

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 16
Judiciary

(Delegate Stewart)

Judicial Proceedings

Correctional Services – Immigration Detention – Prohibition (Dignity Not
Detention Act)

This bill prohibits the State or any local jurisdiction from entering into an agreement relating to the establishment of an immigration detention facility owned or operated by a private entity. The bill prohibits the State or any local jurisdiction from approving a zoning variance or permit for the construction or reuse of buildings that will be used by private entities as an immigration detention facility without first notifying the public and holding public meetings for comment. The bill also prohibits the State or any local jurisdiction from entering into or renewing an immigration detention agreement. In addition, the bill prohibits specified State and local law enforcement agents from inquiring about an individual’s immigration status during the performance of regular police functions. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Any change in State policing activities does not materially impact State finances.

Local Effect: Any change in local law enforcement policing activities does not materially impact local finances. Federal fund revenues decrease by a significant amount for counties with an existing immigration detention agreement with the federal government. Currently, two local governments (Frederick and Worcester counties) receive approximately \$5.0 million in payments from the federal government to house individuals under a federal immigration agreement. Expenditures decrease to the extent that local jurisdictions no longer provide immigration detention services for the federal government. In Worcester County, the potential decrease in local detention center expenditures could be significant. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Selected Definitions – Federal Immigration Detention Agreements

The bill defines an “immigration detention agreement” as any contract, agreement, intergovernmental service agreement, or memorandum of understanding that authorizes a State or local government agency to house or detain individuals for federal civil immigration violations. The bill defines “immigration detention facility” as any building, facility, or structure used, in whole or in part, to house or detain individuals for federal civil immigration violations.

Federal Immigration Detention Agreements

The State, local governments, and specified State and local agents are prohibited from (1) entering into an agreement of any kind for the detention of individuals in an immigration detention facility owned, managed, or operated, in whole or in part, by a private entity; (2) paying, reimbursing, subsidizing, or defraying in any way any costs related to the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity; (3) receiving any payment related to the detention of individuals in an immigration detention facility owned, managed, or operated in whole or in part, by a private entity; or (4) otherwise giving any financial incentive or benefit to any private entity or person in connection with the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity.

The State, local governments, and specified State and local agents are prohibited from approving a zoning variance or issuing a permit for the construction of a building or the reuse of existing buildings or structures by any private entity for use as an immigration detention facility unless the entity (1) provides notice to the public of the proposed zoning variance or permit action at least 180 days before authorizing the variance or issuing the permit and (2) solicits and hears public comments on the proposed zoning variance or permit action in at least two separate meetings open to the public.

The State, local governments, and specified State and local agents are prohibited from entering into or renewing an immigration detention agreement. Those with an existing immigration detention agreement must exercise the termination provision contained in the immigration detention agreement no later than October 1, 2022. In any dispute over an immigration detention agreement with the State, the provisions of the bill govern. However, the bill’s provisions may not be construed to authorize or prohibit the State, local

governments, and specified State and local agents from entering into an agreement with the federal government under 8 U.S.C. § 1357(g).

Selected Definitions – Immigration Status and Law Enforcement Agents

The bill defines “civil immigration violation” as a violation of federal civil immigration law. The bill defines “law enforcement agent” as an individual who is certified by the Maryland Police Training and Standards Commission. “Law enforcement agent” does not include an agent or employee of a State correctional facility or local correctional facility. The bill specifies that “arrest” does not include a routine booking procedure.

Immigration Status and Law Enforcement Agents

A law enforcement agent may not, during the performance of regular police functions (1) inquire about an individual’s citizenship, immigration status, or place of birth during a stop, a search, or an arrest; (2) detain, or prolong the detention of an individual for the purpose of investigating the individual’s citizenship or immigration status, or based on the suspicion that the individual has committed a civil immigration violation; (3) transfer an individual to federal immigration authorities unless required by federal law; or (4) coerce, intimidate, or threaten any individual based on the actual or perceived citizenship or immigration status of the individual or specified individuals that are generally related to the individual.

Nothing in the bill must prevent a law enforcement agent from inquiring about any information that is material to a criminal investigation.

If the citizenship or immigration status of an individual is relevant to a protection accorded to the individual under State or federal law, or subject to a requirement imposed by international treaty, a law enforcement agent may (1) notify the individual of the protection or requirement and (2) provide the individual an opportunity to voluntarily disclose the individual’s citizenship or immigration status for the purpose of receiving the protection or complying with the requirement.

Severability

The bill includes a severability clause establishing that if any of the bill’s provisions are held invalid by a court, the invalidity of those provisions does not affect the validity of the other provisions and application of those provisions.

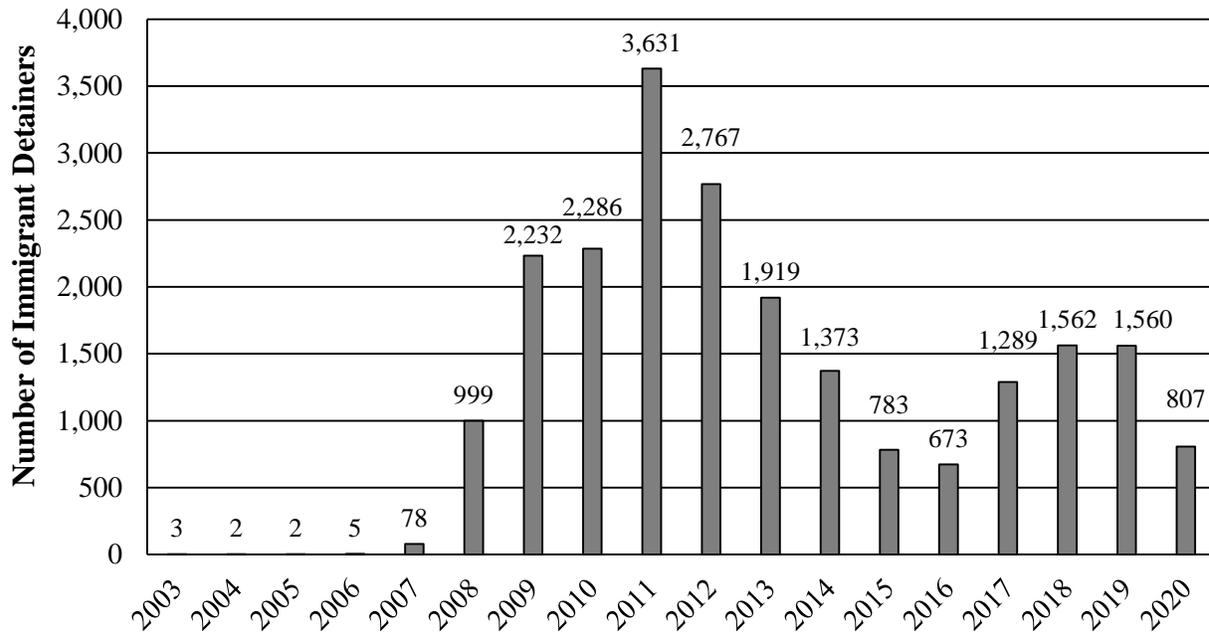
Current Law: While immigration is controlled by federal law, the Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have initiated numerous programs that involve state and local law enforcement

agencies as allies and additional resources. For example, DHS's Priority Enforcement Program (PEP) was established in 2014 to enable DHS to work with state and local law enforcement to take custody of individuals who pose a danger to public safety before those individuals are released. Under the PEP program, after an individual was arrested and booked for a criminal violation, state and local law enforcement officers would send data to ICE so that ICE could determine whether the individual was a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE would seek the transfer of a removable individual when that individual had been convicted of a specified offense, had intentionally participated in an organized criminal gang to further the illegal activity of the gang, or posed a danger to national security.

Pursuant to an executive order dated January 25, 2017, President Trump directed the Secretary of Homeland Security to immediately take all appropriate action to reinstitute the Secure Communities program. Under this program, originally launched in March 2008 and discontinued November 2014, participating correctional facilities would submit the fingerprints of arrestees into traditional criminal databases and immigration databases, such as the U.S. Visitor and Immigrant Status Indicator Technology Program and the Automated Biometric Identification System. If the database indicated that the arrestee matched a record for an individual with an immigration violation, ICE and local law enforcement would automatically be notified. ICE would then review the case and the arrestee's immigration status and determine what action it wished to take. In some instances, ICE would issue a detainer. However, pursuant to an [executive order dated January 20, 2021](#), President Biden revoked the executive order that reestablished the Secure Communities program.

Exhibit 1 shows the total number of immigrant detainers issued in Maryland from fiscal 2003 to 2020.

Exhibit 1
Immigrant Detainers Issued in Maryland
Fiscal 2003-2020



Source: Transactional Records Access Clearing House (TRAC); Department of Legislative Services

Another initiative, authorized under Section 287(g) of the Immigration and Naturalization Act, allows the Secretary of Homeland Security to enter into written agreements to delegate limited immigration enforcement authority to state and local law enforcement officers. In Maryland, the 287(g) program has been established in three jurisdictions – Cecil, Frederick, and Harford counties. In 2008, the Frederick County Sheriff’s Office entered into a partnership with ICE to begin the 287(g) Criminal Alien Program within the county. This partnership entailed training office personnel from both the county detention center and law enforcement operations to become authorized to identify and begin deportation proceedings against undocumented immigrants. The Frederick County Sheriff’s Office is one of the few law enforcement offices nationwide that participate in both the jail enforcement program and the law enforcement task force program. In addition, the local detention center in Harford County participates in the 287(g) program. Cecil County began participating in the 287(g) program in February 2019. Anne Arundel County previously participated in the federal program starting in December 2017 but later withdrew in December 2018.

The Office of the Attorney General of Maryland reissued a letter of advice in [December 2018](#) pertaining to immigration detainers. Such detainers are notices sent from ICE to state or local law enforcement agencies that request the agency to continue to hold the person named in the detainer for up to 48 hours past the date that the individual is otherwise eligible for release. The letter noted that relevant federal regulations specify that the detainer is a request that a state or local agency advise DHS, prior to the detainee's release, in order for DHS to arrange to assume custody in situations in which gaining immediate physical custody is impracticable or impossible. The letter advised that state and local jurisdictions may exercise discretion when determining how to respond to individual immigration detainers.

Federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. However, federal law does prohibit a state or local government from prohibiting or in any way restricting any government entity or official from sending to or receiving from ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual. It also prohibits restrictions on any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) sending such information to, or requesting or receiving such information from, ICE; (2) maintaining such information; or (3) exchanging such information with any other federal, state, or local government authority.

Local Fiscal Effect: Two local governments (Frederick and Worcester counties) currently have immigration detention agreements with the federal government. As shown in **Exhibit 2**, the two jurisdictions will receive approximately \$5.0 million in payments from the federal government in fiscal 2021 to house individuals under a federal immigration detention agreement. In Frederick County, the federal payments account for approximately 6% of the total operating cost of the local detention center.

In Worcester County, the federal payments account for approximately 42% of the total cost of operating the county jail. According to the Worcester County Government, the county expanded the Worcester County Jail in 2011 to increase the facility's capacity from 319 beds to 502 beds to house, in addition to seasonal detainees, immigration-related detainees. ICE revenues for fiscal 2019 contributed \$5.1 million toward the total Worcester County Jail budget of \$9.2 million.

In March 2021, Howard County terminated their immigration detention agreement with the federal government and ordered that all ICE detainees must be removed from the Howard County Detention Center by May 2021. As such, the bill is not anticipated to affect Howard County government operations or finances.

Exhibit 2
Local Governments with Federal Immigration Detention Agreements
Federal Payments and Share of Total Detention Center Costs
Fiscal 2021

	<u>Frederick</u>	<u>Worcester</u>
Federal Payments	\$1.0 million	\$4.0 million
Total Detention Center Costs	\$16.6 million	\$9.5 million
Federal Payments As Percent of Total Costs	6%	42%

Source: County Budget Documents; Department of Legislative Services

Additional Comments: Memorandums of Agreements between DHS and local law enforcement agencies participating in the 287(g) program generally include provisions relating to holding individuals for not more than 48 hours upon their transfer to the custody of ICE. Local governments and law enforcement agencies participating in the 287(g) program may need to update these agreements to be in compliance with the bill's prohibition on entering into immigration detention agreements.

Additional Information

Prior Introductions: HB 677 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 850, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 478 (Senator Smith, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Frederick, Howard, Montgomery, Prince George's, and Worcester counties; City of Bowie; Office of the Attorney General; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History:
rh/hlb

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Revised - Updated Information - March 29, 2021

Enrolled - May 10, 2021

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