HB 304

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 304 (Delegate W. Fisher)
Judiciary

State and Local Government - Participation in Federal Immigration Enforcement

This bill expresses the intent of the General Assembly to maintain community trust in Maryland governmental operations and law enforcement by clarifying the parameters of State and local participation in federal immigration enforcement efforts.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

Local Effect: Federal fund revenues decrease by a significant amount for counties with an existing immigration detention agreement with the federal government. Currently, three local governments (Frederick, Howard, and Worcester counties) receive approximately $9.1 million in payments from the federal government to house individuals under a federal immigration agreement. Expenditures decrease to the extent that local jurisdictions no longer provide immigration detention services for the federal government. In Worcester County, the potential decrease in local detention center expenditures could be significant. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Selected Definitions

A "law enforcement agent" includes (1) a law enforcement officer; (2) a chief of a law enforcement agency; and (3) an agent or employee of a State or local law enforcement agency.

A "state or local correctional agent or employee" means an agent or employee of a State correctional facility or local correctional facility.

"Civil immigration enforcement" includes all efforts to investigate, enforce, or assist in the investigation or enforcement of federal civil immigration law.

A "civil immigration violation" means a violation of federal civil immigration law.

Limitations on Immigration Enforcement

A law enforcement agent may not, during the performance of regular police functions, (1) inquire about an individual's citizenship, immigration status, or place of birth during a stop, a search, or an arrest; (2) detain, or prolong the detention of, an individual for the purposes of investigating the individual's citizenship or immigration status or, based on the suspicion that the individual has committed a civil immigration violation; or (3) transfer an individual to federal immigration authorities unless required by federal law.

Without a judicial warrant, a law enforcement agent may not, pursuant to a request by federal immigration authorities made in relation to civil immigration enforcement purposes (1) transfer an individual to federal immigration authorities for the purpose of civil immigration enforcement; (2) detain an individual for the purpose of civil immigration enforcement; or (3) notify federal immigration authorities of an individual's location, address, or any other information that may be used to aid federal immigration authorities for the purpose of civil immigration enforcement. Without a judicial warrant, a State or local correctional agent or employee may not detain an individual beyond the period prescribed by applicable State or local law or solely for a purpose related to civil immigration enforcement.

The bill does not prohibit a law enforcement agent or State or local correctional agent or employee from (1) responding to a request from federal immigration authorities for information regarding a specific person's criminal record when required by State or federal law, or a lawful subpoena; (2) sending to, or receiving from, any local, State, or federal

agency information regarding the citizenship or immigration status of an individual when required by State or federal law; or (3) otherwise complying with a requirement of State or federal law or a judicial warrant.

Immunity

An official of State or local government is immune from criminal and civil liability for refusing to provide information to the federal government or another state that will be used for the creation or maintenance of a registry for the purpose of discriminating against individuals on the basis of religion, race, gender, sexual orientation, immigration status, or national or ethnic origin. The State may indemnify an official of State or local government for any costs associated with or any judgment in an action or suit filed based on the official's refusal to provide information to the federal government or another state that will be used for the creation or maintenance of a registry for the purpose of discriminating against individuals on the basis of religion, race, gender, sexual orientation, immigration status, or national or ethnic origin.

Citizenship and Immigration Status

Except as otherwise provided in State law, a unit of State or local government may not (1) coordinate with federal immigration authorities in any way related to civil immigration enforcement; (2) allow federal immigration authorities to access an area not accessible to the public in a building owned or controlled by the State or a local government; (3) contact federal immigration authorities regarding an individual who may be subject to civil immigration enforcement; (4) notify federal immigration authorities of an individual's release from a State or local correctional facility; (5) communicate any information about an individual who is or may be subject to civil immigration enforcement to federal immigration authorities; (6) assist in the investigation of the citizenship or immigration status of an individual, unless the status is material to a criminal investigation; or (7) provide federal immigration authorities with access to or use of any facility, information, or equipment owned or controlled by a unit of State or local government for the purpose related to civil immigration enforcement.

Generally, a unit of State or local government or an agent or employee of a unit may not (1) condition the provision of a benefit, an opportunity, or a service on the citizenship or immigration status of an individual unless otherwise required by State or federal law or a court order; (2) coerce, intimidate, or threaten any individual based on the actual or perceived citizenship or immigration status of the individual or specified family and household members; (3) require an individual to prove the individual's citizenship or immigration status; (4) require an individual to complete any type of registration on the basis of religion, race, gender, sexual orientation, immigration status, or national or ethnic origin; (5) include questions relating to citizenship or immigration status as part of any

routine questioning; (6) request information about or investigate, or assist in the investigation of, the citizenship or immigration status of an individual, unless that information is material to a criminal investigation; or (7) enter into an intergovernmental services agreement, or any other agreement, with the federal government for any purpose related to civil immigration enforcement.

If the citizenship or immigration status of an individual is relevant to a protection accorded to the individual under State or federal law, or subject to a requirement imposed by international treaty, a unit of State or local government, or the agent or employee of a unit of State or local government, may notify the individual of the protection or requirement and provide the individual an opportunity to voluntarily disclose the individual's citizenship or immigration status for the purpose of receiving the protection or complying with the requirement.

The following documents must be accepted for the purpose of proving an individual's identity in the same manner that a valid driver's license or State-issued identification card is accepted for the purposes of proving an individual's identity: (1) a driver's license or identification card issued by a foreign government; (2) a passport issued by a foreign government; and (3) a document issued by the embassy or consulate of a foreign government that identifies the individual. Presenting these documents may not subject an individual to a higher level of scrutiny or different treatment. However, this provision does not apply to requirements for establishing identity associated with the completion of a United States Citizenship and Immigration Services I-9, employment eligibility verification form.

To the extent practicable, after 48 hours of receiving the request or inquiry, a unit of State or local government must notify any individual who is the subject of a request or inquiry made by federal immigration authorities relating to civil immigration enforcement. If the request or inquiry is made in writing, the unit that received the request or inquiry must provide the individual who is subject of the request or inquiry a copy of that written request or inquiry when providing notice to the individual.

A unit of State or local government, or an agent or employee of a unit of State or local government is not prevented from (1) responding to a request from federal immigration authorities for information about a specific individual's criminal record when required by State or federal law or a lawful subpoena; (2) sending to, or receiving from, any local, State, or federal agency information regarding the citizenship or immigration status of an individual when required by State or federal law; or (3) complying with a requirement of State or federal law or a judicial warrant.

Use of State Funds

An officer or unit of State government may not spend money from an appropriation, and a person that receives State funds may not use the State funds, to:

- knowingly create or maintain a registry for the purpose of discriminating against individuals on the basis of religion, race, gender, sexual orientation, immigration status, or national or ethnic origin; or
- knowingly provide information to the federal government or another state for the creation or maintenance of a registry for the purpose of discriminating against individuals on the basis of religion, race, gender, sexual orientation, immigration status, or national or ethnic origin.

The State may not reimburse any expenditure to the extent that the expenditure violates the above provisions. The State is not obligated to appropriate money to pay an expenditure that violates these provisions. Each employee or officer of the State government who makes an expenditure or receives State funds in violation of such provisions is subject to disciplinary action, including termination, under the applicable disciplinary and grievance procedures.

Miscellaneous Provisions

The Attorney General must consult with appropriate stakeholders and develop guidelines to assist public schools, hospitals, and courthouses to draft policies that limit civil immigration enforcement activities on their premises in order to ensure these facilities remain safe and accessible to all, regardless of immigration status. Public schools, hospitals, and courthouses may establish and publish policies that limit immigration enforcement on their premises to the fullest extent possible consistent with federal and State law, based on the guidelines developed by the Attorney General.

In order to ensure that eligible individuals are not deterred from seeking services or engaging with State agencies, the bill requires all State agencies to 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. Any necessary changes to those policies must be made as expeditiously as possible, consistent with agency or department procedures.

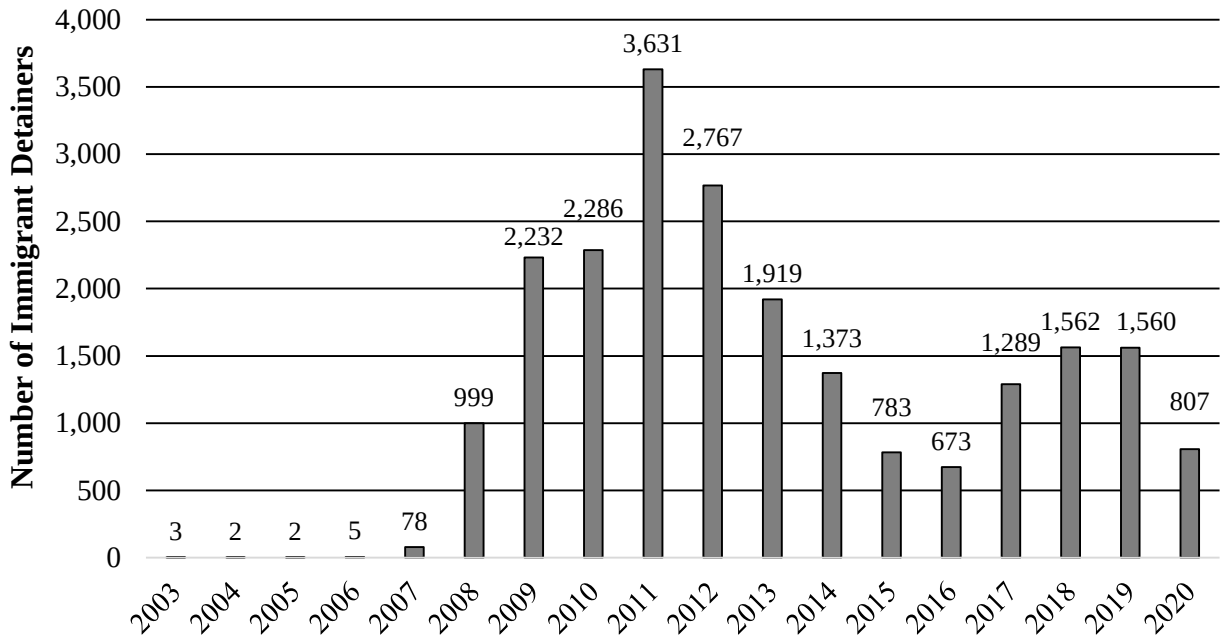
The bill also establishes that its provisions are severable and that if any provision of the bill or its application is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application that can be given effect without the invalid provision or application.

Current Law: 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 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 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. However, pursuant to an executive order dated January 20, 2021, President Biden revoked the executive order that reestablished the Secure Communities program.

Exhibit 1 shows the total number of immigrant detainers issued in Maryland from fiscal 2003 to 2020.

Exhibit 1
Immigrant Detainers Issued in Maryland
Fiscal 2003-2020



Source: Transactional Records Access Clearing House (TRAC); Department of Legislative Services

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 three jurisdictions – Cecil, 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. Cecil County began participating in the 287(g) program in February 2019. 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 reissued a letter of advice in December 2018 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.

Federal law 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 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

State and Local Fiscal Effect: This analysis assumes the Attorney General develops guidelines that ensure compliance with federal law and that the specified parties fully comply with those guidelines. As such, there is no operational or financial impact on State or local entities.

Three local governments (Frederick, Howard, and Worcester counties) currently have immigration detention agreements with the federal government. As shown in **Exhibit 2**, the three jurisdictions receive approximately $9.1 million in payments from the federal government to house individuals under a federal immigration detention agreement. In Worcester County, the federal payments account for approximately 54% of the total cost of operating the county's detention center. In Frederick and Howard counties, the federal payments account for less than 15% of the total operating cost of the local detention center.

Exhibit 2
Local Governments with Federal Immigration Detention Agreements
Federal Payments and Share of Total Detention Center Costs
Fiscal 2020

	Frederick	Howard	Worcester
Federal Payments	$1.0 million	$2.9 million	$5.2 million
Total Detention Center Costs	16.1 million	20.5 million	9.7 million
Federal Payments As Percent of Total Costs	6%	14%	54%

Source: County Budget Documents; Department of Legislative Services

Additional Information

Prior Introductions: SB 901 of 2020 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1612, was referred to the House Rules and Executive Nominations Committee, but no further action was taken. HB 1362 of 2017, a similar bill, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 835, received a hearing in the Senate Judicial Proceedings Committee but was later withdrawn.

Designated Cross File: SB 88 (Senator Smith) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Frederick, Howard, Montgomery, Prince George's, and Worcester counties; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Baltimore County Public Schools; Prince George's County Public Schools; Department of Legislative Services

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