

By Senator Bullard

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1 A bill to be entitled
2 An act relating to federal immigration detainer
3 requests; providing a short title; providing
4 definitions; providing conditions under which law
5 enforcement officials may hold an individual pursuant
6 to a federal immigration detainer request; providing
7 applicability; providing an effective date.
8

9 WHEREAS, The United States Immigration and Customs
10 Enforcement's (ICE) Secure Communities Program relies on local
11 law enforcement to detain individuals wanted for immigration
12 violations in local jails for an additional time beyond that
13 when they otherwise would be eligible for release, shifting the
14 burden of federal civil immigration enforcement onto local law
15 enforcement, and

16 WHEREAS, local law enforcement agencies are not reimbursed
17 by the Federal Government for the full cost of responding to an
18 ICE detainer request, which may include, but is not limited to,
19 legal liability, administrative and personnel costs related to
20 tracking and responding to detainer requests, and costs related
21 to the custodial care of an inmate during the period of
22 detention, and

23 WHEREAS, an ICE detainer request, unlike a criminal
24 detainer, is not supported by a warrant or established standard
25 of proof, such as reasonable suspicion or probable cause, and

26 WHEREAS, ICE detainees have erroneously been placed on
27 United States citizens as well as immigrants who are not
28 deportable and can result in a person being held and transferred
29 into immigration detention without regard to whether the arrest

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30 is the result of a mistake or merely the routine practice of
31 questioning individuals in the course of a law enforcement
32 investigation, and

33 WHEREAS, the Secure Communities Program and ICE detainers
34 harm community policing efforts because immigrant residents who
35 are victims or witnesses to crime, including domestic violence,
36 and who may have recourse to lawful immigration status, are less
37 likely to report crime or cooperate with local law enforcement
38 if contact with local law enforcement could result in
39 deportation, NOW, THEREFORE,

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Florida Trust Act.-

44 (1) SHORT TITLE.-This section may be cited as the "Florida
45 Trust Act."

46 (2) DEFINITIONS.-For purposes of this section, the term:

47 (a) "Conviction" means a determination of guilt that is the
48 result of a plea or trial, regardless of whether adjudication is
49 withheld or a plea of nolo contendere is entered.

50 (b) "Eligible for release from criminal custody" means the
51 individual may be released from criminal custody because one of
52 the following conditions has occurred:

53 1. All criminal charges against the individual have been
54 dropped or dismissed.

55 2. The individual has been acquitted of all criminal
56 charges filed against him or her.

57 3. The individual has served all of the time required for
58 his or her sentence.

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59 4. The individual has posted a bond.

60 5. The individual is otherwise eligible for release under
61 federal, state, or local law, or local policy.

62 (c) "Immigration hold" means an immigration detainer issued
63 by an authorized immigration officer pursuant to 8 C.F.R. part
64 287 which requests that a law enforcement official maintain
65 custody of an individual for up to 48 hours excluding Saturday,
66 Sunday, and legal holidays, and to advise the authorized
67 immigration officer before the release of the individual.

68 (d) "Law enforcement agency" means a law enforcement agency
69 of any county, municipality, special district, or other
70 political subdivision of this state.

71 (e) "Law enforcement official" means any person, law
72 enforcement agency, or officer of a law enforcement agency
73 authorized to:

74 1. Enforce criminal statutes, rules, or local ordinances.

75 2. Operate jails or maintain custody of individuals in
76 jails.

77 3. Operate juvenile detention facilities or maintain
78 custody of individuals in juvenile detention facilities.

79 4. Operate prisons or maintain custody of individuals in
80 prisons.

81 (f) "Serious offense" means the commission, attempt, or
82 solicitation of any of the following offenses:

83 1. Any offense listed in ss. 775.084(1)(c)1., 775.30,
84 776.08, 784.07, 787.06, 800.04, 810.02, 825.1025, 843.01,
85 847.0135, 847.0145, 859.01, 876.32, 893.135, and 895.03, Florida
86 Statutes.

87 2. Any offense in any other state or territory, organized

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88 or unorganized, of the United States, if the elements of the
89 offense are substantially similar to the elements of an offense
90 listed in subparagraph 1.

91 (3) STANDARDS FOR RESPONDING TO AN IMMIGRATION HOLD.-

92 (a) A law enforcement official may detain an individual on
93 the basis of an immigration hold after that individual becomes
94 eligible for release from criminal custody if:

95 1. The individual has been convicted of a serious offense
96 according to a criminal background check or documentation
97 provided to the law enforcement official by United States
98 Immigration and Customs Enforcement or is currently in criminal
99 custody for a charge of a serious offense; and

100 2. The continued detention of the individual on the basis
101 of the immigration hold would not violate federal, state, or
102 local law or local policy.

103 (b) If the conditions specified in paragraph (a) are not
104 satisfied, a law enforcement official may not detain an
105 individual on the basis of an immigration hold after that
106 individual becomes eligible for release from criminal custody.

107 (4) LIMITATIONS.-This section does not provide, expand, or
108 ratify the legal authority for any law enforcement official to
109 detain an individual on an immigration hold.

110 Section 2. This act shall take effect July 1, 2013.