

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 896
Judiciary

(Delegate Hixson, *et al.*)

**Criminal Procedure - Inquiry into Immigration Status of Crime Victim or
Witness - Prohibition**

This bill prohibits an officer or agent of a State or local law enforcement agency, in connection with the report, investigation, or prosecution of a criminal violation of State or local law, from inquiring into the immigration status of an individual who: (1) reports having been a crime victim or is the parent or guardian of a minor who is a crime victim; or (2) is a cooperating witness in the investigation of the crime or is the parent or guardian of a minor who is a witness to the crime.

The bill does not prohibit a law enforcement officer from inquiring into the immigration status of an individual who is a victim or witness, or the parent or guardian of a minor who is a victim or witness, if: (1) the individual has been arrested or charged with, or is being investigated for, a criminal violation of federal, State, or local law; or (2) the inquiry is required by federal law or is essential to the investigation or prosecution of the crime.

Fiscal Summary

State Effect: None. The bill's provisions are procedural in nature. Complying with the bill's requirements can be handled by State law enforcement agencies with existing budgeted resources.

Local Effect: None. The bill's provisions are procedural in nature. Complying with the bill's requirements can be handled by local law enforcement agencies with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: Federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. The extent to which local law enforcement and the State police participate in immigration-related matters varies among jurisdictions.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act. This program authorizes state and local law enforcement agencies to enter into an agreement with the U.S. Immigration and Customs Enforcement (ICE) to perform immigration law enforcement functions, provided that the local law enforcement officers receive appropriate training and function under the supervision of ICE officers.

Background: Many law enforcement agencies and correctional facilities in Maryland already cooperate with federal immigration authorities in identifying and detaining unauthorized immigrants, most of whom are “criminal aliens” who have been arrested for an offense and detained in a local detention center.

Law Enforcement Agencies

While immigration is controlled by federal law, the U.S. Department of Homeland Security (DHS) and ICE have begun to look to state and local law enforcement agencies as allies and 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 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.

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. A recent study by the Migration Policy Institute, found that in Frederick County, the 287(g) program follows a “universal enforcement model” whereby detainees are placed on virtually all potentially removable immigrants encountered. This process occurs at booking in the local correctional facility, although Frederick County immigration screening sometimes begins when persons are encountered by 287(g) officers on patrol. According to the study, 287(g) officers in the Frederick County Sheriff’s Office issued 198 ICE detainees during the first 10 months of fiscal 2010.

Traffic offenders comprised 120 of the detainees; 18 of the detainees were placed on individuals arrested for the most serious crimes (Level 1 offenses).

State Correctional Facilities

The Department of Public Safety and Correctional Services attempts to identify citizenship status for any individual sentenced to a Division of Correction (DOC) facility during the intake process at the Maryland Reception, Diagnostic, and Classification Center. ICE is notified via fax when foreign birth (not unlawful presence) 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, Hagerstown for males 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 unauthorized immigrant and, once the inmate's sentence has been completed or the inmate is paroled, ICE takes custody of the inmate.

According to information provided by DOC, during federal fiscal 2009 (October 1, 2008 – September 30, 2009), DOC released 139 inmates to an ICE detainer. In federal fiscal 2010, that number was 128 inmates.

In May 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.

Local Correctional Facilities

A majority of jurisdictions in Maryland have entered into agreements with the federal government under the Secure Communities program by which "criminal aliens" are identified and referred to ICE for possible deportation. The Secure Communities program is a comprehensive DHS initiative to modernize the criminal alien enforcement process, by increasing and strengthening efforts to identify and remove criminal aliens deemed as "most dangerous" from the United States. As part of the Secure Communities strategy, ICE utilizes a federal biometric information sharing capability to quickly and accurately identify criminal aliens in law enforcement custody. According to ICE, since this capability was first activated in 2008, biometric information sharing has helped the agency identify and remove more than 62,000 convicted criminal aliens from the United

States. As of March 1, 2011, 13 counties in Maryland participate in the program – Anne Arundel, Baltimore, Carroll, Caroline, Dorchester, Frederick, Kent, Prince George’s, Queen Anne’s, St. Mary’s, Somerset, Talbot, and Worcester.

In addition, the Frederick County Sheriff’s Office also participates in ICE’s detention center enforcement program which designates the county’s detention center as an Intergovernmental Service Agreement (IGSA) facility. Once charges in Frederick County have been completed, deportation proceedings are started and the charged inmates then come under IGSA. Depending on the immigration violation, the individual may also be released on bond awaiting an immigration hearing and not retained at the detention facility after adjudication of the charges. ICE also may request the sheriff’s office to temporarily house detainees if space permits. Under IGSA, when the detainees are housed under IGSA guidelines the detention center is paid an \$83 per diem for each detainee, which covers all expenses associated with their housing at the facility.

Sanctuary Policies in Maryland

In Maryland, Baltimore City and Takoma Park have adopted sanctuary policies.

Baltimore City Policy

Baltimore City is the only large jurisdiction in Maryland that has adopted a sanctuary-type resolution that specifically urges the city police department to refrain from enforcing federal immigration laws. In addition, the resolution states that no city service will be denied based on citizenship. The resolution, a criticism of the broader surveillance powers granted to law enforcement by the U.S. Patriot Act, was adopted in May 2003.

Baltimore City adopted another resolution in May 2010 in response to legislation enacted in Arizona that criminalizes unauthorized immigration. The resolution specifies that the Baltimore City Council “opposes the introduction of anti-immigration law in Maryland that criminalizes immigration and encourages racial profiling; requests the Baltimore City Senate and House Delegations to the 2011 Maryland General Assembly to oppose the legislation if introduced; and urges the Governor to veto this legislation, or similar measures, if passed by the Maryland State Legislature.”

Takoma Park Policy

Takoma Park, located in Montgomery County, enacted a sanctuary law in 1985 to protect numerous refugees from El Salvador and Guatemala from being deported to their homelands, which were in a state of civil war at the time. Three main components of the city’s sanctuary law include (1) prohibiting city officials from enforcing federal

immigration laws; (2) prohibiting inquiries into an individual's citizenship status; and (3) prohibiting the release of information pertaining to an individual's citizenship status. In October 2007, the city's sanctuary law was unanimously reaffirmed by the city council.

According to city officials, the Takoma Park Police Department neither inquires nor records information about an individual's immigration status. Police officers do not serve federal immigration orders, detainers, or warrants for violations of immigration or naturalization laws. Police officers, however, are not restricted from arresting someone who is suspected of criminal activity or who is subject to an outstanding nonimmigration-related criminal warrant. The city's sanctuary law, however, is not binding on State or county police officers. The Montgomery County Police Department advises that it closely coordinates investigations with the city police department and provides assistance when requested. If a county level investigation requires county police officers to enter Takoma Park, the county department has the authority to do so and to conduct the investigation in a way that is consistent with county policy, as well as State and federal law.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Garrett, and Montgomery counties; City of Rockville; Department of Natural Resources; Department of General Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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