

JAN 26 2011

A BILL FOR AN ACT

RELATING TO THE POWER OF ARREST.

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

1 SECTION 1. Section 803-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§803-16 Officer of the Federal Bureau of Investigation,**
4 **United States Immigration and Customs Enforcement, or United**
5 **States Customs and Border Protection Service [~~or Citizenship and~~**
6 **~~Immigration Services~~]; arrest powers.** An officer of the Federal
7 Bureau of Investigation, United States Immigration and Customs
8 Enforcement, or United States Customs and Border Protection
9 Service [~~or the Citizenship and Immigration Services~~], without a
10 warrant, may arrest a person if:

11 (1) The officer is on duty;

12 (2) One or more of the following situations exists:

13 (A) The person commits an assault or other crime
14 involving physical harm, defined and punishable
15 under chapter 707, against the officer or against
16 any other person in the presence of the officer;

17 (B) The person commits an offense against public

S.B. NO. 1235

1 order, defined and punishable under chapter 711,
2 in the presence of the officer;

3 (C) The officer has probable cause to believe that a
4 crime as provided in subparagraph (A) or (B) has
5 been committed and has probable cause to believe
6 that the person to be arrested has committed the
7 crime;

8 (D) The officer has probable cause to believe that a
9 felony has been committed and probable cause to
10 believe that the person to be arrested has
11 committed the felony; or

12 (E) The officer has received information by written,
13 telegraphic, teletypic, telephonic, radio, or
14 other authoritative source that a law enforcement
15 officer holds a warrant for the person's arrest;
16 and

17 (3) The [~~Director of the Hawaii district office for the~~]
18 special agent in charge of the Honolulu Division of
19 the Federal Bureau of Investigation; the special
20 agent in charge of the Honolulu/Guam/Commonwealth of
21 the Northern Marianas Division of Immigration and
22 Customs Enforcement; or the port director of the area

S.B. NO. 1235

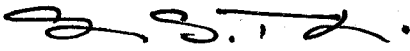
1 port of Honolulu of the United States Customs and
 2 Border Protection Service [~~, or the Citizenship and~~
 3 ~~Immigration Services,~~]; as the case may be, or other
 4 authorized representative, certifies to the State that
 5 the officer has received proper training within the
 6 agency to enable that officer to [~~enforce or~~
 7 ~~administer~~] make arrests as provided in this section."

8 SECTION 2. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.

11

12

INTRODUCED BY: 

13

BY REQUEST

Report Title:

Power of Arrest; Federal Officers

Description:

Adds the federal bureau of investigation and the United States immigration and customs enforcement to the list of federal agencies whose officers may make arrests for certain offenses under state law. Removes the citizenship and immigration services from the list. Adds proper titles of the heads of the district offices for the listed federal agencies.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO POWER OF ARREST.

PURPOSE: To add the Federal Bureau of Investigation and Immigration and Customs Enforcement to the list of federal agencies whose officers may make arrests for certain offenses under state law and thereby provide support to state and county law enforcement efforts. To remove the Citizenship and Immigration Services from the list. To add the proper titles of the heads of the district offices for the listed federal agencies.

MEANS: Amend section 803-16, Hawaii Revised Statutes.

JUSTIFICATION: Section 803-16 currently includes the U.S. Customs and Border Protection and the U.S. Citizenship and Immigration Services, but not the U.S. Immigration and Customs Enforcement (ICE), nor the U.S. Federal Bureau of Investigation (FBI).

ICE is the largest investigative branch of the Department of Homeland Security. The agency was created in March 2003 by combining the law enforcement arms of the former Immigration and Naturalization Service and the former Customs Service. ICE special agents and officers are law enforcement officers authorized to carry weapons and make arrests. ICE will be able to provide much needed support to state and county law enforcement efforts.

The FBI website describes its mission as follows:

As a national security organization, the mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

FBI agents clearly have law enforcement authority and have the ability to provide support to the state and county under section 803-16.

According to ICE legal counsel, Citizenship and Immigration Services officers do not have authority under federal law to arrest aliens. Only ICE and Customs and Border Protection agents have law enforcement authority. Therefore, references to Citizenship and Immigration Services in section 803-16 should be removed.

Impact on the public: Federal officers can provide limited assistance with the enforcement of state laws.

Impact on the department and other agencies: This bill will allow the appropriate federal officers, with clear law enforcement power, to provide arrest support to state and county law enforcement agencies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, and the Department of Public Safety.

EFFECTIVE DATE: Upon approval.