

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1292  
Judiciary

(Delegate McDonough)

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State and Local Correctional Facilities - Release - Notification of Immigration  
Status

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This bill requires the managing official of a State or local correctional facility to provide notice to the U.S. Department of Homeland Security (DHS) at least 10 days before the release of an inmate who is undocumented or not otherwise lawfully authorized to be present within the country. The bill declares that it is the intent of the General Assembly for federal funds to be withheld from any State or local correctional facility that does not comply with these reporting requirements.

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Fiscal Summary

**State Effect:** Although State correctional facilities can use existing resources to send *available* notification to DHS, it will be unable to meet the bill's specific requirements regarding notification for individuals who are incarcerated pretrial, as discussed below. Potential decrease in federal fund revenues to the extent that the bill's intent regarding the withholding of funding is realized.

**Local Effect:** Although local correctional facilities can use existing resources to send *available* notification to DHS, they will be unable to meet the bill's specific requirements regarding notification for individuals who are incarcerated pretrial, as discussed below. Potential decrease in local revenues to the extent that any federal funding is withheld.

**Small Business Effect:** None.

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## Analysis

**Current Law/Background:** While immigration is controlled by federal law, 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, DHS's Priority Enforcement Program (PEP), established in 2014, enables 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. PEP begins at the state and local level when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the Federal Bureau of Investigation for criminal history and warrant checks. This same data is also sent to ICE so that ICE can determine whether the individual is a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE will seek the transfer of a removable individual when that individual has been convicted of a specified offense, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security.

However, federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts or participate in PEP. The Office of the Attorney General of Maryland issued a letter of advice in the fall of 2013 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. Unlike former immigration enforcement programs, PEP allows for detainers to be issued in limited circumstances. ICE must indicate that the individual is both a PEP enforcement priority and that there is probable cause to believe that the subject is removable (such as a final order of removal).

**State and Local Fiscal Effect:** Although the Department of Public Safety and Correctional Services and some local governments indicate that the bill has no fiscal impact, Baltimore and Montgomery counties have noted that it will not be possible to fully comply with the specific notification requirements established under the bill. For example, Baltimore County indicates that because the Baltimore County Detention Center is used primarily as a pretrial detention facility, inmates may post bail at any time. Accordingly, it is not possible to know 10 days in advance the day on which inmates who are eligible for bail will be released. The Department of Legislative Services advises that this will be true for all pretrial facilities, including the Baltimore Pretrial Complex, which is a

State-operated facility in Baltimore City. While correctional facilities will know when an individual is scheduled to appear in court for trial, a case disposition which may result in an immediate release (*e.g.* a sentence of time served, a *nolle prosequi*, a stet, etc.) will not be known beforehand. To the extent that a State or local facility has information that an individual who has been *sentenced* to serve a period of incarceration is undocumented, it can notify DHS using existing resources at least 10 days prior to the scheduled release.

Federal fund revenues decrease to the extent that the bill's intent to withhold federal funding is realized.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; Department of Public Safety and Correctional Services; U.S. Department of Homeland Security; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2016  
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