

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1362
Judiciary

(Delegate Morales, *et al.*)

Judicial Proceedings

Criminal Procedure - Immigration - Community Trust

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: Potential reduction in general fund expenditures to the extent that State funding is withheld from jurisdictions in violation of the bill's provisions. *Potential* significant decrease in federal fund revenues should the bill's provisions be deemed out of compliance with federal law.

Local Effect: Potential reduction in State funding to the extent that State funds are withheld from jurisdictions in violation of the bill's provisions. *Potential* significant decrease in federal fund revenues if local governments are deemed out of compliance with federal law.

Small Business Effect: None.

Analysis

Bill Summary:

Selected Definitions

A “law enforcement agent” includes (1) a law enforcement officer, as specified; (2) a chief of a law enforcement agency, as specified; 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. A “state or local correctional agent or employee” does not include a sheriff or an agent or employee of a State correctional facility or a local correctional facility if the sheriff, agent, or employee is authorized, trained, and sworn to perform the functions of an immigration officer pursuant to a memorandum of agreement with the Office of the U.S. Attorney General.

“Immigration enforcement” includes all efforts to investigate, enforce, or assist in the investigation or enforcement of federal immigration law.

An “administrative immigration detainer” means a detainer for a violation of federal immigration law that was not issued by a federal judge or federal magistrate judge.

Limitations on Immigration Enforcement

A law enforcement agent may not, during the performance of regular police functions, (1) inquire about an individual’s immigration status, citizenship status, or place of birth during a stop, search, or arrest or (2) 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 solely for immigration enforcement purposes (1) transfer an individual to federal immigration authorities for purposes of immigration enforcement; (2) detain an individual solely for the purpose of immigration enforcement; or (3) notify federal immigration authorities of an individual’s location or address. Without a judicial warrant, a State or local correctional agent or employee may not (1) detain an individual pursuant to an administrative immigration detainer or (2) detain an individual beyond the period prescribed by applicable State or local law.

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 allowed by State law or a lawful subpoena or (2) sending to, or receiving from, any local, state, or federal agency

information regarding the citizenship or immigration status, lawful or unlawful, of an individual in accordance with federal law.

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.

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 also 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, as specified. Any necessary changes to those policies must be made as expeditiously as possible, consistent with agency or department procedures.

Memoranda of agreement between the Office of the U.S Attorney General and local jurisdictions seeking to support or assist in civil immigration enforcement operations pursuant to federal immigration law or any other formal or informal law, regulation, or policy must be initiated and periodically evaluated through a process that is transparent, subject to public comment, and provides reasonable advance notice to the public.

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/Background: 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 DHS 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.

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 two jurisdictions – 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 and Anne Arundel County has applied to participate in the federal program.

The Office of the Attorney General of Maryland issued a letter of advice in the fall of 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.

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. 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 the Immigration and Naturalization Service (now known as 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: The executive order signed by President Trump requires the Attorney General to take appropriate enforcement action against any entity that violates specified provisions of federal law or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of federal law. The executive order also declared that it is the policy of the Executive Branch to ensure that jurisdictions that fail to comply with applicable federal law do not receive federal funds, except as mandated by law. Accordingly, federal fund revenues may decrease significantly *if* the bill's provisions are deemed as noncompliant with federal law.

For example, the Department of Justice has determined that the federal law referenced above is an applicable federal law for purposes of federal Edward Byrne Justice Assistance grants and State Criminal Alien Assistance Program (SCAAP) grants; recipients of these grants must certify compliance as preconditions to a grant award. Accordingly, federal funding of \$5.2 million (\$4.0 million in Byrne grants and \$1.2 million in SCAAP funding) may be eliminated *if* the State is deemed to be out of compliance with federal law. However, there remains ambiguity regarding application of the executive order in regard to federal funds. For example, Section 9 of the order states that jurisdictions that willfully refuse to comply with federal law “are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes.” Byrne grants, which support various law enforcement activities, may be deemed as necessary for law enforcement purposes.

Additional Information

Prior Introductions: SB 554 of 2014, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 29, received a hearing in the House Judiciary Committee but was subsequently withdrawn.

Cross File: SB 835 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Charles County; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; U.S. Department of Homeland Security; Department of Legislative Services

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