

By Senator Torres

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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 a state attorney
26 to institute injunctive proceedings; providing
27 severability; providing an effective date.

28
29 WHEREAS, the Legislature finds that one in five residents

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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

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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 and

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

87 WHEREAS, it is the intent of the Legislature that this act

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88 shall not be construed as providing, expanding, or ratifying the
89 legal authority for any state or local law enforcement agency to
90 arrest or detain an individual for immigration purposes, NOW,
91 THEREFORE,

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

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

97 CHAPTER 908

98 FEDERAL IMMIGRATION ENFORCEMENT

99 908.101 Short title.—This chapter may be cited as the
100 “Florida Trust Act.”

101 908.102 Legislative intent.—It is the intent of the
102 Legislature to protect the safety and constitutional rights of
103 residents of the state and to direct the state’s limited
104 resources to matters of greatest concern to state and local
105 governments.

106 908.103 Definitions.—As used in this chapter, the term:

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

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

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117 of the Immigration and Nationality Act.

118 (3) "Immigration enforcement" means an investigation or
119 enforcement, or assistance in the investigation or enforcement,
120 of any federal immigration law, including such laws that
121 penalize a person's presence in, entry or reentry to, or
122 employment in the United States, including, but not limited to,
123 a violation of 8 U.S.C. s. 1253, s. 1324(c), s. 1325, or s.
124 1326.

125 (4) "Immigration hold," "hold request," "notification
126 request," or "transfer request" mean an immigration detainer
127 request issued by an immigration authority, pursuant to 8 C.F.R.
128 s. 287.7, to a local or state law enforcement agency to
129 facilitate the arrest or transfer of an individual to federal
130 immigration custody; maintain custody of an individual for a
131 period not to exceed 48 hours, excluding Saturdays, Sundays, and
132 holidays; and advise the immigration authority before the
133 release of such individual.

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

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

143 (7) "Law enforcement officer" means a person who is
144 elected, appointed, or employed full time by a municipality, the
145 state, or a political subdivision thereof who is authorized to

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146 make arrests and whose primary responsibility is the prevention
147 and detection of crime or the enforcement of state penal,
148 criminal, traffic, or highway laws. The term includes all
149 certified supervisory and command personnel whose duties
150 include, in whole or in part, the supervision, training,
151 guidance, and management responsibilities of a full-time law
152 enforcement officer, part-time law enforcement officer,
153 auxiliary law enforcement officer, or support personnel employed
154 by an employing agency.

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

161 908.104 State and local law enforcement agencies, school
162 law enforcement officers, and security agencies.-

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

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

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

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175 (c) Making an arrest based on a civil immigration warrant.

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

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

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

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

198 (5) This section supersedes any conflicting policy, rule,
199 procedure, or practice within the state. This section may not be
200 construed to prohibit a state or local law enforcement agency,
201 school law enforcement officer, or security agency from
202 cooperating with an immigration authority to the extent required
203 by federal law. This section may not be interpreted or applied

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204 so as to create any power, duty, or obligation in conflict with
205 any federal law.

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

212 908.106 Access to immigration status information.—

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

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

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

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

227 (a) Directly relevant as a lawful criterion for such
228 person's eligibility for the specific method of assistance,
229 services, or benefits sought by the person;

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

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

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233 or health care provider by state or federal law;

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

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

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

253 908.108 Accessibility of public schools, hospitals, and
254 courthouses.—

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

261 (2) K-12 public schools and public postsecondary

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262 educational institutions, hospitals, and courthouses shall
263 develop and make public policies that limit assistance with
264 immigration enforcement on their premises to the fullest extent
265 possible consistent with federal and state law.

266 908.109 Violations.—

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

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

277 Section 2. The provisions of this act are severable. If any
278 provision of this act or its application is held invalid, that
279 invalidity shall not affect other provisions or applications
280 that can be given effect without the invalid provision or
281 application.

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