

1 A bill to be entitled
2 An act relating to enforcement of federal laws;
3 creating ch. 908, F.S., entitled "Federal Immigration
4 Enforcement"; creating ss. 908.101-908.109, F.S.;
5 providing a short title; providing legislative intent;
6 providing definitions; prohibiting state and local law
7 enforcement agencies, school law enforcement officers,
8 and security agencies from certain actions for
9 purposes of immigration enforcement; providing
10 exceptions; requiring state and local law enforcement
11 agencies to review confidentiality policies and revise
12 such policies, if necessary; prohibiting state and
13 local law enforcement agencies and health care
14 providers from making an inquiry or recording
15 information concerning the immigration status of
16 certain persons; authorizing a limited inquiry and
17 recording of information in certain circumstances;
18 providing that certain persons who are unable to
19 afford legal counsel are entitled to representation;
20 requiring the Attorney General, K-12 public schools
21 and public postsecondary educational institutions,
22 hospitals, and courthouses to develop and publicize
23 certain policies; requiring the Attorney General to
24 prescribe a format for persons to submit a complaint;
25 authorizing the Attorney General or state attorney to

26 | institute injunctive proceedings; providing
27 | severability; providing an effective date.

28 |

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

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

36 | WHEREAS, the Legislature concurs in the recent finding and
37 | recommendation of President Barack Obama's Task Force on 21st
38 | Century Policing that, whenever possible, state and local law
39 | enforcement agencies should not be involved in federal
40 | immigration enforcement, and

41 | WHEREAS, state and local law enforcement agencies operate
42 | with limited resources and personnel, and involvement in federal
43 | immigration enforcement diverts these already limited resources
44 | and personnel away from state and local matters, and

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

51 requests from the federal government, and

52 WHEREAS, unlike criminal detainers, which are supported by
53 a judicial determination of probable cause, United States
54 Immigration and Customs Enforcement (ICE) detainers are issued
55 by immigration authorities without any authorization or
56 oversight by a judge or other neutral decisionmaker with no
57 established standard of proof, such as reasonable suspicion or
58 probable cause, which has led to the erroneous placement of
59 immigration detainers on lawful citizens, and

60 WHEREAS, according to ICE's records, between fiscal year
61 2008 and fiscal year 2012, more than 800 detainers were issued
62 for citizens and nondeportable immigrants, and

63 WHEREAS, the federal 287(g) program can result in a person
64 being held and transferred for detention without regard to the
65 circumstances of the arrest, including whether the arrest was
66 made mistakenly or as part of an investigation without pressing
67 charges, and

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

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

75 WHEREAS, state law does not authorize local law enforcement

76 agencies to arrest or detain individuals for federal immigration
 77 purposes, and

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

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

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

91

92 Be It Enacted by the Legislature of the State of Florida:

93

94 Section 1. Chapter 908, Florida Statutes, consisting of
 95 sections 908.101 through 908.109, is created to read:

96

CHAPTER 908

97

FEDERAL IMMIGRATION ENFORCEMENT

98

908.101 Short title.—This act may be cited as the "Florida

99

Trust Act."

100

908.102 Legislative intent.—It is the intent of the

101 Legislature to protect the safety and constitutional rights of
102 residents of the state and to direct the state's limited
103 resources to matters of greatest concern to state and local
104 governments.

105 908.103 Definitions.—As used in this chapter:

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

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

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

123 (4) "Immigration hold," "hold request," "notification
124 request," or "transfer request" mean an immigration detainer
125 request issued by an immigration authority, pursuant to 8 C.F.R.

126 s. 287.7, to a local or state law enforcement agency to
127 facilitate the arrest or transfer of an individual to federal
128 immigration custody; maintain custody of an individual for a
129 period not to exceed 48 hours, excluding Saturdays, Sundays, and
130 holidays; and advise the immigration authority before the
131 release of such individual.

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

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

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

151 auxiliary law enforcement officer, or support personnel employed
152 by an employing agency.

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

159 908.104 State and local law enforcement agencies, school
160 law enforcement officers, and security agencies.-

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

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

169 (b) Responding to a request from an immigration authority
170 for information not publicly available regarding a person's
171 release date, home address, or work address for purposes of
172 immigration enforcement.

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

174 (d) Performing functions of an immigration officer
175 pursuant to 8 U.S.C. s. 1357(g) or any other law, regulation, or

176 policy, whether formal or informal.

177 (2) A state and local law enforcement agency, school law
178 enforcement officer, security agency, or other state agency may
179 not make an agency database available for purposes of
180 immigration enforcement or for purposes of an investigation or
181 enforcement related to a federal program requiring registration
182 of an individual on the basis of race, gender, disability,
183 sexual orientation, gender identity, religion, immigration
184 status, or national or ethnic origin. Any agreement to make
185 available a database in conflict with this subsection that is in
186 existence on July 1, 2018, is invalid.

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

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

196 (5) This section shall supersede any conflicting policy,
197 rule, procedure, or practice within the state. This section may
198 not be construed to prohibit a state and local law enforcement
199 agency, school law enforcement officer, or security agency from
200 cooperating with an immigration authority to the extent required

201 by federal law. This section may not be interpreted or applied
202 so as to create any power, duty, or obligation in conflict with
203 any federal law.

204 908.105 Confidentiality policies.—A state and local law
205 enforcement agency shall review its confidentiality policies and
206 make any necessary revisions to ensure that information
207 collected by such agency from an individual is limited and may
208 not be used or disclosed beyond the specifically authorized
209 purpose for which it was collected.

210 908.106 Access to immigration status information.—

211 (1) A state or local law enforcement agency, or agent
212 thereof, or health care provider may not make any inquiry or
213 record information concerning the immigration status of a person
214 who:

215 (a) Is seeking assistance, services, or benefits for
216 himself or herself, a family or household member, or any other
217 potential beneficiary of such assistance, services, or benefits.

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

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

225 (a) Directly relevant as a lawful criterion for such

226 person's eligibility for the specific method of assistance,
227 services, or benefits sought by the person;

228 (b) Directly relevant to the subject matter of a specific,
229 ongoing state or local law enforcement investigation;

230 (c) Specifically required by such agency, or agent
231 thereof, or health care provider by state or federal law;

232 (d) Requested by a health care provider for the person's
233 benefit, including, but not limited to, the referral of such
234 person to benefits and services he or she may be eligible for,
235 except that the immigration status of such person may not be
236 documented in any medical record and may not be disclosed for
237 any purpose; or

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

242 908.107 Entitlement to representation for removal
243 proceedings.—A person against whom there is probable cause to
244 commence a removal proceeding or against whom such a proceeding
245 has been commenced who is unable to afford legal counsel is
246 entitled to representation and related assistance by assigned
247 counsel, when the person resided or was detained in the state
248 and was present in the state when questioned, taken into
249 custody, charged, summoned, or presented with allegations of the
250 removal proceedings.

251 908.108 Accessibility of public schools, hospitals, and
252 courthouses.—

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

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

264 908.109 Violations.—

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

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

275 Section 2. The provisions of this act are severable. If

HB 1333

2018

276 | any provision of this act or its application is held invalid,
277 | that invalidity shall not affect other provisions or
278 | applications that can be given effect without the invalid
279 | provision or application.

280 | Section 3. This act shall take effect July 1, 2018.