

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 830 (Senator Hough, *et al.*)
Judicial Proceedings

Correctional Facilities - Individual Subject to Immigration Detainer - Homeland Security Notification

This bill requires a State or local correctional facility to provide notice to the U.S. Department of Homeland Security (DHS) at least 72 hours before an individual is released if the facility has been notified by DHS that the individual is subject to an immigration detainer. In order to allow DHS to assume custody of the individual, a State or local correctional facility may maintain custody for up to 48 hours beyond the time the individual would have otherwise been released from the control of the facility. A State or local correctional facility must respond to and honor immigration detainees in the same manner as other federal detainees.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact the finances of the Department of Public Safety and Correctional Services.

Local Effect: Expenditures increase, *potentially* significantly, for counties to maintain custody of inmates for longer periods of time. Any specific impact will depend on the number of immigration detainees received by any particular jurisdiction.

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 Trump directed the Secretary of Homeland Security to immediately take all appropriate action to terminate PEP and instead reinstitute the Secure Communities program. Under this program, launched in March 2008, 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 issued a letter of advice in fall 2013 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.

State and Local Fiscal Effect: Expenditures increase as a result of the bill's requirement to retain custody of specified individuals for an additional 48 hours. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. Any specific impact will depend on the number of immigration detainees received by a jurisdiction. For example, Baltimore County advises that it received 34 immigration detainees last year. Retaining custody of 34 individuals for an additional 48 hours increases expenditures by approximately \$7,100, which assumes a per diem of \$104.47. The county further notes that the number of requested detainees has been significantly reduced in recent years. The Department of Legislative Services, therefore, advises that decisions at the federal level regarding immigration enforcement efforts and priorities may significantly increase the number of detainees requested, thereby further impacting expenditures for local jurisdictions. The Department of Public Safety and Correctional Services advises that the bill will not materially impact its expenditures.

Baltimore County has also noted that it will not be possible to fully comply with the specific notification requirements established under the bill; Montgomery County noted similar concerns on a similar bill from the 2016 session. For example, Baltimore County indicates that because the Baltimore County Detention Center is used primarily as a pretrial detention facility, inmates may post bail at any time. Accordingly, it is not possible to know 72 hours in advance the day on which inmates who are eligible for bail will be released. The Department of Legislative Services advises that this will be true for all pretrial facilities, including the Baltimore Pretrial Complex, which is a State-operated facility in Baltimore City. While correctional facilities will know when an individual is scheduled to appear in court for trial, a case disposition which may result in an immediate release (*e.g.*, a sentence of time served, a *nolle prosequi*, a stet, etc.) will not be known beforehand. To the extent that a State or local facility has information that an individual who has been *sentenced* to serve a period of incarceration is undocumented, it can notify DHS using existing resources at least 72 hours prior to the scheduled release.

Additional Information

Prior Introductions: HB 1292, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore and Montgomery counties; Maryland Association of Counties; Department of Public Safety and Correctional Services; U.S. Department of Homeland Security; Department of Legislative Services

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