

By the Committees on Rules; Infrastructure and Security; and Judiciary; and Senators Gruters, Bean, Mayfield, and Broxson

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1 A bill to be entitled
2 An act relating to federal immigration enforcement;
3 creating chapter 908, F.S., relating to federal
4 immigration enforcement; providing legislative
5 findings and intent; providing definitions;
6 prohibiting sanctuary policies; requiring state
7 entities, local governmental entities, and law
8 enforcement agencies to use best efforts to support
9 the enforcement of federal immigration law;
10 prohibiting restrictions by the entities and agencies
11 on taking certain actions with respect to information
12 regarding a person's immigration status; providing
13 requirements concerning certain criminal defendants
14 subject to immigration detainers or otherwise subject
15 to transfer to federal custody; authorizing a law
16 enforcement agency to transport an alien unlawfully
17 present in the United States under certain
18 circumstances; providing an exception to reporting
19 requirements for crime victims or witnesses; requiring
20 recordkeeping relating to crime victim and witness
21 cooperation in certain investigations; specifying
22 duties concerning immigration detainers; requiring
23 county correctional facilities to enter agreements for
24 payments for complying with immigration detainers;
25 providing for injunctive relief; providing for
26 applicability to certain education records;
27 prohibiting discrimination on specified grounds;
28 providing for implementation; requiring repeal of
29 existing sanctuary policies within a specified period;

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30 providing effective dates.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Chapter 908, Florida Statutes, consisting of
35 sections 908.101-908.109, is created to read:

36 CHAPTER 908

37 FEDERAL IMMIGRATION ENFORCEMENT

38 908.101 Legislative findings and intent.—The Legislature
39 finds that it is an important state interest to cooperate and
40 assist the federal government in the enforcement of federal
41 immigration laws within this state.

42 908.102 Definitions.—As used in this chapter, the term:

43 (1) "Federal immigration agency" means the United States
44 Department of Justice and the United States Department of
45 Homeland Security, a division within such an agency, including
46 United States Immigration and Customs Enforcement and United
47 States Customs and Border Protection, any successor agency, and
48 any other federal agency charged with the enforcement of
49 immigration law.

50 (2) "Immigration detainer" means a facially sufficient
51 written or electronic request issued by a federal immigration
52 agency using that agency's official form to request that another
53 law enforcement agency detain a person based on probable cause
54 to believe that the person to be detained is a removable alien
55 under federal immigration law, including detainers issued
56 pursuant to 8 U.S.C. ss. 1226 and 1357 along with a warrant
57 described in paragraph (c). For purposes of this subsection, an
58 immigration detainer is deemed facially sufficient if:

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59 (a) The federal immigration agency's official form is
60 complete and indicates on its face that the federal immigration
61 official has probable cause to believe that the person to be
62 detained is a removable alien under federal immigration law; or

63 (b) The federal immigration agency's official form is
64 incomplete and fails to indicate on its face that the federal
65 immigration official has probable cause to believe that the
66 person to be detained is a removable alien under federal
67 immigration law, but is supported by an affidavit, order, or
68 other official documentation that indicates that the federal
69 immigration agency has probable cause to believe that the person
70 to be detained is a removable alien under federal immigration
71 law; and

72 (c) The federal immigration agency supplies with its
73 detention request a Form I-200 Warrant for Arrest of Alien or a
74 Form I-205 Warrant of Removal/Deportation or a successor warrant
75 or other warrant authorized by federal law.

76 (3) "Inmate" means a person in the custody of a law
77 enforcement agency.

78 (4) "Law enforcement agency" means an agency in this state
79 charged with enforcement of state, county, municipal, or federal
80 laws or with managing custody of detained persons in this state
81 and includes municipal police departments, sheriff's offices,
82 state police departments, state university and college police
83 departments, county correctional agencies, and the Department of
84 Corrections.

85 (5) "Local governmental entity" means any county,
86 municipality, or other political subdivision of this state.

87 (6) "Sanctuary policy" means a law, policy, practice,

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88 procedure, or custom adopted or permitted by a state entity,
89 local governmental entity, or law enforcement agency which
90 contravenes 8 U.S.C. s. 1373(a) or (b) or which knowingly
91 prohibits or impedes a law enforcement agency from communicating
92 or cooperating with a federal immigration agency with respect to
93 federal immigration enforcement, including, but not limited to,
94 limiting a law enforcement agency in, or prohibiting such agency
95 from:

96 (a) Complying with an immigration detainer;

97 (b) Complying with a request from a federal immigration
98 agency to notify the agency before the release of an inmate or
99 detainee in the custody of the law enforcement agency;

100 (c) Providing a federal immigration agency access to an
101 inmate for interview;

102 (d) Participating in any program or agreement authorized
103 under section 287 of the Immigration and Nationality Act, 8
104 U.S.C. s. 1357; or

105 (e) Providing a federal immigration agency with an inmate's
106 incarceration status or release date.

107 (7) "State entity" means the state or any office, board,
108 bureau, commission, department, branch, division, or institution
109 thereof, including institutions within the State University
110 System and the Florida College System.

111 908.103 Sanctuary policies prohibited.—A state entity, law
112 enforcement agency, or local governmental entity may not adopt
113 or have in effect a sanctuary policy.

114 908.104 Cooperation with federal immigration authorities.—

115 (1) A law enforcement agency shall use best efforts to
116 support the enforcement of federal immigration law. This

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117 subsection applies to an official, representative, agent, or
118 employee of the entity or agency only when he or she is acting
119 within the scope of his or her official duties or within the
120 scope of his or her employment.

121 (2) Except as otherwise expressly prohibited by federal
122 law, a state entity, local governmental entity, or law
123 enforcement agency, or an employee, an agent, or a
124 representative of the entity or agency, may not prohibit or in
125 any way restrict a law enforcement agency from taking any of the
126 following actions with respect to information regarding a
127 person's immigration status:

128 (a) Sending the information to or requesting, receiving, or
129 reviewing the information from a federal immigration agency for
130 purposes of this chapter.

131 (b) Recording and maintaining the information for purposes
132 of this chapter.

133 (c) Exchanging the information with a federal immigration
134 agency or another state entity, local governmental entity, or
135 law enforcement agency for purposes of this chapter.

136 (d) Using the information to comply with an immigration
137 detainer.

138 (e) Using the information to confirm the identity of a
139 person who is detained by a law enforcement agency.

140 (3) (a) For purposes of this subsection, the term
141 "applicable criminal case" means a criminal case in which:

142 1. The judgment requires the defendant to be confined in a
143 secure correctional facility; and

144 2. The judge:

145 a. Indicates in the record under s. 908.105 that the

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146 defendant is subject to an immigration detainer; or

147 b. Otherwise indicates in the record that the defendant is
148 subject to a transfer into federal custody.

149 (b) In an applicable criminal case, when the judge
150 sentences a defendant who is the subject of an immigration
151 detainer to confinement, the judge shall issue an order
152 requiring the secure correctional facility in which the
153 defendant is to be confined to reduce the defendant's sentence
154 by a period of not more than 12 days on the facility's
155 determination that the reduction in sentence will facilitate the
156 seamless transfer of the defendant into federal custody. For
157 purposes of this paragraph, the term "secure correctional
158 facility" means a state correctional institution as defined in
159 s. 944.02 or a county detention facility or a municipal
160 detention facility as defined in s. 951.23.

161 (c) If the information specified in sub-subparagraph
162 (a)2.a. or sub-subparagraph (a)2.b. is not available at the time
163 the sentence is pronounced in the case, but is received by a law
164 enforcement agency afterwards, the law enforcement agency shall
165 notify the judge who shall issue the order described by
166 paragraph (b) as soon as the information becomes available.

167 (4) When a county correctional facility or the Department
168 of Corrections receives verification from a federal immigration
169 agency that a person subject to an immigration detainer is in
170 the law enforcement agency's custody, the agency may securely
171 transport the person to a federal facility in this state or to
172 another point of transfer to federal custody outside the
173 jurisdiction of the law enforcement agency. The law enforcement
174 agency may transfer a person who is subject to an immigration

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175 detainer and is confined in a secure correctional facility to
176 the custody of a federal immigration agency not earlier than 12
177 days before his or her release date. A law enforcement agency
178 shall obtain judicial authorization before securely transporting
179 an alien to a point of transfer outside of this state.

180 (5) This section does not require a state entity, local
181 governmental entity, or law enforcement agency to provide a
182 federal immigration agency with information related to a victim
183 of or a witness to a criminal offense if the victim or witness
184 timely and in good faith responds to the entity's or agency's
185 request for information and cooperation in the investigation or
186 prosecution of the offense.

187 (6) A state entity, local governmental entity, or law
188 enforcement agency that, pursuant to subsection (5), withholds
189 information regarding the immigration information of a victim of
190 or witness to a criminal offense shall document the victim's or
191 witness's cooperation in the entity's or agency's investigative
192 records related to the offense and shall retain the records for
193 at least 10 years for the purpose of audit, verification, or
194 inspection by the Auditor General.

195 908.105 Duties related to immigration detainers.-

196 (1) A law enforcement agency that has custody of a person
197 subject to an immigration detainer issued by a federal
198 immigration agency shall:

199 (a) Provide to the judge authorized to grant or deny the
200 person's release on bail under chapter 903 notice that the
201 person is subject to an immigration detainer.

202 (b) Record in the person's case file that the person is
203 subject to an immigration detainer.

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204 (c) Upon determining that the immigration detainer is in
205 accordance with s. 908.102(2), comply with the requests made in
206 the immigration detainer.

207 (2) A law enforcement agency is not required to perform a
208 duty imposed by paragraph (1)(a) or paragraph (1)(b) with
209 respect to a person who is transferred to the custody of the
210 agency by another law enforcement agency if the transferring
211 agency performed that duty before the transfer.

212 (3) A judge who receives notice that a person is subject to
213 an immigration detainer shall cause the fact to be recorded in
214 the court record, regardless of whether the notice is received
215 before or after a judgment in the case.

216 908.106 Reimbursement of costs.—Each county correctional
217 facility shall enter into an agreement or agreements with a
218 federal immigration agency for temporarily housing persons who
219 are the subject of immigration detainers and for the payment of
220 the costs of housing and detaining those persons. A compliant
221 agreement may include any contract between a correctional
222 facility and a federal immigration agency for housing or
223 detaining persons subject to immigration detainers, such as
224 basic ordering agreements in effect on or after July 1, 2019,
225 agreements authorized by section 287 of the Immigration and
226 Nationality Act, 8 U.S.C. s. 1357, or successor agreements and
227 other similar agreements authorized by federal law.

228 908.107 Enforcement.—

229 (1) The Attorney General may institute a civil action
230 against any state entity, local government entity, or law
231 enforcement agency for a violation of this chapter or to prevent
232 a violation of this chapter. An action for relief may include an

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233 action for an injunction or any other appropriate orders or
234 relief. Upon adjudication by the court or as provided in a
235 consent decree declaring that a state entity, local governmental
236 entity, or law enforcement agency has violated this chapter, the
237 court shall enjoin the unlawful sanctuary policy. The court has
238 continuing jurisdiction over the parties and subject matter and
239 may enforce its orders with the initiation of contempt
240 proceedings as provided by law.

241 (2) An order approving a consent decree or granting an
242 injunction must include written findings of fact that describe
243 with specificity the existence and nature of the sanctuary
244 policy that is in violation of s. 908.103.

245 908.108 Education records.—This chapter does not apply to
246 the release of information contained in education records of an
247 educational agency or institution, except in conformity with the
248 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s.
249 1232g.

250 908.109 Discrimination prohibited.—A state entity, a local
251 governmental entity, or a law enforcement agency, or a person
252 employed by or otherwise under the direction or control of the
253 entity or agency, may not base its actions under this chapter on
254 the gender, race, religion, national origin, or physical
255 disability of a person except to the extent authorized by the
256 United States Constitution or the State Constitution.

257 Section 2. A sanctuary policy, as defined in s. 908.102,
258 Florida Statutes, that is in effect on the effective date of
259 this act violates the public policy of this state and must be
260 repealed within 90 days after that date.

261 Section 3. Section 908.107, Florida Statutes, as created by

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262 this act, shall take effect October 1, 2019, and, except as
263 otherwise expressly provided in this act, this act shall take
264 effect July 1, 2019.