

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1003  
Judiciary

(Delegates McDonough and McComas)

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**Criminal Procedure - Individual With Immigration Detainer (Maryland Law Enforcement and Public Safety Trust Act)**

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The bill expresses the intent of the General Assembly to restore community trust in Maryland Law Enforcement by clarifying the parameters of local participation in federal immigration enforcement efforts.

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**Fiscal Summary**

**State Effect:** Any change in State law enforcement activities does not materially impact State finances.

**Local Effect:** Any change in local law enforcement activities does not materially impact local finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** When an individual becomes eligible for release from State or local custody, law enforcement or any other government official must continue to detain the individual on the basis of an immigration detainer. A detainee must be denied bail if the detainee has an immigration detainer.

The bill authorizes a law enforcement official to stop, arrest, search, or detain an individual for the purpose of investigating a suspected immigration violation or based on an administrative warrant in the National Crime Information Center database. A law enforcement official may inquire into the immigration status or place of birth of an arrestee or victim of a crime. A law enforcement agency may make an inmate available for an interview by a federal immigration agent.

**Current Law/Background:** While immigration is controlled by federal law, the U.S. Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have begun to look to state and local law enforcement agencies as allies and as additional resources. For example, in March 2008, DHS launched the Secure Communities program. Under the program, participating correctional facilities 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 indicates that the arrestee matches a record for an individual with an immigration violation, ICE and local law enforcement are automatically notified. ICE then reviews the case and the arrestee's immigration status and determines what action it wishes to take. In these cases, ICE often issues a detainer. All of Maryland's 24 jurisdictions participate in the Secure Communities program. Local law enforcement agencies (even agencies that do not participate in Secure Communities) may contact ICE to verify if there is an outstanding detainer of an individual if an individual self reports information relevant to the individual's immigration status.

However, federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. The Office of the Attorney General of Maryland issued a letter of advice in fall 2013 pertaining specifically 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Montgomery County, Baltimore City, cities of Bowie and Takoma Park, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2014  
mc/lgc

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