

JAN 18 2019

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 many people into a valued tapestry of races, ancestral
4 groups, religions, cultures, and languages from many parts of
5 the world. The state and county governments cultivate a culture
6 of inclusion when they ensure that all people in Hawai'i's
7 communities receive equal protection of the laws and respectful
8 treatment without regard to race, national origin, ancestry, or
9 citizenship status. As of 2016, there were 43,700,000
10 immigrants, or foreign-born individuals, in the United States,
11 which was 13.5 per cent of the total United States population.
12 An estimated 10,700,000 of these individuals were undocumented.
13 As of 2015, in Hawai'i there were 253,414 immigrants, of which
14 approximately 45,000 were undocumented.

15 The legislature additionally finds that unlawful presence
16 in the United States is not, by itself, a criminal offense, as
17 recognized by the Supreme Court of the United States in *Arizona*



1 *v. United States*, 567 U.S. 387 (2012). A person's undocumented
2 status can result from crossing a border into the United States
3 without being processed, which is a federal misdemeanor under
4 title 8 United States Code section 1325, or from entering the
5 United States with a visa and then overstaying the length of the
6 visa, which is not a crime. Based on the geography of the
7 Hawaiian islands, the legislature finds it likely that the
8 majority of undocumented immigrants living in Hawai'i overstayed
9 their visas.

10 The legislature also finds that the inclusionary and
11 peaceful culture in Hawai'i is now threatened by inflammatory
12 rhetoric and harsh federal policies that vilify immigrants,
13 divide communities and families, and create fear and suspicion
14 among different racial, ethnic, and ancestral groups. Various
15 efforts have been made to render federal immigration law more
16 humane, however those efforts have failed. Additional relevant
17 facts about immigrants include the following:

18 (1) Over sixty per cent of undocumented immigrants have
19 been in the United States for ten years or more, and
20 another thirty per cent have been present for five to
21 nine years, according to the Migration Policy



1 Institute; these are individuals who live and work in
2 American communities and pay taxes, and many have
3 married citizens and many more have children who are
4 citizens by birth;

5 (2) Citizenship, under current law, is virtually
6 unattainable for most undocumented immigrants, as many
7 do not meet the requisite criteria for family
8 reunification, do not have a unique and exceptional
9 skill that is of high national interest for
10 employment, or qualify for humanitarian protection
11 such as refugee or asylum status, and thus are unable
12 to apply for citizenship and instead live in a state
13 of limbo fearing deportation;

14 (3) According to a spring 2017 McClatchy-Marist Poll,
15 eighty per cent of Americans support a pathway to
16 citizenship for undocumented immigrants, provided they
17 meet certain criteria such as being willing to learn
18 English, paying any fines caused by their undocumented
19 status, being employed, and paying taxes; and

20 (4) Numerous studies show that immigrants have a crime
21 rate that is lower than that of native-born United



1 States citizens and there is an inverse relationship
2 between crime and immigration; and these studies hold
3 true for undocumented immigrants.

4 The legislature additionally finds that, unlike policies
5 under President Obama that prioritized deportation actions on
6 immigrants who had committed serious crimes, the executive
7 orders issued by President Trump seek to deport virtually all
8 undocumented immigrants, including individuals who have not been
9 charged or convicted of a crime. The orders also seek to
10 deputize local law enforcement as federal immigration agents,
11 which would allow them to ask everyone they come into contact
12 with about their immigration status. These actions may cause
13 undocumented immigrants - and others - to be fearful that
14 contact with the police and other law enforcement personnel will
15 lead to deportation and other immigration-based actions, and to
16 become reluctant to report crimes or come forth as witnesses,
17 making our communities less safe. As a result, seven states and
18 more than three hundred cities and counties have limited their
19 law enforcement agencies from cooperating with Immigration and
20 Customs Enforcement and Customs Border Protection.



1 The legislature understands that immigration is a federal
2 function and state and local agencies have significant
3 discretion regarding whether and how to respond to requests for
4 assistance with immigration enforcement. The enforcement of
5 immigration law is carried out by the federal Immigration and
6 Customs Enforcement agency and the Customs and Border Protection
7 agency, both of which are components of the federal Department
8 of Homeland Security. Federal law does not require state and
9 local entities to collect or share information with Immigration
10 and Customs Enforcement and Customs and Border Protection.
11 Rather, federal law, at title 8 United States Code section 1373,
12 limits state and local governments from restricting
13 communication with federal immigration authorities concerning
14 "information regarding the citizenship or immigration status,
15 lawful or unlawful, of any individual." There is no affirmative
16 duty for state and local governments to collect or share this
17 information, and there is no prohibition against preventing the
18 communication of other non-public information, such as when a
19 detained individual will be released or the individual's
20 address. Furthermore, state and local agencies that do
21 participate in federal immigration enforcement do not receive



1 any funding or reimbursement for their efforts. Essentially,
2 the federal government is attempting to impose an unfunded
3 mandate on the State and counties.

4 The legislature also finds that President Trump issued
5 three executive orders in January 2017 relating to immigration
6 and enforcement, entitled as follows:

- 7 (1) "Enhancing Public Safety in the Interior of the United
8 States";
9 (2) "Border Security and Immigration Enforcement
10 Improvements"; and
11 (3) "Protecting the Nation from Foreign Terrorist Entry
12 into the United States".

13 The executive orders encourage state and local law enforcement
14 agencies to voluntarily honor Immigration and Customs
15 Enforcement and Customs and Border Protection administrative
16 detainers of undocumented immigrants. These "administrative
17 detainers" are requests by Immigration and Customs Enforcement
18 and Customs and Border Protection for state and local law
19 enforcement to keep an individual in custody for forty-eight
20 hours beyond when the state or local entity would have released



1 the person. Moreover, these detainers are not reviewed and
2 signed by a judge, nor are they warrants.

3 The legislature furthermore finds that state and local
4 agencies must adhere to the United States and Hawai'i
5 constitutions, such as the Fourth Amendment of the United States
6 Constitution prohibition on unreasonable searches and seizures.
7 Several federal courts have held that Immigration and Customs
8 Enforcement detainers do not provide probable cause for arrest
9 or detention under the Fourth Amendment and that the state or
10 local law enforcement agency may be liable for monetary damages
11 for unlawful detention. In addition, a number of jurisdictions
12 have paid monetary awards, either as judgments or settlements,
13 to individuals who claimed that they were unlawfully held based
14 on Immigration and Customs Enforcement detainer requests. For
15 example, San Juan county, New Mexico agreed to pay \$724,000 to
16 one hundred ninety-three individuals and their attorneys in a
17 federal judge-approved settlement in 2017.

18 The "Enhancing Public Safety in the Interior of the United
19 States" Executive Order issued by President Trump seems to
20 attempt to improperly coerce jurisdictions into cooperating with
21 Immigration and Customs Enforcement and Customs and Border



1 Protection by threatening to withhold federal grants from
2 sanctuary jurisdictions that "willfully refuse" to comply.
3 However, the federal government may not commandeer states and
4 their subdivisions in this manner. In *Printz v. United States*,
5 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144
6 (1992), the United States Supreme Court held that the Tenth
7 Amendment to the United States Constitution prohibits federal
8 "commandeering" of state or local governments to help enforce
9 federal law. Several federal courts have attempted to block
10 implementation of President Trump's executive order to withhold
11 federal grants from jurisdictions that do not provide
12 immigration authorities access to detained individuals or
13 advance notice of their release. These include:

- 14 (1) *City of Chicago v. Sessions*, 888 F.3d 272 (7th
15 Cir. 2018) (United States Attorney General cannot
16 impose conditions on sanctuary cities' receipt of law
17 enforcement grant funds);
18 (2) *City of Philadelphia v. Sessions*, 2017 WL 5489476
19 (E.D. Penn. Nov. 15, 2017) (preliminary injunction);
20 and



1 (3) *City and County of San Francisco v. Trump*, 897 F.3d
2 1225 (9th Cir. 2018) (the Executive Branch cannot
3 withhold federal grants to sanctuary cities without an
4 Act of Congress permitting the withholding).

5 The legislature recognizes the numerous contributions of
6 individuals of various immigration statuses who have sought a
7 better life by immigrating to Hawai'i and elsewhere in the United
8 States. The legislature finds that trying to deport all
9 undocumented immigrants greatly outweighs any negative
10 consequences from permitting immigrants to stay in the State and
11 country. The involvement of state and local law enforcement
12 officers in federal deportation programs and activities probably
13 would alienate members of the State's many communities from
14 Hawai'i's law enforcement agencies. This alienation may also
15 undermine relationships with law enforcement that are necessary
16 to secure the peace and successfully resolve criminal
17 investigations. To ensure a safe, secure, and welcoming
18 community for everyone, including immigrants of every status,
19 and to promote respectful collaboration between community
20 members and agencies providing public safety services, this Act
21 prohibits, except as required by law, state and local law



1 enforcement agencies from collaborating with the federal
2 government for immigration purposes.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 HO'OKIPA WELCOMING POLICY ACT

8 § -1 Findings. The legislature finds and declares that
9 the State of Hawaii is home to people of diverse ethnic, racial,
10 and national backgrounds and includes immigrants who are
11 valuable and important members of Hawaii's community. It is
12 essential to the public safety of all residents that there is a
13 relationship of trust and cooperation among members of the
14 immigrant community and state and local law enforcement
15 agencies. This relationship is undermined when state and local
16 law enforcement voluntarily act at the request of federal
17 immigration officials. Voluntary enforcement of federal
18 immigration law is not a wise and effective use of state and
19 local resources.

20 This Act is intended to conserve state and local resources
21 and protect the public safety of all residents of the State.



1 § -2 Definitions. As used in this chapter:

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

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

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

17 "ICE" means United States Immigration and Customs
18 Enforcement, a component of the United States Department of
19 Homeland Security.

20 "Judicial warrant" means a warrant based on probable cause
21 and issued by a federal judge or a federal magistrate judge



1 appointed under Article III of the United States Constitution
2 who authorizes federal immigration authorities to take into
3 custody the individual who is the subject of the warrant.
4 "Judicial warrant" does not include a civil immigration warrant,
5 administrative warrant, or other document signed only by ICE or
6 CBP officials.

7 **§ -3 Certain activities solely for the purpose of**
8 **enforcing federal immigration laws.** A Hawaii LEA shall not:

- 9 (1) Stop, question, interrogate, investigate, or arrest an
10 individual based solely upon:
- 11 (A) Actual or suspected immigration or citizenship
12 status; or
 - 13 (B) A civil immigration warrant, administrative
14 warrant, or immigration detainer in the
15 individual's name, including those identified in
16 the National Crime Information Center database;
- 17 (2) Inquire about the immigration status of an individual,
18 including a crime victim, a witness, or an individual
19 who calls or approaches the police seeking assistance,
20 unless necessary to investigate criminal activity by
21 that individual; or



1 (3) Perform the functions of a federal immigration officer
2 or otherwise engage in the enforcement of federal
3 immigration law, including pursuant to title 8 United
4 States Code section 1357(g).

5 § -4 Prohibition against honoring detainer requests;
6 exceptions. (a) A Hawaii LEA shall not comply with a civil
7 immigration detainer from ICE or CBP to detain or transfer an
8 individual for immigration enforcement or investigation
9 purposes; provided that the LEA may respond affirmatively if the
10 detainer request is accompanied by a judicial warrant or as set
11 forth in subsection (b).

12 (b) A Hawaii LEA may detain an individual for up to forty-
13 eight hours on a civil immigration detainer request in the
14 absence of a judicial warrant in the following circumstances:

15 (1) The individual has been convicted of a felony; and
16 (2) There is probable cause to believe that the individual
17 has or is engaged in terrorist activity.

18 § -5 Prohibition against honoring requests for
19 information; exceptions. (a) A Hawaii LEA shall not comply
20 with an ICE or CBP request for non-public information about an
21 individual, including but not limited to non-public information



1 about an individual's release, home address, or work address,
2 except as set forth below.

3 (b) A Hawaii LEA may comply with an information request in
4 the following circumstances:

5 (1) The information request is accompanied by a judicial
6 warrant;

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

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

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

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

16 (6) There is probable cause to believe that the individual
17 has illegally re-entered the United States after a
18 previous removal or return as defined by title 8
19 United States Code section 1326(b); or

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



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

4 (d) Nothing in this section shall prohibit a Hawaii LEA
5 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 where disclosure of such
12 information is otherwise permitted by state law or
13 required pursuant to subpoena or court order; or

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

19 § -6 Prohibition against providing access to individuals
20 in custody for questioning or interviewing principally for
21 immigration enforcement purposes. A Hawaii LEA shall not



1 provide ICE or CBP with access to an individual in the agency's
2 custody or the use of agency facilities to question or interview
3 such individual if ICE or CBP's principal purpose is enforcement
4 of federal immigration law, unless:

- 5 (1) The individual requests to meet with ICE or CBP;
- 6 (2) The access request is accompanied by a judicial
7 warrant;
- 8 (3) The individual has been convicted of a felony;
- 9 (4) The individual has been convicted of any misdemeanor
10 specified in section 706-606.5(5) within the prior
11 five years;
- 12 (5) The individual has been arrested for a felony and a
13 judge has made a finding of probable cause pursuant to
14 section 805-7;
- 15 (6) There is probable cause to believe that the individual
16 has or is engaged in terrorist activity;
- 17 (7) There is probable cause to believe that the individual
18 has illegally re-entered the United States after a
19 previous removal or return as defined by title 8
20 United States Code section 1326(b); or



1 (8) The individual is currently registered as a covered
2 offender under chapter 846E.

3 **§ -7 Due process rights; federal immigration enforcement**
4 **requests.** (a) A Hawaii LEA shall not delay bail or the release
5 from custody upon posting of bail solely because of an
6 individual's immigration or citizenship status, a civil
7 immigration warrant, or an ICE or CBP request for notification
8 about, transfer of, detention of, or interview or interrogation
9 of that individual for immigration enforcement purposes.

10 (b) Upon receipt of an ICE or CBP detainer, transfer,
11 notification, interview, or interrogation request, a Hawaii LEA
12 shall provide a copy of that request to the individual named
13 therein and inform the individual whether the Hawaii LEA will
14 comply with the request before communicating its response to the
15 requesting agency.

16 (c) Individuals in the custody of a Hawaii LEA shall be
17 subject to the same booking, processing, release, and transfer
18 procedures, policies, and practices of that agency, regardless
19 of actual or suspected citizenship or immigration status.

20 **§ -8 Prohibition on use of public resources.** No agency
21 of the State or any of its political subdivisions shall use



1 moneys, facilities, property, equipment, or personnel of the
2 State or any of its political subdivisions to investigate,
3 enforce, or assist in the investigation or enforcement of any
4 federal program requiring registration of individuals on the
5 basis of race, gender, sexual orientation, religion, ethnicity,
6 or national origin.

7 § -9 **Access to benefits and services.** No agency of the
8 State or any of its political subdivisions shall inquire about
9 or request proof of immigration status or citizenship when
10 providing services or benefits, except where the receipt of such
11 services or benefits is contingent upon the individual's
12 immigration or citizenship status or where inquiries are
13 otherwise required by federal, state, or local laws.

14 § -10 **Data collection.** (a) All Hawaii LEAs shall
15 record, solely to create the reports described in subsection
16 (b), the following information for each immigration detainer,
17 notification, transfer, questioning or interview, or
18 interrogation request received from ICE or CBP:

19 (1) The individual's race, gender, and place of birth;



- 1 (2) Date and time that the individual was taken into
- 2 Hawaii LEA custody, the location where the individual
- 3 was held, and the arrest charges;
- 4 (3) Date and time of the Hawaii LEA's receipt of the
- 5 request;
- 6 (4) The requesting agency;
- 7 (5) Immigration or criminal history indicated on the
- 8 request form, if any;
- 9 (6) Whether the request was accompanied by any
- 10 documentation regarding immigration status or
- 11 proceedings such as a judicial warrant;
- 12 (7) Whether a copy of the request was provided to the
- 13 individual and, if so, the date and time of
- 14 notification;
- 15 (8) Whether the individual consented to the request;
- 16 (9) Whether the individual requested to meet with ICE or
- 17 CBP;
- 18 (10) Whether the individual requested to confer with
- 19 counsel regarding the request;
- 20 (11) The Hawaii LEA's response to the request, including
- 21 any decision not to fulfill the request;



1 (12) If applicable, the date and time that ICE or CBP took
2 custody of, or was otherwise given access to, the
3 individual; and

4 (13) The date and time of the individual's release from the
5 Hawaii LEA's custody.

6 (b) All Hawaii LEAs shall provide semi-annual reports to
7 the state attorney general regarding the information collected
8 in subsection (a) in an aggregated form where all personally
9 identifiable information is redacted to monitor the Hawaii LEA's
10 compliance with all applicable law. The attorney general shall
11 make the reports public and post the reports on its website."

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that
14 began before the effective date.

15 SECTION 4. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

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S.B. NO. 557

1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Karl Rhoads

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Thur



S.B. NO. 557

Report Title:

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

Description:

Prohibits state and county 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.

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

