

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 239
Judiciary

(Delegate McDonough, *et al.*)

Report and Record Immigration Status - Division of Correction and Division of
Parole and Probation

This bill requires the Division of Parole and Probation (DPP) to forward the following information to the U.S. Immigration and Customs Enforcement Agency (ICE) if a presentence investigation report (PSI) indicates that the individual has an immigration status: (1) the name of the individual; (2) the information collected about the individual's immigration status; and (3) a summary of the facts of the case for which the investigation is being conducted. If the immigration status of an inmate was not collected as part of a PSI report, the Division of Correction (DOC) must include that information as part of the case record for an inmate and must forward the specified immigration information to ICE.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Promptly after an inmate is sentenced to the jurisdiction of DOC, the division must assemble a case record for the inmate that includes (1) a description of the inmate; (2) a photograph of the inmate; (3) the family history of the inmate; (4) any previous record of the inmate; (5) a summary of the facts of each case for which the inmate is serving a sentence; and (6) the results of the required physical, mental, and educational examination of the inmate.

On request of a court, DPP must provide the court with a PSI report. On request, the PSI report must be made available to (1) the defendant; (2) the defendant's attorney; (3) the State's Attorney; (4) a correctional facility; (5) a parole, probation, or pretrial release official of this State, any other state, or the United States; or (6) in specified circumstances, a public or private mental health facility or a community substance abuse treatment provider.

Background: Maryland is a leading state for immigrants, due to proximity to the nation's capital and the relatively strong business climate in past years. International immigration added nearly 200,000 people to the State's population between 2000 and 2009, according to the U.S. Census Bureau. This was the thirteenth largest gain from immigration among all states during that period. From 2000 to 2009, Maryland accounted for 2.1% of the total national population gain from international immigration. In the most recent year, the State gained 19,600 people through international immigration or 2.3% of the national total.

A significant portion of Maryland's immigrants are unauthorized, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were 250,000 unauthorized immigrants in the State in 2009, with a range of between 210,000 and 300,000. Based on this estimate, Maryland had the tenth highest number of unauthorized immigrants among the states that year. Over the last two decades, the presence of unauthorized immigrants in Maryland has increased dramatically, from an estimated population of 35,000 in 1990 and 120,000 in 2000. Today, unauthorized immigrants account for 6.3% of the State's labor force and 4.5% of the State's population. Nationally, unauthorized immigrants account for 5.1% of the labor force and 3.7% of total population.

A "criminal alien" is a noncitizen who is residing in the United States lawfully or unlawfully and is convicted of a crime. Criminal aliens are eligible for removal from the United States because criminal activity violates immigration law. However, if a criminal alien goes through a trial and receives a sentence, that individual is in the custody of the sentencing jurisdiction until the sentence has been completed. There are currently no reliable estimates of the portion of those arrested and detained in Maryland who are a "criminal alien."

ICE is the primary federal agency charged with enforcement of federal immigration laws. ICE is the largest bureau within the Department of Homeland Security.

The Department of Public Safety and Correctional Services attempts to identify citizenship status for any individual sentenced to DOC during the intake process at the Maryland Reception, Diagnostic, and Classification Center. ICE is notified via fax when foreign birth (not unlawful presence) is suspected by way of an inmate's own admission,

criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution, Hagerstown for males or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the unauthorized immigrant and, once the inmate's sentence has been completed or the inmate is paroled, ICE takes custody of the inmate.

According to information provided by DOC, during federal fiscal 2009 (October 1, 2008 – September 30, 2009), DOC released 139 inmates to an ICE detainer. In federal fiscal 2010, that number was 128 inmates.

In May 2009, the Maryland Parole Commission, DOC, and ICE finalized a memorandum of understanding to implement the “Rapid Removal of Eligible Parolees Accepted for Transfer” (Rapid REPAT) program. Under the program, eligible foreign-born offenders agree to deportation and are granted parole for that purpose. Only offenders with a final deportation order, serving sentences for nonviolent offenses, are eligible for this program. A similar program was implemented in New York in 1995, with reported savings of over \$140 million.

State Fiscal Effect: DOC can handle the bill's requirements with existing budgeted resources. DOC already notifies ICE when foreign births are suspected and can ensure that the specific information required under the bill's provisions is forwarded to ICE with no additional fiscal or operational impact.

During calendar 2010, DPP conducted 2,156 PSI reports. Assuming that the bill does not require DPP to perform an investigatory role in ascertaining the immigration status of every defendant for whom the court has ordered a PSI, but only requires DPP to notify ICE when, during the course of conducting a PSI, the defendant's immigration status becomes known, the bill's requirements can be handled with existing budgeted resources.

Additional Information

Prior Introductions: HB 1012 of 2010 received an unfavorable report by the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City, Harford County, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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