

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 317 (Senator Hettleman)
Judicial Proceedings

Office of the Attorney General - Right to Counsel in Immigration Proceedings
Coordinator

This bill establishes a right to legal representation in judicial or administrative proceedings where a “covered individual” is subject to deportation from the United States (“covered proceedings”). To facilitate this right, the bill establishes a coordinator in the Office of the Attorney General (OAG) whose purpose is to organize and direct services and resources to designated organizations to provide all covered individuals with access to legal representation.

Fiscal Summary

State Effect: General fund expenditures increase *significantly* beginning in FY 2022 to ensure the right to legal representation in specified proceedings and for OAG to hire a coordinator and a support position. Revenues are not affected. **This bill establishes an entitlement program beginning in FY 2022.**

Local Effect: Local jurisdictions that enact substantially similar programs receive State funding for the benefit of their detained community members.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Selected Definitions

“Covered individual” means an individual who is detained in immigration detention in Maryland or a Maryland resident detained in another state.

“Designated community group” means a designated nonprofit community organization or association that has the capacity and demonstrated ability to conduct outreach and provide engagement, education, and information to covered individuals, their families, or communities impacted by immigration detention.

“Designated organization” means a designated nonprofit organization or association that has the capacity to provide legal representation to covered individuals and agrees to adhere to certain standards of practice.

The Right to Counsel in Immigration Proceedings

The bill establishes a Right to Counsel in Immigration Proceedings Coordinator in OAG to organize and direct services and resources in order to provide all covered individuals with access to legal representation in all covered proceedings. The Attorney General must appoint the coordinator, who serves at the pleasure of the Attorney General. Salaries of the coordinator, staff, and associated expenses are as provided in the State budget. The coordinator must adopt regulations to carry out the bill.

The coordinator must ensure that a covered individual receives legal representation by a designated organization in a covered proceeding as soon as possible after the proceeding’s initiation, and, if feasible, no later than the individual’s first scheduled appearance in the proceeding. Legal representation may not terminate until the federal Board of Immigration Appeals renders a final judgment and all other legal matters affecting relief from deportation have final judgments. If a covered individual is detained out of state and the coordinator cannot secure legal representation from a designated organization, the coordinator must award a stipend to subsidize competent representation in the other state, as specified.

The coordinator must provide legal representation to a covered individual for a covered immigration proceeding, including specified removal proceedings under the federal Immigration and Nationality Act. The coordinator may provide legal representation to a covered individual for a *habeas corpus* proceeding, federal appeal, or any other legal matter affecting deportation that will materially affect a covered proceeding.

Local Jurisdictions

Local jurisdictions may enact substantially similar programs. If a local jurisdiction enacts a substantially similar program, the coordinator may not implement the bill's provisions in that jurisdiction and must instead direct the funding that would have otherwise been allocated for the benefit of that jurisdiction's detained community members to the local jurisdiction's program.

Public Outreach to Impacted Individuals and Communities

The coordinator must designate appropriate community groups to conduct relevant public outreach and education, as specified. The coordinator may award a stipend to a designated community group to facilitate coordination between out-of-state legal representation and the covered individual's family members.

Miscellaneous Provisions

By August 31, 2023, and annually thereafter, the coordinator must submit a report to the Governor, the House Judiciary Committee, and the Senate Judicial Proceedings Committee providing specified information about legal representation extended under the bill. The coordinator must publish the report on the Attorney General's website.

The bill also contains a severability provision.

Current Law: There is no right to legal representation in immigration proceedings in State statute. Although the bill provides legal representation in matters that may result in removal from the United States, these matters are heard by federal immigration courts and federal tribunals, not State courts. However, State courts do have jurisdiction over other legal matters that may *affect* deportation, including (1) Special Immigrant Juvenile Status proceedings and (2) cases and proceedings that impact applications for certain visas (*e.g.*, U visas, T visas, VAWA visas), such as protective orders and criminal matters where the covered individual is a victim.

State Expenditures: General fund expenditures increase *significantly* to fund the legal representation guaranteed by the bill. To ensure that the right to legal representation in covered proceedings is met, OAG must provide funding for nonprofit organizations to represent covered individuals in these proceedings. OAG is further authorized to provide funding for legal representation in other proceedings that affect deportation and to award stipends to designated community groups. OAG estimates that associated costs of the legal representation exceed \$6.0 million annually, which is based on information from an immigration advocacy organization. While the Department of Legislative Services is unable to independently verify this specific amount, it does concur that costs are

significant. The bill’s preamble indicates that more than 400 Marylanders face removal while in detention every year and that at least 70% of detained Marylanders are unable to access counsel in immigration proceedings. Furthermore, because the bill has no requirements related to indigence, any covered individual (regardless of income or the ability to obtain a private attorney) is ensured State-funded representation under the bill. To the extent that local jurisdictions enact similar programs, the coordinator must direct funding for the benefit of that program, as specified.

In addition to the expenditures referenced above, general fund expenditures increase by \$181,717 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one coordinator and one support position within OAG to organize and direct the services and resources that are required to provide access to legal representation. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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| Positions | 2 |
| Salaries and Fringe Benefits | \$167,564 |
| Operating Expenses | 14,513 |
| FY 2022 State Administrative Expenditures | \$181,717 |

Future year administrative expenditures, which increase from \$241,877 in fiscal 2023 to \$266,799 by fiscal 2026, reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The bill is not anticipated to materially impact the finances or operations of the Judiciary. The Judiciary can also absorb any minimal programming costs with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George’s counties; City of Bowie; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Legislative Services

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