

1 A bill to be entitled
2 An act relating to enforcement of federal laws;
3 providing a short title; creating ch. 908, F.S.;
4 creating ss. 908.101-908.108, F.S.; providing
5 legislative intent; providing definitions; prohibiting
6 state and local law enforcement agencies, school
7 officers, and security agencies from certain actions
8 for purposes of immigration enforcement; providing
9 exceptions; requiring state and local law enforcement
10 agencies to review confidentiality policies and revise
11 such policies, if necessary; prohibiting state and
12 local law enforcement agencies, school officers, and
13 security agencies from making an inquiry or recording
14 information concerning the immigration status of
15 certain persons; authorizing a limited inquiry and
16 recording of information in certain circumstances;
17 providing that certain persons unable to afford legal
18 counsel are entitle to representation; requiring the
19 Attorney General, K-12 public schools and public
20 postsecondary educational institutions, hospitals, and
21 courthouses to develop and publicize certain policies;
22 requiring the Attorney General to prescribe a format
23 for persons to submit a complaint; authorizing the
24 Attorney General or state attorney to institute
25 injunctive proceedings; providing severability;

26 providing an effective date.

27
28 WHEREAS, the Legislature finds that one in five residents
29 of the state is foreign-born and one in three children in the
30 state has at least one immigrant parent, and

31 WHEREAS, immigrants are valuable and essential members of
32 our community and a relationship of trust between immigrants and
33 state and local law enforcement agencies is central to public
34 safety, and

35 WHEREAS, the Legislature concurs in the recent finding and
36 recommendation of the President's Taskforce on 21st Century
37 Policing that whenever possible, state and local law enforcement
38 should not be involved in federal immigration enforcement, and

39 WHEREAS, state and local departments and agencies operate
40 with limited resources and personnel, and involvement in federal
41 immigration enforcement diverts these already limited resources
42 and personnel away from state and local matters, and

43 WHEREAS, state and local law enforcement agencies are not
44 reimbursed by the federal government for the full cost of
45 responding to immigration holds, immigration detainers, hold
46 requests, notification requests, and transfer requests, which
47 can lead to the expenditure of resources to pay for detention
48 time and the administrative costs of tracking and responding to
49 requests from the federal government, and

50 WHEREAS, unlike criminal detainers, which are supported by

51 a judicial determination of probable cause, United States
52 Immigration and Customs Enforcement (ICE) detainers are issued
53 by immigration authorities without any authorization or
54 oversight by a judge or other neutral decisionmaker with no
55 established standard of proof, such as reasonable suspicion or
56 probable cause, leading immigration detainers to have been
57 erroneously placed on lawful citizens, and

58 WHEREAS, according to ICE's records, between fiscal year
59 2008 and fiscal year 2012, more than 800 detainers were issued
60 for citizens and nondeportable immigrants, and

61 WHEREAS, the federal 287(g) program can result in a person
62 being held and transferred for detention without regard to the
63 circumstances of the arrest, including whether the arrest is a
64 mistake or part of an investigation without pressing charges,
65 and

66 WHEREAS, detention denies lawful status to victims or
67 witnesses to crimes who may otherwise be eligible for lawful
68 status through U-visas or T-visas, and

69 WHEREAS, the Legislature commends the 29 counties and local
70 law enforcement agencies in the state that currently have
71 written policies to limit detention ordered by ICE detainers
72 without a showing of probable cause, and

73 WHEREAS, state law does not authorize local law enforcement
74 to arrest or detain individuals for federal immigration
75 purposes, and

76 WHEREAS, state and local law enforcement involvement in
 77 federal immigration enforcement raises constitutional concerns
 78 regarding the Equal Protection Clause and the Fourth Amendment,

79 WHEREAS, federal courts have repeatedly held that detention
 80 by a local law enforcement agency at the request of ICE of an
 81 individual suspected of immigration violations violates the
 82 Fourth Amendment to the United States Constitution and governing
 83 federal law, and

84 WHEREAS, it is the intent of the Legislature that this act
 85 shall not be construed as providing, expanding, or ratifying the
 86 legal authority for any state or local law enforcement agency to
 87 arrest or detain an individual for immigration purposes, NOW,
 88 THEREFORE,

89
 90 Be It Enacted by the Legislature of the State of Florida:

91
 92 Section 1. Chapter 908, Florida Statutes, consisting of
 93 sections 908.101 through 908.108, is created to read:

94 CHAPTER 908

95 FEDERAL IMMIGRATION ENFORCEMENT

96 908.101 Short title.—This act may be cited as the "Florida
 97 Trust Act."

98 908.102 Legislative intent.—It is the intent of the
 99 Legislature to protect the safety and constitutional rights of
 100 residents of the state and to direct the state's limited

101 resources to matters of greatest concern to state and local
102 governments.

103 908.103 Definitions.—As used in this chapter:

104 (1) "Civil immigration warrant" means a warrant for a
105 violation of federal immigration law and includes a warrant
106 entered in the Immigration Violator File of the National Crime
107 Information Center database.

108 (2) "Immigration authority" means an officer, employee, or
109 person employed by or acting as an agent of the United States
110 Immigration and Customs Enforcement, or a division thereof, or
111 an officer, employee, or person employed by or acting as an
112 agent of the United States Department of Homeland Security who
113 is charged with immigration enforcement under 8 U.S.C. s. 1357
114 of the Immigration and Nationality Act.

115 (3) "Immigration enforcement" means an investigation or
116 enforcement, or assistance in the investigation or enforcement,
117 of any federal immigration law, including such laws that
118 penalize a person's presence in, entry or reentry to, or
119 employment in, the United States, including, but not limited to,
120 a violation of 8 U.S.C. ss. 1253, 1324(c), 1325, or 1326.

121 (4) "Immigration hold," "hold request," "notification
122 request," or "transfer request" mean an immigration detainer
123 request issued by an immigration authority, pursuant to 8 C.F.R.
124 s. 287.7, to a local or state law enforcement agency to
125 facilitate the arrest or transfer of an individual to federal

126 immigration custody; maintain custody of an individual for a
127 period not to exceed 48 hours, excluding Saturdays, Sundays, and
128 holidays; and advise the immigration authority before the
129 release of such individual.

130 (5) "Immigration status" or "immigration status
131 information" means the lawful or unlawful status of an
132 individual under federal laws and regulations.

133 (6) "Judicial warrant" means a warrant based on probable
134 cause which authorizes an immigration authority to take into
135 custody the person who is the subject of such warrant. Such
136 warrant must be issued by a judge appointed pursuant to Article
137 III of the United States Constitution or a federal magistrate
138 judge appointed pursuant to 28 U.S.C. s. 631.

139 (7) "Law enforcement officer" means a person who is
140 elected, appointed, or employed full time by a municipality, the
141 state, or a political subdivision thereof, who is authorized to
142 make arrests and whose primary responsibility is the prevention
143 and detection of crime or the enforcement of state penal,
144 criminal, traffic, or highway laws. The term includes all
145 certified supervisory and command personnel whose duties
146 include, in whole or in part, the supervision, training,
147 guidance, and management responsibilities of a full-time law
148 enforcement officer, part-time law enforcement officer,
149 auxiliary law enforcement officer, or support personnel employed
150 by an employing agency.

151 (8) "School officer" means a person who is a law
152 enforcement officer under chapter 943 and is employed by a law
153 enforcement agency or district school board. If the officer is
154 employed by a district school board, the district school board
155 is the employing agency for purposes of chapter 943 and must
156 comply with the provisions of that chapter.

157 908.104 State and local law enforcement agencies.—

158 (1) A state and local law enforcement agency, school
159 officer, or security agency may not use agency resources or
160 personnel to investigate, arrest, or detain a person for
161 purposes of immigration enforcement. Such resources include, but
162 are not limited to, labor and resources expended in:

163 (a) Responding to a hold, notification request, or
164 transfer request from an immigration authority.

165 (b) Responding to a request from an immigration authority
166 for information not publicly available regarding a person's
167 release date, home address, or work address for purposes of
168 immigration enforcement.

169 (c) Making an arrest based on civil immigration warrants.

170 (d) Performing functions of an immigration officer
171 pursuant to 8 U.S.C. s. 1357(g) or any other law, regulation, or
172 policy, whether formal or informal.

173 (2) A state and local law enforcement agency, school
174 officer, security agency, and other state agencies may not make
175 an agency database available for purposes of immigration

176 enforcement or an investigation or enforcement related to a
177 federal program requiring registration of an individual on the
178 basis of race, gender, disability, sexual orientation, gender
179 identity, religion, immigration status, or national or ethnic
180 origin. Any agreement to make available a database in conflict
181 with this subsection that is in existence on July 1, 2017, is
182 invalid.

183 (3) This section does not prevent a state or local law
184 enforcement agency from responding to a court order from an
185 immigration authority for information about a person's previous
186 criminal arrests or convictions.

187 (4) This section may not be construed to confer any
188 authority beyond that which existed before the enactment of this
189 section on a state and local law enforcement agency, school
190 officer, or security agency to detain a person based on a civil
191 immigration warrant.

192 (5) This section shall supersede any conflicting policy,
193 rule, procedure, or practice within the state. This section may
194 not be construed to prohibit a state and local law enforcement
195 agency, school officer, or security agency from cooperating with
196 an immigration authority to the extent required by federal law.
197 This section may not be interpreted or applied so as to create
198 any power, duty, or obligation in conflict with any federal law.

199 908.105 Confidentiality policies.—A state and local law
200 enforcement agency shall review its confidentiality policies and

201 make any necessary revisions to ensure that information
202 collected by such agency from an individual is limited and may
203 not be used or disclosed beyond the specifically authorized
204 purpose for which it was collected.

205 908.106 Access to immigration status information.—

206 (1) A state or local agency, or agent thereof, or health
207 care provider may not make any inquiry or record information
208 concerning the immigration status of a person who:

209 (a) Is seeking assistance, services, or benefits for
210 himself or herself, a family or household member, or any other
211 potential beneficiary of such assistance, services, or benefits.

212 (b) Contacts, approaches, requests, or is in need of
213 assistance from a law enforcement agency.

214 (2) A limited inquiry and recording of information
215 concerning the relevant person may be made when, as documented
216 with specificity in such agency's, employee's, agent's, or
217 health care provider's case record of the matter, such person's
218 immigration status is:

219 (a) Directly relevant as a lawful criterion for such
220 person's eligibility for the specific mode of assistance,
221 services, or benefits sought by the person;

222 (b) Directly and highly relevant to the subject matter of
223 a specific, ongoing state or local law enforcement
224 investigation;

225 (c) Specifically required by such agency or agent thereof,

226 or health care provider, by state or federal law;

227 (d) Requested by a healthcare provider for the person's
228 benefit, including, but not limited to, the referral of such
229 person to benefits and services he or she may be eligible for,
230 except that the immigration status of such person may not be
231 documented in any medical record and may not be disclosed for
232 any purpose; or

233 (e) Requested for the person's benefit by a specific
234 agency that is tasked with assisting such person in matters
235 related to such person's immigration status, except that the
236 status of such person may not be disclosed for any purpose.

237 (3) A person against whom there is probable cause to
238 commence a removal proceeding or against whom such a proceeding
239 has been commenced who is unable to afford legal counsel is
240 entitled to representation and related assistance by assigned
241 counsel, when the person:

242 (a) Was present in this state when questioned, taken into
243 custody, charged, summoned, or presented with allegations of the
244 removal proceedings, and the person resides or is detained in
245 this state; or

246 (b) Resided in this state when questioned, taken into
247 custody, charged, summoned, or presented with allegations of the
248 removal proceedings, and the person continues to reside in this
249 state, or if detained, continues to be detained in this state.

250 908.107 Accessibility of public schools, hospitals, and

251 courthouses.-

252 (1) The Attorney General shall develop and provide,
 253 through the Department of Legal Affairs' website, model policies
 254 for K-12 public schools and public postsecondary educational
 255 institutions, hospitals, and courthouses to ensure safety and
 256 accessibility in these locations to all residents of the state,
 257 regardless of immigration status.

258 (2) K-12 public schools and public postsecondary
 259 educational institutions, hospitals, and courthouses shall
 260 develop and make public policies that limit assistance with
 261 immigration enforcement on their premises to the fullest extent
 262 possible consistent with federal and state law and policies.

263 908.108 Violations.-

264 (1) The Attorney General shall prescribe and provide,
 265 through the Department of Legal Affairs' website, the format for
 266 a person to submit a complaint alleging a violation of this
 267 chapter. This section does not prohibit filing an anonymous
 268 complaint or a complaint submitted in another format.

269 (2) The Attorney General or a state attorney may institute
 270 proceedings in circuit court to enjoin a state entity, state
 271 official, law enforcement agency, local governmental entity, or
 272 local government official, school officer, or security agency
 273 found to be in violation of this chapter.

274 Section 2. The provisions of this act are severable. If
 275 any provision of this act or its application is held invalid,

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276 | that invalidity shall not affect other provisions or
277 | applications that can be given effect without the invalid
278 | provision or application.

279 | Section 3. This act shall take effect July 1, 2017.