A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

SECTION 1. The legislature finds that Hawai'i is justifiably proud of its rich immigrant heritage, which has woven many people into a valued tapestry of races, ancestral groups, religions, cultures, and languages from many parts of the world. The state and county governments cultivate a culture of inclusion when they ensure that all people in Hawai'i's communities receive equal protection of the laws and respectful treatment without regard to race, national origin, ancestry, or citizenship status. As of 2016, there were 43,700,000 immigrants, or foreign-born individuals, in the United States, which was 13.5 per cent of the total United States population. An estimated 10,700,000 of these individuals were undocumented. As of 2015, in Hawai'i there were 253,414 immigrants, of which approximately 45,000 were undocumented.

The legislature additionally finds that unlawful presence in the United States is not, by itself, a criminal offense, as recognized by the Supreme Court of the United States in Arizona
v. United States, 567 U.S. 387 (2012). A person's undocumented status can result from crossing a border into the United States without being processed, which is a federal misdemeanor under title 8 United States Code section 1325, or from entering the United States with a visa and then overstaying the length of the visa, which is not a crime. Based on the geography of the Hawaiian islands, the legislature finds it likely that the majority of undocumented immigrants living in Hawai‘i overstayed their visas.

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

(1) Over sixty per cent of undocumented immigrants have been in the United States for ten years or more, and another thirty per cent have been present for five to nine years, according to the Migration Policy
Institute; these are individuals who live and work in American communities and pay taxes, and many have married citizens and many more have children who are citizens by birth;

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

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

(4) Numerous studies show that immigrants have a crime rate that is lower than that of native-born United
States citizens and there is an inverse relationship
between crime and immigration; and these studies hold
true for undocumented immigrants.

The legislature additionally finds that, unlike policies
under President Obama that prioritized deportation actions on
immigrants who had committed serious crimes, the executive
orders issued by President Trump seek to deport virtually all
undocumented immigrants, including individuals who have not been
charged or convicted of a crime. The orders also seek to
deputize local law enforcement as federal immigration agents,
which would allow them to ask everyone they come into contact
with about their immigration status. These actions may cause
undocumented immigrants - and others - to be fearful that
contact with the police and other law enforcement personnel will
lead to deportation and other immigration-based actions, and to
become reluctant to report crimes or come forth as witnesses,
making our communities less safe. As a result, seven states and
more than three hundred cities and counties have limited their
law enforcement agencies from cooperating with Immigration and
Customs Enforcement and Customs Border Protection.
The legislature understands that immigration is a federal function and state and local agencies have significant discretion regarding whether and how to respond to requests for assistance with immigration enforcement. The enforcement of immigration law is carried out by the federal Immigration and Customs Enforcement agency and the Customs and Border Protection agency, both of which are components of the federal Department of Homeland Security. Federal law does not require state and local entities to collect or share information with Immigration and Customs Enforcement and Customs and Border Protection. Rather, federal law, at title 8 United States Code section 1373, limits state and local governments from restricting communication with federal immigration authorities concerning "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." There is no affirmative duty for state and local governments to collect or share this information, and there is no prohibition against preventing the communication of other non-public information, such as when a detained individual will be released or the individual's address. Furthermore, state and local agencies that do participate in federal immigration enforcement do not receive
any funding or reimbursement for their efforts. Essentially, the federal government is attempting to impose an unfunded mandate on the State and counties.

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

(1) "Enhancing Public Safety in the Interior of the United States";

(2) "Border Security and Immigration Enforcement Improvements"; and

(3) "Protecting the Nation from Foreign Terrorist Entry into the United States".

The executive orders encourage state and local law enforcement agencies to voluntarily honor Immigration and Customs Enforcement and Customs and Border Protection administrative detainers of undocumented immigrants. These "administrative detainers" are requests by Immigration and Customs Enforcement and Customs and Border Protection for state and local law enforcement to keep an individual in custody for forty-eight hours beyond when the state or local entity would have released
the person. Moreover, these detainers are not reviewed and
signed by a judge, nor are they warrants.

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

The "Enhancing Public Safety in the Interior of the United
States" Executive Order issued by President Trump seems to
attempt to improperly coerce jurisdictions into cooperating with
Immigration and Customs Enforcement and Customs and Border
Protection by threatening to withhold federal grants from sanctuary jurisdictions that "willfully refuse" to comply. However, the federal government may not commandeer states and their subdivisions in this manner. In Printz v. United States, 521 U.S. 898 (1997), and New York v. United States, 505 U.S. 144 (1992), the United States Supreme Court held that the Tenth Amendment to the United States Constitution prohibits federal "commandeering" of state or local governments to help enforce federal law. Several federal courts have attempted to block implementation of President Trump's executive order to withhold federal grants from jurisdictions that do not provide immigration authorities access to detained individuals or advance notice of their release. These include:

(1) City of Chicago v. Sessions, 888 F.3d 272 (7th Cir. 2018) (United States Attorney General cannot impose conditions on sanctuary cities' receipt of law enforcement grant funds);

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

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

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

"CHAPTER

HO'OKIPA WELCOMING POLICY ACT

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

This Act is intended to conserve state and local resources
and protect the public safety of all residents of the State.
§ 2 Definitions. As used in this chapter:


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

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

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

"Judicial warrant" means a warrant based on probable cause and issued by a federal judge or a federal magistrate judge.
appointed under Article III of the United States Constitution who authorizes federal immigration authorities to take into custody the individual who is the subject of the warrant. "Judicial warrant" does not include a civil immigration warrant, administrative warrant, or other document signed only by ICE or CBP officials.

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

(1) Stop, question, interrogate, investigate, or arrest an individual based solely upon:

(A) Actual or suspected immigration or citizenship status; or

(B) A civil immigration warrant, administrative warrant, or immigration detainer in the individual's name, including those identified in the National Crime Information Center database;

(2) Inquire about the immigration status of an individual, including a crime victim, a witness, or an individual who calls or approaches the police seeking assistance, unless necessary to investigate criminal activity by that individual; or
(3) Perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law, including pursuant to title 8 United States Code section 1357(g).

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

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

(1) The individual has been convicted of a felony; and

(2) There is probable cause to believe that the individual has or is engaged in terrorist activity.

§ -5 Prohibition against honoring requests for information; exceptions. (a) A Hawaii LEA shall not comply with an ICE or CBP request for non-public information about an individual, including but not limited to non-public information
about an individual's release, home address, or work address, except as set forth below.

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

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

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

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

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

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

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

(7) The individual is currently registered as a covered offender under chapter 846E.
(c) A Hawaii LEA shall limit the information collected from individuals concerning immigration or citizenship status to that necessary to perform agency duties.

(d) Nothing in this section shall prohibit a Hawaii LEA from:

(1) Sending to or receiving from any local, state, or federal agency information regarding an individual's country of citizenship or a statement of the individual's immigration status pursuant to title 8 United States Code section 1373;

(2) Disclosing information where disclosure of such information is otherwise permitted by state law or required pursuant to subpoena or court order; or

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

§ -6 Prohibition against providing access to individuals in custody for questioning or interviewing principally for immigration enforcement purposes. A Hawaii LEA shall not
provide ICE or CBP with access to an individual in the agency's custody or the use of agency facilities to question or interview such individual if ICE or CBP's principal purpose is enforcement of federal immigration law, unless:

1. The individual requests to meet with ICE or CBP;
2. The access request is accompanied by a judicial warrant;
3. The individual has been convicted of a felony;
4. The individual has been convicted of any misdemeanor specified in section 706-606.5(5) within the prior five years;
5. The individual has been arrested for a felony and a judge has made a finding of probable cause pursuant to section 805-7;
6. There is probable cause to believe that the individual has or is engaged in terrorist activity;
7. There is probable cause to believe that the individual has illegally re-entered the United States after a previous removal or return as defined by title 8 United States Code section 1326(b); or
The individual is currently registered as a covered offender under chapter 846E.

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

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

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

§ -8 Prohibition on use of public resources. No agency of the State or any of its political subdivisions shall use
moneys, facilities, property, equipment, or personnel of the
State or any of its political subdivisions to investigate,
enforce, or assist in the investigation or enforcement of any
federal program requiring registration of individuals on the
basis of race, gender, sexual orientation, religion, ethnicity,
or national origin.

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

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

(1) The individual's race, gender, and place of birth;
(2) Date and time that the individual was taken into Hawaii LEA custody, the location where the individual was held, and the arrest charges;

(3) Date and time of the Hawaii LEA's receipt of the request;

(4) The requesting agency;

(5) Immigration or criminal history indicated on the request form, if any;

(6) Whether the request was accompanied by any documentation regarding immigration status or proceedings such as a judicial warrant;

(7) Whether a copy of the request was provided to the individual and, if so, the date and time of notification;

(8) Whether the individual consented to the request;

(9) Whether the individual requested to meet with ICE or CBP;

(10) Whether the individual requested to confer with counsel regarding the request;

(11) The Hawaii LEA's response to the request, including any decision not to fulfill the request;
(12) If applicable, the date and time that ICE or CBP took custody of, or was otherwise given access to, the individual; and

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

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

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

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.
SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]

JAN 23 2019
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.

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