

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, if
12 necessary, revise such policies; 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 under 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 submittal of complaints;
25 authorizing the Attorney General and state attorneys
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 this state is foreign born and one in three children in this
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 finding and
37 recommendation of former President Barack Obama's Task Force on
38 21st Century Policing that, whenever possible, state and local
39 law 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 and without
57 an established standard of proof, such as reasonable suspicion
58 or 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 lawful 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, state law does not authorize local law enforcement
72 agencies to arrest or detain individuals for federal immigration
73 purposes, and

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

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

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

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

Section 1. Chapter 908, Florida Statutes, consisting of sections 908.101 through 908.109, Florida Statutes, is created and entitled "Federal Immigration Enforcement," to read:

CHAPTER 908

FEDERAL IMMIGRATION ENFORCEMENT

908.101 Short title.—This chapter may be cited as the "Florida Trust Act."

908.102 Legislative intent.—It is the intent of the Legislature to protect the safety and constitutional rights of residents of this state and to direct the state's limited resources to matters of greatest concern to state and local governments.

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

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

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

(3) "Immigration enforcement" means an investigation or enforcement, or assistance in the investigation or enforcement,

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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. s. 1253, s. 1324(c), s. 1325, or s.
121 1326.

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

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

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

140 (7) "Law enforcement officer" means a person who is
141 elected, appointed, or employed full time by a municipality, the
142 state, or a political subdivision thereof who is authorized to
143 make arrests and whose primary responsibility is the prevention
144 and detection of crime or the enforcement of state penal,
145 criminal, traffic, or highway laws. The term includes all

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146 certified supervisory and command personnel whose duties
147 include, in whole or in part, the supervision, training,
148 guidance, and management responsibilities of a full-time law
149 enforcement officer, part-time law enforcement officer,
150 auxiliary law enforcement officer, or support personnel employed
151 by an employing agency.

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

158 908.104 State and local law enforcement agencies, school
159 law enforcement officers, and security agencies.-

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

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

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

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

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

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175 whether formal or informal.

176 (2) A state or local law enforcement agency, school law
177 enforcement officer, security agency, or other state agency may
178 not make an agency database available for purposes of
179 immigration enforcement or for purposes of an investigation or
180 enforcement related to a federal program requiring registration
181 of an individual on the basis of race, gender, disability,
182 sexual orientation, gender identity, religion, immigration
183 status, or national or ethnic origin. Any agreement to make
184 available a database in conflict with this subsection which is
185 in existence on July 1, 2019, is invalid.

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

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

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

203 908.105 Confidentiality policies.—A state or local law

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

209 908.106 Access to immigration status information.—

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

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

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

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

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

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

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

231 (d) Requested by a health care provider for the person's
232 benefit, including, but not limited to, the referral of such

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233 person to benefits and services he or she may be eligible for,
234 except that the immigration status of such person may not be
235 documented in any medical record and may not be disclosed for
236 any purpose; or

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

241 908.107 Entitlement to representation for removal
242 proceedings.—A person against whom there is probable cause to
243 commence a removal proceeding or against whom such a proceeding
244 has been commenced and who is unable to afford legal counsel is
245 entitled to representation and related assistance by assigned
246 counsel, if the person resided in or was detained in this state
247 and was present in this state when questioned, taken into
248 custody, charged, summoned, or presented with allegations of the
249 removal proceedings.

250 908.108 Accessibility of public schools, hospitals, and
251 courthouses.—

252 (1) The Attorney General shall develop and provide, through
253 the Department of Legal Affairs' website, model policies for K-
254 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 this 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

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262 possible consistent with federal and state law.

263 908.109 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 submitting a complaint 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,
272 local governmental official, school law enforcement officer, or
273 security agency found to be in violation of this chapter.

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

279 Section 3. This act shall take effect July 1, 2019.