
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

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

15 The legislature additionally finds that unlawful presence
16 in the United States is not, by itself, a criminal offense, as
17 recognized by the Supreme Court of the United States in *Arizona*



1 *v. United States*, 567 U.S. 387 (2012). A person's undocumented
2 status can result from crossing a border into the United States
3 without being processed, which is a federal misdemeanor under
4 title 8 United States Code section 1325, or from entering the
5 United States with a visa and then overstaying the length of the
6 visa, which is not a crime. Based on the geography of the
7 Hawaiian islands, the legislature finds it likely that the
8 majority of undocumented immigrants living in Hawai'i overstayed
9 their visas.

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

18 (1) Over sixty per cent of undocumented immigrants have
19 been in the United States for ten years or more, and
20 another thirty per cent have been present for five to
21 nine years, according to the Migration Policy



1 Institute; these are individuals who live and work in
2 American communities and pay taxes, and many have
3 married citizens and many more have children who are
4 citizens by birth;

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

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

20 (4) Numerous studies show that immigrants have a crime
21 rate that is lower than that of native-born United



1 States citizens and there is an inverse relationship
2 between crime and immigration; and these studies hold
3 true for undocumented immigrants.

4 The legislature additionally finds that, unlike policies
5 under President Obama that prioritized deportation actions on
6 immigrants who had committed serious crimes, the executive
7 orders issued by President Trump seek to deport virtually all
8 undocumented immigrants, including individuals who have not been
9 charged or convicted of a crime. The orders also seek to
10 deputize local law enforcement as federal immigration agents,
11 which would allow them to ask everyone they come into contact
12 with about their immigration status. These actions may cause
13 undocumented immigrants - and others - to be fearful that
14 contact with the police and other law enforcement personnel will
15 lead to deportation and other immigration-based actions, and to
16 become reluctant to report crimes or come forth as witnesses,
17 making our communities less safe. As a result, seven states and
18 more than three hundred cities and counties have limited their
19 law enforcement agencies from cooperating with Immigration and
20 Customs Enforcement and Customs Border Protection.



1 The legislature understands that immigration is a federal
2 function and state and local agencies have significant
3 discretion regarding whether and how to respond to requests for
4 assistance with immigration enforcement. The enforcement of
5 immigration law is carried out by the federal Immigration and
6 Customs Enforcement agency and the Customs and Border Protection
7 agency, both of which are components of the federal Department
8 of Homeland Security. Federal law does not require state and
9 local entities to collect or share information with Immigration
10 and Customs Enforcement and Customs and Border Protection.
11 Rather, federal law, at title 8 United States Code section 1373,
12 limits state and local governments from restricting
13 communication with federal immigration authorities concerning
14 "information regarding the citizenship or immigration status,
15 lawful or unlawful, of any individual." There is no affirmative
16 duty for state and local governments to collect or share this
17 information, and there is no prohibition against preventing the
18 communication of other non-public information, such as when a
19 detained individual will be released or the individual's
20 address. Furthermore, state and local agencies that do
21 participate in federal immigration enforcement do not receive



1 any funding or reimbursement for their efforts. Essentially,
2 the federal government is attempting to impose an unfunded
3 mandate on the State and counties.

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

- 7 (1) "Enhancing Public Safety in the Interior of the United
8 States";
9 (2) "Border Security and Immigration Enforcement
10 Improvements"; and
11 (3) "Protecting the Nation from Foreign Terrorist Entry
12 into the United States".

13 The executive orders encourage state and local law enforcement
14 agencies to voluntarily honor Immigration and Customs
15 Enforcement and Customs and Border Protection administrative
16 detainers of undocumented immigrants. These "administrative
17 detainers" are requests by Immigration and Customs Enforcement
18 and Customs and Border Protection for state and local law
19 enforcement to keep an individual in custody for forty-eight
20 hours beyond when the state or local entity would have released



1 the person. Moreover, these detainers are not reviewed and
2 signed by a judge, nor are they warrants.

3 The legislature furthermore finds that state and local
4 agencies must adhere to the United States and Hawai'i
5 constitutions, such as the Fourth Amendment of the United States
6 Constitution prohibition on unreasonable searches and seizures.
7 Several federal courts have held that Immigration and Customs
8 Enforcement detainers do not provide probable cause for arrest
9 or detention under the Fourth Amendment and that the state or
10 local law enforcement agency may be liable for monetary damages
11 for unlawful detention. In addition, a number of jurisdictions
12 have paid monetary awards, either as judgments or settlements,
13 to individuals who claimed that they were unlawfully held based
14 on Immigration and Customs Enforcement detainer requests. For
15 example, San Juan county, New Mexico agreed to pay \$724,000 to
16 one hundred ninety-three individuals and their attorneys in a
17 federal judge-approved settlement in 2017.

18 The "Enhancing Public Safety in the Interior of the United
19 States" Executive Order issued by President Trump seems to
20 attempt to improperly coerce jurisdictions into cooperating with
21 Immigration and Customs Enforcement and Customs and Border



1 Protection by threatening to withhold federal grants from
2 sanctuary jurisdictions that "willfully refuse" to comply.
3 However, the federal government may not commandeer states and
4 their subdivisions in this manner. In *Printz v. United States*,
5 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144
6 (1992), the United States Supreme Court held that the Tenth
7 Amendment to the United States Constitution prohibits federal
8 "commandeering" of state or local governments to help enforce
9 federal law. Several federal courts have attempted to block
10 implementation of President Trump's executive order to withhold
11 federal grants from jurisdictions that do not provide
12 immigration authorities access to detained individuals or
13 advance notice of their release. These include:

- 14 (1) *City of Chicago v. Sessions*, 888 F.3d 272 (7th
15 Cir. 2018) (United States Attorney General cannot
16 impose conditions on sanctuary cities' receipt of law
17 enforcement grant funds);
- 18 (2) *City of Philadelphia v. Sessions*, 2017 WL 5489476
19 (E.D. Penn. Nov. 15, 2017) (preliminary injunction);
20 and



1 (3) *City and County of San Francisco v. Trump*, 897 F.3d
2 1225 (9th Cir. 2018) (the Executive Branch cannot
3 withhold federal grants to sanctuary cities without an
4 Act of Congress permitting the withholding).

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



1 enforcement agencies from collaborating with the federal
2 government for immigration purposes.

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

6 "CHAPTER

7 HO'OKIPA WELCOMING POLICY ACT

8 § -1 Findings. The legislature finds and declares that
9 the State of Hawaii is home to people of diverse ethnic, racial,
10 and national backgrounds and includes immigrants who are
11 valuable and important members of Hawaii's community. It is
12 essential to the public safety of all residents that there is a
13 relationship of trust and cooperation among members of the
14 immigrant community and state and local law enforcement
15 agencies. This relationship is undermined when state and local
16 law enforcement voluntarily act at the request of federal
17 immigration officials. Voluntary enforcement of federal
18 immigration law is not a wise and effective use of state and
19 local resources.

20 This Act is intended to conserve state and local resources
21 and protect the public safety of all residents of the State.



1 § -2 **Definitions.** As used in this chapter:

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

8 "Customs and Border Protection" means United States Customs
9 and Border Protection, a component of the United States
10 Department of Homeland Security.

11 "Hawaii law enforcement agency" means any agency of the
12 State or any of its political subdivisions, or any officer of
13 those agencies, that is authorized to enforce criminal laws,
14 operate correctional facilities, or maintain custody of
15 individuals in correctional facilities, and any individual or
16 agency authorized to operate juvenile detention facilities or to
17 maintain custody of individuals in juvenile detention
18 facilities.

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



1 "Judicial warrant" means a warrant based on probable cause
2 and issued by a federal judge or a federal magistrate judge
3 appointed under Article III of the United States Constitution
4 who authorizes federal immigration authorities to take into
5 custody the individual who is the subject of the warrant.

6 "Judicial warrant" shall not include a civil immigration
7 warrant, administrative warrant, or other document signed only
8 by Immigration and Customs Enforcement or Customs and Border
9 Protection officials.

10 § -3 **Certain activities solely for the purpose of**
11 **enforcing federal immigration laws.** A Hawaii law enforcement
12 agency shall not:

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

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

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



1 (2) Inquire about the immigration status of an individual,
 2 including a crime victim, a witness, or an individual
 3 who calls or approaches the police seeking assistance,
 4 unless necessary to investigate criminal activity by
 5 that individual; or

6 (3) Perform the functions of a federal immigration officer
 7 or otherwise engage in the enforcement of federal
 8 immigration law, including pursuant to title 8 United
 9 States Code section 1357(g).

10 § -4 Prohibition against honoring detainer requests;

11 exceptions. (a) A Hawaii law enforcement agency shall not
 12 comply with a civil immigration detainer from Immigration and
 13 Customs Enforcement or Customs and Border Protection to detain
 14 or transfer an individual for immigration enforcement or
 15 investigation purposes; provided that the Hawaii law enforcement
 16 agency may respond affirmatively if the detainer request is
 17 accompanied by a judicial warrant or as set forth in subsection
 18 (b).

19 (b) A Hawaii law enforcement agency may detain an
 20 individual for up to forty-eight hours on a civil immigration



1 detainer request in the absence of a judicial warrant in the
2 following circumstances:

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

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

6 § -5 Prohibition against honoring requests for

7 information; exceptions. (a) A Hawaii law enforcement agency
8 shall not comply with an Immigration and Customs Enforcement or
9 Customs and Border Protection request for non-public information
10 about an individual, including non-public information about an
11 individual's release, home address, or work address, except as
12 set authorized by this section.

13 (b) A Hawaii law enforcement agency may comply with an
14 information request in the following circumstances:

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

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

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



- 1 (4) The individual has been arrested for a felony and a
2 judge has made a finding of probable cause pursuant to
3 section 805-7;
- 4 (5) There is probable cause to believe that the individual
5 has or is engaged in terrorist activity;
- 6 (6) There is probable cause to believe that the individual
7 has illegally re-entered the United States after a
8 previous removal or return as defined by title 8
9 United States Code section 1326(b); or
- 10 (7) The individual is currently registered as a covered
11 offender under chapter 846E.
- 12 (c) A Hawaii law enforcement agency shall limit the
13 information collected from individuals concerning immigration or
14 citizenship status to that necessary to perform agency duties.
- 15 (d) Nothing in this section shall prohibit a Hawaii law
16 enforcement agency from:
 - 17 (1) Sending to or receiving from any local, state, or
18 federal agency information regarding an individual's
19 country of citizenship or a statement of the
20 individual's immigration status pursuant to title 8
21 United States Code section 1373;



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

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

9 § -6 **Prohibition against providing access to individuals**
10 **in custody for questioning or interviewing principally for**
11 **immigration enforcement purposes.** A Hawaii law enforcement
12 agency shall not provide Immigration and Customs Enforcement or
13 Customs and Border Protection with access to an individual in
14 the agency's custody or the use of agency facilities to question
15 or interview an individual if Immigration and Customs
16 Enforcement's or Customs and Border Protection's principal
17 purpose is enforcement of federal immigration law, unless:

- 18 (1) The individual requests to meet with Immigration and
19 Customs Enforcement or Customs and Border Protection;
20 (2) The access request is accompanied by a judicial
21 warrant;



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

16 **§ -7 Due process rights; federal immigration enforcement**
17 **requests.** (a) A Hawaii law enforcement agency shall not delay
18 bail or the release from custody upon posting of bail solely
19 because of an individual's immigration or citizenship status, a
20 civil immigration warrant, or an Immigration and Customs
21 Enforcement or Customs and Border Protection request for



1 notification about, transfer of, detention of, or interview or
2 interrogation of that individual for immigration enforcement
3 purposes.

4 (b) Upon receipt of an Immigration and Customs Enforcement
5 or Customs and Border Protection detainer, transfer,
6 notification, interview, or interrogation request, a Hawaii law
7 enforcement agency shall provide a copy of that request to the
8 individual named therein and inform the individual whether the
9 Hawaii law enforcement agency will comply with the request
10 before communicating its response to the requesting agency.

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

16 § -8 **Prohibition on use of public resources.** No agency
17 of the State or any of its political subdivisions shall use
18 moneys, facilities, property, equipment, or personnel of the
19 State or any of its political subdivisions to investigate,
20 enforce, or assist in the investigation or enforcement of any
21 federal program requiring registration of individuals on the



1 basis of race, gender, sexual orientation, religion, ethnicity,
2 or national origin.

3 § -9 **Access to benefits and services.** No agency of the
4 State or any of its political subdivisions shall inquire about
5 or request proof of immigration status or citizenship when
6 providing services or benefits, except where the receipt of the
7 services or benefits is contingent upon the individual's
8 immigration or citizenship status or where inquiries are
9 otherwise required by federal, state, or county laws.

10 § -10 **Data collection.** (a) All Hawaii law enforcement
11 agencies shall record, solely to create the reports described in
12 subsection (b), the following information for each immigration
13 detainer, notification, transfer, questioning or interview, or
14 interrogation request received from Immigration and Customs
15 Enforcement or Customs and Border Protection:

- 16 (1) The individual's race, gender, and place of birth;
17 (2) Date and time that the individual was taken into
18 Hawaii law enforcement agency custody, the location
19 where the individual was held, and the arrest charges;
20 (3) Date and time of the Hawaii law enforcement agency's
21 receipt of the request;



- 1 (4) The requesting agency;
- 2 (5) Immigration or criminal history indicated on the
- 3 request form, if any;
- 4 (6) Whether the request was accompanied by any
- 5 documentation regarding immigration status or
- 6 proceedings such as a judicial warrant;
- 7 (7) Whether a copy of the request was provided to the
- 8 individual and, if so, the date and time of
- 9 notification;
- 10 (8) Whether the individual consented to the request;
- 11 (9) Whether the individual requested to meet with
- 12 Immigration and Customs Enforcement or Customs and
- 13 Border Protection;
- 14 (10) Whether the individual requested to confer with
- 15 counsel regarding the request;
- 16 (11) The Hawaii law enforcement agency's response to the
- 17 request, including any decision not to fulfill the
- 18 request;
- 19 (12) If applicable, the date and time that Immigration and
- 20 Customs Enforcement or Customs and Border Protection



1 took custody of, or was otherwise given access to, the
2 individual; and

3 (13) The date and time of the individual's release from the
4 Hawaii law enforcement agency's custody.

5 (b) All Hawaii law enforcement agencies shall provide
6 semi-annual reports to the attorney general regarding the
7 information collected pursuant to subsection (a) in an
8 aggregated form where all personally identifiable information is
9 redacted to monitor the Hawaii law enforcement agencies'
10 compliance with all applicable statutes. The attorney general
11 shall make the reports available to the public on its website."

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

15 SECTION 4. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

21 SECTION 5. This Act shall take effect on July 1, 2050.



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 county law. Effective 7/1/2050. (SD1)

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

