

Department of Legislative Services

Maryland General Assembly

2013 Session

FISCAL AND POLICY NOTE

House Bill 558

(Delegate Dwyer, *et al.*)

Health and Government Operations

Maryland Liberty Preservation Act of 2013

This bill prohibits a State or a county agency, an employee of the State or a county acting in an official capacity, or a member of the Maryland National Guard or the Maryland Defense Force acting on official State duty, from knowingly aiding a federal agency in the detention of a person in accordance with §§ 1021 and 1022 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012. The bill does not apply to participation by State or local law enforcement, the Maryland National Guard, or the Maryland Defense Force in a joint task force, partnership, or other similar cooperative agreement with federal law enforcement if the agreement is not for the purpose of participating in a detention described in one of the specified sections of NDAA.

Fiscal Summary

State Effect: None. The bill's changes can be handled with the existing budgeted resources of any affected State agency.

Local Effect: None. The bill's changes can be handled with the existing budgeted resources of any affected local government agency.

Small Business Effect: None.

Analysis

Current Law/Background: NDAA is the annual appropriation bill for the Department of Defense (DOD). Among many other topics, NDAA for 2012 also addressed national security programs, DOD health care costs, counterterrorism within the United States and

abroad, and military modernization and gives governors the ability to request the help of military reservists in the event of a hurricane, earthquake, flood, terrorist attack, or other disaster.

The President signed the bill “despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists.” Those provisions are the gist of counterterrorism provisions of §§ 1021 and 1022.

The 2012 NDAA “affirms” that the President has the authority to detain enemy combatants captured on the battlefield under the 2001 authorization for the use of force against the Taliban and al-Qaeda. It then defines those who can be detained as “covered persons” and establishes this group as anyone affiliated with al-Qaeda or the Taliban. NDAA also states that those people can be held until the end of hostilities, until a tribunal with proper authority is established, or until transferred to the proper authority. Prior to the 2012 NDAA, a U.S. citizen accused of being allied with al Qaeda or plotting terrorist activity was considered to have committed a crime, with all associated rights to counsel and habeas corpus, and the right to remain silent.

According to PoliGu.com:

This change in classification is accomplished by classifying the US as a battlefield in the war on terror. [NDAA] uses the phrase “affirms” when discussing the executive power because the power of the President to arrest and detain enemy combatants on a battlefield is already established ... One section of the legislation states that nothing in the bill is intended to change existing laws with respect to the arrest and detention of US citizens. This has led to a belief that the bill states that it does not apply to US citizens. This is not the case. That section states that current law is not changed by the legislation, but current law already holds that the President already has the power to arrest and indefinitely detain unlawful enemy combatants captured on the battlefield. This legislation merely adds the US homeland as a battlefield and affirms the Presidents authority under that law. Therefore the effect of the law on US citizens is changed without changing the law itself.

Several challenges to the perceived indefinite detention of U.S. citizens have been made to the 2012 NDAA, including by the American Bill of Rights Defense Committee and some media sources. In addition, several states and local jurisdictions are known to have introduced legislation to adjust or repeal the detainment provisions of the 2012 NDAA, including Michigan; Rhode Island; Utah; Clark County, Nevada; and Northhampton, Massachusetts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Harvard Law Review; PoliGu.com; www.aclu.org; www.forbes.com; www.whitehouse.gov; rt.com; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2013
mc/lgc

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