

By: Senator(s) Hill

To: Judiciary, Division B

SENATE BILL NO. 2196

1 AN ACT TO PROHIBIT THE ILLEGAL ENTRY INTO OR ILLEGAL PRESENCE
2 IN THIS STATE BY A PERSON WHO IS AN ALIEN; TO PROVIDE FOR THE
3 ENFORCEMENT OF THE PROHIBITIONS AND CERTAIN RELATED ORDERS; TO
4 PROVIDE IMMUNITY FROM LIABILITY AND INDEMNIFICATION FOR
5 ENFORCEMENT ACTIONS; TO AUTHORIZE, UNDER CERTAIN CIRCUMSTANCES,
6 THE REMOVAL OF PERSONS WHO VIOLATE THOSE PROHIBITIONS; TO CREATE
7 CRIMINAL OFFENSES; TO AMEND SECTION 45-27-9, MISSISSIPPI CODE OF
8 1972, TO CONFORM; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** As used in this act, the following words have the
11 meanings ascribed herein unless the context clearly requires
12 otherwise:

13 (a) "Alien" has the meaning assigned by 8 USC § 1101,
14 as that provision existed on January 1, 2023.

15 (b) "Damages" includes any and all damages, fines,
16 fees, penalties, court costs, attorney's fees or other
17 assessments.

18 (c) "Port of entry" means a port of entry in the United
19 States as designated by 19 C.F.R. Part 101.

20 **SECTION 2.** Notwithstanding any other law, a law enforcement
21 officer may not arrest or detain a person for purposes of



enforcing a provision of this act, if the person is on the premises or grounds of:

(a) A public or private primary or secondary school for educational purposes;

(b) A church, synagogue, or other established place of religious worship; or

(c) A health care facility, including a facility a state agency maintains or operates to provide health care, or the office of a health care provider, provided that the person is on the premises or grounds of the facility or office for the purpose of receiving medical treatment.

SECTION 3. (1) A judge during a person's preliminary hearing may, after making a determination that probable cause exists for arrest for an offense under Section 5 or 6 of this act, order the person released from custody and issue a written order in accordance with subsection (3) of this section.

(2) A judge in a person's case at any time after the preliminary hearing may dismiss the charge pending against the person and issue a written order in accordance with subsection (3) of this section, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under Section 5 or 6 of this act.

(3) A written order authorized by subsection (1) or (2) of this section must discharge the person and require the person to



return to the foreign nation from which the person entered or attempted to enter, and may be issued only if:

(a) The person agrees to the order;

(b) The person has not previously been convicted of an offense under this act, or previously obtained a discharge under an order described by subsection (1) or (2) of this section;

(c) The person is not charged with another offense that is a misdemeanor punishable by up to one (1) year in jail or a fine of up to Four Thousand Dollars (\$4,000.00) or by both jail time and a fine or any higher category of offense; and

(d) Before the issuance of the order, the arresting law enforcement agency:

(i) Collects all available identifying information of the person, which must include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person; and

(ii) Cross-references the collected information with:

1. All relevant local, state, and federal criminal databases; and

2. Federal lists or classifications used to identify a person as a threat or potential threat to national security.

(4) On a person's conviction of an offense under this act, the judge shall enter in the judgment in the case an order



71 requiring the person to return to the foreign nation from which
72 the person entered or attempted to enter. An order issued under
73 this subsection takes effect on completion of the term of
74 confinement or imprisonment imposed by the judgment.

75 (5) An order issued under this article must include:

76 (a) The manner of transportation of the person to a
77 port of entry, as defined by Section 1 of this act; and

78 (b) The law enforcement officer or state agency
79 responsible for monitoring compliance with the order.

80 (6) An order issued under this section must be filed:

81 (a) With the county clerk of the county in which the
82 person was arrested, for an order described by subsection (1) of
83 this section; or

84 (b) With the clerk of the court exercising jurisdiction
85 in the case, for an order described by subsection (2) or (4) of
86 this section.

87 (7) Not later than the seventh day after the date an order
88 is issued under this article, the law enforcement officer or state
89 agency required to monitor compliance with the order shall report
90 the issuance of the order to the Department of Public Safety for
91 inclusion in the appropriate database maintained by the Criminal
92 Information Center.

93 **SECTION 4.** A court may not abate the prosecution of an
94 offense under this act on the basis that a federal determination



regarding the immigration status of the defendant is pending or will be initiated.

SECTION 5. (1) A person who is an alien commits an offense if the person enters or attempts to enter this state directly from a foreign nation at any location other than a lawful port of entry.

(2) (a) An offense under this section is a misdemeanor, except that the offense is a felony if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(b) A misdemeanor under this section shall be punishable by imprisonment in the county jail for not more than one hundred eighty (180) days, or a fine of not more than Two Thousand Dollars (\$2,000.00), or both.

(c) A felony under this section shall be punishable by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(3) It is an affirmative defense to prosecution under this section that:

(a) The federal government has granted the defendant:

(i) Lawful presence in the United States; or

(ii) Asylum under 8 USC § 1158;

(b) The defendant's conduct does not constitute a violation of 8 USC § 1325(a); or



(c) The defendant was approved for benefits under the federal Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

(4) The following federal programs do not provide an affirmative defense for purposes of subsection (3)(a) of this section:

(a) The Deferred Action for Parents of Americans and Lawful Permanent Residents program; and

(b) Any program not enacted by the United States Congress that is a successor to or materially similar to the program described by subsection (3)(c) of this section or paragraph (a) of this subsection.

SECTION 6. (1) A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state after the person:

(a) Has been denied admission to or excluded, deported or removed from the United States; or

(b) Has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

(2) (a) An offense under this section is a Class A misdemeanor, except that the offense is a felony if:

(i) The defendant's removal was subsequent to a conviction for commission of two (2) or more misdemeanors involving drugs, crimes against a person, or both;



(ii) The defendant was excluded pursuant to 8 USC § 1225(c) because the defendant was excludable under 8 USC § 1182(a)(3)(B);

(iii) The defendant was removed pursuant to the provisions of 8 USC Chapter 12, Subchapter V; or

(iv) The defendant was removed pursuant to 8 USC § 1231(a)(4)(B).

(b) A misdemeanor under this section shall be punishable by imprisonment in the county jail for up to one (1) year, or a fine of not more than Four Thousand Dollars (\$4,000.00), or both.

(c) A felony under this section shall be punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years but not more than ten (10) years, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(d) Where a defendant has previously been convicted of a felony under this section, a second felony conviction shall be punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years not more than twenty (20) years, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(3) For purposes of this section, "removal" includes an order issued under Section 3 of this act, or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.



SECTION 7.

(1) A person who is an alien commits an offense if:

(a) The person has been charged with or convicted of an offense under this act;

(b) A magistrate or judge, as applicable, has issued an order under Section 3 of this act for the person to return to the foreign nation from which the person entered or attempted to enter; and

(c) The person refuses to comply with the order.

(2) An offense under this section is a felony which shall be punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years not more than twenty (20) years, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

SECTION 8.

(1) Except as provided by subsection (4) of this section, a local government official, employee, or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce this act or an order issued under Section 3 of this act during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(2) Subject to subsection (3) of this section and except as provided by subsection (4) of this section, a local government



shall indemnify an official, employee, or contractor of the local government for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce this act or an order issued under Section 3 of this act during the course and scope of the official's, employee's or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(3) Indemnification payments made under subsection (2) of this section by a local government may not exceed:

(a) One Hundred Thousand Dollars (\$100,000.00) to any one person or Three Hundred Thousand Dollars (\$300,000.00) for any single occurrence in the case of personal injury or death; or

(b) Ten Thousand Dollars (\$10,000.00) for a single occurrence of property damage.

(4) Subsections (1) and (2) of this section do not apply if the court or jury determines that the local government official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

(5) A local government shall indemnify an official, employee or contractor of the local government for reasonable attorney's fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee or contractor to enforce this act, or an order issued under Section 3 of this act during the course and scope of



the official's, employee's or contractor's office, employment or contractual performance for or service on behalf of the local government.

(6) This section may not be construed to waive any statutory limits on damages under state law.

SECTION 9. (1) Except as provided by subsection (4) of this section, an elected or appointed state official or a state employee or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce this act or an order issued under Section 3 of this act during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(2) Except as provided by subsection (4) of this section, the state shall indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce this act or an order issued under Section 3 of this act during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(3) Notwithstanding any other law, an indemnification payment made under subsection (2) of this section is not subject to an indemnification limit under the laws of this state.



(4) Subsections (1) and (2) of this section do not apply if the court or jury determines that the state official, employee or contractor acted in bad faith, with conscious indifference, or with recklessness.

(5) The state shall indemnify a state official, employee or contractor for reasonable attorney's fees incurred in defense of a criminal prosecution against the official, employee or contractor for an action taken by the official, employee or contractor to enforce Chapter 51, Penal Code, or an order issued under Article 5B.002, Code of Criminal Procedure, during the course and scope of the official's, employee's or contractor's office, employment or contractual performance for or service on behalf of the state.

(6) This section may not be construed to waive any statutory limits on damages under state law.

SECTION 10. For a civil action brought against a person who may be entitled to immunity or indemnification under Section 8 or 9 of this act, an appeal must be taken directly to the Mississippi Supreme Court and retained by the Mississippi Supreme Court.

SECTION 11. This act does not affect a defense, immunity, or jurisdictional bar available to the state or a local government or an official, employee, or contractor of the state or a local government.

SECTION 12. Notwithstanding any other provision of law, a defendant is not eligible for expunction, an intensive supervision program, or nonadjudication and is not eligible for parole release



or for early release from the custody of the Department of Corrections under Section 47-7-3 if the defendant is charged with or convicted of an offense under this act.

SECTION 13. Section 45-27-9, Mississippi Code of 1972, is amended as follows:

45-27-9. (1) All criminal justice agencies within the state shall submit to the center an arrest card that will transmit fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this state for all felonies and misdemeanors as described in Section 45-27-7(2)(a). It shall be the duty of all chiefs of police, sheriffs, district attorneys, courts, court clerks, judges, parole and probation officers, wardens or other persons in charge of correctional institutions in this state to furnish the center with all data required by the rules duly promulgated under the Administrative Procedures Act to carry out its responsibilities under this chapter, and the duty of courts and court clerks to submit a disposition form for every disposition. It shall be the duty of all criminal justice agencies within the state to supply the prosecutor and the proper court with the disposition form that is attached to the physical arrest card if fingerprints were taken manually or, if fingerprints were captured digitally, the disposition form generated by the electronic fingerprint device at the time of the arrest. The PEER committee may conduct random



review of the records of any agency or clerks referenced in this subsection (1) to determine whether the duties of such agencies and clerks are being fulfilled in a timely manner. The PEER committee, based on its findings, if any, shall recommend measures to ensure that the duties are more effectively carried out in a timely manner.

(2) (a) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, fingerprints according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation, full face and profile photographs (if equipment is available) and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection (1) of this section, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file. Any record taken in connection with any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall be purged from the files of the center and destroyed upon receipt by the center of a lawful expunction order. All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrests or takings into custody which result in release without charge or subsequent



exoneration from criminal liability within twenty-four (24) hours of the release or exoneration.

(b) The center will work to secure grant funds to purchase live scan equipment to be utilized throughout the state. All law enforcement agencies shall utilize any live scan equipment provided by the center to ensure the most accurate collection of fingerprints. The center shall coordinate the use of the equipment with federal, state, county and municipal law enforcement agencies.

(3) Fingerprints and other identifying data required to be taken under subsection (2) shall be forwarded within twenty-four (24) hours after taking for filing and classification, but the period of twenty-four (24) hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo Available" and the photographs shall be forwarded subsequently if the center so requests.

(4) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. Also, the agency concerned must



annually, no later than January 31 of each year and at other times if requested by the center, confirm all arrest warrants which continue to be outstanding. Upon receipt of a lawful expunction order, the center shall purge and destroy files of all data relating to an offense when an individual is subsequently exonerated from criminal liability of that offense. The center shall not be liable for the failure to purge, destroy or expunge any records if an agency or court fails to forward to the center proper documentation ordering the action.

(5) All persons in charge of state correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation or as otherwise directed by the center, and full face and profile photographs of all persons received on commitment to the institutions. The prints so taken shall be forwarded to the center, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints, as before, and forward them to the center within ten (10) days, along with any other related information requested by the center. The institution shall notify the center immediately upon the release of the person.

(6) All persons in charge of law enforcement agencies, all court clerks, all municipal justices where they have no clerks, all justice court judges and all persons in charge of state and



369 county probation and parole offices, shall supply the center with
370 the information described in subsections (4) and (10) of this
371 section on the basis of the forms and instructions for the
372 disposition form to be supplied by the center.

373 (7) All persons in charge of law enforcement agencies in
374 this state shall furnish the center with any other identifying
375 data required in accordance with guidelines established by the
376 center. All law enforcement agencies and correctional
377 institutions in this state having criminal identification files
378 shall cooperate in providing the center with copies of the items
379 in the files which will aid in establishing the nucleus of the
380 state criminal identification file.

381 (8) All law enforcement agencies within the state shall
382 report to the center, in a manner prescribed by the center, all
383 persons wanted by and all vehicles and identifiable property
384 stolen from their jurisdictions. The report shall be made as soon
385 as is practical after the investigating department or agency
386 either ascertains that a vehicle or identifiable property has been
387 stolen or obtains a warrant for an individual's arrest or
388 determines that there are reasonable grounds to believe that the
389 individual has committed a crime. The report shall be made within
390 a reasonable time period following the reporting department's or
391 agency's determination that it has grounds to believe that a
392 vehicle or property was stolen or that the wanted person should be
393 arrested.



394 (9) All law enforcement agencies in the state shall
395 immediately notify the center if at any time after making a report
396 as required by subsection (8) of this section it is determined by
397 the reporting department or agency that a person is no longer
398 wanted or that a vehicle or property stolen has been recovered.
399 Furthermore, if the agency making the apprehension or recovery is
400 not the one which made the original report, then it shall
401 immediately notify the originating agency of the full particulars
402 relating to the apprehension or recovery using methods prescribed
403 by the center.

404 (10) All law enforcement agencies in the state and clerks of
405 the various courts shall promptly report to the center all
406 instances where records of convictions of criminals are ordered
407 expunged by courts of this state as now provided by law. The
408 center shall promptly expunge from the files of the center and
409 destroy all records pertaining to any convictions that are ordered
410 expunged by the courts of this state as provided by law.

411 (11) The center shall not be held liable for the failure to
412 purge, destroy or expunge records if an agency or court fails to
413 forward to the center proper documentation ordering the action.

414 (12) Any criminal justice department or agency making an
415 expenditure in excess of Five Thousand Dollars (\$5,000.00) in any
416 calendar year on software or programming upgrades concerning a
417 computerized records management system or jail management system
418 shall ensure that the new or upgraded system is formatted to



Department of Justice approved XML format and that no impediments to data sharing with other agencies or departments exist in the software programming.

(13) (a) All law enforcement agencies within the state shall:

(i) Implement an incident-based reporting system within the agency or department that meets the reporting requirements of the National Incident-Based Reporting System (NIBRS) of the Uniform Crime Reporting Program of the Federal Bureau of Investigation;

(ii) Use the system described by subparagraph (i) to submit to the center information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency, in a manner prescribed by the center; and

(iii) Report the information as soon as is practicable after the investigating agency or department ascertains that a qualifying crime has been committed in its jurisdiction, once the state-level NIBRS Repository is available.

(b) No later than December 31, 2025, state and local law enforcement agencies shall be compliant with all regulations promulgated by the Department of Public Safety's Criminal Information Center (CIC), with consultation with the President of the Sheriffs Association and Mississippi Association of Chiefs of Police with regard to the National Incident-Based Reporting System



443 (NIBRS) of the Uniform Crime Reporting Program of the Federal
444 Bureau of Investigation.

445 (14) The law enforcement agencies in the state and clerks of
446 the various courts with jurisdiction over the defendant shall
447 promptly report orders under Section 3 of this act to the Center
448 to be included in the computerized criminal history system.

449 **SECTION 14.** This act shall take effect and be in force from
450 and after July 1, 2025.

