

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1114

INTRODUCER: Senator Detert

SUBJECT: Verification of a Prisoner's Immigration Status

DATE: March 17, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|--------------------|
| 1. | Clodfelter | Cannon | CJ | Pre-meeting |
| 2. | | | MS | |
| 3. | | | CA | |
| 4. | | | BC | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill requires the staff of any jail or other detention facility to make reasonable efforts to determine the citizenship of any person confined in the facility who is charged with either a felony, driving under the influence, or boating under the influence. If the person is a foreign national, staff is to make reasonable efforts to determine whether the person is lawfully in the United States. If citizenship cannot be determined by documents in the person's possession, a request for verification of immigration status must be requested from the Department of Homeland Security (DHS) within 48 hours of confinement. If DHS verifies that the person is not lawfully present in the United States, staff must notify DHS of the person's confinement and confirm whether a federal immigration detainer has or will be issued.

For purposes of bond consideration, the bill creates a rebuttal presumption that a person who is not lawfully present in the United States is a flight risk.

This bill creates section 907.06 of the Florida Statutes.

II. Present Situation:

An alien is a person in the United States who is not a US citizen. Aliens can be removed for reasons of health, criminal status, economic well-being, national security risks and other reasons of public concern that are specifically defined in the federal Immigration and Nationality Act (INA). The INA grants most aliens the right to a removal proceeding before an immigration judge. In a removal hearing, an immigration judge considers evidence presented by both the alien and the United States Immigration and Customs Enforcement (ICE) and renders a decision that can be appealed to the Board of Immigration Appeals. If the immigration judge issues a decision

ordering the alien removed from the United States, a DHS agency, ICE is responsible for enforcing the removal order. In federal Fiscal Year 2007, ICE removed 276,912 illegal aliens, including voluntary removals, from the United States.¹

ICE ACCESS

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) encompass a number of services and programs that ICE makes available to local law enforcement agencies. Several of these programs specifically address or are related to the need to identify and remove criminal aliens who are jailed or incarcerated by local and state authorities.

Secure Communities

Secure Communities is an ICE ACCESS initiative that focuses federal resources on assisting local communities to identify and remove high-risk criminal aliens who are held in state and local prisons. The focus of the program is sharing of biometric data (such as fingerprint records) between federal, state, and local law enforcement agencies to screen all foreign-born detainees and identify criminal aliens. Fingerprints that are taken during the booking process for any person (not just those suspected of being foreign nationals) are automatically checked against both FBI criminal history records and DHS records. ICE is automatically notified when fingerprint data establishes that a person is an unauthorized alien and ICE officers conduct follow-up interviews and take appropriate action. ICE focuses its follow-up efforts on foreign nationals with charged or convicted offenses such as violent crimes, major drug offenses, and threats to national security.²

In January 2009, Duval County became the first Florida county to participate in Secure Communities. All 67 Florida counties are now activated Secure Communities jurisdictions.

Law Enforcement Support Center

ICE's Law Enforcement Support Center (LESC) answers queries from state and local law enforcement agencies regarding information status. The LESL is available 24 hours a day, 7 days a week. In FY 2010, LESL received 1,133,130 requests for information.³

Florida law enforcement agencies have a reduced need to utilize LESL services since activating Secure Communities with its automatic check of immigration status through fingerprints taken during the booking process. However, the LESL is still available for situations that do not fit into the Secure Communities framework.

Criminal Alien Program

ICE's Criminal Alien Program (CAP) was created to prevent criminal aliens from being released into the general public. CAP teams respond to local law enforcement agency requests as resources permit. Whenever possible, the program secures a final removal order prior to the termination of criminal aliens' sentences. CAP focuses on aliens who have been convicted of

¹ All information concerning ICE is derived from information on the ICE website, www.ice.gov, last viewed on March 17, 2011.

² ICE "Secure Communities: A Modernized Approach to Identifying and Removing Criminal Aliens," <http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf> (last viewed at on March 17, 2011).

³ Description of Law Enforcement Support Center on ICE website at <http://www.ice.gov/lesl> (last viewed on March 17, 2011).

drug trafficking, sex offenses, and other violent crimes, including both offenders who are in custody and those who are at large.⁴

287(g) Immigration Cross-Designation

ICE may enter into written agreements with a state or any political subdivision of a state so that qualified personnel can perform certain functions of an immigration officer.⁵ ICE trains and cross-designates state and local officers to enforce immigration laws as authorized through section 287(g) of the INA. An officer who is trained and cross-designated through the 287(g) program can interview and initiate removal proceedings of aliens processed through the officer's detention facility. If the local law enforcement agency does not have a 287(g) officer, an ICE officer must interview a foreign national and initiate removal proceedings, if appropriate. Since January 2006, the 287(g) program has been credited with identifying more than 185,000 individuals, mostly in jails, who are suspected of being in the country illegally.

ICE has 287(g) agreements with 71 law enforcement agencies in 25 states. Florida currently has four law enforcement agencies that participate in the program: the Florida Department of Law Enforcement (FDLE), and the sheriff's offices of Bay, Collier, and Duval counties.⁶

ALIENS IN FLORIDA JAILS

There is no nationwide reporting system that can be used to determine the total number of criminal aliens who are in jails and prisons in the United States. However, ICE estimates that 300,000 to 450,000 criminal aliens who are potentially removable are detained each year at federal, state, and local prisons and jails. These include illegal aliens in the United States who are convicted of any crime and lawful permanent residents who are convicted of a removable offense.

Florida Model Jail Standard 4.01 provides in part "[w]hen a foreign citizen is received/admitted to a detention facility for any reason, the detention facility shall make notification using the guidelines as set forth by the U.S. Department of State."⁷ Prior to implementation of Secure Communities, when a person was booked into a local jail, jail officials used the information given by the detainee to help determine the person's citizenship status. If a detainee admitted that he or she was not a U.S. citizen, or if there was reason to believe a detainee was not a U.S. citizen, jail officials attempted to determine the detainee's citizenship status by submitting the detainee's identification information through LESC. This process is greatly simplified with Secure Communities because the booking fingerprints are automatically checked against the DHS database.

⁴ Description of Criminal Alien Program on ICE website at <http://www.ice.gov/criminal-alien-program/>, last viewed on March 17, 2011.

⁵ Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296.

⁶ "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited March 17, 2011).

⁷ http://www.flsheriffs.org/our_program/florida-model-jail-standards/?index.cfm/referer/content.contentList/ID/408/ (last visited March 8, 2011).

III. Effect of Proposed Changes:

The bill basically codifies the current participation by FDLE and all 67 county sheriffs in ICE's Secure Communities Program. However, there are differences between Secure Communities and the requirements of the bill.

This bill requires a number of actions to be taken by the staff of any jail or detention facility concerning a person who is confined for any period of time and is charged with either a felony, misdemeanor driving under the influence (DUI) (s. 316.193, F.S.), or misdemeanor boating under the influence (BUI) (s. 327.35, F.S.). The staff must:

- Make reasonable efforts to determine the citizenship of the person.
- If the person is a foreign national, make reasonable efforts to determine whether the person is lawfully in the United States.
- If the person's citizenship cannot be determined by documents in his or her possession, request verification of the person's immigration status from the Department of Homeland Security (DHS) within 48 hours of confinement.
- If DHS verifies that the person is not lawfully present in the United States, notify DHS of the person's confinement and confirm whether a federal immigration detainer has or will be issued.

The bill provides that it must be construed consistent with federal law. It appears that a state or local law enforcement agency could responsibly meet the bill's requirements by participating in Secure Communities. However, the bill is more restrictive than Secure Communities because it only requires determination of the immigration status of persons who are charged with a felony or with misdemeanor DUI or BUI.

The bill establishes a rebuttable presumption that the person is a flight risk if DHS verifies that he or she is a foreign national who is not lawfully present in the United States. This presumption would be considered in any decision establishing conditions of bond. Because the presumption is rebuttable, it could be overcome by evidence that the person is not a flight risk, such as having ties to the local community.

There is nothing in the bill authorizing detention of a person for the purpose of determining his or her immigration status. In the absence of a legal detainer from ICE, a person cannot be held longer than is required due to state criminal charges or another lawful reason such as a detainer from another jurisdiction. For example, a first appearance before a judge is required within 24 hours of arrest, and it would be unlawful to delay the first appearance in order to receive confirmation of alien or immigrant status from ICE.

The bill requires affected state or local agencies to adopt written procedures in compliance with federal immigration law to administer its provisions.

Other Potential Implications:

Specifically requiring determination of the immigration status of persons charged with a felony or misdemeanor DUI or BUI may lead to challenges in the use of the Secure Communities

technology to automatically check the immigration status of every person who is fingerprinted during booking.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
