

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1061
Judiciary

(Delegate Shank, *et al.*)

Public Safety - Correctional Facilities - Immigration Status of Inmates

This bill requires an individual committed to a “correctional facility” to provide information as to his/her immigration status. If it is determined that the individual is unlawfully present in the United States, the correctional facility must send an immigration alien query to the U.S. Immigration and Customs Enforcement Agency (ICE) for information relating to the individual’s immigration status. If the results of the query indicate that the individual is unlawfully present in the United States, the managing official of a correctional facility must report that fact to the Central Repository and the Division of Correction (DOC).

Fiscal Summary

State Effect: The Department of Public Safety and Correctional Services (DPSCS) can handle the bill’s requirements using existing resources.

Local Effect: Potential minimal expenditure increase in some counties for additional staff at correctional facilities. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: DOC must maintain in its offender management system a specific data field for the entry of reports received regarding individuals committed to a correctional facility who are unlawfully present in the United States. DOC must also assist ICE with information leading to the deportation of individuals committed to a correctional facility who are unlawfully present in the United States.

The central repository must: 1) record information regarding an individual's illegal immigration status in the individual's criminal history record; and 2) report to ICE the identity and release dates of all convicted offenders in the custody of a correctional facility who are unlawfully present in the United States.

"Correctional facility" includes local correctional facilities and correctional facilities in the Division of Correction.

Current Law/Background: Federal and state laws do not mandate that law enforcement agencies, including correctional facilities, become involved in immigration efforts.

A "criminal alien" is a noncitizen who is residing in the United States legally or illegally and is convicted of a crime. Criminal aliens are eligible for removal from the United States because criminal activity violates immigration law. However, if a criminal alien goes through a trial and receives a sentence, that individual is in the custody of the sentencing jurisdiction until the sentence has been completed.

DPSCS attempts to identify citizenship status for any individual sentenced to DOC during the intake process. ICE is notified via fax when foreign birth is suspected by way of an inmate's own admission, criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution in Hagerstown or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the criminal alien and, once the inmate's sentence has been completed or the inmate is paroled, ICE takes custody of the inmate.

DOC provided notification to ICE regarding the presence of 207 foreign born inmates in calendar 2008. During the same time period, DOC released 157 foreign born inmates from its custody, of which 123 were remanded to the custody of ICE and 34 were released to the community.

In May of 2009 the Maryland Parole Commission, DOC, and ICE finalized a memorandum of understanding to implement the "Rapid Removal of Eligible Parolees Accepted for Transfer" (Rapid REPAT) program. Under the program, eligible foreign born offenders agree to deportation and are granted parole for that purpose. Only offenders with a final deportation order, serving sentences for nonviolent offenses are eligible for this program. A similar program was implemented in New York in 1995, with savings of over \$140 million reported since that time.

The Criminal Justice Information System (CJIS) Central Repository is established within DPSCS to collect, manage, and disseminate Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

Local Fiscal Effect: Of the five local jurisdictions that responded to a request for information, two indicated that there would be a fiscal impact. Anne Arundel County advised that it already processes approximately 60 names for ICE review per month at an estimated cost of \$45,000 annually and anticipates that the bill's requirement may double that number. Accordingly, Anne Arundel County expenditures increase by approximately \$45,000 annually to reflect the additional names that will be processed. Howard County estimated county expenditures would increase by \$100,000 annually to reflect the costs of additional staff (a correctional officer and a clerical support position). Baltimore, Garrett, and Montgomery counties indicated that there will be no fiscal impact. Montgomery County indicates that it already submits names to ICE on a weekly basis and Baltimore County indicates that its correctional staff already performs a similar function.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Garrett, Howard, and Montgomery counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services, State's Attorneys' Association; Department of Legislative Services

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