S.B. NO. 775

JAN 1 7 2025

## A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1 The legislature finds that, according to the SECTION 1. American Immigration Council, the State is home to approximately 2 3 two hundred fifty-four thousand immigrants, including fifty 4 thousand five hundred undocumented immigrants. The legislature 5 further finds that the State is justifiably proud of its rich immigrant heritage, which has woven many residents into a valued 6 tapestry of races, ancestral groups, religions, cultures, and 7 8 languages from many parts of the world.

9 The legislature further finds that while immigration is a federal responsibility, state and local agencies have 10 significant discretion regarding whether and how to respond to 11 12 requests for assistance from federal immigration enforcement. The enforcement of immigration law is carried out by the United 13 14 States Immigration and Customs Enforcement and United States 15 Customs and Border Protection, both of which are agencies of the 16 Department of Homeland Security. Federal law does not require 17 state and local entities to collect or share information with

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1 the United States Immigration and Customs Enforcement or United 2 States Customs and Border Protection. Rather, federal law, 3 under title 8 United States Code section 1373, limits state and local governments from restricting communication with federal 4 5 immigration authorities concerning information regarding the citizenship or immigration status, lawful or unlawful, of any 6 7 There is no affirmative duty for state and local individual. governments to collect or share this information, and there is 8 9 no prohibition against preventing the communication of other 10 non-public information.

11 The legislature further finds that the federal government should not shift the financial burden of federal civil 12 immigration enforcement, including personnel time and costs 13 14 relating to notification and detention, onto local law enforcement by requesting that local law enforcement agencies 15 continue detaining persons based on non-mandatory civil 16 immigration detainers or cooperating and assisting with requests 17 to notify United States Immigration and Customs Enforcement that 18 a person will be released from local custody. The legislature 19 20 believes that it is not a wise and effective use of valuable and

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limited state and local resources at a time when vital services
 are overburdened.

3 The legislature further finds that civil immigration 4 detainers are issued by immigration officers without judicial 5 oversight, and the federal regulation authorizing civil immigration detainers provides no minimum standard of proof for 6 7 their issuance, leading to questions as to their 8 constitutionality. Unlike criminal warrants, which must be 9 supported by probable cause and issued by judges, there are no similar requirements for the issuance of a civil immigration 10 detainer. Several federal courts have ruled that because civil 11 immigration detainers and other United States Immigration and 12 Customs Enforcement notice of action documents are issued 13 without probable cause of criminal conduct, they do not meet the 14 15 Fourth Amendment requirements for state or local law 16 enforcements to arrest and hold an individual in custody. Complying with non-mandatory civil immigration detainers 17 18 frequently raises due process concerns.

19 The legislature further finds that because the State is
20 home to residents of diverse ethnic, racial, and national
21 backgrounds, including immigrants who are valuable and important

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members of their communities, it is essential to the public 1 2 safety of all residents that there is a relationship of trust 3 and cooperation among all members of the community, including 4 immigrants, migrants, and the local law enforcement community. 5 This relationship, essential to "community policing", is 6 undermined when local law enforcement agencies voluntarily act 7 at the request of a federal immigration official to enforce 8 federal immigration laws. 9 Accordingly, the purpose of this Act is to prohibit state 10 and local law enforcement agencies to collaborate with the federal government for immigration purposes except for in 11 12 limited, specific circumstances. SECTION 2. Chapter 353C, Hawaii Revised Statutes, is 13 14 amended by adding two new sections to be appropriately 15 designated and to read as follows: "§353C-A Honoring detainer requests; prohibition. (a) 16 No law enforcement agency shall comply with a civil immigration 17 detainer from the United States Immigration and Customs 18 Enforcement or United States Customs and Border Protection to 19 detain or transfer an individual for immigration enforcement or 20

21 investigation purposes; provided that the law enforcement agency

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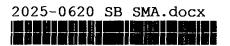
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1	may respond affirmatively if the detainer request is accompanied
2	by a judicial warrant.
3	(b) No law enforcement agency shall enter into a formal or
4	informal agreement with the United States Immigration and
5	Customs Enforcement, United States Customs and Border
6	Protection, or other federal immigration authority relating to
7	the detention of a person being detained for immigration
8	enforcement or investigation purposes.
9	(c) No law enforcement agency shall use agency moneys,
10	equipment, or personnel for the purpose of detecting or
11	apprehending persons for the purpose of enforcing federal
12	immigration laws.
13	(d) This section shall not prohibit any political
14	subdivision from establishing more stringent standards and
15	protections.
16	(e) For the purposes of this section:
17	"Civil immigration detainer" means an immigration detainer
18	issued pursuant to title 8 Code of Federal Regulations section
19	287.7 or any similar request from the United States Immigration
20	and Customs Enforcement or United States Customs and Border

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1	Protection for detention of an individual suspected of violating
2	civil immigration law.
3	"Judicial warrant" means a warrant based on probable cause
4	and issued by a federal judge or federal magistrate judge
5	appointed under Article III of the United States Constitution
6	who authorizes federal immigration authorities to take into
7	custody the individual who is the subject of the warrant;
8	provided that "judicial warrant" shall not include a civil
9	immigration warrant, administrative warrant, or other document
10	signed only by the United States Immigration and Customs
11	Enforcement or United States Customs and Border Protection.
12	"Law enforcement agency" means any agency of the State or
13	any of its political subdivisions, or any officer of those
14	agencies, which is authorized to enforce criminal laws, operate
15	correctional facilities, or maintain custody of individuals in
16	correctional facilities, and any individual or agency authorized
17	to operate juvenile detention facilities or to maintain custody
18	of individuals in juvenile detention facilities.
19	<u>§353C-B</u> Requests for information from immigration
20	authority; prohibition; exceptions. (a) No law enforcement
21	agency shall comply with a United States Immigration and Customs



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1	Enforceme	nt or United States Customs and Border Protection		
2	request f	or non-public information about an individual,		
3	including but not limited to information about an individual's			
4	release,	home address, or work address, except as authorized by		
5	this sect	ion; provided that a law enforcement agency may comply		
6	with an i	nformation request if the request is accompanied by a		
7	judicial	warrant.		
8	<u>(b)</u>	A law enforcement agency shall limit the information		
9	collected	from an individual concerning immigration or		
10	<u>citizensh</u>	ip status to that necessary to perform agency duties.		
11	<u>(c)</u>	Nothing in this section shall prohibit a law		
12	enforcemen	nt agency from:		
13	(1)	Sharing and receiving from any local, state, or		
14		federal agency information regarding an individual's		
15		country of citizenship or a statement of the		
16		individual's immigration status pursuant to title 8		
17		United States Code section 1373; or		
18	(2)	Disclosing information where disclosure of that		
19		information is otherwise required by state law or		
20		pursuant to subpoena or court order.		

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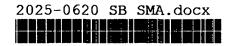
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1	(d) This section shall not prohibit any political
2	subdivision from establishing more stringent standards and
3	protections.
4	(e) For the purposes of this section:
5	"Judicial warrant" has the same meaning as defined in
6	section 353C-A.
7	"Law enforcement agency" has the same meaning as defined in
8	section 353C-A."
9	SECTION 3. In codifying the new sections added by
10	section 2 of this Act, the revisor of statutes shall substitute
11	appropriate section numbers for the letters used in designating
12	the new sections in this Act.
13	SECTION 4. New statutory material is underscored.
14	SECTION 5. This Act shall take effect upon its approval.
15	Hal that

INTRODUCED BY:



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### Report Title:

Immigration; Law Enforcement; Cooperation; Prohibition; Exceptions

#### Description:

Prohibits state and local law enforcement agencies to collaborate with the federal government for immigration purposes except for in limited, specific circumstances.

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

