

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 756
Judiciary

(Delegate Szeliga, *et al.*)

Correctional Services - Transfers to Federal Authorities - Undocumented
Immigrants (Protecting Marylanders From Violent Crime Act of 2022)

This bill requires a State or local correctional facility with custody of an undocumented immigrant who is serving a sentence in the facility for conviction of a crime to transfer the individual to the U.S. Department of Homeland Security (DHS) on request if the individual (1) has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security; (2) has been convicted of an offense which an element is active participation in a criminal street gang; (3) is at least 16 years of age and intentionally participated in a criminal street gang; or (4) has been convicted of an aggravated felony.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State incarceration costs.

Local Effect: The bill is not anticipated to materially impact local incarceration costs.

Small Business Effect: None.

Analysis

Current Law: While immigration is controlled by federal law, 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. The PEP program was subsequently replaced by the reauthorization of the Secure Communities program at the onset of the Trump Administration.

Policies under the Trump and Biden Administration

Pursuant to an executive order dated January 25, 2017, President Donald J. 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 in 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 Joseph R. Biden, Jr., revoked the executive order that reestablished the Secure Communities program.

Law Enforcement Practices in Maryland

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 ability for a law enforcement agency to continue participating in the 287(g) program may be limited by legislation passed by the General Assembly at the 2021 session. While the legislation was vetoed by the Governor, the General Assembly overrode the veto at the 2021 special session. The legislation specifically prohibits law enforcement agents, during the performance of regular police functions, from (1) inquiring about an individual's citizenship, immigration status, or place of birth during a stop, a search, or an arrest; (2) detaining, or prolonging 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) transferring an individual to federal immigration authorities unless required by federal law; or (4) coercing, intimidating, or threatening an individual based on the actual or perceived citizenship or immigration status of the individual or the individual's family.

Responding to Immigration Detainers

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.

State and Local Fiscal Effect: Because the bill's applicability is limited to individuals who have been convicted (and likely have more definitive release dates), for purposes of this fiscal and policy note it is assumed that ICE can provide sufficient notice of a transfer

request so as not to require individuals to be held past the date on which the individual would otherwise be eligible for release. Accordingly, it is assumed that the bill's provisions can be accomplished with existing resources.

Additional Information

Prior Introductions: HB 1411 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; Department of Juvenile Services; Somerset County; Department of Legislative Services

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