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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2019	.	
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	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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



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12 (1) "Federal immigration agency" means the United States
13 Department of Justice and the United States Department of
14 Homeland Security, a division within such an agency, including
15 United States Immigration and Customs Enforcement and United
16 States Customs and Border Protection, any successor agency, and
17 any other federal agency charged with the enforcement of
18 immigration law. The term includes an official or employee of
19 such an agency.

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

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

33 (b) The federal immigration agency's official form is
34 incomplete and fails to indicate on its face that the federal
35 immigration official has probable cause to believe that the
36 person to be detained is a removable alien under federal
37 immigration law, but is supported by an affidavit, order, or
38 other official documentation that indicates that the federal
39 immigration agency has probable cause to believe that the person
40 to be detained is a removable alien under federal immigration



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41 law; and

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

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

48 (4) "Law enforcement agency" means an agency in this state
49 charged with enforcement of state, county, municipal, or federal
50 laws or with managing custody of detained persons in the state
51 and includes municipal police departments, sheriff's offices,
52 state police departments, state university and college police
53 departments, county correctional agencies, and the Department of
54 Corrections. The term includes an official or employee of such
55 an agency.

56 (5) "Local governmental entity" means any county,
57 municipality, or other political subdivision of this state. The
58 term includes a person holding public office or having official
59 duties as a representative, agent, or employee of the entity.

60 (6) "Sanctuary policy" means a law, policy, practice,
61 procedure, or custom adopted or permitted by a state entity,
62 local governmental entity, or law enforcement agency which
63 contravenes 8 U.S.C. s. 1373(a) or (b) or which knowingly
64 prohibits or impedes a law enforcement agency from communicating
65 or cooperating with a federal immigration agency with respect to
66 federal immigration enforcement, including, but not limited to,
67 limiting a law enforcement agency in, or prohibiting such agency
68 from:

69 (a) Complying with an immigration detainer;



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

73 (c) Providing a federal immigration agency access to an
74 inmate for interview;

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

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

80 (7) "State entity" means the state or any office, board,
81 bureau, commission, department, branch, division, or institution
82 thereof, including institutions within the State University
83 System and the Florida College System. The term includes a
84 person holding public office or having official duties as a
85 representative, agent, or employee of the entity.

86 908.103 Sanctuary policies prohibited.—A state entity, law
87 enforcement agency, or local governmental entity may not adopt
88 or have in effect a sanctuary policy.

89 908.104 Cooperation with federal immigration authorities.—

90 (1) A law enforcement agency shall use best efforts to
91 support the enforcement of federal immigration law. This
92 subsection applies to an official, representative, agent, or
93 employee of the entity or agency only when he or she is acting
94 within the scope of his or her official duties or within the
95 scope of his or her employment.

96 (2) Except as otherwise expressly prohibited by federal
97 law, a state entity, local governmental entity, or law
98 enforcement agency may not prohibit or in any way restrict a law



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99 enforcement agency from taking any of the following actions with
100 respect to information regarding a person's immigration status:

101 (a) Sending the information to or requesting, receiving, or
102 reviewing the information from a federal immigration agency for
103 purposes of this chapter.

104 (b) Recording and maintaining the information for purposes
105 of this chapter.

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

109 (d) Using the information to comply with an immigration
110 detainer.

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

113 (3) (a) For purposes of this subsection the term "applicable
114 criminal case" means a criminal case in which:

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

117 2. The judge:

118 a. Indicates in the record under s. 908.105 that the
119 defendant is subject to an immigration detainer; or

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

122 (b) In an applicable criminal case, when the judge
123 sentences a defendant who is the subject of an immigration
124 detainer to confinement, the judge shall issue an order
125 requiring the secure correctional facility in which the
126 defendant is to be confined to reduce the defendant's sentence
127 by a period of not more than 7 days on the facility's



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128 determination that the reduction in sentence will facilitate the
129 seamless transfer of the defendant into federal custody. For
130 purposes of this paragraph, the term "secure correctional
131 facility" means a state correctional institution as defined in
132 s. 944.02 or a county detention facility or a municipal
133 detention facility as defined in s. 951.23.

134 (c) If the information specified in sub-subparagraph
135 (a)2.a. or sub-subparagraph (a)2.b. is not available at the time
136 the sentence is pronounced in the case, but is received by a law
137 enforcement agency afterwards, the law enforcement agency shall
138 notify the judge who shall issue the order described by
139 paragraph (b) as soon as the information becomes available.

140 (4) When a county correctional facility or the Department
141 of Corrections receives verification from a federal immigration
142 agency that a person subject to an immigration detainer is in
143 the law enforcement agency's custody, the agency may securely
144 transport the person to a federal facility in this state or to
145 another point of transfer to federal custody outside the
146 jurisdiction of the law enforcement agency. However, the law
147 enforcement agency may transport a person who is subject to an
148 immigration detainer and is confined in a secure correctional
149 facility only upon authorization by a court order unless the
150 transportation will occur within the 7 day period under
151 subsection (3). A law enforcement agency shall obtain judicial
152 authorization before securely transporting an alien to a point
153 of transfer outside of this state.

154 (5) This section does not require a state entity, local
155 governmental entity, or law enforcement agency to provide a
156 federal immigration agency with information related to a victim



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157 of or a witness to a criminal offense if the victim or witness
158 timely and in good faith responds to the entity's or agency's
159 request for information and cooperation in the investigation or
160 prosecution of the offense.

161 (6) A state entity, local governmental entity, or law
162 enforcement agency that, pursuant to subsection (5), withholds
163 information regarding the immigration information of a victim of
164 or witness to a criminal offense shall document the victim's or
165 witness's cooperation in the entity's or agency's investigative
166 records related to the offense and shall retain the records for
167 at least 10 years for the purpose of audit, verification, or
168 inspection by the Auditor General.

169 908.105 Duties related to immigration detainers.—

170 (1) A law enforcement agency that has custody of a person
171 subject to an immigration detainer issued by a federal
172 immigration agency shall:

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

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

178 (c) Upon determining that the immigration detainer is in
179 accordance with s. 908.102(2), comply with the requests made in
180 the immigration detainer.

181 (2) A law enforcement agency is not required to perform a
182 duty imposed by paragraph (1)(a) or paragraph (1)(b) with
183 respect to a person who is transferred to the custody of the
184 agency by another law enforcement agency if the transferring
185 agency performed that duty before the transfer.



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

190 908.106 Reimbursement of costs.—Each county correctional
191 facility shall enter into an agreement or agreements with a
192 federal immigration agency for temporarily housing persons who
193 are the subject of immigration detainers and for the payment of
194 the costs of housing and detaining those persons. A compliant
195 agreement may include any contract between a correctional
196 facility and a federal immigration agency for housing or
197 detaining persons subject to immigration detainers, such as
198 basic ordering agreements in effect on or after July 1, 2019,
199 agreements authorized by section 287 of the Immigration and
200 Nationality Act, 8 U.S.C. s. 1357, or successor agreements and
201 other similar agreements authorized by federal law.

202 908.107 Enforcement.—

203 (1) The Attorney General may institute a civil action
204 against any state entity, local government entity, or law
205 enforcement agency for a violation of this chapter or to prevent
206 a violation of this chapter. An action for relief may include an
207 action for an injunction or any other appropriate orders or
208 relief. Upon adjudication by the court or as provided in a
209 consent decree declaring that a state entity, local governmental
210 entity, or law enforcement agency has violated this chapter, the
211 court shall enjoin the unlawful sanctuary policy. The court has
212 continuing jurisdiction over the parties and subject matter and
213 may enforce its orders with the initiation of contempt
214 proceedings as provided by law.



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

219 908.108 Education records.—This chapter does not apply to
220 the release of information contained in education records of an
221 educational agency or institution, except in conformity with the
222 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s.
223 1232g.

224 908.109 Discrimination prohibited.—A state entity, a local
225 governmental entity, or a law enforcement agency, or a person
226 employed by or otherwise under the direction or control of the
227 entity or agency, may not base its actions under this chapter on
228 the gender, race, religion, national origin, or physical
229 disability of a person except to the extent authorized by the
230 United States Constitution or the State Constitution.

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

235 Section 3. Section 908.107, Florida Statutes, as created by
236 this act, shall take effect October 1, 2019, and, except as
237 otherwise expressly provided in this act, this act shall take
238 effect July 1, 2019.

239
240 ===== T I T L E A M E N D M E N T =====

241 And the title is amended as follows:

242 Delete everything before the enacting clause
243 and insert:



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244 A bill to be entitled
245 An act relating to federal immigration enforcement;
246 providing a short title; creating chapter 908, F.S.,
247 relating to federal immigration enforcement; providing
248 legislative findings and intent; providing
249 definitions; prohibiting sanctuary policies; requiring
250 state entities, local governmental entities, and law
251 enforcement agencies to use best efforts to support
252 the enforcement of federal immigration law;
253 prohibiting restrictions by the entities and agencies
254 on taking certain actions with respect to information
255 regarding a person's immigration status; providing
256 requirements concerning certain criminal defendants
257 subject to immigration detainers or otherwise subject
258 to transfer to federal custody; authorizing a law
259 enforcement agency to transport an alien unlawfully
260 present in the United States under certain
261 circumstances; providing an exception to reporting
262 requirements for crime victims or witnesses; requiring
263 recordkeeping relating to crime victim and witness
264 cooperation in certain investigations; specifying
265 duties concerning immigration detainers; requiring
266 county correctional facilities to enter agreements for
267 payments for complying with immigration detainers;
268 providing for injunctive relief; providing for
269 applicability to certain education records;
270 prohibiting discrimination on specified grounds;
271 providing for implementation; requiring repeal of
272 existing sanctuary policies within a specified period;



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providing effective dates.