

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 2-C

INTRODUCER: Senator Gruters

SUBJECT: Immigration

DATE: February 11, 2025

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Sadberry	AP	<b>Pre-meeting</b>

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**I. Summary:**

SB 2-C strengthens the state’s approach to illegal immigration by providing coordination within the state and with federal immigration agencies.

**State Board of Immigration Enforcement**

The bill creates the State Board of Immigration Enforcement (board) within the Florida Department of Law Enforcement (FDLE). The Governor and Cabinet will serve as the agency head of the board, and all board action must be by unanimous vote. The board is the chief immigration enforcement officer and must, in part:

- Serve as a resource for the U.S. Immigration and Customs Enforcement (ICE).
- Coordinate with the Federal Government in matters related to immigration.
- Coordinate with and provide assistance to law enforcement.
- Administer the Local Law Enforcement Immigration Grant Program.
- Annually report on cooperation and coordination between the ICE and law enforcement agencies.
- Report to the Legislature by March 24, 2025, the number of vacant beds available in state correctional institutions and facilities and county detention facilities which can be sublet to the ICE for use as detention beds.

**Immigration Enforcement Council**

The bill creates the State Board of Immigration Enforcement Council (council) for the purpose of advising the board. The council is composed of eight members. The Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture must each appoint one police chief and the President of the Senate and the Speaker of the House must each appoint two sheriffs. The council must unanimously elect a sheriff from among the council’s membership to serve as chair.

The council must meet by April 1, 2025, and quarterly thereafter. The council must, in part:

- Assist the board.

- Request guidance from the ICE for training opportunities and strategies to further federal 287(g) program participation.
- Advise the board on the efforts of local law enforcement agencies.
- Provide recommendations on financial resources necessary to aid local law enforcement agencies.
- Provide recommendations to enhance information sharing.
- Provide recommendations on strategies to increase the number of available detention beds for use by the ICE.

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

The bill creates the Local Law Enforcement Immigration Grant Program within the State Board of Immigration Enforcement to award grants to support local law enforcement agencies in their cooperation and coordination with federal immigration agencies. The board must award any funds specifically appropriated for the program to reimburse expenses or provide bonus payments. The council is directed to make recommendations to the board on other expenses that should be reimbursable and funding criteria for the program.

The bill appropriates \$250 million from nonrecurring general revenue funds for the program.

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

The bill provides that a state entity, local governmental entity, or law enforcement agency, may not prohibit or in any way restrict a law enforcement officer from executing or assisting in the execution of a lawful judicial warrant.

Additionally the term “sanctuary policy” is amended to include any law, policy, practice, procedure, or custom adopted to prohibit or impede a law enforcement agency from:

- Executing a lawful judicial warrant; or
- Participating in a federal immigration operation with a federal immigration agency as permitted by federal and state law.

The bill specifies that any executive or administrative state, county, or municipal officer who violates his or her duties under this chapter may be subject to action by the Governor, *including potential suspension from office*.

### **Unauthorized Alien Transport Program**

The bill codifies the Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) for the purpose of facilitating the transport of unauthorized aliens, consistent with federal law. The ICE must specifically request assistance from the DEM with transportation of unauthorized aliens under the direct control and supervision of the ICE and must reimburse the state for the actual cost associated with the transportation.

### **Other Immigration Provisions**

The bill makes numerous changes to enhance criminal penalties for offenses committed by unauthorized aliens, provide requirements for driver licenses, and modify eligibility requirements for out-of-state fee waivers.

### ***Criminal Justice Provisions***

The bill makes various changes to criminal penalties and pretrial release and detention procedures. These changes include:

- Reclassifying misdemeanor and felony crimes if the defendant is an unauthorized alien;
- Adding transnational crime organizations to the list of organizations that may be a criminal gang.
- Requiring dangerous unauthorized alien offenders to be sentenced to the maximum penalty for any felony offense.
- Creating a new third degree felony if an unqualified noncitizen votes;
- Creating a new third degree felony for aiding or soliciting an unqualified noncitizen to vote;
- Adding aiding or soliciting an noncitizen to vote to the list of crimes that may constitute racketeering activity; and
- Ranking specified crimes related to unauthorized alien voting.
- Creating a rebuttable presumption that an unauthorized alien is a flight risk for purposes of pretrial release. If an unauthorized alien cannot demonstrate by a preponderance of the evidence that he or she is not a flight risk, he or she must be detained.

The bill requires law enforcement to:

- Comply with an immigration detainer if such a detainer has been placed on a defendant;
- Notify the state attorney of such detainer; and
- Provide a list of all inmates booked into a detention facility upon request by the federal government.

The bill makes changes to exceptions to reporting a person's information to the Federal Government if such person is a witness or victim of a crime. The changes ensure that the crime occurred in the United States and that such witness or victim is necessary to the investigation or prosecution.

### **Driver License and Motor Vehicle Provisions**

The bill clarifies proof of identity requirements for driver licenses and motor vehicle titles and registrations by defining valid passports issued by foreign governments. The bill provides that, for purposes of proof of identity, a driver license from another state must be compliant with the REAL ID Act of 2005. The bill prohibits the issuance of a driver license or identification card to any person who is an unauthorized alien or undocumented immigrant. The bill also requires a person who becomes a U.S. citizen to obtain a replacement driver license within 30 days of becoming a citizen.

## **Out-of-State Fee Waivers**

The bill modifies the eligibility for an out-of-state fee waiver at a public postsecondary institution. Beginning July 1, 2025, a student must be a citizen of the United States or lawfully present in the United States to receive the fee waiver, in addition to other requirements. Public postsecondary institutions must, beginning July 1, 2025, reevaluate all students currently receiving the waiver to determine continued eligibility.

The bill will have a significant fiscal impact. The bill appropriates the sum of \$13,233,593 in recurring funds and the sum of \$285,596,959 in nonrecurring funds from the General Revenue Fund and authorizes a total of 89 full-time equivalent positions. *See Section V., Fiscal Impact Statement.*

Except as otherwise provided by the act, it takes effect upon becoming a law.

## **II. Present Situation:**

### **Federal Immigration Policy & Background**

The Federal Government is responsible for establishing and enforcing immigration laws. Congress has enacted legislation, which the federal courts have interpreted, and the body of immigration law has developed. The responsibility for enforcing immigration laws rests with the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and its Enforcement and Removal Operations. It is the mission of Enforcement and Removal Operations to identify, apprehend, and remove aliens who are a risk to national security or public safety, enter the country illegally, or seek to undermine the integrity of the country's immigration laws or border control efforts.<sup>1</sup>

### ***Immigration Enforcement Encounters***

Over the last four federal fiscal years (FFY),<sup>2</sup> the U.S. Border Patrol and Office of Field Operations has recorded close to 11.5 million enforcement encounters as described in the table below.<sup>3</sup> These actions refer to actions involving individuals “encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.”<sup>4</sup> The total also includes encounters that led to apprehensions or expulsions; apprehensions refer to individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.<sup>5</sup>

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<sup>1</sup> United States Immigration and Customs Enforcement, Department of Homeland Security, *Enforcement and Removal Operations, Mission*, available at <https://www.ice.gov/about-ice/ero> (last visited February 9, 2025).

<sup>2</sup> *Id.* The federal fiscal year is October 1 to September 30 of the next calendar year.

<sup>3</sup> United States Customs and Border Protection, Department of Homeland Security, *Total CBP Enforcement Actions*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>. (last visited February 9, 2025).

<sup>4</sup> *Id.* at note 1.

<sup>5</sup> *Id.* at notes 1 and 2.

<b>Enforcement</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Total Enforcement Encounters</b>	<b>646,822</b>	<b>1,956,519</b>	<b>2,766,582</b>	<b>3,201,144</b>	<b>2,901,142</b>

In addition to the approximately 11.5 million enforcement encounters, the U.S. Customs and Border Protection has recorded roughly 2 million known “gotaways” since the beginning of FFY 2021, but the actual number of gotaways may be 20 percent greater.<sup>6</sup> Gotaways are individuals who have evaded detection and attempts at verifying their identities or backgrounds.

### *Immigration Hearings*

Though they may be removed at some point, many inadmissible aliens are released or paroled into the United States after an enforcement encounter. Under federal law, an inadmissible alien is an alien who is generally ineligible to receive a visa or ineligible to be admitted to the United States for specified reasons.<sup>7</sup> Those released or paroled include hundreds of thousands of inadmissible aliens who have scheduled appointments through the CBP One app.<sup>8</sup> This app, disabled by the new federal administration on January 20, 2025, was used for scheduling appointments for asylum processing at points of entry along the southwest border.<sup>9</sup>

Many illegal immigrants who are released into the United States are given hearing dates at an immigration court of the U.S. Department of Justice’s Executive Office for Immigration Review.<sup>10</sup> While these courts have experienced a substantial backlog of cases since FFY 2006, the number of pending cases has recently grown to unprecedented levels. Federal fiscal year 2019 registered more than 1 million pending cases for the first time in its history. The total pending cases approached almost 2.5 million at the conclusion of FFY 2023. At the conclusion

<sup>6</sup> Homeland Security Committee Republicans, United States House of Representatives, *Border Crisis Startling Stats: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters Bringing Total Encounters to 10.8 Million Since FY2021*, (September 2024), available at <https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf>. (last visited February 9, 2025).

<sup>7</sup> Specified reasons include, in part, that the alien has a communicable disease of public health significance; has a physical or mental disorder and behavior that poses a threat to the property, safety or welfare of the individual or others; has committed acts constituting a crime of moral turpitude; has violated a law related to a controlled substance; has committed two or more criminal offenses for which the aggregate sentences to confinement were 5 years or more; trafficked in controlled substances; has engaged in terrorist activity, is likely to engage in terrorist activity, or has incited terrorist activity; has falsely represented himself or herself to be a citizen of the United States; an alien who has voted illegally. *See* 8 U.S.C. s. 1182 for more details, including exceptions and grounds for waivers. For a more in depth explanation of the various grounds for inadmissibility *see* Abigail F. Kolker and Hillel R. Smith, *Immigration: Grounds of Inadmissibility*, Congressional Research Service (July 29, 2024), available at <https://crsreports.congress.gov/product/pdf/IF/IF12662>. (last visited February 9, 2025).

<sup>8</sup> Homeland Security Committee Republicans, United States House of Representatives, *Border Crisis Startling Stats: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounter, Bringing Total Encounters to 10.8 Million Since FY 2021* (September 2024) (explaining that since January 2023, 95.8 percent of 852,000 otherwise inadmissible aliens who scheduled appointments through the CBP One app from January 2023 through September 2023 were ultimately released into the United States on parole), available at <https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf>. (last visited February 9, 2025).

<sup>9</sup> United States Customs and Border Protection, Department of Homeland Security, *CBP One Mobile Application*, available at <https://www.cbp.gov/about/mobile-apps-directory/cbpone>. (last visited February 9, 2025).

<sup>10</sup> Holly Straut-Eppsteiner, *Immigration Courts: Decline in New Cases at the End of FY2024*, Congressional Research Service (November 26, 2024), available at <https://crsreports.congress.gov/product/pdf/IN/IN12463>. (last visited February 9, 2025).

of FFY 2024, there were almost 3.6 million pending cases. These immigration hearings often relate to asylum claims that are raised as a defense to removal.<sup>11</sup>

### ***Attempts to Locate Migrants Who Have Been Released into the Country***

The Office of Inspector General (OIG) of the DHS released a report<sup>12</sup> in September 2023 that noted from March 2021 through August 2022, the DHS released more than 1,000,000 migrants into the country.

The DHS is required to obtain an address for each migrant when possible. However, the inspector general's office reviewed 981,671 migrant records and found that addresses for more than 177,000 records, or approximately 18 percent, were missing, were not valid for delivery purposes, or did not contain legitimate residential locations. Of the total number of addresses, 80 percent were reported to have been used at least twice during the 18 month period of the review. Over 780 residential addresses were listed more than 20 times. The report stated that 54,663 records did not contain an address. The report also noted that in an average month, the DHS releases more than 60,000 migrants into the country and it is essential that the post-release addresses be accurate for ICE to be able to locate migrants once they are released.

The OIG made four recommendations for the DHS to implement and thereby improve the ability to locate migrants who have been released. The DHS responded to the recommendations by stating that it did not concur with the OIG's analysis. As a result, the OIG responded that it did not find the DHS' actions to be responsive to the recommendations.

### ***Illegal Immigrant Population Estimates***

Current authoritative data on the number of illegal immigrants in the United States or in this state is not available. However, the PEW Research Center estimated that the number of illegal immigrants in the United States was approximately 11 million in 2022.<sup>13</sup> For Florida, the Center estimated that the population of illegal immigrants grew by 400,000 from 2019 to 2022 to approximately 1.2 million.<sup>14</sup> These estimates of illegal immigrants include those aliens who have temporary protection from deportation. The estimates, however, do not include aliens who have been admitted for lawful residence, persons admitted as refugees, persons granted asylum, and lawful temporary residents such as foreign students and guest workers.

### ***New Executive Orders by President Trump***

On his first day in office, President Trump issued the following executive orders relating to the enforcement of federal immigration laws:

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<sup>11</sup> Holly Straut-Eppsteiner, *Asylum Process in Immigration Courts and Selected Trends*, Congressional Research Service (May 15, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R47504>. (last visited February 9, 2025).

<sup>12</sup> Joseph V. Cuffari, Ph.D., Inspector General, Office of Inspector General, Department of Homeland Security, *DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States* (September 6, 2023), available at <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-47-Sep23-Redacted.pdf>. (last visited February 9, 2025).

<sup>13</sup> Jeffrey S. Passell and Jens Manuel Krogstad, Pew Research Center, *What we know about unauthorized immigrants living in the United States* (July 22, 2024), available at <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>. (last visited February 9, 2025).

<sup>14</sup> *Id.*

- *Declaring a National Emergency at the Southern Border of the United States*, ordered the deployment of the Armed Forces, including the Ready Reserve and the National Guard, to obtain complete operational control of the southern border.<sup>15</sup> The order also directed the Secretaries of Defense and Homeland Security to immediately construct additional physical barriers along the southern border.
- *Securing Our Borders*, ordered that the border be secured through various means including federal-state partnerships to enforce federal immigration priorities, detaining and removing aliens apprehended for violations of immigration law, and ending the prior administrations “catch-and-release” practices.<sup>16</sup>
- *Realigning the United States Refugee Admissions Program*, ordered that state and local jurisdictions have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions.<sup>17</sup>
- *Designating Cartels and other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*, noted that some violent cartels profit by the trafficking of drugs and humans through Mexico and into the United States in ways that threaten the security and stability of Mexico and the United States.<sup>18</sup> Based on that finding, the order directed the Secretary of State, in consultation with other federal officials, to make recommendations regarding the designation of any cartel or similar organization as a Foreign Terrorist Organization or Specially Designated Global Terrorist.

### Immigration Policy in Florida

In recent years, Governor DeSantis and the Legislature have taken action to address the increasing immigration crisis. The Governor has issued the following executive orders:

- September 28, 2021, Executive Order No. 21-223, *Biden Border Crisis*.<sup>19</sup> Finding that the detrimental effects of an unsecured southwest border of the United States would reverberate beyond border states, including increased crime, such as drug trafficking and human trafficking and smuggling, diminished economic opportunities for American workers, and stresses on education and healthcare systems. The order prohibited state agencies from assisting with the transport of aliens apprehended at the southwest border into Florida. Moreover, the order required state agencies to use the federal Systematic Alien Verification for Entitlements program to confirm the eligibility of persons before providing any funds, resources, or other benefits.

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<sup>15</sup> Executive Order by President Trump, *Declaring a National Emergency at the Southern Border of the United States* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/>. (last visited February 9, 2025).

<sup>16</sup> Executive Order by President Trump, *Securing Our Borders* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/>. (last visited February 9, 2025).

<sup>17</sup> Executive Order by President Trump, *Realigning the United States Refugee Admission Program* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/realigning-the-united-states-refugee-admissions-program/>. (last visited February 9, 2025).

<sup>18</sup> Executive Order by President Trump, *Designating Cartels and other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/designating-cartels-and-other-organizations-as-foreign-terrorist-organizations-and-specially-designated-global-terrorists/>. (last visited February 9, 2025).

<sup>19</sup> See State of Florida, Office of the Governor, *Executive Order No. 21-223* (September 28, 2021), available at [https://flgov.com/eog/sites/default/files/executive-orders/2024/EO\\_21-223.pdf](https://flgov.com/eog/sites/default/files/executive-orders/2024/EO_21-223.pdf). (last visited February 9, 2025).



- January 6, 2023, Executive Order No. 23-03, *Emergency Management – Illegal Migration*.<sup>20</sup> Based on findings of unprecedented interdictions, attempts of entry, and border patrol encounters, the Governor designated the migration of unauthorized aliens to Florida as likely to constitute a major disaster and designated the director of the Division of Emergency Management as the state coordinating officer for the disaster with direction to execute response, recovery, and mitigation plans necessary to cope with the emergency. The order also activates the Florida National Guard, as needed, to assist with the efforts. The order waives contracting policies and requirements, allows for expenditure of state funds through the Emergency Preparedness and Response Fund, and authorizes medical professionals, social workers, and counselors with good and valid licenses issued by other states to provide humanitarian aid services.<sup>21</sup>

The Governor extended the duration of Executive Order No. 23-03 multiple times for the same reason: “the influx of illegal aliens remains unabated and the response from the Biden Administration continues to be inadequate.”<sup>22</sup> The order, last extended on December 9, 2024, remains in effect for 60 days following that date.<sup>23</sup>

The Legislature responded to the recent increases in illegal immigration most significantly by enacting:

- SB 1808 (2022), expanded the definition of “sanctuary city,” required each law enforcement agency that operates a county detention facility to enter into 287(g) agreements, and prohibited state and local governments from entering into certain contracts.
- SB 1718 (2023), increased criminal penalties for human smuggling and using false identification; required employers use E-Verify; provided that driver licenses issued in other states to persons who do not provide proof of lawful presence in the United States are not valid in this state; required persons in the custody and subject to an immigration detainer to submit a DNA sample; and required the collection of data to aid in the determination of the cost of health care provided to illegal immigrants.
- HB 1589 (2024) increased criminal penalties for repeat offenses of driving without a valid driver license.
- SB 1036 (2024) increased criminal penalties for certain persons who commit a felony after having been convicted of a crime relating to the reentry into the United States, and for committing crimes to further the interests of a transnational crime organization, which is an organization that is routinely involved in trafficking drugs, humans, or weapons.
- HB 1451 (2024) prohibited counties and municipalities from accepting identification cards that are issued by organizations that knowingly issue them to individuals who are not lawfully present in the United States.

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<sup>20</sup> State of Florida, Office of the Governor, *Executive Order No. 23-03* (January 6, 2023), available at <https://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO-23-03-1.pdf>. (last visited February 9, 2025).

<sup>21</sup> *Id.*

<sup>22</sup> See State of Florida Office of the Governor, *Executive Order Nos. 23-49, 23-88, 23-134, 23-213, 23-245, 24-35, 24-74, 24-118, 24-173, 24-220, and 24-269*.

<sup>23</sup> State of Florida, Office of the Governor, *Executive Order No. 24-269* (December 9, 2024), available at <https://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO%2024-269.pdf>. (last visited February 9, 2025).



## Cooperation with Federal Immigration Enforcement

Legislation in 2019 created ch. 908, F.S., which, among other things, prohibits state and local government entities from having sanctuary policies.<sup>24, 25</sup> A sanctuary policy is a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with federal immigration laws or which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement 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 the custody of the law enforcement agency;
- Providing a federal immigration agency access to an inmate for interview;
- Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, [8 U.S.C. s. 1357](#) as required by [s. 908.11](#);
- Providing a federal immigration agency with an inmate's incarceration status or release date; or
- Providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency.<sup>26</sup>

The act sought to ensure that state and local entities and law enforcement agencies cooperate with Federal Government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law.<sup>27</sup> When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Each law enforcement agency operating a county detention facility must enter into a written agreement with the ICE to participate in the immigration program established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357.<sup>28</sup> Until the law enforcement agency enters into the written agreement, the agency must notify the Department of Law Enforcement (FDLE) quarterly of the status of such written agreements and any reason for noncompliance if applicable.<sup>29</sup>

The 287(g) program allows ICE to partner with state and local law enforcement agencies to identify and remove incarcerated criminal aliens who are amenable to removal from the United States before they are released into the community. There are two program models: the Jail

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<sup>24</sup> Section 908.103, F.S.

<sup>25</sup> Chapter 2019-102, L.O.F. The law was challenged in *City of South Miami v. DeSantis*, 408 F.Supp.3d 1266 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and the Eleventh Circuit vacated the judgment and remanded to the lower court with instructions to dismiss for lack of jurisdiction. *See City of South Miami v. DeSantis*, 65 F. 4<sup>th</sup> 631 (11<sup>th</sup> Cir. 2023).

<sup>26</sup> Section 908.102, F.S.

<sup>27</sup> *See* ch. 908, F.S.

<sup>28</sup> Section 908.11, F.S. A law enforcement agency is not required to participate in a particular program model.

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

Enforcement Model and the Warrant Service Officer program. The Jail Enforcement Model is designed to identify and process removable aliens who are arrested by state and local law enforcement and have criminal or pending criminal charges. The Warrant Service Officer program allows ICE to train, certify, and authorize state and local law enforcement officers to serve and execute administrative warrants on aliens in their agency's jail.<sup>30</sup>

Section 908.104, F.S., requires a Florida law enforcement agency to use its best efforts to support the enforcement of federal immigration law. This applies to an official, representative, agent, or employee of the entity or agency only when he or she is acting within the scope of his or her official duties or within the scope of his or her employment.

Except as otherwise prohibited by federal law, a state entity, local governmental entity, or law enforcement agency, or an employee, an agent, or a representative thereof, may not prohibit or restrict a law enforcement agency from taking the following actions regarding a person's immigration status:<sup>31</sup>

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency.
- Recording and maintaining the information.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency.
- 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.
- Sending the applicable information obtained pursuant to enforcement of s. 448.095, F.S., to a federal immigration agency.<sup>32</sup>

A law enforcement agency that has custody of a person subject to an immigration detainer issued by a federal immigration agency must:

- Provide to the judge authorized to grant or deny the person's release on bail notice 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.

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<sup>30</sup> United States Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, (January 24, 2025), available at <https://www.ice.gov/identify-and-arrest/287g> (last visited February 9, 2025).

<sup>31</sup> Section 908.104(2), F.S.

<sup>32</sup> Section 908.104(2)(a)-(f), F.S.

- Upon determining the detainer is in accordance with s. 908.102(2), F.S.,<sup>33</sup> comply with the requests made in the immigration detainer.<sup>34, 35</sup>

A judge who receives notice that a person is subject to an immigration detainer must ensure the fact is recorded in the court record, regardless of whether the notice is received before or after a judgement in the case.

In an applicable criminal case,<sup>36</sup> when the judge sentences a defendant who is the subject of an immigration detainer to confinement, the judge must issue an order requiring the secure correctional facility<sup>37</sup> housing the defendant to reduce the defendant's sentence by no more than 12 days on the determination that the reduction will aid in a seamless transfer of the defendant into federal custody.<sup>38</sup> If information regarding an immigration detainer is not available at the time of sentencing, a law enforcement agency must notify the judge who will issue the order as soon as the information becomes available.<sup>39</sup>

When a county correctional facility or the Department of Corrections (DOC) receives verification from a federal immigration agency that a person in custody is subject to an immigration detainer, the law enforcement agency may transport the person to a federal facility in this state or another point of transfer to federal custody outside the jurisdiction of law enforcement. The agency may not transfer a person earlier than 12 days before his or her release date. A law enforcement agency must obtain judicial authorization before transporting a person to a point of transfer outside of the state.<sup>40</sup>

A state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related to a victim of or a witness to a criminal offense if the victim or witness timely and in good faith responds to the agency's request for

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<sup>33</sup> "Immigration detainer" means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law, including detainers issued pursuant to 8 U.S.C. ss. 1226 and 1357 along with the warrant described. An immigration detainer is facially sufficient if the federal immigration agency's official form is complete and indicates on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law; or if the federal immigration agency's official form is incomplete and fails to indicate on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law, but is supported by an affidavit, order, or other official documentation that the agency has probable cause and the agency supplies a Form I-200 Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a successor warrant or other warrant authorized by federal law. Section. 908.102(2), F.S.

<sup>34</sup> Section 908.105(1)(a)-(c), F.S.

<sup>35</sup> Section 908.105(2), F.S., provides that law enforcement agency is not required to notify the judge or record in the person's case file if the person is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed those duties prior to the transfer.

<sup>36</sup> "Applicable criminal case" means a criminal case in which the judge requires the defendant to be confined in a secure correctional facility and the judge either indicates in the record under s. 908.105, F.S., that the defendant is subject to an immigration detainer, or otherwise indicates the defendant is subject to a transfer into federal custody.

<sup>37</sup> "Secure correctional facility" means a state correctional institution as defined in s. 944.02, F.S., or a county detention facility or a municipal detention facility as defined in s. 951.23, F.S.

<sup>38</sup> Section 908.104(3)(b), F.S.

<sup>39</sup> Section 908.104(3)(c), F.S.

<sup>40</sup> Section 908.104(4), F.S.

information and cooperation in the investigation and prosecution of the offense.<sup>41</sup> An agency that withholds information regarding the immigration information of a victim or witness must document cooperation in the investigative records related to the offense and retain the records for at least 10 years.<sup>42</sup> A law enforcement agency is not authorized to detain an alien unlawfully present in the United States pursuant to an immigration detainer solely because the alien witnessed or reported a crime or was the victim of a criminal offense.<sup>43</sup>

Additionally, a state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related any alien unlawfully present in the United States if he or she has been a necessary witness or victim of a specified crime.<sup>44</sup>

Any executive or administrative state, county, or municipal officer who violates his or her duties under ch. 908, F.S., relating to federal immigration enforcement, may be subject to action by the Governor in the exercise of his or her authority under the Florida Constitution and state law. The Governor may initiate judicial proceedings in the name of the state to enforce officers' compliance with any duty or to restrain any unauthorized act contrary to ch. 908, F.S.<sup>45</sup>

Additionally, the Attorney General may file a suit against any local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief. The court must enjoin an unlawful sanctuary policy if the local governmental entity or local law enforcement agency violates ch. 908, F.S.<sup>46</sup> The court has continuing jurisdiction over the parties and subject matter and may enforce its orders with the initiation of contempt proceedings. An order approving a consent decree or granting an injunction must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy.<sup>47</sup>

## **Criminal Laws Related to Illegal Immigration**

### ***Voting***

In Florida, it is a third degree felony for a person, knowing he or she is not a qualified elector, to willfully vote at any election.<sup>48</sup>

While Florida law does not have any crime specifically related to an unauthorized alien voting in an election, 18 U.S.C. s. 611, provides that it is unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commission, unless:

- The election is held partly for some other purpose;

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<sup>41</sup> Section 908.104(5), F.S.

<sup>42</sup> Section 908.104(6), F.S.

<sup>43</sup> Section 908.104(7), F.S.

<sup>44</sup> Section 908.104(8), F.S., specified crimes include 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, and witness tampering.

<sup>45</sup> Section 908.107(1), F.S.

<sup>46</sup> Section 908.107(2)-(3), F.S.

<sup>47</sup> Section 908.107(3)-(4), F.S.

<sup>48</sup> Section 104.15, F.S.

- Aliens are authorized to vote for such other purpose under a state constitution or local ordinance; and
- Voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

Violation of this section is punishable by a fine and imprisonment for not more than one year.<sup>49</sup>

### ***Florida RICO Act***

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.<sup>50</sup> “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.<sup>51</sup> In 2023, the Legislature added the offense of human smuggling to the list of offenses that may constitute racketeering activity.<sup>52</sup>

Section 895.03, F.S. provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>53</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>54</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.<sup>55</sup>

<sup>49</sup> 18 U.S.C. s. 611; This section does not apply if each natural parent, or adoptive parent, is or was a citizen; the alien permanently resided in the United States prior to attaining the age of 16; and the alien reasonably believed at the time of voting in violation of such subsection that he or she was a citizen of the United States

<sup>50</sup> Section 895.01, F.S.

<sup>51</sup> Section 895.02(8), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1)

<sup>52</sup> Section 895.02(8)(a)27., F.S.

<sup>53</sup> Section 895.02(12), F.S., “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.

<sup>54</sup> Section 895.02(5), F.S., “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.

<sup>55</sup> Section 895.03(4), F.S.

Section 895.04, F.S., provides that a conviction for engaging in the above activities results in a first degree felony.<sup>56, 57</sup>

### ***Reclassification of Crimes Committed After Unlawful Reentry***

Reclassification occurs when the Legislature *increases the degree of a conviction*. The reclassification attaches at the time the charges are filed.<sup>58</sup> Reclassification of a criminal conviction from one degree to a higher degree stems from an express and explicit grant of statutory authority.<sup>59</sup>

In 2024 the Legislature enacted s. 775.0848, F.S., to reclassify the penalty for committing a felony if the person committing such felony has previously been convicted for unlawful reentry by a removed alien pursuant to 8 U.S.C. s. 1326. Section 775.0848, F.S., provides that:

- A felony of the third degree is reclassified to a felony of the second degree.<sup>60</sup>
- A felony of the second degree is reclassified to a felony of the first degree.<sup>61</sup>
- A felony of the first degree is reclassified to a life felony.<sup>62</sup>

According to U.S. Customs and Border Protection the term “criminal noncitizens” refers to individuals who have been convicted of one or more crimes, whether in the United States or abroad, prior to interdiction by the U.S. Border Patrol. In 2024, there were 17,048 arrests of criminal noncitizens, almost 1,800 more arrests than the previous year. Of those arrests, 10,935 are for illegal re-entry after prior deportation.<sup>63</sup>

Reentry to the United States by aliens<sup>64</sup> who have been removed from the United States is addressed in 8 U.S.C.A. 1326 as follows:

- Any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States...shall be fined under Title 18, or imprisoned not more than 2 years, or both.

<sup>56</sup> A first-degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>57</sup> Section 895.05(2), F.S., in addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, 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 conduct in violation of the act

<sup>58</sup> *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

<sup>59</sup> *Cf. Spicer v. State*, 615 So.2d 725, 726 (Fla. 2d DCA 1993) (reversing reclassification of robbery with a mask conviction because “[p]enal statutes must be construed in terms of their literal meaning .... [I]f the legislature had intended section 775.0845 [Florida Statutes (1989)] to reclassify offenses, it would have so stated ....”).

<sup>60</sup> A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

<sup>61</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. A first-degree felony is punishable by up to 30 years to life imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

<sup>62</sup> A first-degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a \$10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

<sup>63</sup> United States Customs and Border Protection, *Criminal Noncitizen Statistics*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics> (last visited February 9, 2025).

<sup>64</sup> The term “alien” means any person not a citizen or national of the United States. 8 U.S.C.A. 1101(a)(3).

- Any alien whose removal was subsequent to a conviction for the commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony),<sup>65</sup> such alien shall be fined under Title 18, imprisoned not more than 10 years, or both.
- Any alien whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

The term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either federal or state law.<sup>66</sup>

Any alien deported prior to completion of term of imprisonment, and who enters, attempts to enter, or is at any time found in, the United States must be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien is subject to penalties relating to the reentry of deported aliens as provided.<sup>67</sup>

### ***Penalty Enhancements***

Penalty enhancements are different than reclassifications and refer to the authority of a judge to impose a *more severe sentence* for a convicted offense when certain factual findings are made.<sup>68</sup>

A good example of a penalty enhancement statute is the habitual felony offender law found in s. 775.084(1)(a), F.S. “Habitual felony offender” means a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
  - Within 5 years of the date of the conviction of the defendant’s last prior felony or other qualified offense, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13, F.S., relating to the purchase or the possession of a controlled substance.
- The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this law.

<sup>65</sup> “Aggravated felony” is defined in 8 U.S.C.A. 1101(a)(43)(A)-(U). The term applies to a felony offense, whether in violation of Federal or State law, and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. 8 U.S.C.A.1101(a).

<sup>66</sup> 8 U.S.C.A. 1326(b).

<sup>67</sup> 8 U.S.C.A. 1326(c).

<sup>68</sup> *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).



- A conviction of a felony or other qualified offense necessary to the operation of this law has not been set aside in any postconviction proceeding.

In a separate proceeding, if the court finds that the defendant meets the criteria for imposing such sanction, the court must sentence the defendant as a habitual felony offender unless the court finds that it is not necessary for the protection of the public. The court may sentence the habitual felony offender as follows:

- In the case of a life felony or a felony of the first degree, for life.
- In the case of a felony of the second degree, for a term of years not exceeding 30.
- In the case of a felony of the third degree, for a term of years not exceeding 10.<sup>69</sup>

### ***Criminal Gangs***

As defined in s. 874.03, F.S., “criminal gang” means 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, terrorist organizations and hate groups. Additionally, “criminal gang-related activity” means:

- An activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person’s own standing or position within a criminal gang;
- An activity in which the participants are identified as criminal gang members or criminal gang associates acting individually or collectively to further any criminal purpose of the gang;
- An activity that is defined as criminal gang activity by a documented reliable informant; or
- An activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information.<sup>70</sup>

Section 874.04, F.S., provides enhanced penalties for gang-related criminal offenses. Upon finding the charged offense was for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the penalty for any felony or misdemeanor may be enhanced to the next degree of offense.<sup>71</sup>

Section 874.05, F.S., provides it is a third degree felony for a person who intentionally causes, encourages, solicits, or recruits another person to become a criminal gang member where a condition of membership or continued membership is the commission of any crime.<sup>72</sup> This section also provides it is a second degree felony for a person who intentionally causes, encourages, solicits, or recruits another person under the age of 13 to become a criminal gang member where a condition of membership or continued membership is the commission of any crime.<sup>73</sup> Enhanced penalties are provided for second or subsequent offenses under this section.

<sup>69</sup> Sections 775.084(1)(a), (3)(a), and (4)(a), F.S.

<sup>70</sup> Section 874.03(4)(a)-(d), F.S.

<sup>71</sup> Section 874.04, F.S. For purposes of sentencing under ch. 921, F.S., and determining incentive gain-time eligibility under ch. 944, F.S., such felony offense is ranked as provided in s. 921.022, F.S., or s. 921.0023, F.S., and without regard to the penalty enhancement in this subsection.

<sup>72</sup> Section 874.05(1), F.S.

<sup>73</sup> Section 874.05(2), F.S.

## *Sentencing*

### Criminal Punishment Code

The Criminal Punishment Code<sup>74</sup> is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense, and a second degree felony is ranked as a level 4 offense.<sup>75</sup>

### *Types of Felonies*

Florida defines the term "forcible felony," in s. 776.08, F.S. Under this section, forcible felonies include: Treason; Murder; Manslaughter; Sexual battery; Carjacking; Home-invasion robbery; Robbery; Burglary; Arson; Kidnapping; Aggravated assault; Aggravated battery; Aggravated stalking; Aircraft piracy; Unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

Similarly, federal law also groups specific offenses together in what is referred to as an "aggravated felony." An aggravated felony under 8 U.S.C. s. 1101, includes, in part:

- Murder, rape, or sexual abuse of a minor;<sup>76</sup>
- Illicit trafficking in a controlled substance,<sup>77</sup> including a drug trafficking crime.<sup>78, 79</sup>
- Illicit trafficking in firearms or destructive devices<sup>80</sup> or in explosive materials;<sup>81</sup>

<sup>74</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>75</sup> Section 921.0023(1) and (2), F.S.

<sup>76</sup> 8 U.S.C.A. § 1101(a)(43)(A).

<sup>77</sup> As defined in section 802 of Title 21, the term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, IV, or V. The terms does not include distilled spirits, wine, malt beverages, or tobacco. 21 U.S.C.A. § 802(6).

<sup>78</sup> As defined in section 924(c) of Title 18, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act, the Controlled Substances Import and Export Act, or chapter 705 of title 46. 18 U.S.C.A. § 924(c)(2).

<sup>79</sup> 8 U.S.C.A. § 1101(a)(43)(B).

<sup>80</sup> As defined in section 921 of Title 18, the term "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, rocket having propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the devices described. Additionally, any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and any combination of parts either designed or intended for use in converting any device into any destructive device described from which a destructible device may be readily assembled. 18 U.S.C.A. § 921(a)(4).

<sup>81</sup> 8 U.S.C.A. § 1101(a)(43)(C).

- An offense described in section 1956 of Title 18 relating to laundering of monetary instruments or section 1957 of that title relating to engaging in monetary transactions in property derived from specific unlawful activity if the amount of the funds exceed \$10,000;<sup>82</sup>
- Certain offenses related to firearms;<sup>83</sup>
- Certain crimes of violence;<sup>84,85</sup>
- Certain theft or burglary offenses;<sup>86</sup>
- Certain offenses relating to child pornography;<sup>87</sup>
- Certain offenses relating to prostitution and human trafficking that;<sup>88</sup>
- Certain offenses relating to alien smuggling;<sup>89</sup> and
- An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness.<sup>90</sup>

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.<sup>91</sup>

### ***Pretrial Detention and Bail***

Article I, s. 14 of the Florida Constitution states that “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. 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.”

A person must appear before a judge within 24 hours of arrest for a “first appearance.”<sup>92</sup> During first appearance, a judge advises a defendant of the charges for which he or she was arrested, determines whether there is probable cause that a defendant committed such an offense, and advises a defendant of specified rights.<sup>93</sup> If a judge determines that probable cause exists, the judge then determines whether a defendant is entitled to pretrial release. A judge may grant

<sup>82</sup> 8 U.S.C.A. § 1101(a)(43)(D).

<sup>83</sup> 8 U.S.C.A. § 1101(a)(43)(E).

<sup>84</sup> As defined in section 16 of Title 18, the term “crime of violence” means an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another; or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. 18 U.S.C.A. § 16.

<sup>85</sup> 8 U.S.C.A. § 1101(a)(43)(F).

<sup>86</sup> 8 U.S.C.A. § 1101(a)(43)(G).

<sup>87</sup> 8 U.S.C.A. § 1101(a)(43)(I).

<sup>88</sup> 8 U.S.C.A. § 1101(a)(43)(K).

<sup>89</sup> 8 U.S.C.A. § 1101(a)(43)(N).

<sup>90</sup> 8 U.S.C.A. § 1101(a)(43)(S).

<sup>91</sup> 8 U.S.C.A. § 1101(a)(43).

<sup>92</sup> Fla. R. Crim. P. 3.130.

<sup>93</sup> *Id.*

pretrial release either by setting a specified bail amount or releasing the defendant on his or her own recognizance.<sup>94</sup>

Section 903.046, F.S., provides that the purpose of bail proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to ensure the safety of the public. When determining whether to release a defendant on bail or other conditions, and what that bail or conditions may be, the court must consider certain factors. Such factors include, in part:

- 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 nature and probability of danger which the defendant's release poses to the community.
- Any other facts the court considers relevant.<sup>95</sup>

While Florida does not specify that the court may consider a defendant's immigration status when setting bail, courts have found that this may be considered in the court's analysis.<sup>96</sup>

### ***Issuance of Driver Licenses and Identification Cards***

Section 322.08, F.S., establishes requirements governing the application process for driver licenses and identification cards. All applicants must present primary identification; proof of social security number or secondary identification; and two documents that demonstrate a residential address in Florida. Non-U.S. citizens are required to produce proof of legal presence documentation issued through the U.S. Citizenship and Immigration Services. Noncitizens applying for an original driver license are generally issued a 60-day temporary paper permit without a photo and a receipt. Non-U.S. citizens applying for an identification card are issued a receipt.

Upon the review and verification of identity and legal status by the Department of Highway Safety and Motor Vehicles, and satisfactory completion of required knowledge and skills examinations, a driver license or identification card is issued within 60 days and mailed to the address on the driver record. The driver license or identification card is issued for the period of time specified in the relevant U.S. Citizenship and Immigration Services documentation, up to a maximum of four years. For non-citizens with legal presence the word "TEMPORARY" will appear in red on the front, right lower margin of the driver license or identification card.<sup>97</sup>

Section 322.19, F.S., provides that, with certain exceptions, whenever any person, after applying for or receiving a driver license or identification card, changes his or her legal name, that person must within 30 days obtain a replacement license or card that reflects the change. Similarly, if a person, after applying for or receiving a driver license or identification card, changes the legal

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<sup>94</sup> Fla. R. Crim. P. 3.131.

<sup>95</sup> Section 903.046, F.S.

<sup>96</sup> See *United States v. Lozano, United States*, 2009 WL 3052279 (M.D. Ala, 2009).

<sup>97</sup> Department of Highway Safety and Motor Vehicles, *Frequently Asked Questions: If I am a non-immigrant with legal presence and I want to renew my Class E or Commercial Driver License (CDL), how long will the license be valid and what is the cost?*, available at <https://www.flhsmv.gov/driver-licenses-id-cards/what-to-bring/frequently-asked-questions/>. (last visited February 9, 2025).

residence or mailing address in the application, license, or card, the person must, within 30 days after making the change, obtain a replacement license or card that reflects the change. A violation of this requirement is a non-moving violation, punishable as provided s. 318.18, F.S.

For purposes of documenting proof of lawful presence for the issuance of a driver license or identification card, s. 322.08, F.S., provides that the Department of Highway Safety and Motor Vehicles may require an unexpired foreign passport with an unexpired U.S. visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States. While the term “valid passport” is used in various sections of the Florida Statutes, the term is not currently defined.

### **Department of Agriculture and Consumer Services**

The Commissioner of Agriculture serves as the head of the Department of Agriculture and Consumer Services (DACS), which is created under s. 20.14, F.S. The DACS currently has 12 divisions within the department. Bureaus may be established as deemed necessary.<sup>98</sup>

The office of Agricultural Law Enforcement has certified law enforcement positions in two bureaus: the Bureau of Uniform Services and the Bureau of Investigative Services.<sup>99</sup> When it comes to protecting Florida agriculture, the Bureau of Uniform Services is the first line of defense at the state borders. The DACS operates 23 interdiction stations on 19 highways going into and out of Florida.<sup>100</sup> Such stations are open 24 hours a day, 365 days a year. Trucks, rental trucks, vans, trailers, and any vehicles carrying agricultural, horticultural, or livestock products.<sup>101</sup>

### **Education**

Florida’s education system has also been affected by the influx in immigration. Florida schools may provide education to those who are here lawfully, unlawfully, or to children whose parents are here unlawfully.

### ***Florida Public Postsecondary Institutions***

Florida’s system of public postsecondary education consists of:

- The State University System (SUS), composed of the 12 state universities.<sup>102</sup> Each state university is administered by a local board of trustees.<sup>103</sup> The system is supervised by the Board of Governors.<sup>104</sup>

<sup>98</sup> Section 20.14, F.S., Divisions within the DACS include: Administration; Agriculture Environmental Services; Animal Industry; Aquaculture; Consumer Services; Food Safety; Florida Forest Service; Fruit and Vegetables; Licensing.

<sup>99</sup> The Department of Agriculture and Consumer Services, *About the Office of Agricultural Law Enforcement*, available at <https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement/Become-a-Member-of-the-Office-of-Agricultural-Law-Enforcement/About-OALE> (last visited February 9, 2025).

<sup>100</sup> *Id.*

<sup>101</sup> The Department of Agriculture and Consumer Services, *Agriculture Inspection stations*, available at <https://www.fdacs.gov/Agriculture-Industry/Agricultural-Inspection-Stations> (last visited February 9, 2025).

<sup>102</sup> Section 1000.21(9), F.S.

<sup>103</sup> Art. IX, s. 7(b), FLA. CONST.

<sup>104</sup> Art. IX, s. 7(b), FLA. CONST. *See also* s. 1001.705, F.S.

- The Florida College System (FCS), composed of 28 institutions with defined service areas.<sup>105</sup> A local board of trustees governs each FCS institution, and the State Board of Education supervises the system.<sup>106</sup>
- Career centers (also called technical colleges), which are a part of a district school system and offer technical courses leading toward a career certificate or industry certification.<sup>107</sup> There are 47 career centers, each governed by its district school board.
- Charter technical career centers, which are public schools or public technical centers operated under a charter granted by a district school board or FCS institution board of trustees.<sup>108</sup> Currently, there is one charter technical career center in Florida—Lake Technical College, chartered under the Lake County School Board.

### ***Residency Status for Tuition Purposes***

Students must be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by public postsecondary institutions. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.<sup>109</sup>

To qualify as a resident for tuition purposes, a person, or if that person is a dependent child, his or her parent or parents, must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in the public postsecondary institution.<sup>110</sup>

Each public postsecondary institution must make a residency determination based on the submission of at least two forms of documentation specified in law.<sup>111</sup>

### ***Tuition and Out-of-State Fees***

Florida law defines “tuition” as the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state. A student who is classified as a resident for tuition purposes qualifies for the in-state tuition rate. An out-of-state fee is the additional fee for instruction charged to a student who does not qualify for the in-state tuition rate,<sup>112</sup> unless these costs are exempted or waived.<sup>113</sup>

The resident undergraduate tuition rate for the SUS is set at \$105.07 per credit hour.<sup>114</sup> The SUS average tuition and out-of-state fee is \$570.01 per credit hour.

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<sup>105</sup> Section 1000.21(5), F.S.

<sup>106</sup> Art. IX, S. 8(b), FLA. CONST.

<sup>107</sup> Section 1001.44(a), F.S.

<sup>108</sup> Section 1002.34(a), F.S.

<sup>109</sup> Section 1009.21, F.S.

<sup>110</sup> Section 1009.21(2)(a), F.S. This section also specifies other circumstances that may classify a person as a resident for tuition purposes.

<sup>111</sup> Section 1009.21(3), F.S. Documentation includes, but is not limited to, a Florida voter registration card, Florida driver’s license, Florida vehicle registration, homestead exemption (which is a single, conclusive proof of residency), proof of full-time Florida employment, declaration of domicile, Florida incorporation, lease agreements, or utility bills.

<sup>112</sup> Section 1009.01, F.S.

<sup>113</sup> Section 1009.24(2), F.S.

<sup>114</sup> Section 1009.24(4)(a), F.S.

The FCS tuition rate for college credit courses is \$71.98 per credit hour, and the out-of-state fee is \$215.94 per credit hour. Baccalaureate degree program resident tuition is \$91.79 per credit hour, and the total tuition and out-of-state fee may not exceed 85 percent of the tuition and out-of-state fee of the nearest state university.<sup>115</sup> If a career center offers college credit courses as a part of a career associate degree program, the standard tuition is also \$71.98 per credit hour, and the out-of-state fee is \$215.94 per credit hour.<sup>116</sup>

For non-college-credit career programs at career centers and FCS institutions, the standard tuition is \$2.33 per contact hour, and the out-of-state fee is \$6.99 per contact hour.<sup>117</sup> Each district school board or FCS institution board of trustees may adopt tuition and out-of-state fees that vary no more than 5 percent below or 5 percent above such fees.<sup>118</sup>

### *Out-of-State Fee Waiver*

In 2014, the Florida Legislature established an out-of-state fee waiver for students, including, but not limited to, students who are undocumented for federal immigration purposes, who meet certain conditions:<sup>119</sup>

- Attendance in a secondary school in Florida for three consecutive years immediately before graduating from a high school in Florida.
- Application for enrollment in a state university, FCS institution, or technical center within 24 months after high school graduation.
- Submission of an official Florida high school transcript.

The fee waiver may both include students who are undocumented for federal immigration purposes, as well as students who are lawfully present in the United States, but whose parents are not residents of Florida. The exact number of undocumented students receiving the out-of-state fee waiver is unknown.

The out-of-state fee waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled.<sup>120</sup> A student who receives an out-of-state fee waiver is not considered a Florida resident and is not eligible for financial aid awards and tuition assistance grants.<sup>121</sup>

The below table shows, for the 2023-2024 fiscal year, the number of students receiving an out-of-state fee waiver from a state university, FCS institution, or career center, and the total value of the waived out-of-state fees. The totals include all non-resident students, regardless of lawful status.

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<sup>115</sup> Section 1009.23(3), F.S.

<sup>116</sup> Section 1009.22(4), F.S.

<sup>117</sup> Section 1009.22(3)(c), F.S.

<sup>118</sup> Section 1009.22(3)(d), F.S.

<sup>119</sup> Section 1009.26(12), F.S.

<sup>120</sup> Section 1009.26(12)(b), F.S.

<sup>121</sup> The general requirements for student eligibility for state financial aid and tuition assistance in s. 1009.40, F.S., specifies legal residence in Florida. *See also* Board of Governors Regulation 7.008.



Institutions	Number of Students	Total Value of Fee Waiver
State University System <sup>122</sup>	2,005	\$20,009,990.00
Florida College System <sup>123</sup>	4,573	\$20,649,408.44
District Career Centers <sup>124</sup>	3	\$12,584.70
<b>Total</b>	<b>6,581</b>	<b>\$40,671,983.14</b>

At least 25 states, including Florida, currently have laws and policies that permit certain students who have attended and graduated from secondary schools in their state to pay in-state tuition at their state’s public postsecondary institutions, regardless of their immigration status.<sup>125</sup> There are nine states that block access to in-state tuition for undocumented students.<sup>126</sup>

**III. Effect of Proposed Changes:**

The bill strengthens the state’s approach to illegal immigration by providing coordination within the state and with federal immigration agencies.

**State Board of Immigration Enforcement (Section 16)**

The bill creates s. 908.1031, F.S., to create the State Board of Immigration Enforcement (board) within the Florida Department of Law Enforcement (FDLE). The Governor and Cabinet serve as the agency head of the board, and all board action must be by unanimous vote. The board is not subject to the control, supervision, or direction of the FDLE in any manner.

The board is the chief immigration enforcement officer and must:

- Serve as a resource for the U.S. Immigration and Customs Enforcement (ICE).
- Coordinate and cooperate with the Federal Government in matters related to immigration.
- Coordinate with and provide assistance to law enforcement related to the enforcement of federal immigration laws and monitor local government compliance with ch. 908, F.S.
- Administer the Local Law Enforcement Immigration Grant Program.
- Collect data related to operations with the ICE from law enforcement agencies and report annually, by December 15, to the Legislature on data collected, the level of coordination and cooperation with the federal government, recommendations for improvement in the coordination and cooperation with the Federal Government, and the number of trained officers under the federal 287(g) program in this state.
- Actively seek Congressional action to amend the National Crime Prevention and Privacy Compact to require party states to share information related to an individual’s immigration status.

<sup>122</sup> Florida Board of Governors, *Fee Waivers*, available at <https://www.flbog.edu/resources/data-analytics/dashboards/fee-waiver-summary/> (select *Non-Resident (5012)* waiver label) (last visited February 9, 2025).

<sup>123</sup> Email, Florida Department of Education (January 24, 2025) (on file with the Committee on Appropriations).

<sup>124</sup> Email, Florida Department of Education (January 25, 2025) (on file with the Committee on Appropriations).

<sup>125</sup> National Immigration Law Center, *Basic Facts About In-State Tuition for Undocumented Immigrant Students*, available at <https://www.nilc.org/wp-content/uploads/2024/06/instate-tuition-basicfacts-2024-06-1-1.pdf>. (last visited February 9, 2025).

<sup>126</sup> Higher ED Immigration Portal, *States*, available at <https://www.higheredimmigrationportal.org/states/> (last visited February 9, 2025).

- Report to the Legislature by March 24, 2025, the number of vacant beds available in state correctional institutions and facilities and county detention facilities which can be sublet to the ICE for use as detention beds.

The board is authorized to adopt necessary rules. The FDLE must provide administrative support to the board.

### **State Immigration Enforcement Council (Section 17)**

The bill creates s. 908.1032, F.S. to create the State Board of Immigration Enforcement Council (council) for the purpose of advising the board. The council is 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 must each appoint two sheriffs. The State Board of Immigration Enforcement must unanimously elect a sheriff from among the council's membership to serve as chair.

Members must be appointed to terms of four years, and any vacancy must be filled within 2 weeks of such vacancy. To create staggered terms, the initial members appointed by the Cabinet serve 2-year terms. Membership on the council does not disqualify a member from holding any other public office or being employed by a public entity, except that no member of the Legislature can serve on the council. Members of the council must serve without compensation.

The council must meet by April 1, 2025, and quarterly thereafter. The council must:

- Assist the board, upon unanimous request by the board, with issues related to immigration enforcement.
- Recommend to the board expenses related to federal 287(g) program participation that should be reimbursable under the Local Law Enforcement Immigration Grant Program (described below) and funding criteria for the grant program.
- Request guidance from the ICE for training opportunities and strategies to further federal 287(g) program participation and make related recommendations to the board to expand the grant program to reimburse costs related to new training activities.
- Advise the board on the efforts of local law enforcement agencies' efforts related to enforcement of federal immigration laws.
- Provide recommendations on financial and other resources necessary to aid local law enforcement agencies.
- 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. The recommendations must provide for enhanced use and coordination of the following centers, including but not limited to:
  - The Federal Bureau of Investigation's Terrorist Screening Center.
  - The U.S. Customs and Border Protection's National Targeting Center.
  - The U.S. Department of Homeland Security Fusion Center.
  - The U.S. Drug Enforcement Administration's Special Operations Unit.
- Provide recommendations on strategies to increase the number of available detention beds for use by the ICE.

- Upon unanimous request of the board, assist the board in data collection from law enforcement agencies for the board's annual report.

The FDLE must provide administrative support to the council.

### **Local Law Enforcement Immigration Grant Program (Sections 18,28)**

The bill creates s. 908.1033, F.S., to establish the Local Law Enforcement Immigration Grant Program within the State Board of Immigration Enforcement to award grants to support local law enforcement agencies, which include chief correctional officers operating county detention facilities, in their cooperation and coordination with federal immigration agencies. The board must award any funds specifically appropriated for the program to reimburse expenses or provide bonus payments. The council is directed to make recommendations to the board on other expenses that should be reimbursable and funding criteria for the program.

A local law enforcement agency may apply to the board for reimbursement of expenses incurred in its cooperation and coordination with federal immigration agencies in the enforcement of federal immigration laws. Reimbursements may be requested for the following eligible expenses:

- Subletting detention beds to the ICE.
- Equipment, travel, and lodging related to the federal 287(g) program.
- Training programs, including certified apprenticeship programs, related to supporting the enforcement of federal immigration laws.
- Hardware or software essential to assisting the Federal Government in its enforcement of federal immigration laws.

A local law enforcement agency may apply to the board to provide bonus payments for the agency's local law enforcement officers who participate in U.S. 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, including applicable federal income taxes, employed within that agency. The applying local law enforcement agency must certify that the officer participated in one or more operations and provide any other information required by the board. Eligible participation does not include operations that occur solely at a correctional or detention facility.

The grants must be awarded on a first-come, first-served basis. The total amount of grants awarded may not exceed funding appropriated for the grant program. Upon receiving an application, the executive director of the board must review the application to ensure it is complete, and at least quarterly, make a recommendation to the board for approval or denial of the application.

A grant application recommended for approval by the executive director must be unanimously approved by the board or by the executive director if authorized by the board in rule. Administrative rules adopted by the board may allow for the executive director to approve grants of up to \$25,000 without board approval. Upon approval, the board must submit a 14-day budget amendment to the chair and vice chair of the Legislative Budget Commission before a grant can be issued to a local law enforcement agency. Either the chair or vice chair may object to the

amendment, which voids the action until addressed by the Legislative Budget Commission or the Legislature.

The board must adopt rules to implement this section. The board is granted emergency rulemaking authority to adopt rules to implement this section.

### **Enforcing Cooperation with Federal Immigration Authorities (Sections 15, 19, 20, 21)**

The bill amends s. 908.104, F.S., to provide that a state entity, local governmental entity, or law enforcement agency, may not prohibit or in any way restrict a law enforcement officer from executing or assisting in the execution of a lawful judicial warrant.

Additionally, the bill amends s. 908.102, F.S., to amend the term “sanctuary policy,” to include any law, policy, practice, procedure, or custom adopted to prohibit or impede a law enforcement agency from:

- Executing a lawful judicial warrant; or
- Participating in a federal immigration operation with a federal immigration agency as permitted by federal and state law.

The bill amends s. 908.105, F.S., to provide if any county, district, authority, municipality or other local government adopts an ordinance, a regulation, a rule, or a policy refusing to comply with or otherwise directing local officials, employees, or others to refuse to comply with an immigration detainer issued by a federal agency, the Attorney General must initiate judicial proceedings to enforce compliance. If the court determines that a violation was knowing and willful, the court must assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.

The bill amends s. 908.107, F.S., to specify that any executive or administrative state, county, or municipal officer who violates his or her duties under this chapter may be subject to action by the Governor, *including potential suspension from office*.

The bill amends s. 908.11, F.S., to require a sheriff or the chief correctional officer operating a county detention facility to enter into a written agreement with the United States Immigration and Customs Enforcement to participate in the 287(g) program. The board is required to approve the termination of any such agreement. Beginning April 1, 2025, each sheriff or chief correctional officer operating a county detention facility must provide the board with quarterly status updates of such written agreements.

### **Training with Federal Immigration Authorities (Section 29)**

The bill makes legislative findings that the state’s criminal justice training centers as well as facilities of the Department of Military Affairs, such as the Camp Blanding Joint Training Center, are highly qualified and critical strategic year-round assets for training. The Legislature has made significant investments to make Camp Blanding Joint Training Center the premier facility in the southeast. In order to support the anticipated training and operations involving multiple federal and state and local agencies and given the scale and value of this state’s assets,

the Department of Military Affairs and local law enforcement must work with the Office to ensure that the state's federal partners can access and use the state's physical assets in order to further the nation's mission to address illegal immigration. Such activities include outreach to federal partnership as well as entering into agreements for the use of such facilities.

### **Unauthorized Alien Transport Program (Sections 23, 27)**

The bill creates s. 908.13, F.S., to codify the Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) for the purpose of facilitating the transport of unauthorized aliens, consistent with federal law.

The following specified requirements must be met before the DEM may provide transport:

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

This section is repealed on June 30, 2027.

The bill repeals Section 1 of ch. 2023-3, Laws of Florida, which contains similar provisions relating to the transport of unauthorized aliens.

### **Other Immigration Provisions**

The bill makes numerous changes to enhance criminal penalties for offenses committed by unauthorized aliens, provides requirements for driver licenses, and modifies eligibility requirements for out-of-state fee waivers.

#### ***Criminal Law (Sections 19, 20)***

The bill amends s. 908.105, F.S., to provide that a law enforcement agency that has custody of a person subject to an immigration detainer issued by a federal immigration agency must notify the state attorney that the person is subject to an immigration detainer.

The bill amends s. 908.104, F.S., to provide that a sheriff or chief correctional officer operating a county detention facility must provide, upon request from a federal immigration agency, a list of all inmates booked into a county detention facility and any information regarding each inmate's immigration status.

Additionally, s. 908.104, F.S., is revised to specify that *consistent with all duties created in the state and federal law, state and local law enforcement agencies, and any official responsible for directing or supervising such agencies*, shall use best efforts to support the enforcement of federal immigration law.

Section 908.104, F.S., provides that a state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related to a victim of or a witness to a criminal offense if the victim or witness timely and in good faith

responds to the entity's or agency's request for information and cooperates in the investigation or prosecution of such offense. The bill specifies that such a victim or witness *must be necessary to the investigation or prosecution of such crime, and that such crime must occur in the United States.*

Section 908.104, F.S., provides that a state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related to a necessary witness or victim of specified crimes. The bill specifies that the crime *must occur in the United States, and that documentation must be relied upon to verify that the person was a necessary witness or victim to the crime.*

### ***Criminal Penalties (Sections 1, 9, 10, 11, 12, 24)***

The bill creates s. 104.155, F.S., to provide that it is a third degree felony for a person who is not a qualified elector because he or she is noncitizen to willfully vote in any election. A person's ignorance of his or her citizenship status or a person's bona fide belief of his or her citizenship status cannot be raised as a defense in a prosecution.

Any person who aids or solicits another to commit the crime described above with knowledge that such person is noncitizen, commits a third degree felony.

The bill amends s. 895.02, F.S., to add aiding or soliciting a noncitizen alien in voting to the list of crimes that may constitute racketeering activity.

The bill amends s. 921.0022, F.S., to rank the third degree felonies of a noncitizen willfully voting, or aiding or soliciting unauthorized aliens in voting as a level four offense in the offense severity ranking chart.

The bill creates s. 775.0824, F.S., to provide mandatory minimum prison terms for dangerous unauthorized alien offenders. A dangerous unauthorized alien offender is any unauthorized alien<sup>127</sup> who is a member of a criminal gang, including any member of a transnational crime organization, and who commits or attempts to commit a felony offense in this state.

For an offense committed on or after the effective date of this act, if the state attorney determines that a person is a dangerous unauthorized alien offender, the state attorney must seek to have the court sentence the person as a dangerous unauthorized alien offender.

In a separate proceeding conducted pursuant to this section, upon proof from the state attorney that establishes by a preponderance of the evidence that the person is a dangerous unauthorized alien offender, such person is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

- For a life felony, by a term of life imprisonment;
- For a first degree felony, by a term of imprisonment for 30 years;

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<sup>127</sup> "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. The term shall be interpreted consistently with any applicable federal statutes, rules, or regulations.

- For a second degree felony, by a term of imprisonment for 15 years; or
- For a third degree felony, by a term of imprisonment for 5 years.

A person who is sentenced as a dangerous unauthorized alien offender must be released only by expiration of sentence and must not be eligible for parole, control release, or any form of early release. A dangerous unauthorized alien offender must serve 100 percent of his or her court-imposed sentence.

The bill amends s. 775.0848, F.S., to remove the requirement that a person must have previously been convicted of unlawful reentry into the United States, for a new crime to be reclassified to the next higher degree. Under the bill, the penalty for misdemeanor and felony crimes will be reclassified as follows if such crime was committed by an unauthorized alien:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.

The bill amends s. 874.03, F.S., to add transnational crime organizations, to the list of groups that may be considered a criminal gang.

A transnational crime organization means any group, network, or association of persons, at least one of which is an unauthorized alien as defined in 8 U.S.C. ss. 1101, that routinely facilitates the international trafficking of drugs, humans, or weapons, or the international smuggling of humans.

#### ***Pretrial Release (Section 13, 14)***

The bill amends s. 903.046, F.S., to provide that the court must consider a defendant's immigration status when determining whether to release a defendant on bail or other conditions, and what that bail or conditions may be.

The bill amends s. 907.041, F.S., to revise legislative intent that persons posing a substantial flight risk because of their status as unauthorized aliens be detained upon arrest.

An unauthorized alien who is charged with a forcible felony has no presumption in favor of release on nonmonetary condition, and immigration status to the list of circumstances that must be investigated or verified before a person may be released on nonmonetary conditions under the supervision of a pretrial release service.

An unauthorized alien who is arrested for a forcible felony is not eligible for release until he or she appears for a first appearance hearing. The bill creates a rebuttable presumption that the defendant is a flight risk and that no conditions of release will ensure his or her appearance and trial if the court determines there is probable cause to believe the defendant committed a forcible felony and further determines by a preponderance of the evidence that the defendant is an unauthorized alien. If the defendant cannot rebut such presumption, by a preponderance of the evidence, then he or she must be ordered to pretrial detention.



The defendant may request up to a 48-hour continuance of his or her first appearance hearing and the state must be entitled to one continuance for good cause.

***Driver License and Motor Vehicle Requirements (Sections 2, 3, 4, 5, 6, 7, 8)***

The bill clarifies that proof of identity for the issuance of driver licenses and motor vehicle titles and registrations may include certain valid, unexpired passports. The bill amends ss. 319.001, 320.01, and 322.08, F.S., to create a standard definition for valid passport. Specifically, a “valid passport” is defined to mean:

- An unexpired passport or passport card issued by the U.S. government; or
- An unexpired passport issued by the government of another country with:
  - A stamp or mark affixed by the Federal Government onto the passport to evidence and authorize lawful presence in the United States; or
  - An unexpired I-94, or current permanent resident card, or unexpired immigrant visa, issued by the Federal Government.

The bill amends s. 322.02, F.S., to provide legislative intent that the state meet all minimum security standards of the federal REAL ID Act for the issuance of driver licenses and identification cards.

The bill amends s. 322.033, F.S., to reiterate that the state must meet all minimum security standards of the federal REAL ID Act for driver licenses and identification cards and prohibits the Department of Highway Safety and Motor Vehicles from issuing a driver license or identification card to any person who is an unauthorized alien or undocumented immigrant.

The bill amends s. 322.08, F.S., to stipulate that, for purposes of proof of identity, a driver license record or identification card record from another jurisdiction must comply with the federal REAL ID Act.

The bill also requires a person who becomes a U.S. citizen to obtain a replacement driver license within 30 days of becoming a citizen. The bill amends s. 322.19, F.S., to provide that a person who becomes a citizen of the United States after applying for or receiving a driver license must obtain a replacement license or card that reflects such change within 30 calendar days after making the change. The bill makes a corresponding amendment to s. 322.121, F.S., related to “safe driver” designations on licenses. The bill also updates the time period referenced in that statute from 10 days to 30 days to align with s. 322.19, F.S., which was updated in 2016.<sup>128</sup>

***Out-of-State Fee Waivers (Section 25)***

The bill amends s. 1009.26, F.S., effective July 1, 2025, to specify that a student must be a citizen of the United States or lawfully present in the United States, in addition to the other conditions, in order to qualify for the out-of-state fee waiver at a Florida public postsecondary institution. Fewer students would therefore be eligible for the waiver, but the exact number of students is unknown.

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<sup>128</sup> Section 60, ch. 2016-239, Laws of Fla.

In addition to new applications for fee waivers that must be evaluated based on the additional criteria in the bill, the bill also requires postsecondary institutions to, beginning July 1, 2025, reevaluate any student who is currently receiving the fee waiver to determine continued eligibility.

### **Appropriations**

The bill appropriates funds to the State Board of Immigration Enforcement within the FDLE for the 2024-2025 fiscal year. The bill appropriates \$680,046 in recurring funds and \$26,781 in nonrecurring funds from the General Revenue Fund and 5 full-time equivalent positions (FTE) with associated salary rate of 325,928 to implement the bill. The bill appropriates \$250 million in nonrecurring funds from the General Revenue Fund for the Local Law Enforcement Immigration Grant Program.

The bill appropriates the sums of \$12,553,547 in recurring funds and \$35,570,178 in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services (DACS) for the 2024-2025 fiscal year to enhance interdiction activities and protect the borders of this state. Additionally, the bill authorizes the DACS to establish 84 FTE with associated salary rate of 5,064,250 to expand law enforcement coverage of interdiction stations and improve border security.

Except as otherwise provided by this act, this act takes effect upon becoming a law.

### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

#### **Equal Protection**

The crimes created in the bill and the mandatory sentencing scheme may be subject to future challenges. The crimes and sentencing scheme presented in this bill only apply to unauthorized aliens.

The Fourteenth Amendment to the U.S. Constitution is not confined to the protection of citizens. It says: ‘[n]or shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.’<sup>129</sup> Because immigration status is not a protected class, it is likely that equal protection challenges to the statutes in the bill will be subject to the lower, rational basis standard. The Court has used a rational basis standard for determining that a state did not establish a sufficient rational basis for denying undocumented children access to public education that the state afforded other residents.<sup>130</sup>

### **Federal Preemption**

The bill may be subject to challenges for encroaching upon federal law. The Court has found that Federal Government’s broad, undoubted power over immigration and alien status rests, in part on its constitutional power to “establish an uniform Rule of Naturalization,” and on its inherent sovereign power to control and conduct foreign relations.<sup>131</sup> Additionally, the Supremacy clause gives Congress the power to preempt state law, either by an express or inferred preemption. State laws are also preempted when they conflict with federal law.<sup>132</sup> The Court has stated that although “federal law permits state officers to ‘cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States,’ this does not encompass the unilateral decision to detain.”<sup>133</sup>

### **Right Pretrial Release**

Article I, s. 14 of the Florida Constitution states that “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

The bill provides that some unauthorized aliens are not entitled to pretrial release. The bill provides a rebuttable presumption that an unauthorized alien is a flight risk, and this may be subject to challenges. However, the bill shifts the burden from the state onto the defendant at a first appearance hearing, not at trial. Generally, rebuttable presumptions in a criminal case that shift the state’s burden to prove an element beyond a reasonable doubt have been found unconstitutional.<sup>134</sup>

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

<sup>129</sup> See *Plyer v. Doe*, 457 United States 202 (1982); *Wong Wing v. United States*, 163 United States 228 (1896).

<sup>130</sup> *Plyer v. Doe*, 457 United States 202 (1982).

<sup>131</sup> *Arizona v. United States*, 567 United States 387 (2012).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Tatum v. State*, 857 So.2d 331, 336-337 (Fla. 2d DCA 2003).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:****State Board of Immigration Enforcement**

For the 2024-2025 fiscal year, the bill appropriates the sums of \$680,046 in recurring funds and \$250,026,781 in nonrecurring funds from the General Revenue Fund to the board.

The recurring general revenue funds of \$680,046 must be allocated to the board in the following appropriation categories:

- \$478,235 in Salaries and Benefits;
- \$30,053 in Expenses;
- \$150,000 in Contracted Services;
- \$10,000 in Operating Capital Outlay;
- \$10,000 in Lease/Purchase of Equipment; and
- \$1,758 in Transfer to the Department of Management Services/Statewide Human Resources Contract.

From the nonrecurring general revenue funds, \$26,781 is allocated to the board in the Expenses appropriation category.

The board is authorized to establish 5 FTE with associated salary rate of 325,928 as follows: one executive director, one senior management analyst, two governmental analysts, and one administrative assistant.

Additionally, from the nonrecurring general revenue funds, \$250 million is allocated to the Local Law Enforcement Immigration Grant Program. The unexpended balance of funds remaining on June 30, 2025, shall revert and is appropriated to the board for the 2025-2026 fiscal year for the same purpose.

**Department of Agriculture and Consumer Services**

For the 2024-2025 fiscal year, the bill appropriates the sums of \$12,553,547 in recurring funds and \$35,570,178 in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services to enhance interdiction activities and protect the borders of this state.

The Agricultural Law Enforcement budget entity is authorized to establish 84 FTE with associated salary rate of 5,064,250, including 57 law enforcement positions and 21 investigators, and from the:

- Recurring funds, \$12,553,547 is appropriated in the following appropriation categories:
  - \$8,574,036 in Salaries and Benefits;

- \$3,449,999 in Expenses;
- \$500,000 in Contracted Services; and
- \$29,512 in Transfer to the Department of Management Services/Statewide Human Resources Contract.
- Nonrecurring funds, \$35,570,178 is appropriated in the following appropriation categories:
  - \$327,754 in Operating Capital Outlay;
  - \$25,000,000 in Fixed Capital Outlay-Facilities Construction and Major Renovations;
  - \$10,029,160 in Acquisition of Motor Vehicles; and
  - \$213,264 in Acquisition of Boats, Motors, and Trailers.

Any unexpended balances of nonrecurring funds appropriated to the Department of Agriculture and Consumer Services that remain as of June 30, 2025, shall revert and are appropriated to the department for the 2025-2026 fiscal year for the same purpose.

### **Out-of-State Fee Waivers**

The bill has an indeterminate, likely significant, revenue impact on state colleges and universities relating to the requirement that out-of-state fee waivers be granted only to students who are citizens of the United States or lawfully present in the United States. The fiscal impact is indeterminate because it is difficult to identify the number of students who would be affected by the changes outlined in the bill. In addition, the revenue impact will also depend on the behavior of affected students. While the cumulative amount of the fee waivers was more than \$40 million in FY 2023-2024, it is not clear that institutions will receive that revenue with the changes to the fee waiver. Some students who are undocumented for federal immigration purposes may choose to pay the out-of-state fee while others may choose to withdraw from school. Therefore, institutions may experience an increase in fee revenue as students pay the out-of-state fees, or experience declines in fee revenue as those students decide to withdraw from school and are not replaced by other students.

### **Department of Corrections**

The DOC may have a positive indeterminate impact on prison beds (unquantifiable increase in prison beds) due to the creation of new crimes and the increase in penalties.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 319.001, 320.01, 322.02, 322.033, 322.08, 322.121, 322.19, 775.0824, 775.0848, 874.03, 895.02, 903.046, 907.041, 908.102, 908.104, 908.105, 908.107, 908.11, 921.0022, and 1009.26.

This bill creates the following sections of the Florida Statutes: 104.155, 775.0824, 908.1031, 908.1032, 908.1033, and 908.13.

This bill creates eight undesignated sections of Florida Law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.