

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [HB 1C](#)

**TITLE:** Immigration

**SPONSOR(S):** McClure

**COMPANION BILL:** [SB 2-C](#) (Gruters)

**LINKED BILLS:** None

**RELATED BILLS:** None

## Committee References

[Budget](#)

## SUMMARY

### Effect of the Bill:

The bill enhances statewide efforts to enforce federal immigration laws. Specifically, the bill creates the State Board of Immigration Enforcement, composed of the Governor and Cabinet, to serve as a resource for the Federal Government for purposes of the enforcement of federal immigration laws. The bill establishes the State Immigration Enforcement Council and the Local Law Enforcement Immigration Grant Program. The bill creates and increases various criminal penalties and strengthens criminal sentences for crimes committed by unauthorized aliens and prohibits students who are undocumented for federal immigration purposes from receiving the out-of-state fee waiver for recent Florida high school graduates.

### Fiscal or Economic Impact:

The bill will have a significant fiscal impact on the state. For the 2024-2025 fiscal year, the bill appropriates \$298.8 million from the General Revenue Fund (\$13.2 million in recurring funds and \$285.6 million in nonrecurring funds) and 89 full-time equivalent positions to implement the requirements of the bill, including 5 positions for the State Board of Immigration Enforcement and 84 positions for the Department of Agriculture and Consumer Services.

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## ANALYSIS

### EFFECT OF THE BILL:

#### State Board of Immigration Enforcement

The bill creates the State Board of Immigration Enforcement (board) within the [Department of Law Enforcement \(FDLE\)](#), composed of the Governor and Cabinet as head of the board. The board is a separate budget entity from FDLE and not subject to control, supervision, or direction of FDLE. (Section [16](#))

The bill provides that the board must appoint an executive director to aid the board in the implementation of its responsibilities. The bill requires all board action to be by unanimous vote. The board, as the chief immigration enforcement officer of the state, must:

- Serve as a resource for the United States Immigration and Customs Enforcement (ICE).
- Coordinate and cooperate with the Federal Government in the enforcement of federal immigration law.
- Coordinate with and provide assistance to law enforcement agencies and monitor local government compliance with federal immigration enforcement.
- Administer the Local Law Enforcement Immigration Grant Program.
- Actively seek Congressional action to amend the National Crime Prevention and Privacy Compact to require states that are a party to the compact to share information relating to a person's immigration status for criminal justice purposes and to require that such information be fully shared with all federal agencies having authority over immigration enforcement. (Section [16](#))

No later than March 24, 2025, the bill requires the board to report to the Legislature on the number of vacant beds available in correctional institutions and facilities and county detention facilities that can be sublet to ICE for use as

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detention beds. Operators of such facilities must provide the information requested by the board no later than March 15, 2025. (Section [16](#))

The board must collect data related to operations with ICE from local law enforcement agencies, and, by December 15 of each year, the board must submit a report to the Legislature detailing the level of coordination and cooperation between federal immigration entities and state and local governments and law enforcement agencies. (Section [16](#))

### **State Immigration Enforcement Council**

The bill creates the State Immigration Enforcement Council (council), an advisory body, for the purpose of advising the board. The council must be composed of eight members. The Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture must each appoint one police chief. The President of the Senate and the Speaker of the House of Representatives must each appoint two sheriffs. The board must unanimously elect a sheriff from among the council's membership to serve as chair. Any vacancies that arise on the council must be filled within two weeks. Members of the council serve without compensation but are entitled to reimbursement for per diem and travel expenses. (Section [17](#))

The first meeting of the council must be held no later than April 1, 2025. Thereafter, the council must meet quarterly. Meetings may be conducted by teleconference or other electronic means.

The council is responsible for assisting the board on issues related to immigration enforcement, provided such requests are made after unanimous approval of the board. The council must advise the board on the efforts of local law enforcement agencies related to the enforcement of federal immigration laws. Additionally, the council must provide recommendations to the board regarding:

- Expenses related to 287(g) program participation that should be reimbursable under the Local Law Enforcement Immigration Grant Program.
- Financial resources necessary to aid local law enforcement agencies in the cooperation and coordination with the Federal Government.
- Enhancing information sharing between state entities, local governmental entities, law enforcement agencies, and the Federal Government in the enforcement of federal immigration laws.
- Resources necessary to facilitate the training of local law enforcement agencies in the cooperation and coordination with the Federal Government and the enforcement of federal immigration laws.
- Strategies to increase the number of available detention beds for use by ICE.

The council must request guidance from ICE for training opportunities and strategies to further 287(g) program participation in the state and advise the board on new training activities that could be considered for reimbursement by the Local Law Enforcement Immigration Grant Program. (Section [17](#))

The council must also provide recommendations to enhance information sharing between state entities, local governmental entities, law enforcement agencies, and the Federal Government in the enforcement of federal immigration laws within the state. The recommendations must provide for enhanced use and coordination of the following Federal Government centers, including, but not limited to:

- The Federal Bureau of Investigation's Terrorist Screening Center;
- The United States Customs and Border Protection's National Targeting Center;
- The United States Department of Homeland Security Fusion Centers; and
- The United States Drug Enforcement Administration's Special Operations Unit. (Section [17](#))

### **Local Law Enforcement Immigration Grant Program**

The bill creates the Local Law Enforcement Immigration Grant Program within the board to award grants to local law enforcement agencies, including chief correctional officers who operate a county detention facility, to support their cooperation with federal immigration agencies in the enforcement of federal immigration law. The board must award any funds specifically appropriated for the grant program to reimburse expenses or issue bonus payments. (Section [18](#))

Grants may be issued to a local law enforcement agency for:

- Subletting detention beds to ICE;
- Equipment, travel, and lodging related to the 287(g) program;
- Training programs, including certified apprenticeship programs, related to supporting the enforcement of federal immigration laws; and
- Hardware or software costs essential to assisting the federal government in its enforcement of federal immigration laws. (Section [18](#))

Grants may also be issued to a local law enforcement agency to provide bonus payments for the agency’s local law enforcement officers who participate in the United States Department of Homeland Security at-large task force operations. The local law enforcement agency may apply for a bonus of up to \$1,000 for each local law enforcement officer employed by the agency who participated in one or more operations.

The grant funds are awarded on a first-come, first-served basis, but the board must prescribe the procedure and application for the program after considering the recommendations from the council.

Upon receiving an application, the bill provides that the executive director for the board must review the application to ensure that it is complete and make a recommendation for approval or denial of funding to the board. Upon unanimous approval of the board or the executive director, when authorized by the board, the board must provide notification to the chair and vice chair of the Legislative Budget Commission (LBC) at least 14 days before a grant may be issued to reimburse a local law enforcement agency or provide bonus grants. If the chair or vice chair of the LBC objects in writing, the funding request must be addressed by the LBC or the Legislature. (Section [18](#))

The bill provides that the total amount of grants awarded may not exceed funding appropriated for the program. In addition, the bill provides that in order to efficiently and effectively disburse funds, the board shall not duplicate benefits and grants may not be awarded to pay for any activity for which the agency has received or expects to receive federal or other funding.

The bill provides that the board must adopt rules to implement the grant program, which includes establishing a process for reviewing and acting on grant applications in bulk or as part of a consent calendar. The rules must also include application requirements and establish supporting documentation necessary for the board to make decisions. The rules may allow the executive director to approve grants without board approval, provided the grant does not exceed \$25,000. (Section [18](#))

### **[Cooperation with Federal Immigration Authorities](#)**

The bill expands the current requirement for every law enforcement agency to use best efforts to support the enforcement of federal immigration law to specify that the requirement applies to state and local law enforcement agencies and any official who is responsible for directing or supervising such an agency. The bill specifies such efforts must be consistent with all duties created in state and federal law. (Section [19](#))

The bill amends the definition of “sanctuary policy” to include, and prohibit state entities or local governmental entities from adopting, any law, policy, practice, procedure, or custom that would limit or prohibit a law enforcement agency from executing a lawful judicial warrant or participating in a federal immigration operation with a federal immigration agency. (Section [15](#))

The bill also specifically prohibits a state entity, local governmental entity, or law enforcement agency, from prohibiting or in any way restricting a law enforcement officer from executing or assisting in the execution of a judicial warrant. (Section [19](#))

The bill requires a sheriff or chief correctional officer operating a county detention facility, upon request by a federal immigration agency, to provide the agency with a list of all inmates booked in a county detention facility and any information regarding the immigration status of each inmate. (Section [19](#))

Additionally, the bill narrows the exception related to a state or local governmental entity’s or law enforcement agency’s requirement to share information with a federal immigration agency related to a victim of or witness to a

crime. Specifically, for the exception to apply, the bill requires the victim or witness to be necessary to the investigation or prosecution of a crime that occurred in the United States. Further, the bill narrows the exception related to a state or local entity's or law enforcement agency's requirement to share information about any alien who is unlawfully present with a federal immigration agency if he or she is or has been a necessary witness or victim to certain crimes, such as domestic violence, sexual assault, murder, manslaughter, or human trafficking. Under the bill, for the exception to apply, the person must be or must have been a necessary witness or victim of such a crime that was committed in the United States and in verifying that the person qualifies as such a victim or witness, the verifying entity must rely on documentation such as police reports, testimony, sworn statements or a victim impact statement. (Section [19](#))

The bill requires any law enforcement agency that has custody of a person who is subject to a federal immigration detainer to notify the state attorney that the person is subject to an immigration detainer. (Section [20](#))

The bill requires the Attorney General to initiate judicial proceedings to enforce compliance with requirements related to federal immigration detainers if any local governmental entity adopts an ordinance, regulation, rule, or policy refusing to comply with or otherwise directing local officials, employees, or others to refuse to comply with such detainers. If the court finds a local government entity in noncompliance, the bill requires the court to declare the improper ordinance, regulation, rule, or policy invalid and issue a permanent injunction prohibiting its enforcement. The bill prohibits a local government from raising a defense that it acted in good faith or upon the advice of counsel. Finally, if the court determines a violation was knowing and willful, the court may assess a \$5,000 fine against the elected or appointed local government official or administrative agency head responsible. (Section [20](#))

Under the bill, any executive or administrative state, county, or municipal officer who violates his or her duties to comply with the immigration enforcement requirements of ch. 908, F.S., may be subject to action by the Governor in the exercise of his or her authority, specifically including suspension from office. (Section [21](#))

### **[287\(g\) Agreements](#)**

The bill specifies that the requirements relating to providing assistance to ICE through participation in the 287(g) program apply to any sheriff or chief correctional officer operating a county detention facility, rather than to any law enforcement agency operating a county detention facility. The change ensures that county detention facilities operated by a county, rather than a sheriff, are similarly required to participate in assisting ICE in the enforcement of federal immigration law. Further, the bill revises the start date by which a nonparticipating sheriff or chief correctional officer is required to report his or her noncompliance to April 1, 2025, and requires such a report to be made to the board. (Section [22](#))

Additionally, the bill requires the board to approve the termination of any 287(g) agreement. (Section [22](#))

### **[Access to State Training Centers](#)**

The bill requires the Department of Military Affairs and local law enforcement agencies to work with the board to ensure the state's federal partners can access and use the state's physical training facility assets. (Section [29](#))

### **[Penalty Reclassification for Offenses Committed by Unauthorized Alien](#)**

The bill revises the application of the penalty reclassification scheme in [s. 775.0848, F.S.](#), to apply to any misdemeanor or felony if it was committed by an unauthorized alien as defined in [s. 908.111, F.S.](#), rather than only applying to a felony offense committed by a person who was previously convicted of the federal crime of unlawful reentry of removed aliens under 8 U.S.C. s. 1326. (Section [10](#))

Qualifying offenses are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree is reclassified to a life felony. (Section [10](#))

## **Transnational Crime Organizations**

The bill adds “transnational crime organizations” to the definition of “[criminal gang](#).” The bill defines a “transnational crime organization” as any group, network, or association of persons, at least one of which is an unauthorized alien as defined in [s. 908.111, F.S.](#), that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans. By specifically adding transnational crime organizations to the definition of “criminal gang” the bill makes such organizations subject to the existing criminal penalties and civil remedies for criminal gangs outlined in ch. 874, F.S. (Section [11](#))

## **Dangerous Unauthorized Alien Offender**

The bill defines a “dangerous unauthorized alien offender” as any unauthorized alien who is a member of a criminal gang as defined in [s. 874.03, F.S.](#), who commits or attempts to commit a felony offense in this state. Under the bill, the term “unauthorized alien” means a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq., and must be interpreted consistently with any applicable federal statutes, rules, or regulations. (Section [9](#))

The bill requires a state attorney to seek to have the court sentence a defendant as a dangerous unauthorized alien offender if the state attorney determines that the defendant meets the criteria for such a sentence. Under the bill, a defendant is not eligible for sentencing under the sentencing guidelines if the court determines in a separate proceeding from a criminal trial that the defendant is a dangerous unauthorized alien offender, and the court must sentence the defendant as follows:

- For a felony punishable by life, by a term of life imprisonment.
- For a felony of the first degree, by a term of imprisonment of 30 years.
- For a felony of the second degree, by a term of imprisonment for 15 years.
- For a felony of the third degree, by a term of imprisonment for 5 years. (Section [9](#))

Under the bill, a defendant who is sentenced as a dangerous unauthorized alien offender may only be released through expiration of his or her sentence and is not eligible for parole, control release, or any form of early release and must serve 100 percent of his or her prison sentence. The bill does not prohibit a court from imposing a greater sentence of incarceration if authorized by law. (Section [9](#))

## **Bail and Pretrial Detention**

The bill requires a court to consider a defendant’s immigration status when determining whether to release the defendant on bail or other conditions, and what such bail or conditions should be. (Section [13](#))

The bill also amends [s. 907.041, F.S.](#), to:

- Prohibit a person from being released to supervised pretrial release on nonmonetary conditions unless the pretrial release services certifies to the court that it has investigated or otherwise verified the person’s immigration status.
- Require an arresting agency to provide the state attorney with any information the agency has obtained relevant to a defendant’s immigration status when a person is charged with a crime for which pretrial detention could be ordered. (Section [14](#))

The bill prohibits an unauthorized alien who is arrested for committing a forcible felony from being released until he or she appears for a first appearance hearing. At the first appearance hearing, if the court determines there is probable cause to believe the defendant committed a forcible felony and also determines, by a preponderance of the evidence, that the defendant is an unauthorized alien, the court must presume that the defendant presents a substantial flight risk and that no conditions of release will secure his or her appearance at trial and must order pretrial detention. Under the bill, the defendant may rebut the presumption by demonstrating, by a preponderance of the evidence, that appropriate conditions of release will ensure his or her appearance at trial. (Section [14](#))

## **Noncitizen Illegal Voting**

The bill creates a new third degree felony offense prohibiting a person who is not a qualified elector because he or she is not a citizen of the United States from willfully voting in any election. The bill prohibits a person from raising ignorance of his or her citizenship status or a bona fide belief of his or her citizenship status as a defense to prosecution. As such, to prove a violation, the state does not need to prove that a person illegally voted *knowing*

that he or she was an unqualified elector because he or she was not a United States citizen. Rather, the state must simply prove that a person voted and that he or she is an unqualified elector because he or she is not a United States citizen. (Section [1](#))

The bill also creates a new third degree felony offense prohibiting a person from aiding or soliciting another person, who he or she knows is an unqualified elector because he or she is not a United States citizen, to vote in any election. The bill ranks the new offenses as Level 4 offenses on the offense severity ranking chart for the purposes of calculating a person’s criminal sentence. (Sections [1](#) and [24](#))

### **Florida RICO Act**

The bill adds any crime under [s. 104.155\(2\), F.S.](#), relating to aiding or soliciting a noncitizen in voting, to the definition of “racketeering activity.” As such, under the bill, any person who violates [s. 895.03, F.S.](#), by committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit racketeering activity involving unlawfully aiding or soliciting a noncitizen in voting, commits a first degree felony. (Section [12](#))

### **Driver License, Motor Vehicle Title, and Motor Vehicle Registration**

The bill revises various provisions related to a driver license, motor vehicle title, and motor vehicle registration to ensure that a driver updates his or her driver license within 30 days of becoming a U.S. citizen. It also ensures that a motor vehicle title and motor vehicle registration cannot be obtained without proof of citizenship or lawful presence in the country. (Multiple Sections)

### **Fee Waiver**

The bill prohibits students who are undocumented for federal immigration purposes from receiving the out-of-state fee waiver for recent Florida high school graduates, and requires public postsecondary institutions to reevaluate the eligibility of all students receiving the fee waiver beginning July 1, 2025. (Sections [25](#) and [26](#))

### **Unauthorized Alien Transport Program**

The bill repeals the current program from chapter law and creates the Unauthorized Alien Transport Program within the Department of Emergency Management (DEM) for the purpose of facilitating the transport of unauthorized aliens consistent with federal law. In order for DEM to provide such transport, all of the following conditions must be met:

- ICE must specifically request assistance from DEM with the transport of unauthorized aliens pursuant to specific federal legal authority.
- ICE must reimburse the state for the actual cost of assisting with the transport of unauthorized aliens.
- The transportation must occur under the direct control and supervision of ICE.

The bill specifies that the program expires on June 30, 2027. (Section [23](#))

### **Effective Date**

The bill provides an effective date of upon becoming a law, except as otherwise provided. (Section [33](#))

### **RULEMAKING:**

The bill authorizes the board to adopt rules to implement the bill, including the Local Law Enforcement Immigration Grant Program. The bill also authorizes emergency rulemaking authority for the board to implement the provisions of the bill creating the board and the Local Law Enforcement Immigration Grant Program.

***Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.***

### **FISCAL OR ECONOMIC IMPACT:**

## STATE GOVERNMENT:

The bill will have a significant fiscal impact on the state. The bill appropriates for the 2024-2025 fiscal year to the State Board of Immigration Enforcement \$680,046 in recurring funds and \$250 million in nonrecurring funds from the General Revenue Fund, along with 5 full-time equivalent (FTE) positions and 325,928 in associated salary rate. These resources are distributed as follow:

- \$706,827 (\$680,046 recurring and \$26,781 nonrecurring) and 5 FTE positions for the State Board of Immigration Enforcement; and
- \$250 million nonrecurring for the Local Law Enforcement Immigration Grant Program.

The bill also appropriates for the 2024-2025 fiscal year to the Department of Agriculture and Consumer Services \$12.6 million in recurring funds and \$35.6 million in nonrecurring funds from the General Revenue Fund, along with 84 FTE positions and 5,064,250 in associated salary rate.

The bill provides for the creation of a State Immigration Enforcement Council that may impact workload within the Department of Law Enforcement. Any costs for the council will be handled within appropriations provided to the State Board of Immigration Enforcement.

## LOCAL GOVERNMENT:

The bill will have an indeterminate positive fiscal impact on local government through the grant program established in the bill.

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### [Florida Department of Law Enforcement \(FDLE\)](#)

FDLE is a statewide law enforcement agency headed by the Governor and Cabinet.<sup>1</sup> The chief administrative officer of FDLE, statutorily known as the executive director but commonly referred to as the Commissioner of FDLE,<sup>2</sup> is “appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side.”<sup>3</sup> The executive director must be a resident of the state and have served five years as a police executive or possess training and experience in police affairs or public administration.<sup>4</sup>

The mission of FDLE is to “promote the public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida’s citizens and visitors.”<sup>5</sup> FDLE is subdivided into five divisions: Criminal Investigations and Forensic Science, Criminal Justice Information, Criminal Justice Information, Criminal Justice Professionalism, Capitol Police, and Executive Direction and Business Support.<sup>6</sup>

#### **Law Enforcement Information Sharing**

##### *National Crime Prevention and Privacy Compact*

The National Crime Prevention and Privacy Compact (Compact)<sup>7</sup> authorizes states that have ratified the Compact to share criminal history record information with other states for a “noncriminal justice purpose.” Examples of noncriminal justice purposes include disseminating criminal history record information for purposes of conducting a background check for employment or licensure, adoption, obtaining a security clearance, or civil immigration or

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<sup>1</sup> [Article IV, s. 4\(g\), FLA. CONST.](#); *see* [s. 20.201, F.S.](#)

<sup>2</sup> Florida Department of Law Enforcement, [Statement of Agency Organization and Operation](#) (last visited Feb. 9, 2025); *see also* Florida Department of Law Enforcement, [FDLE Headquarters](#) (last visited Feb. 9, 2025).

<sup>3</sup> S. [20.201\(1\), F.S.](#)

<sup>4</sup> S. [943.03\(1\), F.S.](#)

<sup>5</sup> Florida Department of Law Enforcement, [Statement of Agency Organization and Operation](#) (last visited Feb. 9, 2025).

<sup>6</sup> *Id.*; *see also* [s. 20.201\(2\), F.S.](#)

<sup>7</sup> 34 U.S.C. § 40311-40316 (formerly cited as 42 U.S.C. § 14611-14616).

naturalization matters.<sup>8</sup> As of July 1, 2023, 35 states, including Florida, have ratified the Compact.<sup>9</sup> Section [943.0543, F.S.](#), authorizes the Executive Director of FDLE to administer the Compact on behalf of the state, and designates FDLE as the repository of criminal history records for purposes of dissemination under the Compact.<sup>10</sup>

#### *Federal Bureau of Investigation (FBI) Terrorist Screening Center*

The FBI's Terrorist Screening Center (TSC) shares terrorism-related information across the United States government and with other law enforcement agencies. The TSC operates one consolidated federal terrorism watchlist, which includes information such as names, dates of birth, and fingerprints related to people reasonably suspected to be involved in terrorism.<sup>11</sup>

#### *United States Customs and Border Protection's (CBP) National Targeting Center*

CBP's National Targeting Center focuses on detecting and apprehending travelers and cargo that threaten national security and building a network of partner nations committed to fighting global threats.<sup>12</sup>

#### *United States Department of Homeland Security (DHS) Fusion Centers*

DHS Fusion Centers are state-owned and operated centers that engage in the gathering, receipt, analysis, and sharing of threat-related information between state, local, tribal and territorial, federal, and private sector partners. These Fusion Centers act as the primary contact between frontline personnel, state and local leadership, and DHS.<sup>13</sup>

#### *United States Drug Enforcement Administration's (DEA) Special Operations Unit*

The DEA's Special Operations Division supports global operations combatting drug trafficking and transnational drug crimes.<sup>14</sup>

### **Immigration Enforcement**

The Federal Government has broad power over immigration and alien status, and has implemented an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States.<sup>15</sup> While the federal government's authority over immigration is well established, the U.S. Supreme Court has recognized that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted" by the federal government.<sup>16</sup>

The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.<sup>17</sup> ICE, a federal law enforcement agency under DHS, manages all aspects of the immigration enforcement process, including the identification, arrest, detention and removal of aliens who are subject to removal or are unlawfully present in the United States.<sup>18</sup> U.S. Customs and Border Protection (CBP), another federal law enforcement agency under DHS, is responsible for securing the nation's borders and facilitating international travel and trade.<sup>19</sup>

### **Cooperation with Federal Immigration Authorities**

Section [908.103, F.S.](#), prohibits a state entity, law enforcement agency, or local governmental entity from adopting or having a sanctuary policy in effect. A "sanctuary policy" is defined as any law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law

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<sup>8</sup> Federal Bureau of Investigation, *The Compact Act*, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/compact-council/the-compact-act> (last visited Feb. 7, 2025).

<sup>9</sup> *Id.*

<sup>10</sup> S. [943.0543, F.S.](#)

<sup>11</sup> FBI, *Terrorist Screening Center*, <https://www.fbi.gov/investigate/terrorism/tsc> (last visited Feb. 9, 2025).

<sup>12</sup> CBP, *Working Together*, <https://www.cbp.gov/frontline/cbp-national-targeting-center> (last visited Feb. 9, 2025).

<sup>13</sup> DHS, *Fusion Centers*, <https://www.dhs.gov/fusion-centers> (last visited Feb. 9, 2025).

<sup>14</sup> Get Smart About Drugs, *Tackling Cyber Crime with DEA's Special Ops*, July 10, 2024, <https://www.getsmartaboutdrugs.gov/tackling-cyber-crime-deas-special-ops> (last visited Feb. 9, 2025).

<sup>15</sup> *Arizona v. U.S.*, 567 U.S. 387 (2012).

<sup>16</sup> *DeCanas v. Bica*, 424 U.S. 351, 355 (1976).

<sup>17</sup> 8 U.S.C. §§ 1101-1778.

<sup>18</sup> ICE, *Enforcement and Removal Operations*, (last visited Feb. 9, 2025).

<sup>19</sup> CBP, *About CBP*, (last visited Feb. 9, 2025).



enforcement agency from complying with 8 U.S.C. s. 1373 or which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such agency in, or prohibit the agency from:

- Complying with an immigration detainer;
- Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in its custody;
- Providing the federal immigration agency access to an inmate for an interview;
- Participating in any program or agreement as required by [s. 908.11, F.S.](#);
- Providing a federal immigration agency with an inmates incarceration status or release date; or
- Providing information to a state entity on the immigration status of an inmate or detainee in its custody.

Section [908.104, F.S.](#), requires a law enforcement agency<sup>20</sup> to use its best efforts to support the enforcement of federal immigration law and applies to any official, representative, agent, or employee of an entity or agency when he or she is acting within the scope of his or her official duties or employment. Unless expressly prohibited by federal law, a state entity, local governmental entity, or law enforcement agency, or any employee, agent, or representative of the entity or agency, may not prohibit or restrict a law enforcement agency from taking any of the following actions with respect to information regarding a person’s immigration status:

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency for the purposes of ch. 908, F.S.
- Recording and maintaining the information for the purposes of ch. 908, F.S.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for the purposes of ch. 908, F.S.
- Using the information to comply with an immigration detainer.
- Using the information to confirm the identity of a person who is detained by a law enforcement agency.

Section [908.104\(5\), F.S.](#), provides an exception to the requirement for a law enforcement agency to provide a federal immigration agency with information regarding a detained person. The exception applies when such a person is also a victim or witness to a criminal offense so long as the person timely and in good faith responds to the entity or agency’s request for information and cooperation in the investigation or prosecution of the offense. If any state entity, local governmental entity, or law enforcement agency withholds information pursuant to this exception, it must document the victim’s or witness’s cooperation in the related investigative records and retain the records for at least 10 years for the purpose of audit, verification, or inspection by the Auditor General.<sup>21</sup>

A law enforcement agency may not detain an alien who is unlawfully present in the United States pursuant to an immigration detainer solely because the alien witnessed or reported a crime or was a victim of a crime.<sup>22</sup> Additionally, the requirements of [s. 908.104, F.S.](#), do not apply when the alien who is unlawfully present is or has been a necessary witness or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering.<sup>23</sup>

In January 2023, the Twenty-First Statewide Grand Jury reviewed county compliance with [s. 908.104, F.S.](#), specifically the process by which inmates in some county jails seek to lift a detainer issued by ICE. The Grand Jury concluded that [s. 908.104\(8\), F.S.](#), is being intentionally and flagrantly abused, leading to the lifting of detainers contrary to the plain meaning of the statute and the statute’s intent. The Grand Jury further found that unproven claims of being a qualifying victim are being submitted and approved allowing county officials to disregard and lift federal detainers.<sup>24</sup>

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<sup>20</sup> “Law enforcement agency” means an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in this state and includes municipal police departments, sheriffs’ offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections. S. [908.102\(4\), F.S.](#)

<sup>21</sup> S. [908.104\(6\), F.S.](#)

<sup>22</sup> S. [908.104\(7\), F.S.](#)

<sup>23</sup> S. [908.104\(8\), F.S.](#)

<sup>24</sup> The Supreme Court of Florida, [Second Presentment of the Twenty-First Statewide Grand Jury \(s. 908.104, F.S.\)](#) (last visited Feb. 9, 2025).

Additionally, under [s. 908.105, F.S.](#), a law enforcement agency that has custody of a person who is subject to a federal immigration detainer must:

- Provide notice to the judge authorized to grant or deny the person's release on bail that the person is subject to an immigration detainer.
- Record in the person's case file that the person is subject to an immigration detainer.
- Comply with the request made in any immigration detainer determined to be facially sufficient.<sup>25</sup>

Upon receiving notice that a person is subject to an immigration detainer, a judge must record such information in the person's court record.

### **[287\(g\) Agreements](#)**

In 1996, the United States Congress added s. 287(g) to the Immigration and Nationality Act,<sup>26</sup> codified as 8 U.S.C. § 1357(g). This section authorizes the Secretary of Homeland Security<sup>27</sup> (Secretary) to enter into a written agreement with a state or any political subdivision of a state to allow a state or local officer to perform immigration functions, such as investigating, apprehending, detaining, or transporting aliens.<sup>28</sup> Such state or local officer acts at the direction and under the supervision of the Secretary.<sup>29</sup> The state or local officer must:

- Be qualified to perform immigration officer functions, as determined by the Secretary.
- Have knowledge of and adhere to federal law.
- Have received adequate training on the enforcement of federal immigration laws, as indicated in a written certification.

There are currently two active enforcement models for 287(g) agreements, the Jail Enforcement Model and the Warrant Service Officer Model.

#### *Jail Enforcement Model (JEM)*

Under the JEM, a state or local officer receives a delegation of immigration authority and training from ICE and performs immigration enforcement functions as provided in the memorandum of agreement between the Secretary and the state or local jurisdiction.<sup>30</sup> Such immigration enforcement functions under the JEM may include the power and authority to:

- Interrogate a person detained in a detention facility about his or her immigration status.
- Serve and execute warrants of arrest for immigration violations and serve warrants of removal on designated aliens detained in a jail or other correctional facility at the time of the alien's scheduled release from criminal custody.
- Administer oaths and take and consider evidence to complete alien processing.
- Prepare charging documents.
- Detain and transport arrested aliens subject to removal to ICE-approved detention facilities.
- Issue immigration detainers.<sup>31</sup>

Four Florida sheriffs' offices and the Florida Department of Corrections have 287(g) agreements under the JEM.<sup>32</sup>

#### *Warrant Service Officer Model (WSO)*

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<sup>25</sup> S. [908.105, F.S.](#)

<sup>26</sup> Pub. L. 104-208.

<sup>27</sup> Although the regulations reference the "Attorney General," Congress has, since the publication of the regulations, transferred the authority and responsibility for administering and enforcing the immigration laws to the Secretary of Homeland Security. See INA s. 103(a)(1), 8 U.S.C. s. 1103(a)(1) (charging the Secretary of Homeland Security with the administration and enforcement of the chapter and all other laws relating to the immigration and naturalization of aliens).

<sup>28</sup> 8 U.S.C. § 1357(g).

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., ICE, [Memorandum of Agreement 287\(g\) Jail Enforcement Model](#) (last visited Feb. 8, 2025).

<sup>31</sup> *Id.*

<sup>32</sup> ICE, [Delegation of Immigration Authority Section 287\(g\) Immigration and Nationality Act: Participating Entities](#), <https://www.ice.gov/identify-and-arrest/287g> (last visited Feb. 8, 2025). Sheriffs' Offices with a JEM include: Clay, Collier, Hernando, and Jacksonville.

Alternatively, a state or local jurisdiction may have a 287(g) agreement under the WSO Model. The WSO Model is a narrower cooperative agreement between the Secretary and the local jurisdiction in which a state or local officer receives specified training from ICE, but only receives limited authority to serve and execute administrative warrants on behalf of ICE to aliens incarcerated in a county detention facility.<sup>33</sup> Forty-three Florida sheriffs' offices have 287(g) agreements under the WSO Model.<sup>34</sup>

#### *Florida Immigration Enforcement Assistance Agreements*

In 2022, the Florida Legislature passed CS/SB 1808, requiring each law enforcement agency in Florida that operates a county detention facility to enter into a 287(g) agreement with ICE.<sup>35</sup> The agencies are not required to participate in any particular program model under such an agreement.<sup>36</sup> Any law enforcement agency that has not entered into a 287(g) agreement must report to FDLE quarterly regarding the status of any such agreement and any reason for noncompliance.<sup>37</sup>

#### **Penalty Reclassification for Offenses Committed by Unauthorized Alien**

Section 1326 of the INA<sup>38</sup> generally prohibits an alien<sup>39</sup> that has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding from reentering or attempting to reenter the United States, unless the alien has acquired express consent from the U.S. Attorney General prior to reentering. An alien who violates this prohibition may be fined under federal law, imprisoned for up to two years, or both.<sup>40</sup>

Section [775.0848, F.S.](#), reclassifies the criminal penalty for any felony offense when committed by a person who has been previously convicted of a crime relating to the reentry of removed aliens under 8 U.S.C. s. 1326, in the following manner:

- A felony of the third degree<sup>41</sup> is reclassified to a felony of the second degree.<sup>42</sup>
- A felony of the second degree is reclassified to a felony of the first degree.<sup>43</sup>
- A felony of the first degree is reclassified to a life felony.

#### **Criminal Gangs**

Section [874.03, F.S.](#), defines a "criminal gang" as a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorists organizations<sup>44</sup> and hate groups.<sup>45</sup>

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<sup>33</sup> ICE, [Delegation of Immigration Authority Section 287\(g\) Immigration and Nationality Act: 287\(g\) Program Models](#), <https://www.ice.gov/identify-and-arrest/287g> (last visited Feb. 8, 2025).

<sup>34</sup> Sheriff's offices with a WSO Model include: Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Columbia, DeSoto, Flagler, Franklin, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Osceola, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Wakulla, and Walton.

<sup>35</sup> Ch. 2022-193, L.O.F.

<sup>36</sup> [S. 908.11\(1\), F.S.](#)

<sup>37</sup> [S. 908.11\(2\), F.S.](#)

<sup>38</sup> 8 U.S.C.A. §1326.

<sup>39</sup> "Alien" means any person not a citizen or national of the United States. 8 U.S.C.A. §1101(a)(3).

<sup>40</sup> 8 U.S.C.A. §1326(a).

<sup>41</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>42</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>43</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>44</sup> "Terrorist organization" means any organized group engaged in or organized for the purpose of engaging in terrorism as defined in [s. 775.30, F.S.](#) [S. 874.03\(7\), F.S.](#)

<sup>45</sup> "Hate group" means an organization whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of race, religion, disability, sexual orientation, ethnicity, or national origin. S. [874.03\(6\), F.S.](#)

## *Criminal Penalties*

Chapter 874, F.S., outlines enhanced penalties and specific criminal offenses that target criminal gangs and their related activities. Section [874.04, F.S.](#), enhances the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if the commission of the offense is found to be for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as follows:

- A misdemeanor of the second degree<sup>46</sup> is reclassified to a misdemeanor of the first degree.<sup>47</sup>
- A misdemeanor of the first degree is reclassified to a felony of the third degree.<sup>48</sup>
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.
- A felony of the first degree may be punished as if it were a life felony.<sup>49</sup>

Under [s. 874.05, F.S.](#), any person who intentionally causes, encourages, solicits, or recruits another person to become a criminal gang member where a condition of membership is the commission of any crime commits a third degree felony. A person who commits a second or subsequent violation commits a second degree felony. Additionally, a person who intentionally causes, encourages, solicits, or recruits another person under the age of 13 years old to become a criminal gang member commits a second degree felony. If a person commits a second or subsequent violation for recruiting a person under the age of 13 years old, the penalty increases to a first degree felony.

Additionally, [s. 874.10, F.S.](#), prohibits any person from knowingly initiating, organizing, planning, financing, directing, managing, or supervising criminal gang related activity.<sup>50</sup> A violation of the prohibition is a first degree felony, punishable by up to life imprisonment.

## *Civil Remedies*

Under [s. 874.06, F.S.](#), a person or organization that establishes, by clear and convincing evidence, any coercion, intimidation, threats, or other harm was done to the person or organization in violation of ch. 874, F.S., has a civil cause of action for treble damages, an injunction, or other appropriate relief in law or equity. A prevailing plaintiff may recover attorney fees and any costs of investigation or litigation that are reasonably incurred in bringing an action under this section.

Additionally, [s. 874.08, F.S.](#), subjects all of the following to seizure and forfeiture under the Florida Contraband Forfeiture Act<sup>51</sup>:

- Profits, proceeds, and instrumentalities of criminal gang activity.
- Property used or attempted to be used to facilitate the criminal activity of any criminal gang or any criminal gang member.
- Profits, proceeds, and instrumentalities of criminal gang recruitment.
- Property used or attempted to be used to facilitate criminal gang recruitment.

## **Bail and Pretrial Detention**

Under the Florida Constitution, every person charged with a crime is entitled to pretrial release on reasonable conditions, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of

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<sup>46</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. S. [775.082, F.S.](#), and [s. 775.083, F.S.](#)

<sup>47</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. S. [775.082, F.S.](#), and [s. 775.083, F.S.](#)

<sup>48</sup> For purposes of sentencing such an offense is ranked as a level 1 offense on the Criminal Punishment Code offense severity ranking chart. S. [874.04\(1\)\(b\), F.S.](#)

<sup>49</sup> For purposes of sentencing any such felony offenses enhanced under [s. 874.04, F.S.](#), are to be ranked on the OSRC without regard to the penalty enhancement.

<sup>50</sup> “Criminal gang-related activity” means an activity: 1) committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a person’s own standing or position within the criminal gang; 2) in which the participants are identified as criminal gang members or associates acting individually or collectively to further any criminal purpose of a criminal gang; 3) that is identified as criminal gang activity by a documented reliable informant; or 4) that is identified as criminal gang activity by an informant when such identification is corroborated by independent information. S. [874.03\(4\), F.S.](#)

<sup>51</sup> S. [932.704, F.S.](#)

guilt is evident or the presumption is great...[or if] no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.”<sup>52</sup>

### *Bail*

After a person has been arrested, he or she must appear before a judge within 24 hours of arrest, which is known as a “first appearance.”<sup>53</sup> At a first appearance, a judge advises a defendant of the charges for which he or she was arrested, determines whether there is probable cause that the defendant committed such an offense, and advises the defendant of specified rights.<sup>54</sup> If a judge determines that probable cause exists, the judge then determines whether the defendant is entitled to pretrial release. When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court must consider:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant’s family ties, length of residence in the community, employment history, financial resources, and mental condition,
- The defendant’s past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant’s release poses to the community.
- The source of funds used to post bail or procure an appearance bond, particularly whether the funds can be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation under the Criminal Gang Prevention Act or is a crime involving traveling across county lines to commit a burglary.
- Whether the defendant is required to register as a sexual offender or sexual predator.<sup>55</sup>

A judge may grant pretrial release either by setting a specified bail amount or releasing the defendant on his or her own recognizance.<sup>56</sup>

Section [907.041, F.S.](#), creates a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.<sup>57</sup> A person may not be released on

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<sup>52</sup> [Article I, s. 14, FLA. CONST.](#)

<sup>53</sup> Fla. R. Crim. P. 3.130.

<sup>54</sup> *Id.*

<sup>55</sup> [S. 903.046\(2\), F.S.](#)

<sup>56</sup> Fla. R. Crim. P. 3.131.

<sup>57</sup> A “dangerous crime” includes: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter, including DUI manslaughter and BUI manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; an act of domestic violence as defined in [s. 741.28, F.S.](#); home invasion robbery; an act of terrorism as defined in [s. 775.30, F.S.](#); manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; human trafficking; trafficking in dangerous fentanyl or fentanyl analogues; extortion; or written threats to kill. A person charged with such a crime must be released on monetary conditions if the court determines that such conditions are necessary to assure the presence of the person at trial or other proceedings, to protect the community from risk of physical harm to persons, or to assure the integrity of the judicial process. [S. 907.041\(5\)\(a\), F.S.](#)

nonmonetary conditions to supervised pretrial release, unless the pretrial release service certifies to the court it has investigated or otherwise verified:

- The circumstances of the accused’s family, employment, financial resources, character, mental condition, and length of residence in the community.
- The accused’s record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings.
- Other facts necessary to assist the court in determining the accused indigency status and whether he or she should be released on supervised pretrial release.<sup>58</sup>

#### *Discretionary Motion for Pretrial Detention*

Upon a motion by the state attorney, the court may order pretrial detention if it finds a substantial probability, based on a defendant’s past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, that any of the following circumstances exist:<sup>59</sup>

- The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant’s appearance at subsequent proceedings;
- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with trafficking in controlled substances under s. 893.135, F.S., there is a substantial probability that the defendant has committed the offense, and no conditions of release will reasonably assure the defendant’s appearance at subsequent criminal proceedings;
- The defendant is charged with DUI manslaughter, there is a substantial probability that the defendant committed the crime, and the defendant poses a threat of harm to the community;
- The defendant poses the threat of harm to the community;<sup>60</sup>
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;
- The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or
- The defendant:
  - Has previously been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;
  - There is a substantial probability that the defendant committed the offense; and
  - There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.<sup>61</sup>

#### *Mandatory Motion for Pretrial Detention*

Section [907.041\(5\)\(d\), F.S.](#), requires the state attorney or the court, on its own motion, to motion for pretrial detention if a defendant is arrested for a dangerous crime that is a capital felony,<sup>62</sup> a life felony,<sup>63</sup> or a first degree felony and the court determines there is probable cause to believe that the defendant committed the offense.<sup>64</sup> A judge *must* order pretrial detention if he or she finds a substantial probability that the defendant committed such

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<sup>58</sup> S. [907.041\(3\)\(b\), F.S.](#)

<sup>59</sup> S. [907.041, F.S.](#)

<sup>60</sup> A court may conclude a defendant poses the threat of harm to the community if the defendant is charged with a dangerous crime, there is a substantial probability that the defendant committed such crime, the factual circumstances of the crime indicate a disregard for the safety of the community, and there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. S. [907.041\(5\)\(c\)5., F.S.](#)

<sup>61</sup> S. [907.041\(5\)\(c\), F.S.](#)

<sup>62</sup> A capital felony is punishable by death or mandatory life imprisonment. S. [775.082, F.S.](#)

<sup>63</sup> A life felony is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment and a \$15,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>64</sup> S. [907.041\(5\)\(d\), F.S.](#)

an offense and, based on the defendant’s past and present patterns of behavior, consideration of the criteria in [s. 907.046, F.S.](#), used for determining bail, and any other relevant facts, the court finds that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process.<sup>65</sup>

### **[Noncitizen Illegal Voting](#)**

To be a qualified elector in Florida, the Florida Constitution requires a person to be a United States citizen, at least 18 years of age, a permanent resident of the state, and registered as provided by law.<sup>66</sup> Additionally, the Florida Election Code<sup>67</sup> specifies that a person may become a registered voter only if he or she is: a United States citizen, at least 18 years of age, a legal resident of the state and of the county in which the person seeks to be registered to vote, and registers pursuant to the Florida Election Code.<sup>68</sup>

Under current law, a person who is not registered to vote may not vote. Additionally, the following persons, who might be otherwise qualified to vote, are not entitled to register to vote or to vote:

- A person who has been adjudicated mentally incapacitated with respect to voting in Florida or any other state and who has not had his or her right to vote restored.
- A person who has been convicted of a felony and who has not had his or her right to vote restored.<sup>69</sup>

Florida’s current voter registration application requires an applicant to answer whether or not he or she is a citizen of the United States and to swear or affirm that he or she is qualified to register as an elector under the Constitution and laws of the State of Florida.<sup>70</sup> Under the Florida Election Code, it is a third degree felony for a person who, knowing he or she is not a qualified elector, to willfully vote at any election.<sup>71</sup>

### **[Florida RICO Act](#)**

Sections 895.01-895.06, F.S., are known as the “Florida RICO (Racketeering Influenced and Corrupt Organization) Act.”<sup>72</sup> A person commits “racketeering activity” when he or she commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another person to commit any offense listed in [s. 895.02\(8\), F.S.](#)<sup>73, 74</sup>

A “pattern of racketeering activity”<sup>75</sup> means engaging in at least two incidents of racketeering conduct<sup>76</sup> having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.<sup>77</sup>

Under [s. 895.03, F.S.](#), it is unlawful for any person:

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<sup>65</sup> *Id.*

<sup>66</sup> Article VI, s. 2, FLA. CONST.

<sup>67</sup> Chapters 97-106 are known and may be cited as the “The Florida Election Code.” S. [97.011, F.S.](#)

<sup>68</sup> S. [97.041, F.S.](#)

<sup>69</sup> S. [97.041, F.S.](#)

<sup>70</sup> See Florida Department of State, [Florida Voter Registration Application](#) (last visited Feb. 9, 2025).

<sup>71</sup> S. [104.15, F.S.](#) A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>72</sup> S. [895.01, F.S.](#)

<sup>73</sup> S. [895.02, F.S.](#)

<sup>74</sup> The offenses listed under [s. 895.02\(8\), F.S.](#), include violations of specified Florida laws (e.g., Medicaid fraud, workers’ compensation fraud, human trafficking, kidnapping, and drug offenses), as well as any conduct defined as “racketeering activity” in 18 U.S.C. § 1961.

<sup>75</sup> [s. 895.02\(7\), F.S.](#)

<sup>76</sup> At least one of incident of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. [s. 895.02\(7\), F.S.](#)

<sup>77</sup> In *Bowden v. State*, the Florida Supreme Court considered the definition of “pattern of racketeering activity” in [s. 895.02\(7\), F.S.](#), construing the definition to not only require “similarity and interrelatedness of racketeering activities,” but also “proof that a continuity of a particular criminal activity exists.” *Bowden v. State*, 402 So. 2d 1173, 1174 (Fla. 1981). The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>78</sup> to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.<sup>79</sup>
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

A person convicted of any such activities commits a first degree felony,<sup>80</sup> and may be subject to civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.<sup>81</sup>

In addition to criminal penalties, the Florida RICO Act also imposes civil liability for a violation including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through racketeering conduct.<sup>82</sup> The Florida RICO Act also provides for specified restitution and civil penalties, authorizes a violation to be prosecuted by the Office of the Statewide Prosecutor, and allows an investigating agency to seek confidential subpoenas when the agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, a violation.

### **Driver License, Motor Vehicle Title, and Motor Vehicle Registration**

#### *Motor Vehicle Title Certificate*

In order to obtain a certificate of title for a motor vehicle, a person must complete an application for such title and file it with the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>83</sup> Among other requirements, the application must contain the applicant's name, date of birth, sex, and the license plate number of the motor vehicle. Additionally, an individual applicant, as opposed to a business applicant, must provide either a valid driver license or identification card issued by Florida or another state, or a valid passport.<sup>84</sup>

#### *Motor Vehicle Registration Application*

Every owner or person in charge of a motor vehicle that is operated or driven on the roads of Florida must register the vehicle in the state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration of each such vehicle on a form prescribed by DHSMV.<sup>85</sup> The application for registration must include the street address of the owner's permanent residence or the address of his or her permanent place of business and be accompanied by personal or business identification information. An individual applicant must provide a valid driver license or identification card issued by this state or another state or a valid passport.<sup>86</sup>

#### *Application for Driver License and Driver License Updates*

<sup>78</sup> "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law. S. 895.02(12), F.S.

<sup>79</sup> "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in [s. 874.03, F.S.](#), constitutes an enterprise. S. [895.02\(5\), F.S.](#)

<sup>80</sup> S. [895.04, F.S.](#) A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

<sup>81</sup> S. [895.05\(2\), F.S.](#)

<sup>82</sup> S. [895.05\(2\), F.S.](#)

<sup>83</sup> S. [319.23\(1\), F.S.](#)

<sup>84</sup> S. [319.23\(9\), F.S.](#)

<sup>85</sup> S. [320.02\(1\), F.S.](#)

<sup>86</sup> S. [320.02\(2\)\(a\), F.S.](#)



A Florida driver license application requires the applicant to submit specified information, including the individual’s name, proof of birth date, and proof of identity.<sup>87</sup> Proof of identify may be established through the submittal of a driver license or identification card from another jurisdiction, a certified copy of a U.S. birth certificate, or a valid unexpired U.S. passport.<sup>88</sup>

Current law requires a person with a driver license to update his or her information and obtain a replacement license whenever the person’s legal name has changed or whenever the person changes his or her residential or mailing address.<sup>89</sup> The person must update his or her information and obtain the replacement card within 30 days of the change occurring.<sup>90</sup> If the person fails to make the change within that timeframe he or she commits a nonmoving traffic violation.<sup>91</sup>

**Fee Waiver**

State universities, Florida College System institutions, career centers operated by a school district under [s. 1001.44, F.S.](#), and charter technical career centers must waive out-of-state fees for students, including, but not limited to, students who are undocumented for federal immigration purposes. Students must have:

- Attended a Florida secondary school for three consecutive years.
- Apply for enrollment in a postsecondary institution within 24 months after graduation.
- Submit their high school transcript as documentary evidence of attendance and graduation.<sup>92</sup>

**Unauthorized Alien Transport Program**

In 2023, the Legislature created the Unauthorized Alien Transport Program within DEM to “mitigate the effects of [the border] crisis on the State of Florida.”<sup>93</sup> The program facilitates “the transport of inspected unauthorized aliens within the United States, consistent with federal law.”<sup>94</sup>

**RECENT LEGISLATION:**

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	<a href="#">CS/CS/SB 1036</a>	Michael	Ingoglia	Passed and became law.
2023	<a href="#">CS/CS/SB 1718</a>	Michael	Ingoglia	Passed and became law.
2022	<a href="#">CS/SB 1808</a>	Snyder	Bean	Passed and became law.

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<sup>87</sup> [S. 322.08\(2\), F.S.](#)  
<sup>88</sup> [S. 322.08\(2\)\(c\), F.S.](#)  
<sup>89</sup> [S. 322.19, F.S.](#)  
<sup>90</sup> *Id.*  
<sup>91</sup> [S. 322.19\(3\), F.S.](#)  
<sup>92</sup> [S. 1009.26, F.S.](#)  
<sup>93</sup> Ch. 2023-3, L.O.F.  
<sup>94</sup> *Id.*

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## BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Budget Committee</a>		2/10/2025	Pridgeon	Hall