

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 2-B

INTRODUCER: Appropriations Committee and Senator Gruters

SUBJECT: Immigration

DATE: January 27, 2025      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Sadberry	AP	Fav/CS

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 2-B, the Tackling and Reforming Unlawful Migration Policy (TRUMP) Act, strengthens the state's approach to illegal immigration by providing for coordination within the state and with federal immigration agencies.

**Chief Immigration Officer**

The bill designates the Commissioner of Agriculture as the chief immigration officer. This position is essential to facilitating coordination, assistance, and communication between the Federal Government, state entities, local governmental entities, and law enforcement agencies regarding the enforcement of federal immigration laws. The bill creates several responsibilities for the chief immigration officer, including:

- Serving as the state's official liaison between state entities, local governmental entities, and law enforcement agencies and the Federal Government regarding the enforcement of federal immigration laws;
- Providing recommendations to the legislature to improve assistance and coordination with the Federal Government on immigration;
- Reporting to the Legislature, no later than March 15, 2025, the number of vacant beds available in correctional facilities and county jails that can be sublet to the U.S. Immigration and Customs Enforcement (ICE);
- Serving as the state's "authorized state officer" under the Laken Riley Act; and
- Having the sole authority to issue a state of emergency related to illegal immigration, illegal migration, or immigration enforcement.

### **Office of State Immigration Enforcement**

The bill creates the Office of State Immigration Enforcement (Office) within the Division of Law Enforcement under the Department of Agriculture and Consumer Services (DACS). The purpose of the office is to aid the chief immigration officer by:

- Encouraging cooperation with the Federal Government to support the enforcement of federal immigration laws to the maximum extent permissible under federal law across the State of Florida.
- Serving as the central point of coordination between federal immigration agencies, state entities, local governmental entities, and law enforcement agencies regarding the enforcement of federal immigration laws.

Various duties and responsibilities regarding employment verification and other matters of immigration are transferred to the Office, including the Unauthorized Alien Transport program under the Division of Emergency Management within the Executive Office of the Governor. References related to immigration are removed from provisions of ch. 943, F.S., and Florida Department of Law Enforcement (FDLE) is required to coordinate with the Office or the chief immigration officer when dealing with federal matters of immigration.

### **State Immigration Enforcement Council**

The bill creates the State Immigration Enforcement Council (Council), made up of seven sheriffs four police chiefs, appointed by the chief immigration officer, and the executive director of the FDLE. The purpose of the Council is to advise the chief immigration officer and includes duties such as:

- Providing recommendations on the resources necessary to aid local law enforcement agencies in the cooperation and coordination with the Federal Government, including financial and training needs.
- Providing recommendations to enhance information sharing between the state entities, local entities, law enforcement agencies, and the Federal Government.
- Providing recommendations on strategies to increase the number of available detention beds for use by the ICE.

### **Local Law Enforcement Immigration Grant Program**

The bill creates the Local Law Enforcement Immigration Grant Program to award grants to support local law enforcement agencies' cooperation and coordination with federal immigration agencies. The Office must annually award any funds specifically appropriated for the grant program to reimburse expenses related to supporting the enforcement of federal immigration laws, including, but not limited to:

- The subletting of detention beds to the ICE;
- Equipment;
- Travel, lodging, and training programs; and
- Certified apprenticeship programs.

## **Other Immigration Provisions**

The bill mandates that every unit of government, including its officers, public-private organizations, and others that contract or act on behalf of any public agency has a duty and an obligation to cooperate to the fullest extent possible with the Federal Government in the enforcement of federal immigration laws and the protection of the borders of the United States.

## ***Criminal Justice Provisions***

The bill makes various changes to criminal penalties and pretrial release procedures. These changes include:

- Reclassifying misdemeanor crimes if the defendant has previously been convicted of unlawful reentry;
- Creating a new third degree felony if a noncitizen votes;
- Creating a new felony for aiding or soliciting a noncitizen to vote;
- Adding aiding or soliciting a noncitizen to vote to the list of crimes that may constitute racketeering activity; and
- Ranking specified crimes related to noncitizens voting.

The bill requires law enforcement to:

- Comply with an immigration detainer if such a detainer has been placed on a defendant;
- Notify the state attorney of such detainer; and
- Provide a list of all inmates booked into a detention facility upon request by the federal government.

The bill makes changes to exceptions to reporting a person's information to the Federal Government if such person is a witness or victim of a crime. The changes ensure that the crime occurred in the United States and that such witness or victim is necessary to the investigation or prosecution.

Additionally, the court must consider a defendant's immigration status when determining whether to release a defendant on bail or other release conditions. Immigration status must also be investigated or verified before a person may be released on nonmonetary conditions. The bill also requires the arresting agency to notify the state attorney of a person's immigration status when such person is arrested and charged with a crime for which pretrial detention could be ordered.

## ***Driver License and Vehicles***

The bill clarifies proof of identity for driver licenses, titles, and registrations by defining valid passports issued by foreign governments. The bill also requires a person who becomes a U.S. citizen to obtain a replacement driver license within 30 days of becoming a citizen.

## ***Out-of-State Fee Waivers***

The bill modifies the eligibility for an out-of-state fee waiver at a public postsecondary institution. Beginning July 1, 2025, a student must be a citizen of the United States or lawfully present in the United States to receive the fee waiver, in addition to other requirements. Public

postsecondary institutions must, beginning July 1, 2025, reevaluate all students currently receiving the waiver to determine continued eligibility.

### **Fiscal Impact**

The bill will have a significant fiscal impact on the DACS and an indeterminate fiscal impact on state revenue due to changes related to tuition waivers. Additionally, the bill will have an indeterminate fiscal impact on local jails and the DOC due to additional or increased penalties.

For the 2024-2025 fiscal year, the sums of \$20,562,630 in recurring funds and \$484,467,609 in nonrecurring funds are appropriated from the General Revenue Fund to the DACS to implement this act. *See Section V., Fiscal Impact Statement.*

Except as otherwise provided by the act, it takes effect upon becoming a law.

## **II. Present Situation:**

### **Federal Immigration Policy & Background**

The Federal Government is responsible for establishing and enforcing immigration laws. Congress has enacted legislation, which the federal courts have interpreted, and the body of immigration law has developed. The responsibility for enforcing immigration laws rests with the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and its Enforcement and Removal Operations. It is the mission of Enforcement and Removal Operations to identify, apprehend, and remove aliens who are a risk to national security or public safety, enter the country illegally, or seek to undermine the integrity of the country's immigration laws or border control efforts.<sup>1</sup>

#### ***Immigration Enforcement Encounters***

Over the last 4 federal fiscal years (FFY),<sup>2</sup> the U.S. Border Patrol and Office of Field Operations has recorded close to 11.5 million enforcement encounters as described in the table below.<sup>3</sup> These actions refer to actions involving individuals “encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.”<sup>4</sup> The total also includes encounters that led to apprehensions or expulsions; apprehensions refer to individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.<sup>5</sup>

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<sup>1</sup> U.S. Immigration and Customs Enforcement, Department of Homeland Security, *Enforcement and Removal Operations, Mission*, available at <https://www.ice.gov/about-ice/ero> (last visited January 23, 2025).

<sup>2</sup> *Id.* The federal fiscal year is October 1 to September 30 of the next calendar year.

<sup>3</sup> U.S. Customs and Border Protection, Department of Homeland Security, *Total CBP Enforcement Actions*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited January 23, 2025).

<sup>4</sup> *Id.* at note 1.

<sup>5</sup> *Id.* at notes 1 and 2.

Enforcement	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>Total Enforcement Encounters</b>	<b>646,822</b>	<b>1,956,519</b>	<b>2,766,582</b>	<b>3,201,144</b>	<b>2,901,142</b>

In addition to the approximately 11.5 million enforcement encounters, the U.S. Customs and Border Protection has recorded roughly 2 million known “gotaways” since the beginning of FFY 2021, but the actual number of gotaways may be 20 percent greater.<sup>6</sup> Gotaways are individuals who have evaded detection and attempts at verifying their identities or backgrounds.

### *Immigration Hearings*

Though they may be removed at some point, many inadmissible aliens are released or paroled into the United States after an enforcement encounter. Under federal law, an inadmissible alien is an alien who is generally ineligible to receive a visa or ineligible to be admitted to the United States for specified reasons.<sup>7</sup> Those released or paroled include hundreds of thousands of inadmissible aliens who have scheduled appointments through the CBP One app.<sup>8</sup> This app, disabled by the new federal administration on January 20, 2025, was used for scheduling appointments for asylum processing at points of entry along the southwest border.<sup>9</sup>

Many illegal immigrants who are released into the United States are given hearing dates at an immigration court of the U.S. Department of Justice’s Executive Office for Immigration Review.<sup>10</sup> While these courts have experienced a substantial backlog of cases since FFY 2006, the number of pending cases has recently grown at unprecedented levels. Federal fiscal year 2019 registered more than 1 million pending cases for the first time in its history. The total pending cases approached almost 2.5 million at the conclusion of FFY 2023. At the conclusion

<sup>6</sup> Homeland Security Committee Republicans, U.S. House of Representatives, *Border Crisis Startling Stats: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters Bringing Total Encounters to 10.8 Million Since FY2021*, (September 2024), available at <https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf>. (last visited January 26, 2025).

<sup>7</sup> Specified reasons include, in part, that the alien has a communicable disease of public health significance; has a physical or mental disorder and behavior that poses a threat to the property, safety or welfare of the individual or others; has committed acts constituting a crime of moral turpitude; has violated a law related to a controlled substance; has committed two or more criminal offenses for which the aggregate sentences to confinement were 5 years or more; trafficked in controlled substances; has engaged in terrorist activity, is likely to engage in terrorist activity, or has incited terrorist activity; has falsely represented himself or herself to be a citizen of the U.S.; an alien who has voted illegally. See 8 U.S.C. s. 1182 for more details, including exceptions and grounds for waivers. For a more in depth explanation of the various grounds for inadmissibility see Abigail F. Kolker and Hillel R. Smith, *Immigration: Grounds of Inadmissibility*, Congressional Research Service (July 29, 2024), available at <https://crsreports.congress.gov/product/pdf/IF/IF12662>. (last visited January 26, 2025).

<sup>8</sup> Homeland Security Committee Republicans, U.S. House of Representatives, *Border Crisis Startling Stats: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounter, Bringing Total Encounters to 10.8 Million Since FY 2021* (September 2024) (explaining that since January 2023, 95.8 percent of 852,000 otherwise inadmissible aliens who scheduled appointments through the CBP One app from January 2023 through September 2023 were ultimately released into the United States on parole), available at <https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf>. (last visited January 26, 2025).

<sup>9</sup> U.S. Customs and Border Protection, Department of Homeland Security, *CBP One Mobile Application*, available at <https://www.cbp.gov/about/mobile-apps-directory/cbpone>. (last visited January 24, 2025).

<sup>10</sup> Holly Straut-Eppsteiner, *Immigration Courts: Decline in New Cases at the End of FY2024*, Congressional Research Service (November 26, 2024), available at <https://crsreports.congress.gov/product/pdf/IN/IN12463> (last visited January 26, 2025).

of FFY 2024, there were almost 3.6 million pending cases. These immigration hearings often relate to asylum claims that are raised as a defense to removal.<sup>11</sup>

### ***Attempts to Locate Migrants Who Have Been Released into the Country***

The Office of Inspector General (OIG) of the DHS released a report<sup>12</sup> in September 2023 that noted from March 2021 through August 2022, the DHS released more than 1,000,000 migrants into the country.

The DHS is required to obtain an address for each migrant when possible. However, the inspector general's office reviewed 981,671 migrant records and found that addresses for more than 177,000 records, or approximately 18 percent, were missing, were not valid for delivery purposes, or did not contain legitimate residential locations. Of the total number of addresses, 80 percent were reported to have been used at least twice during the 18 month period of the review. Over 780 residential addresses were listed more than 20 times. The report stated that 54,663 records did not contain an address. The report also noted that in an average month, the DHS releases more than 60,000 migrants into the country and it is essential that the post-release addresses be accurate for ICE to be able to locate migrants once they are released.

The OIG made four recommendations for the DHS to implement and thereby improve the ability to locate migrants who have been released. The DHS responded to the recommendations by stating that it did not concur with the OIG's analysis. As a result, the OIG responded that it did not find the DHS' actions to be responsive to the recommendations.

### ***Illegal Immigrant Population Estimates***

Current authoritative data on the number of illegal immigrants in the United States or in this state is not available. However, the PEW Research Center estimated that the number of illegal immigrants in the United States was approximately 11 million in 2022.<sup>13</sup> For Florida, the Center estimated that the population of illegal immigrants grew by 400,000 from 2019 to 2022 to approximately 1.2 million.<sup>14</sup> These estimates of illegal immigrants include those aliens who have temporary protection from deportation. The estimates, however, do not include aliens who have been admitted for lawful residence, persons admitted as refugees, persons granted asylum, and lawful temporary residents such as foreign students and guest workers.

### ***New Executive Orders by President Trump***

On his first day in office, President Trump issued the following executive orders relating to the enforcement of federal immigration laws:

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<sup>11</sup> Holly Straut-Eppsteiner, *Asylum Process in Immigration Courts and Selected Trends*, Congressional Research Service (May 15, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R47504>. (last visited January 26, 2025).

<sup>12</sup> Joseph V. Cuffari, Ph.D., Inspector General, Office of Inspector General, Department of Homeland Security, *DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States* (September 6, 2023), available at <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-47-Sep23-Redacted.pdf>. (last visited January 26, 2025).

<sup>13</sup> Jeffrey S. Passell and Jens Manuel Krogstad, Pew Research Center, *What we know about unauthorized immigrants living in the U.S.* (July 22, 2024), available at <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>. (last visited January 26, 2025).

<sup>14</sup> *Id.*

- *Declaring a National Emergency at the Southern Border of the United States*, ordered the deployment of the Armed Forces, including the Ready Reserve and the National Guard, to obtain complete operational control of the southern border.<sup>15</sup> The order also directed the Secretaries of Defense and Homeland Security to immediately construct additional physical barriers along the southern border.
- *Securing Our Borders*, ordered that the border be secured through various means including federal-state partnerships to enforce federal immigration priorities, detaining and removing aliens apprehended for violations of immigration law, and ending the prior administrations “catch-and-release” practices.<sup>16</sup>
- *Realigning the United States Refugee Admissions Program*, ordered that state and local jurisdictions have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions.<sup>17</sup>
- *Designating Cartels and other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*, noted that some violent cartels profit by the trafficking of drugs and humans through Mexico and into the United States in ways that threaten the security and stability of Mexico and the United States.<sup>18</sup> Based on that finding, the order directed the Secretary of State, in consultation with other federal officials, to make recommendations regarding the designation of any cartel or similar organization as a Foreign Terrorist Organization or Specially Designated Global Terrorist.

### Immigration Policy in Florida

In recent years, Governor DeSantis and the Legislature have taken action to address the increasing immigration crisis. The Governor has issued the following executive orders:

- September 28, 2021, Executive Order No. 21-223, *Biden Border Crisis*.<sup>19</sup> Finding that the detrimental effects of an unsecured southwest border of the United States would reverberate beyond border states, including increased crime, such as drug trafficking and human trafficking and smuggling, diminished economic opportunities for American workers, and stresses on education and healthcare systems. The order prohibited state agencies from assisting with the transport of aliens apprehended at the southwest border into Florida. Moreover, the order required state agencies to use the federal Systematic Alien Verification for Entitlements program to confirm the eligibility of persons before providing any funds, resources, or other benefits.

<sup>15</sup> Executive Order by President Trump, *Declaring a National Emergency at the Southern Border of the United States* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/>. (last visited January 26, 2025).

<sup>16</sup> Executive Order by President Trump, *Securing Our Borders* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/>. (last visited January 26, 2025).

<sup>17</sup> Executive Order by President Trump, *Realigning the United States Refugee Admission Program* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/realigning-the-united-states-refugee-admissions-program/>. (last visited January 26, 2025).

<sup>18</sup> Executive Order by President Trump, *Designating Cartels and other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/designating-cartels-and-other-organizations-as-foreign-terrorist-organizations-and-specially-designated-global-terrorists/>. (last visited January 26, 2025).

<sup>19</sup> See State of Florida, Office of the Governor, *Executive Order No. 21-223* (September 28, 2021), available at [https://flgov.com/eog/sites/default/files/executive-orders/2024/EO\\_21-223.pdf](https://flgov.com/eog/sites/default/files/executive-orders/2024/EO_21-223.pdf). (last visited January 26, 2025).



- January 6, 2023, Executive Order No. 23-03, *Emergency Management – Illegal Migration*.<sup>20</sup> Based on findings of unprecedented interdictions, attempts of entry, and border patrol encounters, the Governor designated the migration of unauthorized aliens to Florida as likely to constitute a major disaster and designated the director of the Division of Emergency Management as the state coordinating officer for the disaster with direction to execute response, recovery, and mitigation plans necessary to cope with the emergency. The order also activates the Florida National Guard, as needed, to assist with the efforts. The order waives contracting policies and requirements, allows for expenditure of state funds through the Emergency Preparedness and Response Fund, and authorizes medical professionals, social workers, and counselors with good and valid licenses issued by other states to provide humanitarian aid services.<sup>21</sup>

The Governor extended the duration of Executive Order No. 23-03 multiple times for the same reason: “the influx of illegal aliens remains unabated and the response from the Biden Administration continues to be inadequate.”<sup>22</sup> The order, last extended on December 9, 2024, remains in effect for 60 days following that date.<sup>23</sup>

The Legislature responded to the recent increases in illegal immigration most significantly by enacting:

- SB 1718 (2023), increased criminal penalties for human smuggling and using false identification; required employers use E-Verify; provided that driver licenses issued in other states to persons who do not provide proof of lawful presence in the U.S. are not valid in this state; required persons in the custody and subject to an immigration detainer to submit a DNA sample; and required the collection of data to aid in the determination of the cost of health care provided to illegal immigrants.
- HB 1589 (2024) increased criminal penalties for repeat offenses of driving without a valid driver license.
- SB 1036 (2024) increased criminal penalties for certain persons who commit a felony after having been convicted of a crime relating to the reentry into the United States, and for committing crimes to further the interests of a transnational crime organization, which is an organization that is routinely involved in trafficking drugs, humans, or weapons.
- HB 1451 (2024) prohibited counties and municipalities from accepting identification cards that are issued by organizations that knowingly issue them to individuals who are not lawfully present in the United States.

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<sup>20</sup> State of Florida, Office of the Governor, *Executive Order No. 23-03* (January 6, 2023), available at <https://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO-23-03-1.pdf>. (last visited January 26, 2025).

<sup>21</sup> *Id.*

<sup>22</sup> See State of Florida Office of the Governor, *Executive Order Nos. 23-49, 23-88, 23-134, 23-213, 23-245, 24-35, 24-74, 24-118, 24-173, 24-220, and 24-269*.

<sup>23</sup> State of Florida, Office of the Governor, *Executive Order No. 24-269* (December 9, 2024), available at <https://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO%2024-269.pdf>. (last visited January 26, 2025).



### ***Cooperation with Federal Immigration Enforcement***

Legislation in 2019 created ch. 908, F.S., which, among other things, prohibits state and local government entities from having sanctuary policies.<sup>24, 25</sup> The act sought to ensure that state and local entities and law enforcement agencies cooperate with Federal Government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law.<sup>26</sup> When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Each law enforcement agency operating a county detention facility must enter into a written agreement with the ICE to participate in the immigration program established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357.<sup>27</sup> Until the law enforcement agency enters into the written agreement, the agency must notify the Department of Law Enforcement (FDLE) quarterly of the status of such written agreement and any reason for noncompliance if applicable.<sup>28</sup>

The 287(g) program allows ICE to partner with state and local law enforcement agencies to identify and remove incarcerated criminal aliens who are amenable to removal from the U.S. before they are released into the community. There are two program models: the Jail Enforcement Model and the Warrant Service Officer program. The Jail Enforcement Model is designed to identify and process removable aliens who are arrested by state and local law enforcement and have criminal or pending criminal charges. The Warrant Service Officer program allows ICE to train, certify, and authorize state and local law enforcement officers to serve and execute administrative warrants on aliens in their agency's jail.<sup>29</sup>

Section 908.104, F.S., requires a Florida law enforcement agency to use its best efforts to support the enforcement of federal immigration law. This 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.

Except as otherwise prohibited by federal law, a state entity, local governmental entity, or law enforcement agency, or an employee, an agent, or a representative thereof, may not prohibit or restrict a law enforcement agency from taking the following actions regarding a person's immigration status:<sup>30</sup>

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<sup>24</sup> Section 908.103, F.S.

<sup>25</sup> Chapter 2019-102, L.O.F. The law was challenged in *City of South Miami v. DeSantis*, 408 F.Supp.3d 1266 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and the Eleventh Circuit vacated the judgment and remanded to the lower court with instructions to dismiss for lack of jurisdiction. *See City of South Miami v. DeSantis*, 65 F. 4<sup>th</sup> 631 (11<sup>th</sup> Cir. 2023).

<sup>26</sup> *See* ch. 908, F.S.

<sup>27</sup> Section 908.11, F.S. A law enforcement agency is not required to participate in a particular program model.

<sup>28</sup> *Id.*

<sup>29</sup> U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, (January 24, 2025), available at <https://www.ice.gov/identify-and-arrest/287g> (last visited January 26, 2025).

<sup>30</sup> Section 908.104(2), F.S.

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency.
- Recording and maintaining the information.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency.
- Using the information to comply with an immigration detainer.
- Using the information to confirm the identity of a person who is detained by a law enforcement agency.
- Sending the applicable information obtained pursuant to enforcement of s. 448.095, F.S., to a federal immigration agency.<sup>31</sup>

A law enforcement agency that has custody of a person subject to an immigration detainer issued by a federal immigration agency must:

- Provide to the judge authorized to grant or deny the person's release on bail notice that the person is subject to an immigration detainer.
- Record in the person's case file that the person is subject to an immigration detainer.
- Upon determining the detainer is in accordance with s. 908.102(2), F.S.,<sup>32</sup> comply with the requests made in the immigration detainer.<sup>33, 34</sup>

A judge who receives notice that a person is subject to an immigration detainer must ensure the fact is recorded in the court record, regardless of whether the notice is received before or after a judgement in the case.

In an applicable criminal case,<sup>35</sup> when the judge sentences a defendant who is the subject of an immigration detainer to confinement, the judge must issue an order requiring the secure correctional facility<sup>36</sup> housing the defendant to reduce the defendant's sentence by no more than 12 days on the determination that the reduction will aid in a seamless transfer of the defendant

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<sup>31</sup> Section 908.104(2)(a)-(f), F.S.

<sup>32</sup> "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 the warrant described. An immigration detainer is facially sufficient if 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 if 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 the agency has probable cause and the agency supplies 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. Section. 908.102(2), F.S.

<sup>33</sup> Section 908.105(1)(a)-(c), F.S.

<sup>34</sup> Section 908.105(2), F.S., provides that law enforcement agency is not required to notify the judge or record in the person's case file if the person is transferred to the custody of the agency by another law enforcement agency if the transferring agency performed those duties prior to the transfer.

<sup>35</sup> "Applicable criminal case" means a criminal case in which the judge requires the defendant to be confined in a secure correctional facility and the judge either indicates in the record under s. 908.105, F.S., that the defendant is subject to an immigration detainer, or otherwise indicates the defendant is subject to a transfer into federal custody.

<sup>36</sup> "Secure correctional facility" means a state correctional institution as defined in s. 944.02, F.S., or a county detention facility or a municipal detention facility as defined in s. 951.23, F.S.

into federal custody.<sup>37</sup> If information regarding an immigration detainer is not available at the time of sentencing, a law enforcement agency must notify the judge who will issue the order as soon as the information becomes available.<sup>38</sup>

When a county correctional facility or the Department of Corrections (DOC) receives verification from a federal immigration agency that a person in custody is subject to an immigration detainer, the law enforcement agency may transport the person to a federal facility in this state or another point of transfer to federal custody outside the jurisdiction of law enforcement. The agency may not transfer a person earlier than 12 days before his or her release date. A law enforcement agency must obtain judicial authorization before transporting a person to a point of transfer outside of the state.<sup>39</sup>

A state entity, local governmental entity, or law enforcement agency is not required 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 agency's request for information and cooperation in the investigation and prosecution of the offense.<sup>40</sup> An agency that withholds information regarding the immigration information of a victim or witness must document cooperation in the investigative records related to the offense and retain the records for at least 10 years.<sup>41</sup> A law enforcement agency is not authorized 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 the victim of a criminal offense.<sup>42</sup>

Additionally, a state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related any alien unlawfully present in the United States if he or she has been a necessary witness or victim of a specified crime.<sup>43</sup>

Any executive or administrative state, county, or municipal officer who violates his or her duties under ch. 908, F.S., relating to federal immigration enforcement, may be subject to action by the Governor in the exercise of his or her authority under the Florida Constitution and state law. The governor may initiate judicial proceedings in the name of the state to enforce officers' compliance with any duty or to restrain any unauthorized act contrary to ch. 908, F.S.<sup>44</sup>

Additionally, the Attorney General may file a suit against any local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief. The court must enjoin an unlawful sanctuary policy if the local governmental entity or local law enforcement agency violates ch. 908, F.S.<sup>45</sup> The court has continuing jurisdiction over the parties and subject matter and may enforce its orders with the initiation of contempt proceedings. An

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<sup>37</sup> Section 908.104(3)(b), F.S.

<sup>38</sup> Section 908.104(3)(c), F.S.

<sup>39</sup> Section 908.104(4), F.S.

<sup>40</sup> Section 908.104(5), F.S.

<sup>41</sup> Section 908.104(6), F.S.

<sup>42</sup> Section 908.104(7), F.S.

<sup>43</sup> Section 908.104(8), F.S., specified crimes include 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, and witness tampering.

<sup>44</sup> Section 908.107(1), F.S.

<sup>45</sup> Section 908.107(2)-(3), F.S.

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.<sup>46</sup>

### ***Florida Agencies & Immigration Enforcement***

#### **Florida Department of Law Enforcement**

The mission of the FDLE is to “promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida’s citizens and visitors.”<sup>47</sup>

The FDLE must coordinate and direct the law enforcement, initial emergency, and other initial responses with respect to counter-terrorism efforts, responses to acts of terrorism within or affecting this state, coordinating with and providing assistance to the Federal Government in the enforcement of federal immigration laws, responses to immigration enforcement incidents within or affecting this state, and other matters related to the domestic security of Florida as it relates to terrorism and immigration enforcement incidents.<sup>48</sup>

The FDLE’s Executive Director serves as the Chief of Domestic Security in Florida and oversees the Office of Domestic Security. The office works with federal, state, and local officials to detect, prevent, prepare for, respond to, and recover from acts of terrorism within or affecting this state and immigration enforcement incidents within or affecting this state.<sup>49</sup>

There are three primary components to Florida’s domestic security governance structure: the regional domestic security task forces (RDSTF), the domestic security coordinating group, and the domestic security oversight council.<sup>50</sup> The regional domestic security task forces consist of local and multi-disciplinary representatives who collectively support the domestic security mission and provide the necessary link between the state and local communities. There are seven regional domestic security task forces located across the state in Pensacola, Tallahassee, Jacksonville, Orlando, Tampa, Ft. Myers, and Miami.<sup>51</sup>

The RDSTF’s advise the FDLE and the Chief of Domestic Security on the development and implementation of a statewide strategy to address prevention, preparation, protection, response, and recovery efforts related to the state’s domestic security. The task forces also coordinate efforts to cooperate with and aid the Federal Government in the enforcement of federal immigration laws within or affecting this state among local, state, and federal resources to ensure that such efforts are not fragmented and duplicative.<sup>52</sup>

The Domestic Security Coordinating Group (DSCG) is made up of representatives and subject matter experts from the RDSTFs, designated urban areas, state agency partners, and key

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<sup>46</sup> Section 908.107(3)-(4), F.S.

<sup>47</sup> Florida Department of Law Enforcement, *About FDLE*, available at <https://www.fdle.state.fl.us/About-Us/General-Information> (last visited January 24, 2025).

<sup>48</sup> Section 943.03(14), F.S.

<sup>49</sup> Section 943.0311(1)(a), F.S.

<sup>50</sup> Florida Department of Law Enforcement, *Domestic Security Organization*, available at <https://www.fdle.state.fl.us/Domestic-Security/Organization> (last visited January 24, 2025)

<sup>51</sup> *Id.*

<sup>52</sup> Section 943.0312(2), F.S.

organization liaisons who come together to address domestic security issues presented by the RDSTFs, network of Fusion Centers,<sup>53</sup> and the Domestic Security Oversight Council.<sup>54</sup>

The Domestic Security Oversight Council (DSOC) is an executive policy advisory group created to provide guidance to the state's regional domestic security task forces and other domestic security working groups. The DSOC also makes recommendations to the Governor and the Legislature regarding the expenditure of funds and allocation of resources related to counter-terrorism and cooperating with and providing assistance to the Federal Government in the enforcement of federal immigration laws and domestic security efforts.<sup>55</sup>

#### Department of Agriculture and Consumer Services

While current state matters of immigration are enforced by the FDLE, historically such matters were not housed within the FDLE. The Office of Commissioner of Immigration was consolidated with the Offices of the Surveyor General, and became the Commissioner of Lands and Immigration, which was then renamed the Commission of Agriculture. The Commission of Agriculture kept the Bureau of Immigration. Subsequently, the Bureau of Immigration was abolished and the Department of Agriculture, which is now named the Department of Agriculture and Consumer Services (DACS), was created.<sup>56</sup>

The Commissioner of Agriculture serves as the head of the DACS, which is created under s. 20.14, F.S. The DACS currently has 12 divisions within the department.<sup>57</sup>

#### Florida Department of Health

In order to provide the Florida Department of Health (FDOH) and law enforcement agencies the means to effectively identify, investigate, and arrest persons engaging in human trafficking, an employee and any person performing massage therapy in a massage establishment must

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<sup>53</sup> "Fusion centers" were established following the terrorist attacks of September 11, 2001, to connect-the-dots between critical information housed in different agencies and share information and intelligence to aid in protecting communities. Fusion centers are the primary conduit between frontline personnel, state, and local leadership which assist in the collective review of information for the purpose of detecting, preventing and preparing for threats to public health and safety. They rely on partner agencies from a variety of sectors, including the private sector, to identify indicators and trends. Fusion centers also accept tips and suspicious activity reports from the public, particularly those that may be indicators for terrorist activity." Florida Department of Law Enforcement, *Florida Fusion Center*, available at <https://www.fdle.state.fl.us/FFC/FusionCenterHistory> (last visited January 24, 2025)

<sup>54</sup> Florida Department of Law Enforcement, *Domestic Security Organization*, available at <https://www.fdle.state.fl.us/Domestic-Security/Organization> (last visited January 24, 2025)

<sup>55</sup> *Id.*

<sup>56</sup> See Florida Department of Agriculture and Consumer Services, *Our History*, available at <https://www.fdacs.gov/About-Us/Our-History> (last visited January 24, 2025).

<sup>57</sup> Section 20.14, F.S., Divisions within the DACS include: Administration; Agriculture Environmental Services; Animal Industry; Aquaculture; Consumer Services; Food Safety; Florida Forest Service; Fruit and Vegetables; Licensing.

immediately present, upon the request of an investigator of the FDOH or a law enforcement officer, valid government identification while in the establishment.<sup>58, 59</sup>

The FDOH must notify a federal immigration office if a person operating a massage establishment, an employee, or any person performing massage therapy in a massage establishment fails to provide valid government identification as required.<sup>60</sup>

#### Executive Office of the Governor and the Division of Emergency Management

As described above, in 2023 the Governor issued Executive Order 23-03, declaring a state of emergency<sup>61, 62</sup> and directing state law enforcement agencies and other state agencies to take necessary actions to protect Floridians from the impacts of the border crisis.

During the state of emergency, the Governor is the commander in chief of the Florida National Guard and all other forces available for emergency duty.<sup>63</sup> In addition to any other powers conferred upon the Governor by law, she or he may exercise additional authority granted under s. 252.36, F.S., which includes, in part, the ability to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.<sup>64</sup>

In response to Executive Order 23-03, the Legislature found that the Federal Government failed to secure the nation's borders and has allowed a surge of inspected unauthorized aliens<sup>65</sup> to enter the United States.<sup>66</sup>

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<sup>58</sup> Section 480.0535(1), F.S., "Valid government identification means" a valid, unexpired driver license issued by any state, territory, or district of the U.S.; a valid, unexpired identification card issued by any state, territory, or district of the U.S.; a valid, unexpired U.S. passport; a naturalization certificate issued by the U.S. Department of Homeland Security; a valid, unexpired alien registration receipt card (green card); or a valid, unexpired employment authorization card issued by the U.S. Department of Homeland Security.

<sup>59</sup> Section 480.0535, F.S., A person operating a massage establishment must immediately present, upon the request of an investigator of the FDOH or a law enforcement officer specified identification and documentation and ensure that each employee or person performing massage therapy is able to immediately present valid government identification while in the establishment. A person who violates this section commits a second-degree misdemeanor for a first violation, a first-degree misdemeanor for a second violation, and third-degree felony for a third or subsequent violation.

<sup>60</sup> Section 480.0535(4), F.S.

<sup>61</sup> Section 252.36(1)(a), F.S., provides the Governor is responsible for meeting the dangers presented to this state and its people by emergencies and, in the event of an emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

<sup>62</sup> Section 252.36, F.S., A state of emergency must be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency. Additionally, at any time, the Legislature, by concurrent resolution, may terminate a state of emergency or any specific order, proclamation, or rule. Upon such concurrent resolution, the Governor must issue an executive order or proclamation consistent with the concurrent resolution.

<sup>63</sup> Section 252.36(5), F.S.

<sup>64</sup> Section 252.36(6)(a), F.S.

<sup>65</sup> Ch. 2023-3, L.O.F., An "inspected unauthorized alien" means an individual who has documentation for the U.S. government indicating that the U.S. government processed and released him or her into the U.S. without admitting the individual in accordance with the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101, et seq.

<sup>66</sup> *Id.*

The Legislature created the Unauthorized Alien Transport Program (UATP) in an effort to mitigate the effects of this crisis on the State of Florida. The UATP is under the Division of Emergency Management within the Executive Office of the Governor and was created for the purpose of facilitating the transport of inspected unauthorized aliens within the United States, consistent with federal law. The division is authorized to contract for services to implement the program. This program expires June 30, 2025.<sup>67</sup> The Legislature appropriated \$10 million of nonrecurring general revenue funds to the division to implement the provisions.

### ***Criminal Laws Related to Illegal Immigration***

#### **Voting**

In Florida, it is a third-degree felony for a person, knowing he or she is not a qualified elector, to willfully vote at any election.<sup>68</sup>

While Florida law does not have any crime specifically related to an unauthorized alien voting in an election, 18 U.S.C. s. 611, provides that it is unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless:

- The election is held partly for some other purpose;
- Aliens are authorized to vote for such other purpose under a state constitution or local ordinance; and
- Voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

Violation of this section is punishable by a fine and imprisonment for not more than one year.<sup>69</sup>

#### **Florida RICO Act**

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.<sup>70</sup> “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.<sup>71</sup> In 2023, the Legislature added the offense of human smuggling to the list of offenses that may constitute racketeering activity.<sup>72</sup>

Section 895.03, F.S. provides that it is unlawful for any person:

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<sup>67</sup> *Id.*

<sup>68</sup> Section 104.15, F.S.

<sup>69</sup> 18 U.S.C. s. 611; This section does not apply if each natural parent, or adoptive parent, is or was a citizen; the alien permanently resided in the U.S. prior to attaining the age of 16; and the alien reasonably believed at the time of voting in violation of such subsection that he or she was a citizen of the U.S.

<sup>70</sup> Section 895.01, F.S.

<sup>71</sup> Section 895.02(8), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1)

<sup>72</sup> Section 895.02(8)(a)27., F.S.



- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>73</sup> to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.<sup>74</sup>
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously described activity.<sup>75</sup>

Section 895.04, F.S., provides that a conviction for engaging in the above activities results in a first-degree felony.<sup>76, 77</sup>

#### Reclassification of Crimes Committed After Unlawful Reentry

Reclassification occurs when the Legislature *increases the degree of a conviction*. The reclassification attaches at the time the charges are filed.<sup>78</sup> Reclassification of a criminal conviction from one degree to a higher degree stems from an express and explicit grant of statutory authority.<sup>79</sup>

In 2024 the Legislature enacted s. 775.0848, F.S., to reclassify the penalty for committing a felony after such person has been convicted for unlawful reentry by a removed alien pursuant to 8 U.S.C. s. 1326. Section 775.0848, F.S., provides that:

- A felony of the third degree is reclassified to a felony of the second degree.<sup>80</sup>
- A felony of the second degree is reclassified to a felony of the first degree.<sup>81</sup>

<sup>73</sup> Section 895.02(12), F.S., “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

<sup>74</sup> Section 895.02(5), F.S., “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

<sup>75</sup> Section 895.03(4), F.S.

<sup>76</sup> A first-degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>77</sup> Section 895.05(2), F.S., In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act

<sup>78</sup> *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

<sup>79</sup> *Cf. Spicer v. State*, 615 So.2d 725, 726 (Fla. 2d DCA 1993) (reversing reclassification of robbery with a mask conviction because “[p]enal statutes must be construed in terms of their literal meaning .... [I]f the legislature had intended section 775.0845 [Florida Statutes (1989)] to reclassify offenses, it would have so stated ....”).

<sup>80</sup> A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

<sup>81</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. A first-degree felony is punishable by up to 30 years to life imprisonment and a \$10,000 fine. (Sections 775.082 and 775.083, F.S.).

- A felony of the first degree is reclassified to a life felony.<sup>82</sup>

Reentry to the United States by aliens<sup>83</sup> who have been removed from the U.S. is addressed in 8 U.S.C.A. 1326 as follows:

- Any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States...shall be fined under Title 18, or imprisoned not more than 2 years, or both.
- Any alien whose removal was subsequent to a conviction for the commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony),<sup>84</sup> such alien shall be fined under Title 18, imprisoned not more than 10 years, or both.
- Any alien whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

The term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either federal or state law.<sup>85</sup>

### Criminal Punishment Code

The Criminal Punishment Code<sup>86</sup> is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense, and a second-degree felony is ranked as a level 4 offense.<sup>87</sup>

### Pretrial Detention and Bail

Article I, s. 14 of the Florida Constitution states that “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.”

<sup>82</sup>A first-degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a \$10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

<sup>83</sup> The term “alien” means any person not a citizen or national of the United States. 8 U.S.C.A. 1101(a)(3).

<sup>84</sup> “Aggravated felony” is defined in 8 U.S.C.A. 1101(a)(43)(A)-(U). The term applies to a felony offense, whether in violation of Federal or State law, and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. 8 U.S.C.A.1101(a).

<sup>85</sup> 8 U.S.C.A. 1326(b).

<sup>86</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>87</sup> Section 921.0023(1) and (2), F.S.

A person must appear before a judge within 24 hours of arrest for a “first appearance.”<sup>88</sup> During first appearance, a judge advises a defendant of the charges for which he or she was arrested, determines whether there is probable cause that a defendant committed such an offense, and advises a defendant of specified rights.<sup>89</sup> If a judge determines that probable cause exists, the judge then determines whether a defendant is entitled to pretrial release. A judge may grant pretrial release either by setting a specified bail amount or releasing the defendant on his or her own recognizance.<sup>90</sup>

Section 903.046, F.S., provides that the purpose of bail proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to ensure the safety of the public. When determining whether to release a defendant on bail or other conditions, and what that bail or conditions may be, the court must consider certain factors. Such factors include, in part:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant’s family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The nature and probability of danger which the defendant’s release poses to the community.
- Any other facts the court considers relevant.<sup>91</sup>

While Florida does not specify that the court may consider a defendant’s immigration status when setting bail, courts have found that this may be considered in the court’s analysis.<sup>92</sup>

### ***Employment Verification***

It is unlawful for any person to knowingly employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment, an alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security.<sup>93</sup> If the Florida Department of Commerce (DCM) finds or is notified by a specified entity that an employer has knowingly employed an unauthorized alien without verifying the employment eligibility, the DCM must enter an order making such determination and require repayment of any economic development incentive.<sup>94</sup>

The DCM must place the employer on probation for a 1-year period and require that the employer report quarterly to the DCM to demonstrate compliance if there was a violation. Any violation which takes place within 24 months after a previous violation constitutes grounds for

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<sup>88</sup> Fla. R. Crim. P. 3.130.

<sup>89</sup> *Id.*

<sup>90</sup> Fla. R. Crim. P. 3.131.

<sup>91</sup> Section 903.046, F.S.

<sup>92</sup> *See U.S. v. Lozano, U.S.*, 2009 WL 3052279 (M.D. Ala, 2009).

<sup>93</sup> Section 448.09(1), F.S.

<sup>94</sup> Section 448.09(2); Section 288.061(6), F.S., prohibits the Secretary of Commerce from approving an economic development incentive application unless the application includes proof to the department that the applicant business is registered with and uses the E-Verify system. Upon a final determination of noncompliance, the awardee must repay all moneys received as an economic development incentive to the department within 30 days after the final determination. Section 288.061, F.S.

the suspension or revocation of all licenses issued by a licensing agency subject to ch. 120, F.S. The DCM is required to take the following actions for a violation involving:

- One to 10 unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.
- Eleven to 50 unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.
- More than 50 unauthorized aliens, revocation of all applicable licenses held by a private employer by the respective agencies that issued them.<sup>95</sup>

Section 448.095, F.S., requires an employer to verify each new employee's employment eligibility within 3 business days after the first day that the employee begins working for pay. A public agency, or a private agency with 25 or more employees, must use the E-Verify system to verify employment eligibility. Each employer required to use the E-Verify system must certify compliance each year to the Department of Revenue when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.<sup>96</sup>

If the E-Verify system is unavailable for 3 business days after the new employee begins working for pay and an employer cannot access the system to verify eligibility, an employer must use the Employment Eligibility Verification form (Form I-9) to verify that new hires are authorized to work in the United States. The employer must retain a copy of the documentation provided and any official verification generated for at least three years.<sup>97</sup>

An employer may not continue to employ an unauthorized alien after obtaining knowledge that a person is or has become an unauthorized alien.<sup>98</sup>

An employer must provide copies of any documentation relied upon by the employer for the verification of employment eligibility when requested by the following:

- The Department of Law Enforcement;
- The Attorney General;
- The state attorney in the circuit in which the new employee works;
- The statewide prosecutor; or
- The Department of Commerce.

A person or entity that makes a request must rely on the Federal Government to verify an employee's employment eligibility and may not independently make a final determination as to whether an employee is an unauthorized alien.<sup>99</sup>

An employer that uses the E-Verify system or, if that system is unavailable, Form I-9 has established a rebuttable presumption that the employer did not knowingly employ an unauthorized alien. An employer that uses the same documentation required by the United States

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<sup>95</sup> Section 448.09(4), F.S.

<sup>96</sup> Section 448.095(2), F.S., An employer that voluntarily uses the E-Verify system may also make such a certification on its first return each calendar year in order to document such use.

<sup>97</sup> Section 448.095(2), F.S.

<sup>98</sup> *Id.*

<sup>99</sup> Section 448.095(3), F.S.

Citizenship and Immigration Services on its Form I-9 has established an affirmative defense<sup>100</sup> that the employer did not knowingly employ an unauthorized alien.<sup>101</sup>

A public agency<sup>102</sup> must require in any contract that the contractor,<sup>103</sup> and any subcontractor<sup>104</sup> thereof, register with and use the E-Verify system to verify the work authorization of all new employees.<sup>105</sup>

If the DCM determines an employer failed to use the E-Verify system, the department must notify the employer of noncompliance and provide the employer with 30 days to rectify the noncompliance. If an employer failed to use the E-Verify system three times in a 24-month period, the DCM must impose a fine of \$1,000 per day until the employer provides sufficient proof to the DCM that the compliance has been cured. The DCM must use any fines collected for employer outreach and public notice of the state's employment verification laws. Noncompliance constitutes grounds for the suspension of all licenses until the noncompliance has been cured.

### ***Impact of Immigration on Hospitals***

Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.<sup>106</sup> Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.<sup>107</sup>

Section 395.3027, F.S., requires any hospital that accepts Medicaid to include a question on its admission or registration forms, to be answered by the patient or the patient's representative, inquiring whether the patient: is a United States citizen; is lawfully present in the United States; is not lawfully present in the United States; or declines to answer. The question must be followed by a statement indicating that the response to the question will not affect patient care or result in a report of the patient's immigration status to immigration authorities.<sup>108</sup>

Each hospital must provide a quarterly report to the Florida Agency for Health Care Administration (AHCA), within 30 days of the end of each quarter, detailing the number of hospital admissions or emergency department visits by patients who responded to, or declined to

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<sup>100</sup> An affirmative defense is a defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal liability or civil liability, even if it is proven that the defendant committed the alleged acts.

<sup>101</sup> Section 448.095(4), F.S.

<sup>102</sup> "Public agency" means any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 448.095(1)(d), F.S.

<sup>103</sup> "Contractor" means a person or an entity that has entered or is attempting to enter into a contract with a public agency to provide labor, supplies, or services to such agency in exchange for salary, wages, or other remuneration. Section 448.095(1)(a), F.S.

<sup>104</sup> "Subcontractor" means a person or an entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration." Section 448.095(1)(e), F.S.

<sup>105</sup> Guidance for entering into such contracts is provided in s. 448.095(5), F.S.

<sup>106</sup> Section 395.002(12), F.S.

<sup>107</sup> Section 395.002(12), F.S.

<sup>108</sup> Section 395.3027(1), F.S.

answer, the above questions.<sup>109</sup> The AHCA must compile such data and provide a report to the Governor and the Legislature by March 1 of each year. Additionally, the report must describe the costs of uncompensated care provided to patients not lawfully in the country, the impact of uncompensated care on the cost or ability of hospitals to provide services to the public and on hospital funding needs, and other related information.<sup>110</sup>

In the final report for 2023, the AHCA reported 0.81% of admissions and 0.83% of emergency department visits were notated as illegal aliens. Specifically, the report states:

Approximately 0.82% of all hospital admissions and emergency room visits combined were by patients who were not legally in the country. It is unclear how many of the 0.82% were able to pay for all or a portion of the services provided. It should be noted that approximately 7.5% of admissions and emergency department visits were reported as declined to answer. Presumably some portion of those responses contain respondents who were in the country illegally. Some facilities had issues in the early weeks of collecting data and may have used this category when data collection was missing and/or for patients who were unable to respond due to their medical condition.<sup>111</sup>

This report also states the total approximate cost of care provided to illegal immigrants is greater than \$566 million.<sup>112</sup> As indicated above, it is unclear how much of that care provided to illegal aliens was uncompensated. It is also unclear what percentage of the declined to answer respondents were illegal aliens.

### ***Driver Licenses or Identification Cards***

Section 322.19, F.S., provides that, with certain exceptions, whenever any person, after applying for or receiving a driver license or identification card, changes his or her legal name, that person must within 30 days obtain a replacement license or card that reflects the change. Similarly, if a person, after applying for or receiving a driver license or identification card, changes the legal residence or mailing address in the application, license, or card, the person must, within 30 days after making the change, obtain a replacement license or card that reflects the change. A violation of this requirement is a non-moving violation, punishable as provided s. 318.18, F.S.

### **Driver License or Identification Card for Non-Citizens**

Section 322.08, F.S., establishes requirements governing the application process for driver licenses and identification cards. All applicants must present primary identification; proof of social security number or secondary identification; and two documents that demonstrate a residential address in Florida. Non-U.S. citizens are required to produce proof of legal presence documentation issued through the United States Citizenship and Immigration Services. Non-citizens applying for an original driver license are generally issued a 60-day temporary paper

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<sup>109</sup> Section 395.3027(2), F.S.

<sup>110</sup> Section 395.3027(3), F.S.

<sup>111</sup> Florida Agency for Health Care Administration, *The Hospital Patient Immigration Status Report*, (on file with the Senate Committee on Appropriations).

<sup>112</sup> *Id.*

permit without a photo and a receipt. Non-U.S. citizens applying for an identification card are issued a receipt. Upon the verification of identity and legal status by the Department of Highway Safety and Motor Vehicles, and satisfactory completion of required knowledge and skills examinations, a driver license or identification card is issued within 60 days and mailed to the address on the driver record. The driver license or identification card is issued for the period of time specified in the relevant United States Citizenship and Immigration Services documentation, up to a maximum of four years.

For purposes of documenting proof of lawful presence for the issuance of a driver license or identification card, s. 322.08, F.S., provides that the Department of Highway Safety and Motor Vehicles may require an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States. While the term “valid passport” is used in various sections of the Florida Statutes, the term is not currently defined.

### **Education**

Florida’s education system has also been affected by the influx in immigration. Florida schools may provide education to those who are here lawfully, unlawfully, or to children whose parents are here unlawfully.

#### ***Florida Public Postsecondary Institutions***

Florida’s system of public postsecondary education consists of:

- The State University System (SUS), composed of the 12 state universities.<sup>113</sup> Each state university is administered by a local board of trustees.<sup>114</sup> The system is supervised by the Board of Governors.<sup>115</sup>
- The Florida College System (FCS), composed of 28 institutions with defined service areas.<sup>116</sup> A local board of trustees governs each FCS institution, and the State Board of Education supervises the system.<sup>117</sup>
- Career centers (also called technical colleges), which are a part of a district school system and offer technical courses leading toward a career certificate or industry certification.<sup>118</sup> There are 47 career centers, each governed its district school board.
- Charter technical career centers, which are public schools or public technical centers operated under a charter granted by a district school board or FCS institution board of trustees.<sup>119</sup> Currently, there is one charter technical career center in Florida—Lake Technical College, chartered under the Lake County School Board.

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<sup>113</sup> Section 1000.21(9), F.S.

<sup>114</sup> Art. IX, s. 7(b), FLA. CONST.

<sup>115</sup> Art. IX, s. 7(b), FLA. CONST. *See also* s. 1001.705, F.S.

<sup>116</sup> Section 1000.21(5), F.S.

<sup>117</sup> Art. IX, S. 8(b), FLA. CONST.

<sup>118</sup> Section 1001.44(a), F.S.

<sup>119</sup> Section 1002.34(a), F.S.



***Residency Status for Tuition Purposes***

Students must be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by public postsecondary institutions. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.<sup>120</sup>

To qualify as a resident for tuition purposes, a person, or if that person is a dependent child, his or her parent or parents, must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in the public postsecondary institution.<sup>121</sup>

Each public postsecondary institution must make a residency determination based on the submission of at least two forms of documentation specified in law.<sup>122</sup>

***Tuition and Out-of-State Fees***

Florida law defines “tuition” as the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state. A student who is classified as a resident for tuition purposes qualifies for the in-state tuition rate. An out-of-state fee is the additional fee for instruction charged to a student who does not qualify for the in-state tuition rate,<sup>123</sup> unless these costs are exempted or waived.<sup>124</sup>

The resident undergraduate tuition rate for the SUS is set at \$105.07 per credit hour.<sup>125</sup> The SUS average tuition and out-of-state fee is \$570.01 per credit hour.

The FCS tuition rate for college credit courses is \$71.98 per credit hour, and the out-of-state fee is \$215.94 per credit hour. Baccalaureate degree program resident tuition is \$91.79 per credit hour, and the total tuition and out-of-state fee may not exceed 85 percent of the tuition and out-of-state fee of the nearest state university.<sup>126</sup> If a career center offers college credit courses as a part of a career associate degree program, the standard tuition is also \$71.98 per credit hour, and the out-of-state fee is \$215.94 per credit hour.<sup>127</sup>

For non-college-credit career programs at career centers and FCS institutions, the standard tuition is \$2.33 per contact hour, and the out-of-state fee is \$6.99 per contact hour.<sup>128</sup> Each district school board or FCS institution board of trustees may adopt tuition and out-of-state fees that vary no more than 5 percent below or 5 percent above such fees.<sup>129</sup>

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<sup>120</sup> Section 1009.21, F.S.

<sup>121</sup> Section 1009.21(2)(a), F.S. This section also specifies other circumstances that may classify a person as a resident for tuition purposes.

<sup>122</sup> Section 1009.21(3), F.S. Documentation includes, but is not limited to, a Florida voter registration card, Florida driver’s license, Florida vehicle registration, homestead exemption (which is a single, conclusive proof of residency), proof of full-time Florida employment, declaration of domicile, Florida incorporation, lease agreements, or utility bills.

<sup>123</sup> Section 1009.01, F.S.

<sup>124</sup> Section 1009.24(2), F.S.

<sup>125</sup> Section 1009.24(4)(a), F.S.

<sup>126</sup> Section 1009.23(3), F.S.

<sup>127</sup> Section 1009.22(4), F.S.

<sup>128</sup> Section 1009.22(3)(c), F.S.

<sup>129</sup> Section 1009.22(3)(d), F.S.

### *Out-of-State Fee Waiver*

In 2014, the Florida Legislature established an out-of-state fee waiver for students, including, but not limited to, students who are undocumented for federal immigration purposes, who meet certain conditions:<sup>130</sup>

- Attendance in a secondary school in Florida for three consecutive years immediately before graduating from a high school in Florida.
- Application for enrollment in a state university, FCS institution, or technical center within 24 months after high school graduation.
- Submission of an official Florida high school transcript.

The fee waiver may both include students who are undocumented for federal immigration purposes, as well as students who are lawfully present in the United States, but whose parents are not residents of Florida. The exact number of undocumented students receiving the out-of-state fee waiver is unknown.

The out-of-state fee waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled.<sup>131</sup> A student who receives an out-of-state fee waiver is not considered a Florida resident and is not eligible for financial aid awards and tuition assistance grants.<sup>132</sup>

The below table shows, for the 2023-2024 fiscal year, the number of students receiving an out-of-state fee waiver from a state university, FCS institution, or career center, and the total value of the waived out-of-state fees. The totals include all non-resident students, regardless of lawful status.

<b>Institutions</b>	<b>Number of Students</b>	<b>Total Value of Fee Waiver</b>
State University System <sup>133</sup>	2,005	\$20,009,990.00
Florida College System <sup>134</sup>	4,573	\$20,649,408.44
District Career Centers <sup>135</sup>	3	\$12,584.70
<b>Total</b>	<b>6,581</b>	<b>\$40,671,983.14</b>

At least 25 states, including Florida, currently have laws and policies that permit certain students who have attended and graduated from secondary schools in their state to pay in-state tuition at

<sup>130</sup> Section 1009.26(12), F.S.

<sup>131</sup> Section 1009.26(12)(b), F.S.

<sup>132</sup> The general requirements for student eligibility for state financial aid and tuition assistance in s. 1009.40, F.S., specifies legal residence in Florida. *See also* Board of Governors Regulation 7.008.

<sup>133</sup> Florida Board of Governors, *Fee Waivers*, available at <https://www.flbog.edu/resources/data-analytics/dashboards/fee-waiver-summary/> (select *Non-Resident (5012)* waiver label) (last visited January 26, 2025).

<sup>134</sup> Email, Florida Department of Education (January 24, 2025) (on file with the Committee on Appropriations).

<sup>135</sup> Email, Florida Department of Education (January 25, 2025) (on file with the Committee on Appropriations).

their state's public postsecondary institutions, regardless of their immigration status.<sup>136</sup> There are nine states that block access to in-state tuition for undocumented students.<sup>137</sup>

### **State and Federal Relations**

The Legislature created the Office of State-Federal Relations in an effort for the legislative and executive branches of state government to work together to maximize the receipt of federal funds, and to strengthen the state's relationship, position, and communication with the Federal Government.<sup>138</sup>

The Office of State-Federal Relations is created within the Executive Office of the Governor and located in Washington D.C. The Governor must appoint the director, who will be the head of the Office of State-Federal Relations and who shall serve at the pleasure of the Governor. The duties of the Office of State-Federal Relations are to be determined by the Governor, in consultation with the President of the Senate and the Speaker of the House of Representatives, and must include, but need not be limited to:

- Provide legislative and administrative connection between state and federal officials and agencies and with Congress.
- Provide grants assistance and advice to state agencies.
- Assist in the development and implementation of strategies for the evaluation and management of the state's federal legislative program and intergovernmental efforts.
- To facilitate the activities of Florida officials traveling to Washington, D.C., in the performance of their official duties.<sup>139</sup>

### **III. Effect of Proposed Changes:**

The bill, which shall be referred to as the "Tackling and Reforming Unlawful Migration Policy (TRUMP) Act," makes numerous changes throughout the Florida Statutes to strengthen immigration coordination within the state and to increase state cooperation with federal immigration agencies. One of the most significant changes is creating the Office of State Immigration Enforcement within Division of Law Enforcement under the Department of Agriculture and Consumer Services.

#### **Chief Immigration Officer and the Office of State Immigration Enforcement (Sections 3, 5, 7, 22, 23, 24, 29, 31, 41)**

The bill amends s. 908.101, F.S., to provide legislative intent that designating a single state officer, the Commissioner of Agriculture, as the chief immigration officer is essential to facilitating coordination, assistance, and communication between the Federal Government, state entities, local governmental entities, and law enforcement agencies regarding the enforcement of federal immigration laws.

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<sup>136</sup> National Immigration Law Center, *Basic Facts About In-State Tuition for Undocumented Immigrant Students*, available at <https://www.nilc.org/wp-content/uploads/2024/06/instate-tuition-basicfacts-2024-06-1-1.pdf>. (last visited January 26, 2025).

<sup>137</sup> Higher ED Immigration Portal, *States*, available at <https://www.higheredimmigrationportal.org/states/> (last visited January 22, 2025).

<sup>138</sup> Section 14.23, F.S.

<sup>139</sup> *Id.*

The bill amends s. 20.14, F.S., to create the Office of State Immigration Enforcement within the Division of Law Enforcement. The bill authorizes the DACS to establish bureaus and offices as deemed necessary to promote efficient and effective operation of the DACS.

The bill creates s. 19.55, F.S., to provide that the Commissioner of Agriculture is the chief immigration officer of the state and serves as the state's official liaison between the state agencies, local law enforcement agencies, and the Federal Government regarding the enforcement of federal immigration laws. It is the responsibility of the chief immigration officer to:

- Coordinate with and provide assistance to the Federal Government in the enforcement of federal immigration laws and other matters related to the enforcement of federal immigration laws.
- Coordinate with and provide assistance to law enforcement agencies and monitor local government compliance with the requirements of ch. 908, F.S.
- Administer the Local Law Enforcement Immigration Grant Program.
- Regularly coordinate random audits to ensure compliance and enforcement of employment verification requirements.
- Provide recommendations regarding measures that may be implemented to improve assistance and coordination with the Federal Government in the enforcement of federal immigration laws to the Legislature.
- Report to the Legislature, no later than March 15, 2025, the number of vacant beds available in correctional facilities and county jails that can be sublet to the ICE.
- Serve as an "authorized state officer" under the Laken Riley Act, for purposes of having standing to bring an action against specified federal officials to obtain injunctive relief on behalf of the state and its residents.

The bill amends s. 908.102, F.S., to create definitions for ch. 908, F.S., for the chief immigration officer and the Office of State Immigration Enforcement.

The bill creates s. 908.1031, F.S., to provide the responsibilities and duties of the Office of State Immigration Enforcement. The purpose of the office is to aid the Commissioner of Agriculture in the commissioner's role as the chief immigration officer of the state by:

- Encouraging cooperation with the Federal Government to support the enforcement of federal immigration laws to the maximum extent permissible under federal law across the State of Florida.
- Serving as the central point of coordination between federal immigration agencies, state entities, local governmental entities, and law enforcement agencies regarding the enforcement of federal immigration laws.

The Office must coordinate the collection and dissemination of investigative and intelligence information to the Federal Government.

The Office must employ sworn law enforcement officers, nonsworn investigators, and administrative personnel. Such employees, when authorized by federal law, must aid local

governmental entities and law enforcement agencies in the investigation and enforcement of federal immigration laws.

Each law enforcement officer must meet the qualifications of a law enforcement officer as provided by law and must be certified as a law enforcement officer by the FDLE. Each law enforcement officer will have full law enforcement powers granted to other peace officers of the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

By December 15 of each year, the office must submit a report to the Governor and the Legislature that may contain legislative recommendations and must detail the level of coordination and cooperation between specified entities and federal immigration agencies.

The Office serves as the state's relevant state law enforcement agency for any applicable Federal Homeland Security Task Force established under President Trump's Executive Order, Protecting the American People Against Invasion, issued on January 20, 2025.

The bill creates s. 908.13, F.S., to provide the chief immigration officer with the sole authority to issue a state of emergency related to illegal immigration, illegal migration, or immigration enforcement. Such authority is subject to similar requirements as that of emergency declarations by the Governor. These include:

- Authorizing the chief immigration officer may issue emergency orders, proclamations, and rules and may amend or rescind them. Such orders, proclamations, and rules have the force and effect of law.
- Limiting the duration of an emergency order, proclamation, or rule to not more than 60 days, while allowing renewal as necessary during the emergency. Authorizing the Legislature, at any time and by concurrent resolution to terminate a state of emergency or any specific order, proclamation, or rule thereunder.

During a declared state of emergency for illegal immigration, illegal migration, or immigration enforcement, the chief immigration officer must coordinate with and advise state and local law enforcement agencies for the purpose of securing compliance. The chief immigration officer, when deemed necessary to respond to immigration-related emergencies, must request assistance from the Governor for the activation and deployment of the Florida National Guard.

The bill makes corresponding changes in section 7 of the bill to amend s. 252.36, F.S., related to the Governor's emergency powers to exclude suspension of the immigration statutes amended by the bill related to the chief immigration officer and ch. 908, F.S.

The bill amends s. 908.107, F.S., to provide that the chief immigration officer may present evidence to the Governor that an executive or administrative state, county, or municipal officer has violated his or her duties under ch. 908, F.S., and recommend that the Governor take action using his or her authority under the State Constitution and state law.

Additionally, the bill authorizes the chief immigration officer to file suit against a local governmental entity or local law enforcement agency for declaratory or injunctive relief for a

violation of ch. 908, F.S. Current law provides that only the Attorney General may bring such suit.

The Office within the Division of Law Enforcement under the DACS is authorized and all conditions are deemed met, to adopt emergency rules to implement the creation of this act. Emergency rules adopted are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules. This section expires July 1, 2026.

***State Immigration Enforcement Council (Section 27)***

The bill creates s. 908.1042, F.S., to create the State Immigration Enforcement Council within the Office for the purpose of advising the chief immigration officer.

The council at a minimum must be composed of seven sheriffs and four police chiefs appointed by the chief immigration officer, as well as the executive director of the FDLE. The chief immigration officer must appoint a sheriff to serve as chair of the council. Appointments to the council must be made by March 1, 2025. Any vacancies to the council must be filled within 2 weeks after such a vacancy. The Office must provide the council with the staff necessary to assist the council in the performance of its duties.

Membership of the council will not disqualify a member from holding any other public office or being employed by a public entity except that a member of the Legislature may not serve on the council. Members of the council must serve without compensation but are entitled to reimbursement for per diem and travel expenses.

The council must meet quarterly and additional meetings may be held at the discretion of the chair. The duties of the council include:

- Advising the chief immigration officer on the efforts of local law enforcement agencies related to the enforcement of federal immigration laws within the state.
- Providing recommendations on the financial resources necessary to aid local law enforcement agencies in the cooperation and coordination with the Federal Government.
- Providing recommendations to enhance information sharing between the state entities, local entities, law enforcement agencies, and the Federal Government in the enforcement of federal immigration laws within the state.
- Providing recommendations of any resources necessary to facilitate the training of local law enforcement agencies in the cooperation and coordination with the Federal Government and the enforcement of federal immigration laws.
- Providing recommendations on strategies to increase the number of available detention beds for use by the ICE.
- Analyze the information collected by the Office related to levels of cooperation and coordination and make recommendations to the chief immigration officer.

***Local Law Enforcement Immigration Grant Program (Section 4)***

The bill creates s. 19.56, F.S., to create the Local Law Enforcement Immigration Grant Program within the Office. The Office may award grants to support local law enforcement agencies cooperation and coordination with federal immigration agencies. The Office must annually

award any funds specifically appropriated for the grant program to reimburse expenses, including, but not limited to, the subletting of detention beds to the ICE, equipment, travel, lodging, and training programs to include certified apprenticeship programs, related to supporting the enforcement of federal immigration laws.

The Office must prescribe the procedure and application for the program. Grants must be awarded on a first-come, first-served basis. The Office must not duplicate benefits and grants may not be awarded to pay for any activity for which the local law enforcement agency has received or expects to receive federal or other funding. The bill appropriates \$100 million in nonrecurring general revenues funds to the Office to implement the grant program.

### ***Employment (Sections 8, 15, 16, 17)***

The bill transfers responsibilities related to employment verification from the DCM to the Office by amending ss. 448.09 and 448.095, F.S. The bill amends s. 448.09, F.S., related to prohibited employment by unauthorized aliens, and s. 448.095, F.S., related to E-Verify, to specify that the Office must notify the DCM if it finds or is notified that an employer has violated the provisions of the respective statutes. The bill amends s. 288.061, F.S., to make corresponding changes.

Related to any fines imposed by the Office for violations of the E-Verify law, the Office must deposit such fines into the General Inspection Trust Fund, and the bill retains the requirement that collected fines must be used for employer outreach and public notice of the state's employment verification laws.

The bill amends s. 480.0535, F.S., require the FDOH to also notify the chief immigration officer if a person operating a massage establishment, an employee, or any person performing massage therapy in a massage establishment fails to provide valid government identification.

### ***Health Data (Section 14)***

The bill amends s. 395.3027, F.S., to add the chief immigration officer within the DACS to the list of individuals to which the AHCA must submit a report. Additionally, the bill specifies that the report must consist of a consolidation of the quarterly reports of the prior calendar year and an executive summary of the data.

### ***Immigration Enforcement (Sections 2, 30, 33, 34, 35, 36, 37, 40, 43, 44)***

The bill amends s. 14.23, F.S., to specify that the Office of State-Federal Relations does not serve as a liaison between the state government and federal immigration agencies regarding federal immigration laws and matters directly related thereto. The Commissioner of Agriculture as the chief immigration officer is the exclusive liaison between the state government and federal immigration agencies regarding such matters. The Commissioner may appoint an employee of the DACS to work as an adjunct official with the Office of State-Federal Relations.

The bill provides that Executive Order 23-03, renewed by executive orders 23-49, 23-88, 23-134, 23-213, 23-245, 24-35, 24-74, 24-118, 24-173, 24-220 and 24-269, may not be renewed. Once the state of emergency expires, or but for early termination would have expired, the Governor



may not issue a subsequent state of emergency with respect to the same or substantially similar issue or circumstance.

The bill amends s. 1 of ch. 2023-3, L.O.F., to move the Unauthorized Alien Transport program from under the Division of Emergency Management within the Executive Office of the Governor to the Division of Law Enforcement under the DACS. Additionally, the Division of Law Enforcement must evaluate the effectiveness and value of the program in assisting coordination with the Federal Government and recommend to the Legislature by March 15, 2025, to make no changes or to continue or modify the program. The bill also appropriates \$10 million to this transferred program and immediately reverts the unexpended balance of funds for the existing program.

The bill amends s. 908.11, F.S., to specify that the sheriff or the chief correctional officer, rather than each law enforcement agency, must enter into specified written agreements. Additionally, beginning no later than April 1, 2025, and until each sheriff or chief correctional officer operating a county detention facility enters into such a written agreement, such sheriff or chief correctional officer must notify the Office quarterly of the status of such written agreement and any reason for noncompliance. Current law provides that each law enforcement agency must notify the FDLE.

The bill amends ss. 943.03 and 943.0311, F.S., to remove reference to the FDLE's responsibilities and duties relating to matters of immigration and provide that the FDLE, or the chief of domestic security, must coordinate with the Office or the chief immigration officer when providing assistance to the Federal Government in the enforcement of federal immigration laws.

The bill amends ss. 943.03101, 943.0312, and 943.0313, F.S., to remove reference to the FDLE's responsibilities and duties relating to matters of immigration.

Additionally, the bill provides that any interagency agreement, memorandum of understanding, or contract existing before the effective date of this act between the FDLE and any other agency related to the coordination or enforcement of federal immigration laws must continue as an agreement, memorandum, or contract for the remainder of its term with the DACS replacing the FDLE as a party.

Any administrative rules promulgated by the FDLE related to coordination with the Federal Government regarding federal immigration laws or the enforcement of federal immigration laws are transferred to the DACS.

#### ***Cooperation with Federal Government (Section 26)***

The bill creates s. 908.1041, F.S., to provide that every state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government and any other public or private agency, person, partnership, corporation, or business entity contracted with or otherwise acting on behalf of any public agency has a duty and an obligation to cooperate to the fullest extent possible with the Federal Government in the enforcement of federal immigration laws and the protection of the borders of the U.S.

State entities and state law enforcement agencies must cooperate and coordinate with the Office at its request. Any communication with or coordination between a state entity and federal immigration agency concerning federal immigration laws or matters directly related thereto must occur through the Office. The chief immigration officer must approve, prior to execution, any interagency agreement, memorandum of understanding or contract, or any modification or amendment thereto, concerning federal immigration laws or matters directly related to such.

Any requests for assistance regarding federal immigration laws by a local governmental entity or a local law enforcement agency must be coordinated through the Office.

**Criminal Law (Sections 6, 18, 19, 20, 21, 25, 28, 32, 42)**

The bill amends s. 908.105, F.S., to provide that upon determining that an immigration detainer is made in accordance with s. 908.102(3), F.S., a law enforcement agency must comply with the request made in the immigration detainer.

Additionally, a law enforcement agency that has custody of a person subject to an immigration detainer issued by a federal immigration agency must notify the state attorney that the person is subject to an immigration detainer.

The bill amends s. 908.104, F.S., to provide that a sheriff or chief correctional officer operating a county detention facility must provide, upon request from a federal immigration agency, a list of all inmates booked into a county detention facility and any information regarding each inmate's immigration status.

Section 908.104(5), F.S., provides that a state entity, local governmental entity, or law enforcement agency is not required 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 cooperates in the investigation or prosecution of such offense. The bill specifies that such a victim or witness must be necessary to the investigation or prosecution of such crime, and that such crime must occur in the U.S.

Section 908.104(8), F.S., provides that a state entity, local governmental entity, or law enforcement agency is not required to provide a federal immigration agency with information related to a necessary witness or victim of specified crimes. The bill specifies that the crime must occur in the U.S., and that documentation must be relied upon to verify that the person was a necessary witness or victim to the crime.

The bill makes legislative findings that the state's criminal justice training centers as well as facilities of the Department of Military Affairs, such as the Camp Blanding Joint Training Center, are highly qualified and critical strategic year-round assets for training. The Legislature has made significant investments to make Camp Blanding Joint Training Center the premier facility in the southeast. In order to support the anticipated training and operations involving multiple federal and state and local agencies and given the scale and value of this state's assets, the Department of Military Affairs and local law enforcement must work with the Office to ensure that the state's federal partners can access and use the state's physical assets in order to

further the nation's mission to address illegal immigration. Such activities include outreach to federal partnership as well as entering into agreements for the use of such facilities.

### ***Criminal Penalties***

The bill amends s. 775.0848, F.S., to reclassify misdemeanor crimes if such crime was committed after the person was convicted of unlawful reentry into the United States, pursuant to 8 U.S.C. s. 1326:

- A second-degree misdemeanor is reclassified to a first-degree misdemeanor.
- A first-degree misdemeanor is reclassified to a third-degree felony.

The bill creates s. 104.155, F.S., to provide that it is a third-degree felony for a person who is not who is not a citizen of the U.S. to willfully vote in any election. A person's ignorance of his or her citizenship status or a person's bona fide belief of his or her citizenship status cannot be raised as a defense in a prosecution.

Any person who aids or solicits another to commit the crime described above with knowledge that such person is not a citizen of the U.S., commits a third-degree felony.

The bill amends s. 895.02, F.S., to add aiding or soliciting a noncitizen in voting to the list of crimes that may constitute racketeering activity.

The bill amends s. 921.0022, F.S., to rank the third-degree felonies of unqualified noncitizen electors voting or aiding or soliciting noncitizen electors in voting is ranked as a level four offense in the offense severity ranking chart.

### ***Pretrial Release***

The bill amends s. 903.046, F.S., to provide that the court must consider a defendant's immigration status when determining whether to release a defendant on bail or other conditions, and what that bail or conditions may be.

The bill amends s. 907.041, F.S., to add immigration status to the list of circumstances that must be investigated or verified before a person may be released on nonmonetary conditions under the supervision of a pretrial release service.

The arresting agency must notify the state attorney of a person's immigration status when such person is arrested and charged with a crime for which pretrial detention could be ordered.

### ***Driving (Sections 9, 10, 11, 12, 13)***

The bill clarifies that proof of identity for driver licenses, titles, and registrations may include certain valid, unexpired passports. The bill amends ss. 319.001, 320.01, and 322.08, F.S., to create standard requirements. A "valid passport" is defined to mean:

- An unexpired passport or passport card issued by the U.S. government; or
- An unexpired passport issued by the government of another country with:
  - A stamp or mark affixed by the U.S. Department of Homeland Security onto the passport to evidence and authorize lawful presence in the United States; or

- An unexpired I-94, or current permanent resident card, or unexpired immigrant visa, issued by the United States Department of Homeland Security.

The bill also requires a person who becomes a U.S. citizen to obtain a replacement driver license within 30 days of becoming a citizen. The bill amends s. 322.19, F.S., to provide that a person who becomes a citizen of the United States after applying for or receiving a driver license must obtain a replacement license or card that reflects such change within 30 calendar days after making the change. The bill makes a corresponding amendment to s. 322.121, F.S., related to “safe driver” designations on licenses. The bill also updates the time period referenced in that statute from 10 days to 30 days to align with s. 322.19, F.S., which was updated in 2016.<sup>140</sup>

### **Out-of-State Fee Waivers (38, 39)**

The bill amends s. 1009.26, F.S., effective July 1, 2025, to specify that a student must be a citizen of the United States or lawfully present in the United States, in addition to the other conditions, in order to qualify for the out-of-state fee waiver at a Florida public postsecondary institution. Fewer students would therefore be eligible for the waiver, but the exact number of students is unknown.

In addition to new applications for fee waivers that must be evaluated based on the additional criteria in the bill, the bill also requires postsecondary institutions to, beginning July 1, 2025, reevaluate any student who is currently receiving the fee waiver to determine continued eligibility.

### **Appropriations (Sections 45, 46)**

For the 2024-2025 fiscal year, the sums of \$20,562,630 in recurring funds and \$484,467,609 in nonrecurring funds are appropriated from the General Revenue Fund to the DACS to implement this act.

From the nonrecurring general revenue funds, \$100,000,000 must be allocated to implement the Local Law Enforcement Immigration Grant Program. The division is authorized to use \$3,750,000 of the funds for administrative costs associated with developing and implementing the grant program. The division must develop an implementation plan including procedures, administration, and criteria for approving grant applications. The implementation plan must be submitted to the Legislature no later than March 1, 2025. Upon approval of the implementation plan by the Legislature, the Chief Financial Officer must immediately release the balance of the funds to the division.

From the nonrecurring general revenue funds, \$375,000,000 must be allocated to implement specific recommendations from the DACS for use of the funds, which may include funds to support federal access to training facilities in this state; grants to local law enforcement to retain existing law enforcement officers or attract new officers; and grants to pay costs incurred by local law enforcement that were necessary for the full support and coordination with the Federal Government in the implantation and enforcement of federal immigration policies, including

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<sup>140</sup> Section 60, ch. 2016-239, Laws of Fla.

training activities related to the federal program established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357. The DACS must develop a report of the recommendations including allocations of applicable costs and implementation plans. The report must be submitted to the Legislature by March 15, 2025. Upon approval of the report by concurrent resolution of the Legislature, the Chief Financial Officer must immediately release funds to the DACS.

The unexpended balance of funds provided in s. 229, ch. 2024-231, L.O.F., to the Executive Office of the Governor, Division of Emergency Management, must immediately revert. The unexpended balance is approximately \$5.6 million. For the 2024-2025 fiscal year, the nonrecurring sum of \$10,000,000 from the General Revenue Fund is appropriated to the Division of Law Enforcement within the DACS for the Unauthorized Alien Transport Program as amended by the bill.

Except as otherwise provided by this act, this act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:****Department of Agriculture and Consumer Services**

The provisions of the bill relating to the Commissioner of Agriculture serving as the chief immigration officer and the creation of the Office of State Immigration Enforcement within the department will have a significant fiscal impact to the DACS. To address such impact, the bill provides the following appropriations to the DACS for the 2024-2025 fiscal year broken down as follows:

- \$20,562,630 in recurring funds from the General Revenue Fund:
  - \$898,592 to Executive Direction and Support Services.
  - \$19,664,038 to the Division of Law Enforcement/Office of State Immigration Enforcement.
  - Authorizes the DACS to establish 142 full-time equivalent positions with associated salary rate of 8,584,000 within the Division of Law Enforcement/Office of State Immigration Enforcement.
  - Authorizes the DACS to establish 7 full-time equivalent positions with associated salary rate of 550,000 within the Executive Direction and Support Services budget entity.
- \$484,467,609 in nonrecurring funds from the General Revenue Fund:
  - \$38,017 to Executive Direction and Support Services for expenses.
  - \$9,429,592 to the Division of Law Enforcement/Office of State Immigration Enforcement for expenses, contracted services, and other purchases.
  - \$100,000,000 to implement the Local Law Enforcement Immigration Grant Program.
  - \$375,000,000 to implement specific recommendations from the division/office for the use of the funds related to coordination with the Federal Government in the implementation and enforcement of federal immigration policies included within the division/office's report.

The unexpended balance of nonrecurring general revenue funds appropriated to the Division of Law Enforcement/Office of State Immigration Enforcement for expenses, contracted services, and other purchases remaining on June 30, 2025, reverts and is appropriated to the division for the 2025-2026 fiscal year for the same purpose.

The bill immediately reverts the unexpended balance of funds provided to the Division of Emergency Management, provided pursuant to s. 229, ch. 2024-231, Laws of Florida, to respond to unauthorized alien activities.

The bill appropriates for the 2024-2025 fiscal year the nonrecurring sum of \$10,000,000 from the General Revenue Fund to the Division of Law Enforcement within the DACS for the Unauthorized Alien Transport Program as amended by the bill.

**Out-of-State Fee Waivers**

The bill has an indeterminate, likely significant, revenue impact on state colleges and universities relating to the requirement that out-of-state fee waivers be granted only to

students who are citizens of the United States or lawfully present in the United States. The fiscal impact is indeterminate because it is difficult to identify the number of students who would be affected by the changes outlined in the bill. In addition, the revenue impact will also depend on the behavior of affected students. While the cumulative amount of the fee waivers was more than \$40 million in FY 2023-2024, it is not clear that institutions will receive that revenue with the changes to the fee waiver. Some students who are undocumented for federal immigration purposes may choose to pay the out-of-state fee while others may choose to withdraw from school. Therefore, institutions may experience an increase in fee revenue as students pay the out-of-state fees, or experience declines in fee revenue as those students decide to withdraw from school and are not replaced by other students.

### **Department of Corrections**

The DOC may have a positive indeterminate impact on prison beds (unquantifiable increase in prison beds) due to the creation of a new crime and the increase in penalties.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

The bill grants the Office with rulemaking to implement several sections of the bill, including emergency rulemaking authority in order to quickly implement the provisions while regular administrative rules are adopted.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 14.23, 20.14, 252.36, 288.061, 319.001, 320.01, 322.08, 322.121, 322.19, 395.3027, 448.09, 448.095, 480.0535, 775.0848, 895.02, 903.046, 907.041, 908.101, 908.102, 908.104, 908.105, 908.107, 908.11, 921.0022, 943.03, 943.03101, 943.0311, 943.0312, 943.0313, and 1009.26.

This bill contains eight undesignated sections of Florida Law.

This bill creates the following sections of the Florida Statutes: 19.55, 19.56, 104.155, 908.1031, 908.1041, 908.1042, and 908.13.

## **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **CS by Appropriations on January 27, 2025:**

The committee substitute removes the provision stating each law enforcement officer in this state who is certified pursuant to ch. 943, F.S., has the same authority as law



enforcement officers under the Office of State Immigration Enforcement to enforce the laws as described in ch. 908, F.S., relating to federal immigration enforcement.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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