

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 835

(Senator Ramirez, *et al.*)

Judicial Proceedings

Maryland Law Enforcement and Governmental Trust Act

This bill expresses the intent of the General Assembly to restore community trust in Maryland Law Enforcement by clarifying the parameters of local participation in federal immigration enforcement efforts.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Any change in State activities does not materially impact State finances.

Local Effect: Any change in local law enforcement activities does not materially impact local finances.

Small Business Effect: None.

Analysis

Bill Summary:

Selected Definitions

A “government agent” means an agent or employee of the State, a county, or a municipality. A government agent includes (1) an agent or employee of a police or security department of public schools or public institutions of higher education; (2) law enforcement officers, as specified; (3) agents or employees of State or local law enforcement agencies; (4) agents or employees of a court; (5) an agent or employee of a State correctional facility or local correctional facility, as specified; and (6) agents or

employees of the Department of Juvenile Services. Local law enforcement agencies include local correctional facilities.

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

Limitations on Immigration Enforcement

The bill prohibits a government agent from, for immigration enforcement purposes (1) using public funds, facilities, property, equipment, or personnel to stop, investigate, detain, detect, report, or arrest a person; (2) responding to a hold, notification, or transfer request from federal immigration authorities; (3) responding to a request for nonpublicly available information about a person, including information about the person’s date of release from incarceration, home address, or work address; (4) making an arrest based on a civil immigration warrant; (5) giving federal immigration authorities access to interview a person in agency or department custody; (6) performing the functions of an immigration officer; as specified; or (7) supporting or assisting in civil immigration enforcement operations, including the establishment of traffic perimeters.

A law enforcement official may not stop, arrest, search, or detain an individual to (1) investigate a suspected immigration violation or (2) inquire about immigration or citizenship status or place of birth of an arrestee or victim of crime.

A government agent may not (1) use governmental funds, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin; or (2) make a governmental database available to any person or entity for the purpose of immigration enforcement or investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, immigration status, or national or ethnic origin.

A State or local law enforcement agency may not place a law enforcement officer under the supervision of a federal agency or employ a law enforcement officer deputized as a special federal officer or special federal deputy except to the extent that such a law enforcement officer remains subject to State law governing the officer’s conduct and the policies of the employing agency.

A government agent may not, at the request of federal immigration authorities, without a judicial warrant (1) transfer an individual to federal immigration authorities for purposes of immigration enforcement; (2) detain an individual; or (3) notify federal immigration authorities of release information.

The bill does not prohibit a government agent 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 pursuant to federal law.

Miscellaneous Provisions

The Attorney General must consult with appropriate stakeholders and develop and adopt model policies to ensure that all public schools, hospitals, and courthouses remain safe and accessible to all Maryland residents, regardless of immigration status. All public schools, hospitals, and courthouses must establish and publish policies that limit immigration enforcement on their premises to the fullest extent possible consistent with federal and State law.

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.

Any agreement in existence on the bill's effective date that makes any governmental database available in conflict with the bill's provisions is declared null and void as of the bill's effective date.

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. The local detention centers in Frederick and Harford counties participate in the 287(g) program.

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 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.

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: HB 1362 (Delegate Morales, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 20, 2017
fn/hlb

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510