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# A BILL FOR AN ACT

RELATING TO IMMIGRATION.

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

1           SECTION 1. The legislature finds that, according to the  
2 American Immigration Council, the State is home to approximately  
3 258,800 immigrants, including 29,900 undocumented immigrants.  
4 The legislature further finds that the State is justifiably  
5 proud of its rich immigrant heritage, which is reflected in a  
6 valued tapestry of races, ancestral groups, religions, cultures,  
7 and languages from many parts of the world.

8           The legislature further finds that the State is also proud  
9 of its strong civil rights record. Article I, section 5, of the  
10 Hawaii State Constitution affirmatively states that no person  
11 shall be denied the equal protection of the laws or the  
12 enjoyment of the person's civil rights or be discriminated  
13 against in the exercise of these rights because of race or  
14 ancestry.

15           The legislature notes that while immigration is a federal  
16 responsibility, state and local agencies have significant  
17 discretion regarding whether and how to respond to requests for



1 assistance from federal immigration enforcement. The  
2 enforcement of immigration law is carried out by federal  
3 immigration authorities, including the United States Immigration  
4 and Customs Enforcement and United States Customs and Border  
5 Protection, both of which are agencies of the Department of  
6 Homeland Security. Federal law does not require state and local  
7 entities to collect or share information with the United States  
8 Immigration and Customs Enforcement and United States Customs  
9 and Border Protection. Rather, federal law, under title 8  
10 United States Code section 1373, limits state and local  
11 governments from restricting communication with federal  
12 immigration authorities concerning information regarding the  
13 citizenship or immigration status, lawful or unlawful, of any  
14 individual. There is no affirmative duty for state and local  
15 governments to collect or share this information, and there is  
16 no prohibition against preventing the communication of other  
17 non-public information.

18 The legislature also finds that because the State is home  
19 to residents of diverse ethnic, racial, and national  
20 backgrounds, including immigrants who are valuable and important  
21 members of local communities, and because of the State's strong



1 due process and civil rights protections for all, it is  
2 essential to ensure that immigrants and migrants in state and  
3 county law enforcement custody are provided due process and  
4 civil rights protections.

5 Accordingly, the purpose of this Act is to:

6 (1) Require state and county law enforcement agencies to  
7 notify an individual in the custody of a state or  
8 local law enforcement agency of their rights before  
9 any civil immigration interview with federal  
10 immigration authorities pertaining to certain matters  
11 regarding civil immigration violations can commence;  
12 and

13 (2) Designate all records relating to federal immigration  
14 authorities' access to a detained individual provided  
15 by a state or county law enforcement agency as public  
16 records.

17 SECTION 2. Chapter 353C, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20 "§353C- Immigration; civil immigration interviews; due  
21 process and transparency; requirements. (a) Before any civil



1 immigration interview between a federal immigration authority  
2 and an individual in law enforcement agency custody regarding  
3 civil immigration violations may commence, the law enforcement  
4 agency shall provide the individual with a written consent form  
5 that:

6 (1) Explains:

7 (A) The rights afforded under the Fifth Amendment of  
8 the United States Constitution, including the  
9 right to remain silent and the right to have an  
10 attorney present if represented;

11 (B) The interview is voluntary; and

12 (C) The individual may either:

13 (i) Decline to be interviewed; or

14 (ii) Choose to be interviewed only with the  
15 individual's attorney present; and

16 (2) Clearly provides a space for the individual to  
17 indicate that they:

18 (A) Consent to the interview;

19 (B) Consent to the interview with the individual's  
20 attorney present; or

21 (C) Do not consent to the interview.



1           (b) The written consent form required under subsection (a)  
2 shall be provided at no cost and shall be available in the  
3 languages that the office of language access provides  
4 translations for, including but not limited to:

5           (1) Chinese Mandarin or Cantonese;

6           (2) Chuukese;

7           (3) English;

8           (4) Ilokano;

9           (5) Japanese;

10          (6) Korean;

11          (7) Olelo Hawaii;

12          (8) Marshallese;

13          (9) Samoan;

14          (10) Spanish;

15          (11) Tagalog;

16          (12) Thai;

17          (13) Vietnamese; and

18          (14) Visayan;

19 provided that other accommodations shall be made for individuals  
20 who speak languages that the office of language access cannot  
21 provide translation.



1       The law enforcement agency shall provide the individual,  
2 the individual's attorney, or the individual's designated  
3 representative with a copy of the signed written consent form  
4 and retain a copy of each written consent form.

5       (c) Upon request, a law enforcement agency shall provide  
6 the individual with reasonable access to a telephone and a  
7 reasonable opportunity to consult with the individual's attorney  
8 before any civil immigration interview; provided that juveniles  
9 in law enforcement agency custody shall also have a reasonable  
10 opportunity to contact a parent, guardian, or legal custodian.

11       (d) Law enforcement agencies shall log each civil  
12 immigration interview request, including the following:

- 13       (1) Date and time of the civil immigration interview  
14       request;
- 15       (2) Whether the written consent form under subsection (a)  
16       was provided to the individual;
- 17       (3) The language used in the written consent form;
- 18       (4) Whether consent was given to a civil immigration  
19       interview;
- 20       (5) If consent was given, whether counsel was present at  
21       the interview; and



1       (6) If consent was given, the date and time of the civil  
2       immigration interview.

3       (e) Upon receiving any immigration hold, notification, or  
4       transfer request from a federal immigration authority, a law  
5       enforcement agency shall provide a copy of the request to the  
6       individual and inform the individual whether the law enforcement  
7       agency intends to comply with the request. If a law enforcement  
8       agency provides a federal immigration authority with  
9       notification that an individual is being, or will be, released  
10       on a certain date, the law enforcement agency shall promptly  
11       provide the same notification in writing within two business  
12       days to the individual and the individual's attorney or the  
13       individual's designated representative.

14       (f) All records relating to a federal immigration  
15       authority's access to a detained individual provided by a law  
16       enforcement agency, including all communication with the federal  
17       immigration authority, shall be public records for purposes of  
18       chapter 92F, and the exemptions provided in chapter 92F shall  
19       not apply; provided that personal identifying information of a  
20       detained individual shall be redacted before public disclosure  
21       pursuant to section 92F-13(1). Records relating to federal



1 immigration authority access to a detained individual shall  
2 include but not be limited to:

3 (1) Logs maintained by the law enforcement agency pursuant  
4 to subsection (d);

5 (2) The date the federal immigration authority was  
6 provided the access; and

7 (3) Whether the federal immigration authority's access was  
8 provided through an immigration hold, notification  
9 request, or transfer, or other means.

10 (g) The department of the attorney general, the county  
11 prosecuting attorneys, or an agency with separate enforcement  
12 authority may receive and investigate complaints of violations  
13 of this section and issue findings and corrective orders.

14 (h) Any person who is or was in custody and aggrieved by a  
15 violation of this section may bring an action seeking injunctive  
16 or declaratory relief and reasonable attorneys' fees against a  
17 law enforcement agency that has violated the requirements of  
18 subsection (a) or (b).

19 (i) For the purposes of this section:



1       "Civil immigration interview" means any interview by  
2 federal immigration authorities concerning civil immigration  
3 matters of a person in the custody of a law enforcement agency.

4       "Federal immigration authority" means the United States  
5 Immigration and Customs Enforcement, the United States Customs  
6 and Border Protection, or any other federal agency or component  
7 authorized to conduct civil immigration enforcement or civil  
8 immigration interviews under federal law.

9       "Immigration hold" means an immigration detainer issued  
10 pursuant to title 8 Code of Federal Regulations section 287.7,  
11 or any similar request from federal immigration authorities for  
12 detention of an individual suspected of violating civil  
13 immigration law.

14       "Law enforcement agency" means any agency of the State or  
15 any of its political subdivisions, or any officer or individual  
16 of those agencies, that is authorized to enforce criminal laws;  
17 operate correctional, detention, or juvenile detention  
18 facilities; or maintain custody of individuals in correctional,  
19 detention, or juvenile detention facilities. "Law enforcement  
20 agency" does not include any federal agency or its political  
21 subdivisions, or any officer or individual of those agencies."



- 1 SECTION 3. New statutory material is underscored.
- 2 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Immigration; Law Enforcement Agencies; Access to Detained Individuals; Civil Immigration Interviews; Due Process; Public Records

**Description:**

Requires state and county law enforcement agencies to notify an individual in the custody of a state or county law enforcement agency of their rights before any interview with federal immigration authorities pertaining to certain matters regarding civil immigration violations can commence. Designates all records relating to federal immigration authorities' access to detained individuals provided by a state or local law enforcement agency as public records. (CD1)

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

