

HB 767

2013

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.

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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 detainers 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

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29 into immigration detention without regard to whether the arrest  
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  
48 the result of a plea or trial, regardless of whether  
49 adjudication is withheld or a plea of nolo contendere is  
50 entered.

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

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

56 2. The individual has been acquitted of all criminal

57 charges filed against him or her.

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

60 4. The individual has posted a bond.

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

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

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

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

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

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

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

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

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

84 1. Any offense listed in ss. 775.084(1)(c)1., 775.30,

85 776.08, 784.07, 787.06, 800.04, 810.02, 825.1025, 843.01,  
 86 847.0135, 847.0145, 859.01, 876.32, 893.135, and 895.03, Florida  
 87 Statutes.

88 2. Any offense in any other state or territory, organized  
 89 or unorganized, of the United States, if the elements of the  
 90 offense are substantially similar to the elements of an offense  
 91 listed in subparagraph 1.

92 (3) STANDARDS FOR RESPONDING TO AN IMMIGRATION HOLD.—

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

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

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

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

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

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