

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 114 (Delegate Williams)
 Judiciary

Access to Counsel in Immigration Proceedings Program

This bill establishes the Access to Counsel in Immigration Proceedings Program, administered by the Maryland Legal Services Corporation (MLSC), to provide “covered individuals” with access to legal representation in judicial or administrative proceedings relating to deportation from the United States (“covered proceedings”). To facilitate access to legal representation, the bill establishes the Access to Counsel in Immigration Proceedings Special Fund (ACIP Fund), also administered by MLSC. For each fiscal year, the Governor must include in the annual budget bill an appropriation of \$8.0 million to the fund.

Fiscal Summary

State Effect: General fund expenditures increase by \$8.0 million annually beginning in FY 2024 to capitalize the fund; special fund revenues and expenditures increase correspondingly. General fund expenditures (and corresponding special fund impacts) also increase, potentially significantly, in FY 2023 to the extent that funding is provided; however, any funding in FY 2023 is at the discretion of the Governor, as discussed below.

This bill establishes a mandated appropriation beginning in FY 2024.

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	\$8.0	\$8.0	\$8.0	\$8.0
GF Expenditure	-	\$8.0	\$8.0	\$8.0	\$8.0
SF Expenditure	-	\$8.0	\$8.0	\$8.0	\$8.0
Net Effect	(-)	(\$8.0)	(\$8.0)	(\$8.0)	(\$8.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not directly affect governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Selected Definitions

“Covered individual” means an individual detained in the United States who is not represented by counsel and is (1) a Maryland resident and (2) a member of a household with an income that is not greater than 50% of the State median income, as specified.

“Covered proceeding” means a judicial or administrative proceeding where a covered individual is subject to removal from the United States, or a related proceeding, including (1) *habeas corpus* proceedings; (2) federal appeals; or (3) any other civil legal matters affecting a covered individual’s removal proceedings.

“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 (1) has the capacity to provide legal representation to covered individuals (or identify and contract with persons who can) and (2) ensures independent, competent, and zealous representation of covered individuals.

Access to Counsel in Immigration Proceedings Program

The bill establishes an Access to Counsel in Immigration Proceedings Program, administered by MLSC, to organize and direct services and resources in order to provide all covered individuals with access to legal representation in all covered proceedings.

A designated organization must provide legal representation to a covered individual for a covered proceeding either directly or by contracting with a suitable provider, as specified. A designated organization must ensure that a covered individual receives legal representation 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.

Access to Counsel in Immigration Proceedings Special Fund

The bill establishes the ACIP Fund as a special, nonlapsing fund administered by MLSC. It consists of money appropriated in the State budget, interest earnings, and any other money from any other source accepted for the benefit of the fund.

The ACIP Fund may only be used for (1) services provided to implement the program, including costs associated with required legal representation in covered proceedings and any outreach and education activities; (2) MLSC's administrative expenses; and (3) expenses related to the study and evaluation of services and activities provided.

Expenditures from the ACIP Fund may be made only in accordance with the State budget, and money expended from the fund is supplemental to and not intended to take the place of funding that otherwise would be appropriated for civil legal services from any other source.

Public Outreach to Impacted Individuals and Communities

MLSC must contract with designated community groups and award grants to designated organizations to conduct relevant public outreach and education, as specified.

Miscellaneous Provisions

By August 31, 2024, and annually thereafter, MLSC must submit a report to the Governor, the House Judiciary Committee, and the Senate Judicial Proceedings Committee that provides specified information about legal representation and related activities under the bill.

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 for 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.

MLSC was established in 1982 to make grants for civil legal services to indigent clients in the State. In addition to funding from the Unclaimed Property Fund, the MLSC Fund (an existing special fund that is distinct from the ACIP Fund established under the bill) receives funding from surcharges applied to civil filings in circuit court and the District Court. Attorneys are also required to place small or short-term client trust funds into an Interest on Lawyer Trust Accounts account, the interest on which is paid into the MLSC Fund.

State Fiscal Effect: General fund expenditures increase by \$8.0 million annually beginning in fiscal 2024, reflecting the mandated appropriation established by the bill.

Assuming funds are received and expended in the same fiscal year, special fund revenues and expenditures for the ACIP Fund increase correspondingly for authorized purposes.

Furthermore, MLSC advises that it currently does not have the resources necessary to facilitate access to legal representation consistent with the stated purpose of the bill absent dedicated funding. In order to facilitate the access to counsel under the bill, which takes effect October 1, 2022, this analysis also assumes that general fund expenditures increase – potentially significantly – in fiscal 2023 to provide MLSC with the resources to implement the bill, even though funding is not mandated until fiscal 2024. However, funding provided in fiscal 2023 is not subject to the mandated appropriation amount of \$8.0 million. Special fund revenues and expenditures increase correspondingly.

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: HB 750 of 2021, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 317, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 129 (Senators Hettleman and Waldstreicher) - Judicial Proceedings.

Information Source(s): Maryland Legal Services Corporation; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Legislative Services

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