

By the Committee on Judiciary; and Senators Gruters and Bean

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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.

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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:

36 908.101 Legislative findings and intent.—The Legislature
37 finds that it is an important state interest to cooperate and
38 assist the federal government in the enforcement of federal
39 immigration laws within this state.

40 908.102 Definitions.—As used in this chapter, the term:

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

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

58 (a) The federal immigration agency's official form is

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59 complete and indicates on its face that the federal immigration
60 official has probable cause to believe that the person to be
61 detained is a removable alien under federal immigration law; or

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

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

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

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

85 (5) "Local governmental entity" means any county,
86 municipality, or other political subdivision of this state. The
87 term includes a person holding public office or having official

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88 duties as a representative, agent, or employee of the entity.

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

98 (a) Complying with an immigration detainer;

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

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

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

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

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

115 908.103 Sanctuary policies prohibited.—A state entity, law
116 enforcement agency, or local governmental entity may not adopt

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117 or have in effect a sanctuary policy.

118 908.104 Cooperation with federal immigration authorities.-

119 (1) A law enforcement agency shall use best efforts to
120 support the enforcement of federal immigration law. This
121 subsection applies to an official, representative, agent, or
122 employee of the entity or agency only when he or she is acting
123 within the scope of his or her official duties or within the
124 scope of his or her employment.

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

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

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

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

138 (d) Using the information to comply with an immigration
139 detainer.

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

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

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

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146 2. The judge:

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

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

151 (b) In an applicable criminal case, when the judge
152 sentences a defendant who is the subject of an immigration
153 detainer to confinement, the judge shall issue an order
154 requiring the secure correctional facility in which the
155 defendant is to be confined to reduce the defendant's sentence
156 by a period of not more than 7 days on the facility's
157 determination that the reduction in sentence will facilitate the
158 seamless transfer of the defendant into federal custody. For
159 purposes of this paragraph, the term "secure correctional
160 facility" means a state correctional institution as defined in
161 s. 944.02 or a county detention facility or a municipal
162 detention facility as defined in s. 951.23.

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

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

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175 jurisdiction of the law enforcement agency. However, the law
176 enforcement agency may transport a person who is subject to an
177 immigration detainer and is confined in a secure correctional
178 facility only upon authorization by a court order unless the
179 transportation will occur within the 7 day period under
180 subsection (3). A law enforcement agency shall obtain judicial
181 authorization before securely transporting an alien to a point
182 of transfer outside of this state.

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

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

198 908.105 Duties related to immigration detainers.-

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

202 (a) Provide to the judge authorized to grant or deny the
203 person's release on bail under chapter 903 notice that the

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204 person is subject to an immigration detainer.

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

207 (c) Upon determining that the immigration detainer is in
208 accordance with s. 908.102(2), comply with the requests made in
209 the immigration detainer.

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

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

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

231 908.107 Enforcement.—

232 (1) The Attorney General may institute a civil action

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

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

248 908.108 Education records.—This chapter does not apply to
249 the release of information contained in education records of an
250 educational agency or institution, except in conformity with the
251 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s.
252 1232g.

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

260 Section 2. A sanctuary policy, as defined in s. 908.102,
261 Florida Statutes, that is in effect on the effective date of

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262 this act violates the public policy of this state and must be
263 repealed within 90 days after that date.

264 Section 3. Section 908.107, Florida Statutes, as created by
265 this act, shall take effect October 1, 2019, and, except as
266 otherwise expressly provided in this act, this act shall take
267 effect July 1, 2019.