

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1411
Judiciary

(Delegate Szeliga, *et al.*)

Correctional Services – Transfers to Federal Authorities – Undocumented
Immigrants
(Protecting Marylanders From Violent Crime Act of 2020)

This bill requires a State or local correctional facility with custody of an undocumented immigrant who is serving a sentence in the facility for conviction of a crime to transfer the individual to the U.S. Department of Homeland Security (DHS) on request if the individual (1) has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security; (2) has been convicted of an offense which an element is active participation in a criminal street gang; (3) is at least 16 years of age and intentionally participated in a criminal street gang; or (4) has been convicted of an aggravated felony.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State incarceration costs.

Local Effect: The bill is not anticipated to materially impact local incarceration costs.

Small Business Effect: None.

Analysis

Current Law/Background: While immigration is controlled by federal law, 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

the PEP program, 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 Donald J. Trump directed the Secretary of Homeland Security to immediately take all appropriate action to reinstitute the Secure Communities Program. Under this program, originally launched in March 2008 and discontinued November 2014, 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.

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. The Office of the Attorney General of Maryland reissued a letter of advice in [December 2018](#) pertaining to immigration detainees. Such detainees 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.

State and Local Fiscal Effect: Because the bill's applicability is limited to individuals who have been convicted (and likely have more definitive release dates), for purposes of this fiscal and policy note it is assumed that ICE can provide sufficient notice of a transfer request so as not to require individuals to be held past the date on which the individual would otherwise be eligible for release. Accordingly, it is assumed that the bill's provisions can be accomplished with existing resources. In addition, although State and local expenditures may decrease minimally to the extent that the federal government increases immigration enforcement and deportation efforts and requests the transfer of individuals

prior to the completion of any ordered sentence, any such impact is not anticipated to materially impact incarceration costs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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mm/hlb

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