
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawai'i is
2 justifiably proud of its rich immigrant heritage, which has
3 woven our many people into a valued tapestry of races, ancestral
4 groups, religions, cultures, and languages from many parts of
5 the world. Our state and county governments cultivate a culture
6 of inclusion when they ensure that all people in our communities
7 receive equal protection of the laws and respectful treatment
8 without regard to race, national origin, ancestry, or
9 citizenship status.

10 The legislature additionally finds that unlawful presence
11 in the United States is not, by itself, a criminal offense, as
12 recognized by the United States Supreme Court in *Arizona v.*
13 *United States*, 567 U.S. 387 (2012). A person's undocumented
14 status can result from crossing a border into the United States
15 without being processed, which is a federal misdemeanor, or from
16 entering the United States with a visa and then overstaying the
17 length of the visa, which is not a crime. It is believed that



1 the great majority of undocumented immigrants living in Hawai'i
2 overstayed their visas.

3 The legislature moreover finds that Hawaii's inclusionary
4 and peaceful culture is now threatened by inflammatory rhetoric
5 and harsh federal policies that vilify immigrants, divide
6 communities and families, and create fear and suspicion among
7 different racial, ethnic, and ancestral groups. Various efforts
8 have been made to render federal immigration law more humane,
9 however those efforts have failed.

10 Almost sixty per cent of undocumented immigrants have been
11 in the United States for ten years or more, and another twenty-
12 three per cent have been present for five to nine years,
13 according to the Migration Policy Institute. These are
14 individuals who live and work within our communities and pay
15 taxes and many have married citizens and many more have children
16 who are citizens by birth. Citizenship, under current law, is
17 virtually unattainable for most undocumented immigrants, as many
18 do not meet the requisite criteria of employment, family
19 reunification, or humanitarian protection such as refugee or
20 asylum status. They are therefore unable to "get in line" and
21 instead live in a state of limbo fearing deportation. Eighty



1 per cent of Americans support a pathway to citizenship for
2 undocumented immigrants, according to a spring 2017 McClatchy-
3 Marist Poll, provided they meet certain criteria such as
4 willingness to learn English, payment of any fines caused by
5 their undocumented status, employment, and payment of taxes.
6 Numerous studies show that immigrants have a crime rate that is
7 lower than that of native-born United States citizens and there
8 is an inverse relationship between crime and immigration. These
9 studies hold true for undocumented immigrants.

10 The legislature understands that immigration is a federal
11 function and state and local agencies have significant
12 discretion regarding whether and how to respond to requests for
13 assistance with immigration enforcement. The enforcement of
14 immigration law is carried out by the federal Immigration and
15 Customs Enforcement agency, known as ICE, and the Customs and
16 Border Protection agency, known as CBP, both of which are
17 components of the federal Department of Homeland Security.
18 Federal law does not require state and local entities to
19 cooperate with ICE and CBP. Rather, federal law, at title 8
20 United States Code Section 1373, limits state and local
21 governments from enacting laws or policies that restrict



1 communication with federal immigration authorities concerning
2 "information regarding the citizenship or immigration status,
3 lawful or unlawful, of any individual." There is no affirmative
4 duty for state and local governments to collect or share this
5 information, and there is no prohibition against preventing the
6 communication of other non-public information, such as when a
7 detained individual will be released or the individual's
8 address. Further, state and local agencies that do participate
9 in federal immigration enforcement do not receive any funding or
10 reimbursement for their efforts. In a sense, the federal
11 government is attempting to impose an unfunded mandate on the
12 State and counties.

13 The legislature furthermore finds that state and local
14 agencies must adhere to the United States and Hawai'i
15 Constitutions, such as the Fourth Amendment prohibition on
16 unreasonable searches and seizures. Several federal courts have
17 held that ICE detainers do not provide probable cause for arrest
18 or detention under the Fourth Amendment to the United States
19 Constitution and that the state or local law enforcement agency
20 may be liable for monetary damages for unlawful detention. In
21 addition, a number of jurisdictions have paid monetary awards,



1 either as judgments or settlements, to individuals who claimed
2 that they were unlawfully held based on ICE detainer requests.
3 An example of a recent settlement is that agreed to by San Juan
4 County, New Mexico, and approved by a federal judge, to pay
5 \$724,000 to one hundred ninety-three individuals and their
6 attorneys.

7 The legislature recognizes the numerous contributions of
8 individuals of various immigration statuses who have sought a
9 better life by immigrating to Hawai'i and elsewhere in the United
10 States. While the legislature does not condone immigration
11 without legal authorization, it finds that the effects of trying
12 to deport all undocumented immigrants greatly outweigh any
13 negative consequences their presence in our country and State
14 might have. The involvement of state and local law enforcement
15 officers in federal deportation programs and activities will
16 alienate members of the State's many communities from Hawai'i's
17 law enforcement agencies and undermine relationships with law
18 enforcement that are necessary to secure the peace and
19 successfully resolve criminal investigations. In order to
20 ensure a safe, secure, and welcoming community for everyone,
21 including immigrants of every status, to promote respectful



1 relations and collaboration between community members and
2 agencies providing public safety services, the purpose of this
3 Act is to prohibit, except as required by law, state and local
4 police and other local law enforcement agencies from cooperating
5 with the federal government for immigration purposes.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 "CHAPTER

10 HO'OKIPA WELCOMING POLICY ACT

11 § -1 Findings. The legislature finds and declares that
12 the State of Hawai'i is home to people of diverse ethnic, racial,
13 and national backgrounds including immigrants who are valuable
14 and important members of the community. It is essential to the
15 public safety of all residents that there is a relationship of
16 trust and cooperation among members of the immigrant community
17 and state and local law enforcement agencies. This relationship
18 is undermined when state and local law enforcement voluntarily
19 act at the request of federal immigration officials. Voluntary
20 enforcement of federal immigration law is not a wise and
21 effective use of state and local resources.



1 This chapter is intended to conserve state and local
2 resources and protect the public safety of all residents of the
3 State.

4 § -2 Definitions. As used in this chapter:

5 "CBP" means United States Customs and Border Protection, a
6 component of the United States Department of Homeland Security.

7 "Civil immigration detainer", "civil immigration warrant"
8 or "immigration hold", means an immigration detainer issued
9 pursuant to title 8 Code of Federal Regulations section 287.7 or
10 any similar request from ICE or CBP for detention of an
11 individual suspected of violating civil immigration law.

12 "Hawaii law enforcement agency" means any agency of the
13 State or any of its political subdivisions, or any officer of
14 such an agency, that is authorized to enforce criminal laws,
15 operate correctional facilities, or maintain custody of
16 individuals in correctional facilities, and any individual or
17 agency authorized to operate juvenile detention facilities or to
18 maintain custody of individuals in juvenile detention
19 facilities.



1 "ICE" means United States Immigration and Customs
2 Enforcement, a component of the United States Department of
3 Homeland Security.

4 "Judicial warrant" means a warrant based on probable cause
5 and issued by an Article III federal judge or a federal
6 magistrate judge that authorizes federal immigration authorities
7 to take into custody the individual who is the subject of the
8 warrant; provided that "judicial warrant" does not include a
9 civil immigration warrant, administrative warrant, or other
10 document signed only by ICE or CBP officials.

11 § -3 Certain activities solely for the purpose of
12 enforcing federal immigration laws. A Hawaii law enforcement
13 agency shall not:

14 (1) Stop, question, interrogate, investigate, or arrest an
15 individual based solely upon:

16 (A) Actual or suspected immigration or citizenship
17 status; or

18 (B) A civil immigration warrant, administrative
19 warrant, or immigration detainer in the
20 individual's name, including those identified in
21 the National Crime Information Center database;



- 1 (2) Inquire about the immigration status of an individual,
2 including a crime victim, a witness, or an individual
3 who calls or approaches the law enforcement agency
4 seeking assistance, unless necessary to investigate
5 criminal activity by that individual; or
- 6 (3) Perform the functions of a federal immigration officer
7 or otherwise engage in the enforcement of federal
8 immigration law, including pursuant to title 8 United
9 States Code section 1357(g).

10 § -4 Prohibition against honoring detainer requests;
11 exceptions. (a) A Hawaii law enforcement agency shall not
12 comply with a civil immigration detainer from ICE or CBP to
13 detain or transfer an individual for immigration enforcement or
14 investigation purposes; provided that the law enforcement agency
15 may respond affirmatively if the detainer request is accompanied
16 by a judicial warrant or as set forth in subsection (b).

17 (b) A Hawaii law enforcement agency may detain an
18 individual for up to forty-eight hours on a civil immigration
19 detainer request in the absence of a judicial warrant in the
20 following circumstances:

- 21 (1) The individual has been convicted of a felony;



- 1 (2) The individual has been convicted of any misdemeanor
2 specified in section 706-606.5(5) within the prior
3 five years;
- 4 (3) The individual has been arrested for a felony and a
5 judge has made a finding of probable cause pursuant to
6 section 805-7;
- 7 (4) There is probable cause to believe that the individual
8 has or is engaged in terrorist activity;
- 9 (5) There is probable cause to believe that the individual
10 has illegally reentered the United States after a
11 previous removal or return as defined by title 8
12 United States Code section 1326(b)(2); or
- 13 (6) The individual is currently registered as a covered
14 offender under chapter 846E.

15 **§ -5 Prohibition against honoring requests for**
16 **information; exceptions.** (a) A Hawaii law enforcement agency
17 shall not comply with an ICE or CBP request for non-public
18 information about an individual, including but not limited to
19 non-public information about an individual's release, home
20 address, or work address, except as set forth in this section.



1 (b) A Hawaii law enforcement agency may comply with an
2 information request in the following circumstances:

3 (1) The information request is accompanied by a judicial
4 warrant;

5 (2) The individual has been convicted of a felony;

6 (3) The individual has been convicted of any misdemeanor
7 specified in section 706-606.5(5) within the prior
8 five years;

9 (4) The individual has been arrested for a felony and a
10 judge has made a finding of probable cause pursuant to
11 section 805-7;

12 (5) There is probable cause to believe that the individual
13 has or is engaged in terrorist activity;

14 (6) There is probable cause to believe that the individual
15 has illegally reentered the United States after a
16 previous removal or return as defined by title 8
17 United States Code section 1326(b)(2); or

18 (7) The individual is currently registered as a covered
19 offender under chapter 846E.



1 (c) A Hawaii law enforcement agency shall limit the
2 information collected from individuals concerning immigration or
3 citizenship status to that necessary to perform agency duties.

4 (d) Nothing in this section shall prohibit a Hawaii law
5 enforcement agency from:

6 (1) Sending to or receiving from any local, state, or
7 federal agency information regarding an individual's
8 country of citizenship or a statement of the
9 individual's immigration status pursuant to title 8
10 United States Code section 1373;

11 (2) Disclosing information about an individual's criminal
12 arrests or convictions, where disclosure of such
13 information about the individual is otherwise
14 permitted by state law or required pursuant to
15 subpoena or court order; or

16 (3) Disclosing information about an individual's juvenile
17 arrests or delinquency or youthful offender
18 adjudications, where disclosure of such information
19 about the individual is otherwise permitted by state
20 law or required pursuant to subpoena or court order.



1 § -6 Prohibition against providing access to individuals
2 in custody for questioning or interviewing principally for
3 immigration enforcement purposes. A Hawaii law enforcement
4 agency shall not provide ICE or CBP with access to an individual
5 in the agency's custody or with the use of agency facilities to
6 question or interview such individual if ICE or CBP's principal
7 purpose is enforcement of federal immigration law, unless the
8 individual requests to meet with ICE or CBP.

9 § -7 Due process rights; federal immigration enforcement
10 requests. (a) A Hawaii law enforcement agency shall not delay
11 bail or an individual's release from custody upon posting of
12 bail solely because of an individual's immigration or
13 citizenship status, a civil immigration warrant, or an ICE or
14 CBP request for notification about, transfer of, detention of,
15 or interview or interrogation of that individual for immigration
16 enforcement purposes.

17 (b) Upon receipt of an ICE or CBP civil immigration
18 detainer, transfer, notification, or interview or interrogation
19 request, a Hawaii law enforcement agency shall provide a copy of
20 that detainer or request to the individual named therein and
21 inform the individual whether the Hawaii law enforcement agency



1 will comply with the request before communicating its response
2 to the requesting agency.

3 (c) Individuals in the custody of a Hawaii law enforcement
4 agency shall be subject to the same agency booking, processing,
5 release, and transfer procedures, policies, and practices,
6 regardless of actual or suspected citizenship or immigration
7 status.

8 § -8 Prohibition on use of public resources. No agency
9 of the State or any of its political subdivisions shall use
10 moneys, facilities, property, equipment, or personnel of the
11 State or any of its political subdivisions to investigate,
12 enforce, or assist in the investigation or enforcement of any
13 federal program requiring registration of individuals on the
14 basis of citizenship or immigration status.

15 § -9 Access to benefits and services. No agency of the
16 State or any of its political subdivisions shall inquire about
17 or request proof of immigration status or citizenship when
18 providing services or benefits, except where the receipt of such
19 services or benefits are contingent upon the individual's
20 immigration or citizenship status or where inquiries are
21 otherwise lawfully required by federal, state, or local laws.



1 § -10 **Data collection.** (a) All Hawaii law enforcement
2 agencies shall record, solely to create the reports described in
3 subsection (b), the following information for each civil
4 immigration detainer, notification, or request for transfer,
5 questioning or interview, or interrogation received from ICE or
6 CBP:

- 7 (1) The subject individual's race, gender, and place of
8 birth;
- 9 (2) The date and time that the subject individual was
10 taken into Hawaii law enforcement agency custody, the
11 location where the individual was held, and any arrest
12 charges;
- 13 (3) The date and time of the Hawaii law enforcement
14 agency's receipt of the detainer, notification, or
15 request;
- 16 (4) The requesting agency;
- 17 (5) Immigration or criminal history indicated on the
18 request form, if any;
- 19 (6) Whether the detainer, notification, or request was
20 accompanied by any documentation regarding immigration
21 status or proceedings such as a judicial warrant;



- 1 (7) Whether a copy of the detainer, notification, or
2 request was provided to the individual and, if so, the
3 date and time it was provided;
- 4 (8) Whether the individual consented to the detainer,
5 notification, or request;
- 6 (9) Whether the individual requested to meet with ICE or
7 CBP;
- 8 (10) Whether the individual requested to confer with
9 counsel regarding the detainer, notification, or
10 request;
- 11 (11) The Hawaii law enforcement agency's response to the
12 detainer, notification, or request, including any
13 decision not to comply with it;
- 14 (12) If applicable, the date and time that ICE or CBP took
15 custody of, or was otherwise given access to, the
16 individual; and
- 17 (13) The date and time of the individual's release from the
18 Hawaii law enforcement agency's custody.
- 19 (b) All Hawaii law enforcement agencies shall provide
20 semi-annual reports to the attorney general regarding the
21 information collected in subsection (a) in an aggregated form



1 that is stripped of all personal identifiers in order that the
2 Hawaii law enforcement agency and the community may monitor the
3 compliance with all applicable law. The attorney general shall
4 make the reports public and post the reports on its website."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Federal Immigration Enforcement; Law Enforcement Agencies;
United States Customs and Border Protection; United States
Immigration and Customs Enforcement

Description:

Prohibits state law enforcement agencies from complying with
federal immigration detainers or honoring requests for non-
public information unless specifically required to do so by a
warrant signed by a judge or provisions of federal, state, or
local law. (HB1994 HD2)

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