

HOUSE BILL 1362

E2
HB 29/14 – JUD

7lr3452
CF SB 835

By: **Delegates Morales, Sanchez, Pena–Melnyk, Gutierrez, Anderson, Angel, Atterbeary, Barkley, B. Barnes, D. Barnes, Barve, Beidle, Brooks, Carr, Clippinger, Conaway, Cullison, Davis, Dumais, Ebersole, Fennell, Fraser–Hidalgo, Frush, Gaines, Gilchrist, Glenn, Hayes, Haynes, Healey, Hettleman, Hill, Hixson, Holmes, C. Howard, Jackson, Jameson, Jones, Kaiser, Kelly, Knotts, Korman, Kramer, Lafferty, Lam, Lewis, Lierman, Luedtke, McCray, McIntosh, A. Miller, Moon, Morhaim, Mosby, Oaks, Patterson, Pendergrass, Platt, Proctor, Queen, Reznik, Robinson, Rosenberg, Sample–Hughes, Sophocleus, Stein, Sydnor, Tarlau, Turner, Valderrama, Valentino–Smith, Vallario, Waldstreicher, A. Washington, M. Washington, Wilkins, K. Young, P. Young, and Ali**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Maryland Law Enforcement and Governmental Trust Act

FOR the purpose of expressing the intent of the General Assembly to restore community trust in Maryland law enforcement and government by clarifying the parameters of local participation in federal immigration enforcement efforts; prohibiting a certain government agent from taking certain actions for certain purposes; prohibiting a law enforcement official from stopping, arresting, searching, or detaining an individual for the purpose of investigating a suspected immigration violation or inquiring about certain matters; prohibiting a government agent from using certain funds, facilities, property, equipment, or personnel for certain purposes; prohibiting a government agent from making a certain database available for a certain purpose; prohibiting a State or local law enforcement agency from placing a law enforcement officer under a certain supervision or employing a certain law enforcement officer under certain circumstances; prohibiting a certain agent from taking certain actions without a judicial warrant; requiring the Attorney General to develop certain policies in consultation with certain stakeholders; requiring all public schools, hospitals, and courthouses to establish and publish certain policies; providing that nothing in this Act shall prevent a certain State agent from responding to a certain request or sending or receiving certain information; requiring all State agencies to review certain policies, identify certain changes, and make certain changes at a certain time for certain purposes; establishing that a certain agreement that conflicts with a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



certain provision of this Act is null and void at a certain time; defining certain terms; making the provisions of this Act severable; and generally relating to State and local participation in federal immigration enforcement efforts.

BY adding to

Article – Criminal Procedure

Section 5–103

Annotated Code of Maryland

(2008 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Procedure

5–103.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “CIVIL IMMIGRATION WARRANT” MEANS A WARRANT FOR A VIOLATION OF FEDERAL CIVIL IMMIGRATION LAW THAT WAS NOT ISSUED BY A UNITED STATES DISTRICT COURT JUDGE.

(II) “CIVIL IMMIGRATION WARRANT” INCLUDES A CIVIL IMMIGRATION WARRANT ENTERED IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(3) “FEDERAL IMMIGRATION AUTHORITY” MEANS AN OFFICER, EMPLOYEE, OR OTHER PERSON PAID BY OR ACTING AS AN AGENT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY WHO IS CHARGED WITH IMMIGRATION ENFORCEMENT.

(4) (I) “GOVERNMENT AGENT” MEANS AN AGENT OR EMPLOYEE OF THE STATE, A COUNTY, OR A MUNICIPALITY.

(II) “GOVERNMENT AGENT” INCLUDES:

1. AN AGENT OR EMPLOYEE OF A POLICE OR SECURITY DEPARTMENT OF A PUBLIC PRIMARY SCHOOL, A PUBLIC SECONDARY SCHOOL, OR A PUBLIC INSTITUTION OF HIGHER EDUCATION;

2. A LAW ENFORCEMENT OFFICER, AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE;

3. AN AGENT OR EMPLOYEE OF A STATE OR LOCAL LAW ENFORCEMENT AGENCY;

4. AN AGENT OR EMPLOYEE OF A COURT;

5. AN AGENT OR EMPLOYEE OF A STATE CORRECTIONAL FACILITY OR LOCAL CORRECTIONAL FACILITY, AS DEFINED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE; AND

6. AN AGENT OR EMPLOYEE OF THE DEPARTMENT OF JUVENILE SERVICES.

(5) “IMMIGRATION ENFORCEMENT” INCLUDES ALL EFFORTS TO INVESTIGATE, ENFORCE, OR ASSIST IN THE INVESTIGATION OR ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW, INCLUDING VIOLATIONS OF TITLE 8, §§ 1253, 1324(C), 1325, AND 1326 OF THE UNITED STATES CODE.

(6) “JUDICIAL WARRANT” MEANS A WARRANT BASED ON PROBABLE CAUSE AND ISSUED BY A FEDERAL JUDGE OR A FEDERAL MAGISTRATE JUDGE THAT AUTHORIZES FEDERAL IMMIGRATION AUTHORITIES TO TAKE INTO CUSTODY THE PERSON WHO IS THE SUBJECT OF THE WARRANT.

(7) “LOCAL LAW ENFORCEMENT AGENCY” INCLUDES A LOCAL CORRECTIONAL FACILITY.

(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO RESTORE COMMUNITY TRUST IN MARYLAND LAW ENFORCEMENT AND GOVERNMENT BY CLARIFYING THE PARAMETERS OF STATE AND LOCAL PARTICIPATION IN FEDERAL IMMIGRATION ENFORCEMENT EFFORTS.

(C) A GOVERNMENT AGENT MAY NOT, FOR IMMIGRATION ENFORCEMENT PURPOSES:

(1) USE PUBLIC FUNDS, FACILITIES, PROPERTY, EQUIPMENT, OR PERSONNEL TO STOP, INVESTIGATE, DETAIN, DETECT, REPORT, OR ARREST A PERSON;

(2) RESPOND TO A HOLD, NOTIFICATION, OR TRANSFER REQUEST FROM FEDERAL IMMIGRATION AUTHORITIES;

(3) RESPOND TO A REQUEST FOR NONPUBLICLY AVAILABLE INFORMATION ABOUT A PERSON, INCLUDING INFORMATION ABOUT THE PERSON'S DATE OF RELEASE FROM INCARCERATION, HOME ADDRESS, OR WORK ADDRESS;

(4) MAKE AN ARREST BASED ON A CIVIL IMMIGRATION WARRANT;

(5) GIVE FEDERAL IMMIGRATION AUTHORITIES ACCESS TO INTERVIEW A PERSON IN AGENCY OR DEPARTMENT CUSTODY;

(6) PERFORM THE FUNCTIONS OF AN IMMIGRATION OFFICER, WHETHER PURSUANT TO TITLE 8, § 1357(G) OF THE UNITED STATES CODE OR ANY OTHER FORMAL OR INFORMAL LAW, REGULATION, OR POLICY; OR

(7) SUPPORT OR ASSIST IN CIVIL IMMIGRATION ENFORCEMENT OPERATIONS, INCLUDING THE ESTABLISHMENT OF TRAFFIC PERIMETERS.

(D) A LAW ENFORCEMENT OFFICIAL MAY NOT STOP, ARREST, SEARCH, OR DETAIN AN INDIVIDUAL TO:

(1) INVESTIGATE A SUSPECTED IMMIGRATION VIOLATION; OR

(2) INQUIRE ABOUT IMMIGRATION OR CITIZENSHIP STATUS OR PLACE OF BIRTH OF AN ARRESTEE OR VICTIM OF CRIME.

(E) A GOVERNMENT AGENT MAY NOT:

(1) USE GOVERNMENTAL FUNDS, FACILITIES, PROPERTY, EQUIPMENT, OR PERSONNEL TO INVESTIGATE, ENFORCE, OR ASSIST IN THE INVESTIGATION OR ENFORCEMENT OF ANY FEDERAL PROGRAM REQUIRING REGISTRATION OF INDIVIDUALS ON THE BASIS OF RACE, GENDER, SEXUAL ORIENTATION, RELIGION, OR NATIONAL OR ETHNIC ORIGIN; OR

(2) MAKE A GOVERNMENTAL DATABASE AVAILABLE TO ANY PERSON OR ENTITY FOR THE PURPOSE OF IMMIGRATION ENFORCEMENT OR INVESTIGATION OR ENFORCEMENT OF ANY FEDERAL PROGRAM REQUIRING REGISTRATION OF INDIVIDUALS ON THE BASIS OF RACE, GENDER, SEXUAL ORIENTATION, RELIGION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN.

(F) A STATE OR LOCAL LAW ENFORCEMENT AGENCY MAY NOT PLACE A LAW ENFORCEMENT OFFICER UNDER THE SUPERVISION OF A FEDERAL AGENCY OR EMPLOY A LAW ENFORCEMENT OFFICER DEPUTIZED AS A SPECIAL FEDERAL OFFICER OR SPECIAL FEDERAL DEPUTY EXCEPT TO THE EXTENT THAT SUCH A LAW

ENFORCEMENT OFFICER REMAINS SUBJECT TO MARYLAND LAW GOVERNING THE OFFICER'S CONDUCT AND THE POLICIES OF THE EMPLOYING AGENCY.

(G) NOTWITHSTANDING ANY OTHER LAW, A GOVERNMENT AGENT MAY NOT, AT THE REQUEST OF FEDERAL IMMIGRATION AUTHORITIES, WITHOUT A JUDICIAL WARRANT:

(1) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION AUTHORITIES FOR PURPOSES OF IMMIGRATION ENFORCEMENT;

(2) DETAIN AN INDIVIDUAL; OR

(3) NOTIFY FEDERAL IMMIGRATION AUTHORITIES OF RELEASE INFORMATION.

(H) (1) THE ATTORNEY GENERAL, IN CONSULTATION WITH THE APPROPRIATE STAKEHOLDERS, SHALL DEVELOP AND ADOPT MODEL POLICIES TO ENSURE THAT ALL PUBLIC SCHOOLS, HOSPITALS, AND COURTHOUSES REMAIN SAFE AND ACCESSIBLE TO ALL MARYLAND RESIDENTS, REGARDLESS OF IMMIGRATION STATUS.

(2) ALL PUBLIC SCHOOLS, HOSPITALS, AND COURTHOUSES SHALL ESTABLISH AND PUBLISH POLICIES THAT LIMIT IMMIGRATION ENFORCEMENT ON THEIR PREMISES TO THE FULLEST EXTENT POSSIBLE CONSISTENT WITH FEDERAL AND STATE LAW.

(I) NOTHING IN THIS SECTION SHALL PREVENT A GOVERNMENT AGENT FROM:

(1) RESPONDING TO:

(I) A REQUEST FROM FEDERAL IMMIGRATION AUTHORITIES FOR INFORMATION ABOUT A SPECIFIC PERSON'S CRIMINAL RECORD WHEN ALLOWED BY STATE LAW; OR

(II) A LAWFUL SUBPOENA; OR

(2) SENDING TO, OR RECEIVING FROM, ANY LOCAL, STATE, OR FEDERAL AGENCY INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF AN INDIVIDUAL PURSUANT TO §§ 1373 AND 1644 OF TITLE 8 OF THE UNITED STATES CODE.

SECTION 2. AND BE IT FURTHER ENACTED, That, in order to ensure that eligible individuals are not deterred from seeking services or engaging with State agencies, all State agencies shall review their confidentiality policies and identify any changes necessary to ensure that information collected from individuals is limited to that which is necessary to perform agency duties, does not include inquiries into immigration status unless required by federal law or necessary to make a determination of eligibility, and is not used or disclosed for any other purpose. Any necessary changes to those policies shall be made as expeditiously as possible, consistent with agency or department procedures.

SECTION 3. AND BE IT FURTHER ENACTED, That any agreement in existence on the effective date of this Act that makes any governmental database available in conflict with § 5–103 of the Criminal Procedure Article as enacted by Section 1 of this Act shall be null and void as of the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.