hearings for illegal aliens and removable or
3 inadmissible aliens charged with a felony punishable by imprisonment for one year or more;
4 to allow certain offenses to be charged by accusation of the district attorney; to amend
5 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to
6 require sheriffs, jailers, and deputies to honor immigration detainer requests; to provide for
7 definitions; to provide for related matters; to provide for an effective date; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
12 amended in Article 1 of Chapter 6, relating to general provisions for bonds and
13 recognizances, by adding a new subsection to Code Section 17-6-1, relating to when offenses
14 bailable, procedure, schedule of bails, and appeal bonds, to read as follows:

15 “(k)(1) In any case in which a person is charged with a felony punishable by
 16 imprisonment for one year or more and such person is an illegal alien or a removable or
 17 inadmissible alien, as such terms are defined in Code Section 42-4-16:

18 (A) The court shall not be authorized to release such person unless the court enters an
 19 order on the record with specific findings that address each of the factors provided for
 20 in subparagraphs (e)(1)(A) through (e)(1)(D) of this Code section and whether such
 21 person's status as an illegal alien or a removable or inadmissible alien charged with a
 22 felony weighs in favor or against each such factor; and

23 (B) Bail or other release from custody shall be set by a judge on an individual basis and
 24 a schedule of bails provided for in paragraph (1) of subsection (f) of this Code section
 25 shall not be utilized.

26 (2) No person who is charged with a felony which is punishable by imprisonment for one
 27 year or more and who is an illegal alien or a removable or inadmissible alien, as such
 28 terms are defined in Code Section 42-4-16, shall be released on an unsecured judicial
 29 release under any circumstances.”

30

SECTION 2.

31 Said title is further amended in Article 4 of Chapter 7, relating to accusations under pretrial
 32 proceedings, by revising subsection (a) of Code Section 17-7-70.1, relating to trial upon
 33 accusation in certain felony and misdemeanor cases and trial upon plea of guilty or nolo
 34 contendere, as follows:

35 “(a)(1) In felony cases involving ~~violations of the following~~:

36 (A) Offenses in violation of Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20,
 37 16-9-31, 16-9-33, 16-9-37, 16-10-52, and 40-5-58;

38 (B) Offenses in violation of Article 1 of Chapter 8 of Title 16, relating to theft;

39 (C) Offenses in violation of Chapter 9 of Title 16, relating to forgery and fraudulent
 40 practices;

41 (D) Offenses in violation of Article 3 of Chapter 10 of Title 16, relating to escape and
 42 other offenses related to confinement;

43 (E) Offenses in violation of Code Section 16-11-131, relating to possession of a
 44 firearm by a convicted felon or first offender probationer; ~~or~~

45 (F) Offenses in violation of Code Section 16-13-30, relating to the purchase,
 46 possession, manufacture, distribution, or sale of controlled substances or marijuana; or

47 (G) Any offense punishable by imprisonment for one year or more where the person
 48 accused of such offense is an illegal alien or a removable or inadmissible alien, as such
 49 terms are defined in Code Section 42-4-16,

50 in which defendants have either been bound over to the superior court based on a finding
 51 of probable cause pursuant to a commitment hearing under Article 2 of this chapter or
 52 have expressly or by operation of law waived a commitment hearing, the district attorney
 53 shall have authority to prefer accusations, and the defendants shall be tried on such
 54 accusations according to the same rules of substantive and procedural laws relating to
 55 defendants who have been indicted by a grand jury.

56 (2) All laws relating to rights and responsibilities attendant to indicted cases shall be
 57 applicable to cases brought by accusations signed by the district attorney.

58 (3) The accusation need not be supported by an affidavit except in those cases in which
 59 the defendant has not been previously arrested in conjunction with the transaction
 60 charged in the accusation or when the accusation is to be used as the basis for the
 61 issuance of an arrest warrant."

62 **SECTION 3.**

63 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 64 in Article 1 of Chapter 4, relating to general provisions of jails, by adding a new Code
 65 section to read as follows:

66 "42-4-16.

- 67 (a) As used in this Code section, the term:
- 68 (1) 'Illegal alien' means a person who is verified by the federal government to be present
69 in the United States in violation of federal immigration law.
- 70 (2) 'Immigration detainer request' means a federal government request to a local entity
71 to maintain temporary custody of a person, including, but not limited to, a request by the
72 United States Immigration and Customs Enforcement or a United States Department of
73 Homeland Security Form I-247 document or a similar successor form.
- 74 (3) 'Removable or inadmissible alien' means a person who:
- 75 (A) Is not a citizen or national of the United States;
- 76 (B) If convicted for a felony charge pending against him or her, may be sentenced to
77 imprisonment for one year or more; and
- 78 (C) Is or may reasonably be presumed to be subject to removal or inadmissibility under
79 federal immigration law, including, but not limited to, the federal Immigration and
80 Nationality Act, 8 U.S.C. Chapter 12, regardless of whether the removal or
81 inadmissibility status of such person has been determined by federal authorities.
- 82 (b) All sheriffs, jailers, and deputies who have custody of a person who is an illegal alien,
83 a removable or inadmissible alien, or the subject of an immigration detainer request shall:
- 84 (1) As soon as practicable after the commencement of such custody, notify such person
85 that he or she has been identified as being an illegal alien, a removable or inadmissible
86 alien, or the subject of an immigration detainer request, and allow such person to present
87 verifiable proof that he or she is a citizen or national of the United States;
- 88 (2) Within 24 hours of providing the notification required in paragraph (1) of this
89 subsection, notify in writing:
- 90 (A) The prosecuting authority of such person's status as being in custody and an illegal
91 alien, a removable or inadmissible alien, or the subject of an immigration detainer
92 request; and
- 93 (B) The United States Immigration and Customs Enforcement; and

94 (3) If such person is the subject of an immigration detainer request, comply with, honor,
95 and fulfill any request made in such immigration detainer request.

96 (c) A sheriff, jailer, or deputy shall not be required to perform a duty imposed by
97 subsection (b) of this Code section with respect to a person who has provided verified proof
98 that he or she is a citizen or national of the United States. Such proof may include, but
99 shall not be limited to:

100 (1) A driver's license or identification card issued pursuant to Chapter 5 of Title 40; or

101 (2) Government issued identification issued by the federal government or another state."

102 **SECTION 4.**

103 This Act shall become effective upon its approval by the Governor or upon its becoming law
104 without such approval.

105 **SECTION 5.**

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