

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 29
Judiciary

(Delegate Gutierrez)

Maryland Law Enforcement Trust Act

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. The Governor's Office of Crime Control and Prevention (GOCCP) must adopt regulations to implement the bill's provisions.

Fiscal Summary

State Effect: GOCCP can adopt regulations using existing resources. Any change in State law enforcement activities does not materially impact State finances. The Department of Public Safety and Correctional Services can meet the reporting requirement using existing resources.

Local Effect: Any change in local law enforcement activities does not materially impact local finances. Local correctional facilities can meet the reporting requirement using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that when an individual becomes eligible for release from State or local custody, law enforcement or any other government official may not continue to detain the individual on the basis of an immigration detainer. A detainee may also not be denied bail solely because of an immigration detainer. The bill is not to be construed as undermining the authority of a court to make a bail or bond determination according to its usual procedures.

The bill prohibits a law enforcement official from stopping, arresting, searching, or detaining 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 not inquire into the immigration status or place of birth of an arrestee or victim of a crime. A law enforcement agency may not make an inmate available for an interview by a federal immigration agent unless (1) the inmate is given a meaningful opportunity to have counsel present; (2) the inmate signs a written consent form; and (3) the interview does not take place prior to the inmate's first appearance in court.

Once every year, each State and local correctional facility must issue a report detailing (1) the number of individuals held on immigration detainers; (2) the number of days each individual who was held on an immigration detainer was held past the date the individual was eligible for release on State charges; (3) the reason for the arrest of each individual held on an immigration detainer; and (4) the number of individuals ultimately transferred to the custody of federal immigration authorities.

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 the fall of 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 detainees.

Additional Information

Prior Introductions: None.

Cross File: SB 554 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of State Police; Department of Public Safety and Correctional Services; Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Office of the Attorney General; Department of Legislative Services

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