

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 817

(Senator Smith, *et al.*)

Judicial Proceedings

Correctional Facilities and Police Officers - Procedures - Immigration Status

This bill prohibits, without a federal judicial warrant, the detention of a person beyond the person's State-law release date or the notification of federal immigration authorities of the person's State-law release date, location, or address only for immigration enforcement purposes. The bill also prohibits police officers from inquiring about an individual's immigration status, citizenship status, or place of birth during a stop, search, or an arrest conducted in the performance of regular police functions.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. Any change in State 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.

Analysis

Bill Summary: A "federal judicial warrant" is defined as a warrant that (1) is issued by a federal judge or federal magistrate judge on the basis that there is probable cause to believe a crime has been committed and (2) authorizes federal immigration authorities to take into custody the person who is the subject of the warrant. A "State-law release date" is defined as the date on which a person is required, under State law, to be released from confinement from a State or local correctional facility.

The bill prohibits an employee or agent of a correctional facility, without a federal judicial warrant, to (1) detain a person beyond the person's State-law release date or (2) notify federal immigration authorities of the person's State-law release date, location, or address only for immigration enforcement purposes.

The bill also prohibits police officers from inquiring about an individual's immigration status, citizenship status, or place of birth during a stop, a search, or an arrest conducted in the performance of regular police functions.

Current Law/Background: While immigration is controlled by federal law, the Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have initiated numerous programs that involve state and local law enforcement agencies as allies and additional resources. For example, DHS's Priority Enforcement Program (PEP) was established in 2014 to enable 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. Under PEP, after an individual was arrested and booked for a criminal violation, state and local law enforcement officers would send data to ICE so that ICE could determine whether the individual was a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE would seek the transfer of a removable individual when that individual had been convicted of a specified offense, had intentionally participated in an organized criminal gang to further the illegal activity of the gang, or posed a danger to national security.

Pursuant to an executive order dated January 25, 2017, President Trump directed the Secretary of Homeland Security to immediately take all appropriate action to terminate PEP and instead reinstitute the Secure Communities program. Under this program, launched in March 2008, participating correctional facilities would 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 indicated that the arrestee matched a record for an individual with an immigration violation, ICE and local law enforcement would automatically be notified. ICE would then review the case and the arrestee's immigration status and determine what action it wished to take. In some instances, ICE would issue a detainer.

Another initiative, authorized under Section 287(g) of the Immigration and Naturalization Act, allows the Secretary of Homeland Security to enter into written agreements to delegate limited immigration enforcement authority to state and local law enforcement officers. In Maryland, the 287(g) program has been established in two jurisdictions – Frederick and Harford counties. In 2008, the Frederick County Sheriff's Office entered into a partnership with ICE to begin the 287(g) Criminal Alien Program within the county. This partnership entailed training office personnel from both the county detention center and law

enforcement operations to become authorized to identify and begin deportation proceedings against undocumented immigrants. The Frederick County Sheriff's Office is one of the few law enforcement offices nationwide that participate in both the jail enforcement program and the law enforcement task force program. In addition, the local detention center in Harford County participates in the 287(g) program. Anne Arundel County previously participated in the federal program starting in December 2017 but later withdrew in December 2018.

The Office of the Attorney General of Maryland issued a letter of advice in fall 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.

Despite the President's increased focus on undocumented immigrants, federal law still does not mandate that state and local law enforcement agencies become involved in immigration efforts. However, federal law does prohibit a state or local government from prohibiting or in any way restricting any government entity or official from sending to or receiving from the Immigration and Naturalization Service (now known as ICE) information regarding the citizenship or immigration status, lawful or unlawful, of any individual. It also prohibits restrictions on any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) sending such information to, or requesting or receiving such information from, ICE; (2) maintaining such information; or (3) exchanging such information with any other federal, state, or local government authority.

Additional Information

Prior Introductions: None.

Cross File: HB 913 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Harford County; Montgomery County; City of College Park; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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