

JAN 25 2012

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

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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 agent
20 in charge of the Honolulu/Guam/Commonwealth of the
21 Northern Marianas Division of Immigration and Customs
22 Enforcement; or the port director of the area port of

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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.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: To add both the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) 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, and to update and accurately reflect the proper titles of the heads of the district offices for the listed federal agencies.

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

JUSTIFICATION: Act 201, Session Laws of Hawaii 1980, codified as section 803-16, conferred the power to arrest under state law on officers of the United States Custom Service and the Immigration and Naturalization Service. This law provided additional protection at state airports and harbors by authorizing customs and immigration agents to assist in maintaining law and order. These agents were often in a position to observe suspicious activities but were not authorized, under prior state law, to take action under state law.

In March 2003, the Department of Homeland Security was created by combining the law enforcement arms of the former Immigration and Naturalization Service and the former Customs Service. New agencies were created under the Department of Homeland Security, including ICE, the U.S. Customs and Border

Protection Service (CBP), and the
Citizenship and Immigration Services (CIS).

Act 95, Session Laws of Hawaii 2008, amended section 803-16 in an attempt to address the creation of the new federal agencies. It also created new section 803-17, Hawaii Revised Statutes, which grants arrest powers to deputies of the U.S. Marshal Service. While Act 95 granted authority to deputy marshals, and amended section 803-16 to include CBP and CIS, it failed to include ICE, the largest investigative branch of the Department of Homeland Security. Furthermore, by including CIS, it included an agency that, according to ICE legal counsel, does not have the authority to make arrests under federal law. Only ICE and CBP agents have law enforcement authority.

This bill is intended to correct these issues by amending section 803-16 to include agents of ICE, and to delete reference to the officers of the CIS. It also grants authority to FBI agents, who will then be able to provide support to state and county law enforcement efforts. Representatives of both ICE and the FBI are in support of their agencies being added to section 803-16.

The grant of limited arrest powers, under state law, to federal agents, like those of ICE and the FBI, will allow them to provide support to state and county law enforcement efforts, especially in certain times of need. This is particularly important for a small multi-island state like Hawaii, which cannot depend on quick and substantial law enforcement response and support from the limited state and county law enforcement agencies. The state and county must rely on federal law enforcement cooperation and support for natural disasters, joint law enforcement task force efforts, and major or national events.

The following are examples of joint task force cooperation. Federal agents participate on joint task forces that focus on serving outstanding arrest warrants for criminal offenders and in the investigation and apprehension of violators of the state sex offender registration laws. Federal agents also work with state and county officers on special drug enforcement task forces.

Federal cooperation and support is also important for major or national events like the Asia Pacific Economic Cooperation (APEC) Leaders Meeting, which will be held in Honolulu in November 2011. The meeting will bring thousands of people to Honolulu. To ensure the safety and security of those leaders attending the meeting and those in the community, federal, state, and county law enforcement agencies must engage in a major cooperative effort.

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.