LEGISLATIVE ACTION

Senate Comm: WD
02/21/2019

The Committee on Judiciary (Simmons) recommended the following:

Senate Substitute for Amendment (246112) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Short title.—This act may be cited as the “Rule of Law Adherence Act.”

Section 2. Chapter 908, Florida Statutes, consisting of sections 908.101-908.402, 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:

(1) “Federal immigration agency” means the United States Department of Justice and the United States Department of Homeland Security, a division within such an agency, including United States Immigration and Customs Enforcement and United States Customs and Border Protection, any successor agency, and any other federal agency charged with the enforcement of immigration law. The term includes an official or employee of such an agency.

(2) “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. For purposes of this subsection, an immigration detainer is deemed facially sufficient if:

(a) 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

(b) 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 indicates that the federal immigration agency has probable cause to believe that the person to be detained is a removable alien under federal immigration law.

(3) “Inmate” means a person in the custody of a law enforcement agency.

(4) “Law enforcement agency” means an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in the state and includes municipal police departments, sheriff’s offices, state police departments, state university and college police departments, and the Department of Corrections. The term includes an official or employee of such an agency.

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

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

(a) Complying with an immigration detainer;
(b) 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 state entity, local governmental
entity, or law enforcement agency;

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

(d) Initiating an immigration status investigation; or

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

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

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

908.202 Cooperation with federal immigration authorities.—
(1) A state entity, local governmental entity, or law
enforcement agency shall use best efforts to support the
enforcement of federal immigration law. This subsection 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.

(2) Except as otherwise expressly prohibited by federal
law, a state entity, local governmental entity, or law
enforcement agency may not prohibit or in any way restrict
another state entity, local governmental entity, or law
enforcement agency from taking any of the following actions with respect to information regarding a person’s immigration status:

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

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

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

(d) Using the information to determine eligibility for a public benefit, service, or license pursuant to federal or state law or an ordinance or regulation of a local governmental entity.

(e) Using the information to verify a claim of residence or domicile if a determination of residence or domicile is required under federal or state law, an ordinance or regulation of a local governmental entity, or a judicial order issued pursuant to a civil or criminal proceeding in this state.

(f) Using the information to comply with an immigration detainer.

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

(3)(a) For purposes of this subsection the term “applicable criminal case” means a criminal case in which:

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

2. The judge:

   a. Indicates in the record under s. 908.204 that the
defendant is subject to an immigration detainer; or

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

(b) In an applicable criminal case, at the time of
pronouncement of a sentence of confinement, the judge shall
issue an order requiring the secure correctional facility in
which the defendant is to be confined to reduce the defendant’s
sentence by a period of not more than 7 days on the facility’s
determination that the reduction in sentence will facilitate the
seamless transfer of the defendant into federal custody. For
purposes of this paragraph, the term “secure correctional
facility” means a state correctional institution as defined in
s. 944.02 or a county detention facility or a municipal
detention facility as defined in s. 951.23.

(c) If the information specified in sub-subparagraph
(a)2.a. or sub-subparagraph (a)2.b. is not available at the time
the sentence is pronounced in the case, the judge shall issue
the order described by paragraph (b) as soon as the information
becomes available.

(4) When a law enforcement agency receives verification
from a federal immigration agency that an alien in the law
enforcement agency’s custody is unlawfully present in the United
States, the agency may securely transport the alien to a federal
facility in this state or to another point of transfer to
federal custody outside the jurisdiction of the law enforcement
agency. However, the law enforcement agency may transport an
alien who is confined in a secure correctional facility only
upon authorization by a court order unless the transportation
will occur within the 7 day period under subsection (3). A law
enforcement agency shall obtain judicial authorization before securely transporting an alien to a point of transfer outside of this state.

(5) This section does not require a state entity, local governmental entity, or law enforcement agency 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 cooperation in the investigation or prosecution of the offense.

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

908.203 Duties related to certain arrested persons.—

(1) If a person is arrested and is unable to provide proof of his or her lawful presence in the United States, not later than 48 hours after the person is arrested, and before the person is released on bond, a law enforcement agency performing the booking process:

(a) Shall review any information available from a federal immigration agency.

(b) If information obtained under paragraph (a) reveals that the person is not a citizen of the United States and 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., unless good cause is shown in the furtherance of safety and law enforcement practices, must:

1. Provide prompt notice of the person’s arrest and charges to a federal immigration agency.

2. Provide notice of that fact to the judge authorized to grant or deny the person’s release on bail under chapter 903.

3. Record the person’s arrest and charges in the person’s case file.

(2) A law enforcement agency is not required to perform the duty imposed by subsection (1) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before the transfer.

(3) A judge who receives notice of a person’s immigration status under this section shall cause the status to be recorded in the court record.

908.204 Duties related to immigration detainers.—

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

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

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

(c) Upon determining that the immigration detainer is in accordance with s. 908.102(2), comply with the requests made in the immigration detainer.
(2) A law enforcement agency is not required to perform a duty imposed by paragraph (1)(a) or paragraph (1)(b) with respect to a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed that duty before the transfer.

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

908.205 Reimbursement of costs.—

(1) A board of county commissioners may adopt an ordinance requiring a person detained pursuant to an immigration detainer to reimburse the county for any expenses incurred in detaining the person pursuant to the immigration detainer. A person detained pursuant to an immigration detainer is not liable under this section if a federal immigration agency determines that the immigration detainer was improperly issued.

(2) A local governmental entity or law enforcement agency shall enter into an agreement for payment for detaining aliens and complying with federal requests when the costs are incurred in support of the enforcement of federal immigration law. Compliant agreements include any basic ordering agreements between the U.S. Immigration and Customs Enforcement and state and local law enforcement agencies in effect on July 1, 2019, or similar agreements and other agreements authorized by federal law.

908.302 Enforcement.—

(1) Upon adjudication by the court or as provided in a consent decree declaring that a state entity, local governmental
entity, or law enforcement agency has violated this chapter, the court shall enjoin the unlawful sanctuary policy and may award reasonable costs and attorney fees to the plaintiff. The court has continuing jurisdiction over the parties and subject matter and may enforce its orders with the initiation of contempt proceedings as provided by law.

(2) 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 that is in violation of s. 908.201.

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

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

Section 3. A sanctuary policy, as defined in s. 908.102, Florida Statutes, as created by this act, that is in effect on the effective date of this act violates the public policy of this state and must be repealed within 90 days after that date.

Section 4. Section 908.302, Florida Statutes, as created by this act, shall take effect October 1, 2019, and, except as otherwise expressly provided in this act, this act shall take
273 effect July 1, 2019.

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275 ================ T I T L E A M E N D M E N T ================

276 And the title is amended as follows:

277 Delete everything before the enacting clause

278 and insert:

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280 A bill to be entitled

281 An act relating to federal immigration enforcement;

282 providing a short title; creating chapter 908, F.S.,

283 relating to federal immigration enforcement; providing

284 legislative findings and intent; providing

285 definitions; prohibiting sanctuary policies; requiring

286 state entities, local governmental entities, and law

287 enforcement agencies to use best efforts to support

288 the enforcement of federal immigration law;

289 prohibiting restrictions by the entities and agencies

290 on taking certain actions with respect to information

291 regarding a person’s immigration status; providing

292 requirements concerning certain criminal defendants

293 subject to immigration detainers or otherwise subject

294 to transfer to federal custody; authorizing a law

295 enforcement agency to transport an alien unlawfully

296 present in the United States under certain

297 circumstances; providing an exception to reporting

298 requirements for crime victims or witnesses; requiring

299 recordkeeping relating to crime victim and witness

300 cooperation in certain investigations; specifying

301 duties concerning certain arrested persons; specifying

302 duties concerning immigration detainers; requiring
local government entities and law enforcement agencies to enter agreements for payments for complying with immigration detainers; providing for injunctive relief and awards of costs and attorney fees to prevailing plaintiffs; providing for applicability to certain education records; prohibiting discrimination on specified grounds; providing for implementation; requiring repeal of existing sanctuary policies within a specified period; providing effective dates.