

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 342  
Judiciary

(Delegate Cluster, *et al.*)

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Criminal Procedure - Undocumented Immigrants - Prohibition on Pretrial  
Release

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This bill prohibits a judge or District Court commissioner from authorizing the pretrial release of a defendant who cannot provide documentation acceptable to the Department of Public Safety and Correctional Services (DPSCS) certifying that the individual is lawfully present in the United States in accordance with federal law.

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Fiscal Summary

**State Effect:** Minimal increase in State expenditures if individuals in Baltimore City who would otherwise be released are detained in the Baltimore City Detention Center as a result of the bill. The detention center is a State-operated facility used primarily for pretrial detentions.

**Local Effect:** Minimal increase in local expenditures if individuals who would otherwise be released remain in local detention facilities as a result of the bill.

**Small Business Effect:** None.

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Analysis

**Current Law:** A criminal defendant is generally entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and will be released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law

ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by death or life imprisonment without parole; or (2) a crime of violence, certain drug offenses, or certain other serious crimes, after having been previously convicted of one of these crimes.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants registered with the sex offender registry maintained by DPSCS and defendants charged:

- with a crime punishable by death or life imprisonment;
- with escaping from a place of confinement in the State;
- as a drug kingpin;
- with a crime of violence, if the defendant has a previous conviction for a crime of violence;
- with committing a crime of violence or certain serious crimes while on pretrial release for a pending prior charge involving one of these crimes;
- with violating certain provisions of a domestic violence protective order; and
- with certain crimes involving firearms, if the defendant has previously been convicted of one of those crimes.

Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions.

**Background:** While immigration is controlled by federal law, the U.S. Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have begun to look to state and local law enforcement agencies as allies and as additional resources. While federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts, the U.S. Supreme Court has ruled that state and local law enforcement officers may question criminal suspects about their immigration status. Local law enforcement agencies throughout the nation have often expressed reluctance in becoming involved in federal immigration

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enforcement because of a lack of resources and the need to maintain open relationships with members of the community so that they may effectively carry out their policing duties.

Section 287(g) of the Immigration and Nationality Act, which was established by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, authorizes DHS to create voluntary cooperative agreements between the federal government and state and local law enforcement agencies on immigration enforcement. While the agreements contain two models for immigration enforcement (task force and correctional-detention), the correctional-detention model is the one focused primarily on identifying immigrant felons within the prison system. Under the agreements, designated local officers receive training and function under the supervision of ICE officers. On July 10, 2009, DHS announced a new standardized memorandum of agreement for 287(g) participants that shifts the focus of these partnerships to “the identif[ication] and remov[al] of dangerous criminal aliens.” A “criminal alien” is a noncitizen who is residing in the United States lawfully or unlawfully and is convicted of a crime.

The new agreements provide guidelines for supervision, reporting information, and complaint procedures. The new agreements require that interpretation services be made available and state that civil rights laws and regulations pertaining to nondiscrimination apply to the agreements. As a result, all existing agreements must be negotiated and new agreements sunset every three years. As of October 29, 2010, the Frederick County Sheriff’s Office is the only Maryland law enforcement agency that has entered into a 287(g) agreement with DHS. The agreement was signed in February 2008.

In March 2008, DHS launched the Secure Communities program. Under the program, participating correctional facilities 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 indicates that the arrestee matches a record for an individual with an immigration violation, ICE and local law enforcement are automatically notified. ICE then reviews the case and the arrestee’s immigration status and determines what action it wishes to take. In these cases, ICE will often issue a detainer, which is a notice by federal law enforcement requesting the detention of an individual to insure the individual’s availability for any additional federal proceedings. As of February 8, 2011, 10 counties (Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Frederick, Prince George’s, Queen Anne’s, St. Mary’s, and Talbot) participate in the Secure Communities program.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, U.S. Department of Homeland Security, Immigration Policy Center, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2011  
ncs/kdm

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