
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 has woven many
6 residents into a valued tapestry of races, ancestral groups,
7 religions, cultures, 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 the United
3 States Immigration and Customs Enforcement or United States
4 Customs and Border Protection, both of which are agencies of the
5 Department of Homeland Security. Federal law does not require
6 state and local entities to collect or share information with
7 the United States Immigration and Customs Enforcement and United
8 States Customs and Border Protection. Rather, federal law,
9 under title 8 United States Code section 1373, limits state and
10 local governments from restricting communication with federal
11 immigration authorities concerning information regarding the
12 citizenship or immigration status, lawful or unlawful, of any
13 individual. There is no affirmative duty for state and local
14 governments to collect or share this information, and there is
15 no prohibition against preventing the communication of other
16 non-public information.

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



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

4 Accordingly, the purpose of this Act is to:

- 5 (1) Require state and county law enforcement agencies to
6 notify an individual in the custody of a state or
7 local law enforcement agency of their rights before
8 any civil immigration interview with the United States
9 Immigration and Customs Enforcement pertaining to
10 certain matters regarding civil immigration violations
11 can commence;
- 12 (2) Designate all records relating to United States
13 Immigration and Customs Enforcement access to a
14 detained individual provided by a state or county law
15 enforcement agency as public records; and
- 16 (3) Require state and county law enforcement agencies that
17 have provided the United States Immigration and
18 Customs Enforcement access to a detained individual
19 within the previous year to hold two public forums per
20 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 "S353C- Immigration; civil immigration interviews; due
5 process and transparency; requirements. (a) Before any civil
6 immigration interview between United States Immigration and
7 Customs Enforcement and an individual in law enforcement agency
8 custody regarding civil immigration violations may commence, the
9 law enforcement agency shall provide the individual with a
10 written notice that:

11 (1) Explains:

12 (A) The purpose of the interview;

13 (B) The interview is voluntary; and

14 (C) The individual may either:

15 (i) Decline to be interviewed; or

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

18 (2) Clearly provides a space for the individual to
19 indicate that they:

20 (A) Consent to the interview;



1 (B) Consent to the interview with the individual's
2 attorney present; or
3 (C) Do not consent to the interview.

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

8 (1) Chinese Mandarin or Cantonese;
9 (2) Chuukese;
10 (3) English;
11 (4) Ilokano;
12 (5) Japanese;
13 (6) Korean;
14 (7) Olelo Hawaii;
15 (8) Marshallese;
16 (9) Samoan;
17 (10) Spanish;
18 (11) Tagalog;
19 (12) Thai;
20 (13) Vietnamese; and
21 (14) Visayan.



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 reasonable phone access and a reasonable opportunity to consult
7 with counsel before any civil immigration interview.

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

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

19 (e) Upon receiving any United States Immigration and
20 Customs Enforcement immigration hold, notification, or transfer
21 request, a law enforcement agency shall provide a copy of the



1 request to the individual and inform the individual whether the
2 law enforcement agency intends to comply with the request. If a
3 law enforcement agency provides the United States Immigration
4 and Customs Enforcement with notification that an individual is
5 being, or will be, released on a certain date, the law
6 enforcement agency shall promptly provide the same notification
7 in writing within two business days to the individual and the
8 individual's attorney or the individual's designated
9 representative.

10 (f) All records relating to United States Immigration and
11 Customs Enforcement access to a detained individual provided by
12 a law enforcement agency, including all communication with
13 United States Immigration and Customs Enforcement, shall be
14 public records for purposes of chapter 92F, including the
15 exemptions provided by chapter 92F; provided that personal
16 identifying information shall be redacted before public
17 disclosure. Records relating to United states Immigration and
18 Customs Enforcement access to a detained individual shall
19 include but not be limited to:

20 (1) Logs maintained by the law enforcement agency pursuant
21 to subsection (d);



1 (2) The date the United States Immigration and Customs
2 Enforcement was provided the records; and
3 (3) Whether the United States Immigration and Customs
4 Enforcement access was provided through an immigration
5 hold, transfer, or notification request, or other
6 means.

7 (g) Each law enforcement agency shall provide de-
8 identified copies of the records maintained pursuant to
9 subsection (f) to the department of the attorney general on a
10 quarterly basis. The attorney general shall submit a report to
11 the legislature no later than twenty days prior to the convening
12 of each regular session that summarizes the requests for access
13 to a detained individual by the United States Immigration and
14 Customs Enforcement and the outcomes of those requests,
15 aggregated by county.

16 (h) The director, if a state law enforcement agency, or
17 chief of police, if a county law enforcement agency, that has
18 provided the United States Immigration and Customs Enforcement
19 access to a detained individual during the previous year shall
20 hold at least two community forums during the following year.
21 The community forums shall be subject to the requirements of



1 chapter 92 and shall provide information to the public about
2 United States Immigration and Customs Enforcement access to
3 detained individuals and to receive and consider public comment.

4 As part of the forums, the law enforcement agency shall provide
5 the director or chief of police with:

6 (1) Data it maintains regarding the number and demographic
7 characteristics of detained individuals to whom the
8 law enforcement agency has provided the United States
9 Immigration and Customs Enforcement access;

10 (2) The date the United States Immigration and Customs
11 Enforcement was provided the access; and

12 (3) Whether the United States Immigration and Customs
13 Enforcement was provided access through an immigration
14 hold, transfer, or notification request, or other
15 means.

16 The law enforcement agency shall provide the information
17 under paragraphs (1) to (3) to the director or chief of police
18 in the form of statistics; provided that if statistics are not
19 maintained, then the law enforcement agency shall provide the
20 director or chief of police with individual records; provided



1 further that the law enforcement agency shall redact any
2 personally identifiable information.

3 (i) No later than December 31, 2026, the department of the
4 attorney general shall develop and publish consent forms that
5 meet the requirements of subsection (a) and model policies
6 addressing requests from the United States Immigration and
7 Customs Enforcement for access to a detained individual for law
8 enforcement agencies to adopt.

9 (j) The department of the attorney general may receive and
10 investigate complaints of violations of this section and issue
11 findings and corrective orders.

12 (k) An aggrieved person may bring an action seeking
13 injunctive or declaratory relief and reasonable attorney's fees
14 against a law enforcement agency who has violated the
15 requirements of subsection (a) or (b).

16 (l) For the purposes of this section:

17 "Civil immigration interview" means any interview by
18 federal immigration authorities concerning civil immigration
19 matters of a person in the custody of a law enforcement agency.

20 "Director" means director of law enforcement.



1 "Immigration hold" means an immigration detainer issued
2 pursuant to title 8 Code of Federal Regulations section 287.7,
3 or any similar request from the United States Immigration and
4 Customs Enforcement or United States Customs and Border
5 Protection for detention of an individual suspected of violating
6 civil immigration law.

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

21 SECTION 3. New statutory material is underscored.



S.B. NO. 2874

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Anna Merado K.



S.B. NO. 2874

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 the United States Immigration and Customs Enforcement pertaining to certain matters regarding civil immigration violations can commence.

Designates all records relating to United States Immigration and Customs Enforcement access to detained individuals provided by a state or local law enforcement agency as public records.

Requires state and county law enforcement agencies that have provided the United States Immigration and Customs Enforcement access to a detained individual within the previous year to hold two public forums per year.

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