

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE POWER OF ARREST.

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

1 SECTION 1. Section 803-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§803-16 Officer of the United States Immigration and
4 Customs Enforcement or United States Customs and Border
5 Protection [~~Service or Citizenship and Immigration Services~~];
6 **arrest powers.** An officer of the United States Immigration and
7 Customs Enforcement or United States Customs and Border
8 Protection [~~Service or the Citizenship and Immigration~~
9 Services], without a warrant, may arrest a person if:

- 10 (1) The officer is on duty;
- 11 (2) One or more of the following situations exists:
- 12 (A) The person commits an assault or other crime
13 involving physical harm, defined and punishable
14 under chapter 707, against the officer or against
15 any other person in the presence of the officer;
- 16 (B) The person commits an offense against public
17 order, defined and punishable under chapter 711,
18 in the presence of the officer;

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1 (C) The officer has probable cause to believe that a
2 crime as provided in subparagraph (A) or (B) has
3 been committed and has probable cause to believe
4 that the person to be arrested has committed the
5 crime;

6 (D) The officer has probable cause to believe that a
7 felony has been committed and probable cause to
8 believe that the person to be arrested has
9 committed the felony; or

10 (E) The officer has received information by written,
11 telegraphic, teletypic, telephonic, radio, or
12 other authoritative source that a law enforcement
13 officer holds a warrant for the person's arrest;
14 and

15 (3) The [~~Director of the Hawaii district office for the~~
16 special agent in charge, United States Immigration and
17 Customs Enforcement, Homeland Security Investigations
18 Honolulu, or the port director of the area port of
19 Honolulu of the United States Customs and Border
20 Protection [~~Service, or the Citizenship and~~
21 ~~Immigration Services~~], as the case may be, or other
22 authorized representative, certifies to the State that

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Report Title:

Power of Arrest; Immigration and Customs Enforcement

Description:

Updates the list of federal agencies whose officers may make arrests for certain offenses under state law by adding the United States Immigration and Customs Enforcement and removing the Citizenship and Immigration Services from the list. Adds proper titles of the heads of the district offices for the listed federal agencies.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE POWER OF ARREST.

PURPOSE: To update the list of federal agencies whose officers may make arrests for certain offenses under state law by adding the Immigration and Customs Enforcement (ICE) and removing the Citizenship and Immigration Services from the list; and to update and accurately reflect the proper titles of the heads of the district offices for the listed federal agencies and the name of the United States Customs and Border Protection.

MEANS: Amend section 803-16, Hawaii Revised Statutes.

JUSTIFICATION: Act 201, Session Laws of Hawaii 1980, codified as section 803-16, conferred the power to arrest under state law on officers of the United States Custom Service and the Immigration and Naturalization Service. This law provided additional protection at state airports and harbors by authorizing customs and immigration agents to assist in maintaining law and order. These agents were often in a position to observe suspicious activities but were not authorized, under prior state law, to take action under state law.

In March 2003, the Department of Homeland Security was created by combining the law enforcement arms of the former Immigration and Naturalization Service and the former Customs Service. The agencies under the Department of Homeland Security were renamed to include ICE, the U.S. Customs and Border Protection (CBP), and the Citizenship and Immigration Services (CIS).

Act 95, Session Laws of Hawaii 2008, amended section 803-16 in an attempt to address the creation of the new federal agencies. It also created new section 803-17, Hawaii Revised Statutes, which grants arrest powers to deputies of the U.S. Marshal Service. While Act 95 granted authority to deputy marshals, and amended section 803-16 to include CBP and CIS, it failed to include ICE, the largest investigative branch of the Department of Homeland Security. Furthermore, by including CIS, it included an agency that, according to ICE legal counsel, does not have the authority to make arrests under federal law. Only ICE and CBP agents have law enforcement authority.

This bill is intended to correct these issues by amending section 803-16 to include agents of ICE, and to delete reference to the officers of the CIS. ICE is in support of being added to section 803-16.

The grant of limited arrest powers, under state law, to federal agents, like those of ICE, will allow them to provide support to state and county law enforcement efforts, especially in certain times of need. The state and county must rely on federal law enforcement cooperation and support for natural disasters, joint law enforcement task force efforts, and major or national events.

Impact on the public: Officers of ICE can provide limited assistance with the enforcement of state laws.

Impact on the department and other agencies: This bill will allow the appropriate federal officers, with clear law enforcement power, to provide arrest support to state and county law enforcement agencies.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, and the Department of Public
Safety.

EFFECTIVE DATE: Upon approval.