

CHAPTER 2019-102

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 168

An act relating to federal immigration enforcement; creating chapter 908, F.S., relating to federal immigration enforcement; providing legislative findings and intent; providing definitions; prohibiting sanctuary policies; requiring state entities, local governmental entities, and law enforcement agencies to use best efforts to support the enforcement of federal immigration law; prohibiting restrictions by the entities and agencies on taking certain actions with respect to information regarding a person's immigration status; providing requirements concerning certain criminal defendants subject to immigration detainers or otherwise subject to transfer to federal custody; authorizing a law enforcement agency to transport an alien unlawfully present in the United States under certain circumstances; providing an exception to reporting requirements for crime victims or witnesses; requiring recordkeeping relating to crime victim and witness cooperation in certain investigations; providing applicability; specifying duties concerning immigration detainers; requiring county correctional facilities to enter agreements for payments for complying with immigration detainers; providing for enforcement; providing for declaratory or injunctive relief; requiring a court to enjoin unlawful sanctuary policies; requiring written findings of fact under certain circumstances; 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.

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

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

CHAPTER 908

FEDERAL IMMIGRATION ENFORCEMENT

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.

(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 along with a warrant described in paragraph (c). 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; and

(c) The federal immigration agency supplies with its detention request 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.

(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 this state and includes municipal police departments, sheriff’s offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections.

(5) “Local governmental entity” means any county, municipality, or other political subdivision of this state.

(6) “Sanctuary policy” means 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 8 U.S.C. s. 1373 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:

(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 law enforcement agency;

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

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

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

908.104 Cooperation with federal immigration authorities.—

(1) A 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, or an employee, an agent, or a representative of the entity or agency, may not prohibit or in any way restrict a 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 comply with an immigration detainer.

(e) 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. 908.105 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, when the judge sentences a defendant who is the subject of an immigration detainer to 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 12 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, but is received by a law enforcement agency afterwards, the law enforcement agency shall notify the judge who shall issue the order described by paragraph (b) as soon as the information becomes available.

(4) When a county correctional facility or the Department of Corrections receives verification from a federal immigration agency that a person subject to an immigration detainer is in the law enforcement agency’s custody, the agency may securely transport the person to a federal facility in this state or to another point of transfer to federal custody outside the jurisdiction of the law enforcement agency. The law enforcement agency may transfer a person who is subject to an immigration detainer and is confined in a secure correctional facility to the custody of a federal immigration agency not earlier than 12 days before his or her release date. 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.

(7) This section does not authorize a law enforcement agency 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 a victim of a criminal offense.

(8) This section does not apply to any alien unlawfully present in the United States if he or she is or has been a necessary witness or victim of a crime of 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, or witness tampering.

908.105 Duties related to immigration detainees.—

(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.

908.106 Reimbursement of costs.—Each county correctional facility shall enter into an agreement or agreements with a federal immigration agency for temporarily housing persons who are the subject of immigration detainees and for the payment of the costs of housing and detaining those persons. A compliant agreement may include any contract between a correctional facility and a federal immigration agency for housing or

detaining persons subject to immigration detainers, such as basic ordering agreements in effect on or after July 1, 2019, agreements authorized by section 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357, or successor agreements and other similar agreements authorized by federal law.

908.107 Enforcement.—

(1) 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 in the exercise of his or her authority under the State Constitution and state law. Pursuant to s. 1(b), Art. IV of the State Constitution, the Governor may initiate judicial proceedings in the name of the state against such officers to enforce compliance with any duty under this chapter or restrain any unauthorized act contrary to this chapter.

(2) In addition, the Attorney General may file suit against a local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief for a violation of this chapter.

(3) If a local governmental entity or local law enforcement agency violates this chapter, the court must enjoin the unlawful sanctuary policy. 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.

(4) 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 violates this chapter.

908.108 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.

908.109 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 2. A sanctuary policy, as defined in s. 908.102, Florida Statutes, 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 3. Section 908.107, 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 effect July 1, 2019.

Approved by the Governor June 14, 2019.

Filed in Office Secretary of State June 14, 2019.