
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 (2) Designate all records relating to federal immigration
13 authorities access to a detained individual provided
14 by a state or county law enforcement agency as
15 government records; and
- 16 (3) Require state and county law enforcement agencies that
17 have provided federal immigration authorities access
18 to a detained individual within the previous year to
19 hold two public forums per year.



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

4 "§353C- Immigration; civil immigration interviews; due
5 process and transparency; requirements. (a) Before any civil
6 immigration interview between a federal immigration authority
7 and an individual in law enforcement agency custody regarding
8 civil immigration violations may commence, the law enforcement
9 agency shall provide the individual with a written consent form
10 that:

- 11 (1) Explains:
- 12 (A) The rights afforded under the Fifth Amendment of
13 the United States Constitution, including the
14 right to remain silent and the right to have an
15 attorney present if represented;
- 16 (B) The purpose of the interview, if known by the law
17 enforcement agency;
- 18 (C) The interview is voluntary; and
- 19 (D) The individual may either:
- 20 (i) Decline to be interviewed; or



- 1 (ii) Choose to be interviewed only with the
- 2 individual's attorney present; and
- 3 (2) Clearly provides a space for the individual to
- 4 indicate that they:
- 5 (A) Consent to the interview;
- 6 (B) Consent to the interview with the individual's
- 7 attorney present; or
- 8 (C) Do not consent to the interview.
- 9 (b) The written consent form required under subsection (a)
- 10 shall be provided at no cost and shall be available in the
- 11 languages that the office of language access provides
- 12 translations for, including but not limited to:
- 13 (1) Chinese Mandarin or Cantonese;
- 14 (2) Chuukese;
- 15 (3) English;
- 16 (4) Ilokano;
- 17 (5) Japanese;
- 18 (6) Korean;
- 19 (7) Olelo Hawaii;
- 20 (8) Marshallese;
- 21 (9) Samoan;



- 1 (10) Spanish;
- 2 (11) Tagalog;
- 3 (12) Thai;
- 4 (13) Vietnamese; and
- 5 (14) Visayan;

6 provided that other accommodations shall be made for individuals
7 who speak languages that the office of language access cannot
8 provide translation.

9 The law enforcement agency shall provide the individual,
10 the individual's attorney, or the individual's designated
11 representative with a copy of the signed written consent form
12 and retain a copy of each written consent form.

13 (c) Upon request, a law enforcement agency shall provide
14 the individual with reasonable access to a telephone and a
15 reasonable opportunity to consult with the individual's attorney
16 before any civil immigration interview; provided that juveniles
17 in law enforcement agency custody shall also have a reasonable
18 opportunity to contact a parent, guardian, or legal custodian.

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



- 1 (1) Date and time of the civil immigration interview
2 request;
- 3 (2) Whether the written consent form under subsection (a)
4 was provided to the individual;
- 5 (3) The language used in the written consent form;
- 6 (4) Whether consent was given to a civil immigration
7 interview;
- 8 (5) If consent was given, whether counsel was present at
9 the interview; and
- 10 (6) If consent was given, the date and time of the civil
11 immigration interview.
- 12 (e) Upon receiving any immigration hold, notification, or
13 transfer request from a federal immigration authority, a law
14 enforcement agency shall provide a copy of the request to the
15 individual and inform the individual whether the law enforcement
16 agency intends to comply with the request. If a law enforcement
17 agency provides a federal immigration authority with
18 notification that an individual is being, or will be, released
19 on a certain date, the law enforcement agency shall promptly
20 provide the same notification in writing within two business



1 days to the individual and the individual's attorney or the
2 individual's designated representative.

3 (f) All records relating to a federal immigration
4 authority's access to a detained individual provided by a law
5 enforcement agency, including all communication with the federal
6 immigration authority, shall be government records for purposes
7 of chapter 92F; provided that personal identifying information
8 of a detained individual shall be redacted before public
9 disclosure pursuant to section 92F-13(1). Records relating to
10 federal immigration authority access to a detained individual
11 shall include but not be limited to:

12 (1) Logs maintained by the law enforcement agency pursuant
13 to subsection (d);

14 (2) The date the federal immigration authority was
15 provided the access; and

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

19 (g) Each law enforcement agency shall provide de-
20 identified copies of the records maintained pursuant to
21 subsection (f) to the department of the attorney general on a



1 quarterly basis. The attorney general shall submit a report to
2 the legislature no later than twenty days prior to the convening
3 of each regular session that summarizes the requests for access
4 to detained individuals by federal immigration authorities and
5 the outcomes of those requests, aggregated by county.

6 (h) The director, if a state law enforcement agency, or
7 chief of police, if a county law enforcement agency, that has
8 provided the federal immigration authorities access to a
9 detained individual during the previous year shall hold at least
10 two community forums during the following year. The community
11 forums shall be open to the public and shall provide information
12 to the public about federal immigration authorities' access to
13 detained individuals and offer an opportunity to receive and
14 consider public comment. As part of the forums, the law
15 enforcement agency shall provide the director or chief of police
16 with:

17 (1) Data it maintains regarding the number and demographic
18 characteristics of detained individuals to whom the
19 law enforcement agency has provided federal
20 immigration authorities access;



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

3 (3) Whether the federal immigration authority was provided
4 access through an immigration hold, notification
5 request, or transfer, or other means.

6 The law enforcement agency shall provide the information
7 under paragraphs (1) to (3) to the director or chief of police
8 in the form of statistics; provided that if statistics are not
9 maintained, then the law enforcement agency shall provide the
10 director or chief of police with individual records; provided
11 further that personal identifying information of a detained
12 individual shall be redacted.

13 (i) No later than December 31, 2026, the department of the
14 attorney general shall develop and publish consent forms that
15 meet the requirements of subsection (a) and model policies
16 addressing requests from federal immigration authorities for
17 access to a detained individual for law enforcement agencies to
18 adopt.

19 (j) The department of the attorney general, the county
20 prosecuting attorneys, or an agency with separate enforcement



1 authority may receive and investigate complaints of violations
2 of this section and issue findings and corrective orders.

3 (k) Any person who is or was in custody and aggrieved by a
4 violation of this section may bring an action seeking injunctive
5 or declaratory relief and reasonable attorneys' fees against a
6 law enforcement agency that has violated the requirements of
7 subsection (a) or (b).

8 (l) For the purposes of this section:

9 "Civil immigration interview" means any interview by
10 federal immigration authorities concerning civil immigration
11 matters of a person in the custody of a law enforcement agency.

12 "Federal immigration authority" means the United States
13 Immigration and Customs Enforcement, the United States Customs
14 and Border Protection, or any other federal agency or component
15 authorized to conduct civil immigration enforcement or civil
16 immigration interviews under federal law.

17 "Immigration hold" means an immigration detainer issued
18 pursuant to title 8 Code of Federal Regulations section 287.7,
19 or any similar request from federal immigration authorities for
20 detention of an individual suspected of violating civil
21 immigration law.



1 "Law enforcement agency" means any agency of the State or
2 any of its political subdivisions, or any officer or individual
3 of those agencies, that is authorized to enforce criminal laws;
4 operate correctional, detention, or juvenile detention
5 facilities; or maintain custody of individuals in correctional,
6 detention, or juvenile detention facilities. "Law enforcement
7 agency" does not include any federal agency or its political
8 subdivisions, or any officer or individual of those agencies."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on March 22, 2075.



Report Title:

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

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 government records. Requires state and county law enforcement agencies that have provided federal immigration authorities access to a detained individual within the previous year to hold two public forums per year. Effective 3/22/2075. (SD2)

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