

HOUSE BILL 1461

E2
HB 1362/17 – JUD

8lr3197
CF 8lr3860

By: **Delegates Gutierrez, Ali, Anderson, Angel, Atterbeary, B. Barnes, Brooks, Carr, Clippinger, Conaway, Cullison, Davis, Ebersole, Fennell, Fraser-Hidalgo, Frush, Gaines, Gilchrist, Haynes, Healey, Hettleman, Hixson, Jones, Kaiser, Kelly, Knotts, Korman, Kramer, Lafferty, Lam, J. Lewis, R. Lewis, Lierman, Luedtke, McIntosh, A. Miller, Moon, Morales, Mosby, Patterson, Pena-Melnyk, Platt, Queen, Reznik, Robinson, Rosenberg, Sanchez, Sydnor, Tarlau, Turner, Valderrama, Valentino-Smith, Waldstreicher, A. Washington, M. Washington, Wilkins, K. Young, and P. Young**

Introduced and read first time: February 9, 2018
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Immigration – Supporting All Families Everywhere**
3 **(SAFE Act)**

4 FOR the purpose of providing that a certain official is immune from criminal and civil
5 liability for refusing to provide information to the federal government or another
6 state that will be used for a certain purpose; authorizing the State to indemnify a
7 certain official for certain costs or a certain judgment; expressing the intent of the
8 General Assembly to maintain community trust in Maryland governmental
9 operations and law enforcement by clarifying the parameters of State and local
10 participation in federal immigration enforcement efforts; prohibiting a law
11 enforcement agent from taking certain actions at a certain time under certain
12 circumstances; prohibiting a State or local correctional agent or employee from
13 taking certain actions under certain circumstances; prohibiting a certain officer or
14 unit of State government from spending certain funds for a certain purpose;
15 prohibiting the State from reimbursing certain expenditures; providing that the
16 State is not obligated to appropriate money to pay a certain expenditure; providing
17 that a certain employee or officer who makes a certain expenditure or receives
18 certain funds is subject to certain disciplinary action under certain provisions of law;
19 requiring the Attorney General to develop certain policies in consultation with
20 certain stakeholders; authorizing all public schools, hospitals, and courthouses to
21 establish and publish certain policies; providing that nothing in this Act shall
22 prevent a certain agent or employee from responding to a certain request or sending
23 or receiving certain information; requiring all State agencies to review certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 policies, identify certain changes, and make certain changes at a certain time for
2 certain purposes; requiring certain memoranda of agreement to be initiated and
3 evaluated in a certain manner; defining certain terms; making the provisions of this
4 Act severable; and generally relating to State and local participation in federal
5 immigration enforcement efforts.

6 BY adding to

7 Article – Courts and Judicial Proceedings

8 Section 5–527

9 Annotated Code of Maryland

10 (2013 Replacement Volume and 2017 Supplement)

11 BY adding to

12 Article – Criminal Procedure

13 Section 5–103

14 Annotated Code of Maryland

15 (2008 Replacement Volume and 2017 Supplement)

16 BY adding to

17 Article – State Finance and Procurement

18 Section 7–239

19 Annotated Code of Maryland

20 (2015 Replacement Volume and 2017 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

22 That the Laws of Maryland read as follows:

23 **Article – Courts and Judicial Proceedings**

24 **5–527.**

25 (A) AN OFFICIAL OF STATE GOVERNMENT OR A LOCAL GOVERNMENT IS
26 IMMUNE FROM CRIMINAL AND CIVIL LIABILITY FOR REFUSING TO PROVIDE
27 INFORMATION TO THE FEDERAL GOVERNMENT OR ANOTHER STATE THAT WILL BE
28 USED FOR THE CREATION OR MAINTENANCE OF A REGISTRY FOR THE PURPOSE OF
29 DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE,
30 GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC
31 ORIGIN.

32 (B) THE STATE MAY INDEMNIFY AN OFFICIAL OF STATE GOVERNMENT OR A
33 LOCAL GOVERNMENT FOR ANY COSTS ASSOCIATED WITH OR ANY JUDGMENT IN AN
34 ACTION OR SUIT FILED BASED ON THE OFFICIAL'S REFUSAL TO PROVIDE
35 INFORMATION TO THE FEDERAL GOVERNMENT OR ANOTHER STATE THAT WILL BE
36 USED FOR THE CREATION OR MAINTENANCE OF A REGISTRY FOR THE PURPOSE OF
37 DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE,
38 GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC

1 ORIGIN.

2 Article – Criminal Procedure

3 5–103.

4 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (2) “ADMINISTRATIVE IMMIGRATION DETAINER” MEANS A DETAINER
7 FOR A VIOLATION OF FEDERAL IMMIGRATION LAW THAT WAS NOT ISSUED BY A
8 FEDERAL JUDGE OR FEDERAL MAGISTRATE JUDGE.

9 (3) “IMMIGRATION ENFORCEMENT” INCLUDES ALL EFFORTS TO
10 INVESTIGATE, ENFORCE, OR ASSIST IN THE INVESTIGATION OR ENFORCEMENT OF
11 FEDERAL IMMIGRATION LAW.

12 (4) “JUDICIAL WARRANT” MEANS A WARRANT BASED ON PROBABLE
13 CAUSE AND ISSUED BY A FEDERAL JUDGE OR A FEDERAL MAGISTRATE JUDGE THAT
14 AUTHORIZES FEDERAL IMMIGRATION AUTHORITIES TO TAKE INTO CUSTODY THE
15 PERSON WHO IS THE SUBJECT OF THE WARRANT.

16 (5) “LAW ENFORCEMENT AGENT” INCLUDES:

17 (I) A LAW ENFORCEMENT OFFICER, AS DEFINED IN § 3–101 OF
18 THE PUBLIC SAFETY ARTICLE;

19 (II) A CHIEF OF A LAW ENFORCEMENT AGENCY, AS DEFINED IN
20 § 3–101 OF THE PUBLIC SAFETY ARTICLE; AND

21 (III) AN AGENT OR EMPLOYEE OF A STATE OR LOCAL LAW
22 ENFORCEMENT AGENCY.

23 (6) “LOCAL CORRECTIONAL FACILITY” HAS THE MEANING STATED IN
24 § 1–101 OF THE CORRECTIONAL SERVICES ARTICLE.

25 (7) “STATE CORRECTIONAL FACILITY” HAS THE MEANING STATED IN
26 § 1–101 OF THE CORRECTIONAL SERVICES ARTICLE.

27 (8) (I) “STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE”
28 MEANS AN AGENT OR EMPLOYEE OF A STATE CORRECTIONAL FACILITY OR LOCAL
29 CORRECTIONAL FACILITY.

30 (II) “STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE”

1 DOES NOT INCLUDE A SHERIFF OR AN AGENT OR EMPLOYEE OF A STATE
2 CORRECTIONAL FACILITY OR A LOCAL CORRECTIONAL FACILITY IF THE SHERIFF,
3 AGENT, OR EMPLOYEE IS AUTHORIZED, TRAINED, AND SWORN TO PERFORM THE
4 FUNCTIONS OF AN IMMIGRATION OFFICER PURSUANT TO A MEMORANDUM OF
5 AGREEMENT WITH THE OFFICE OF THE UNITED STATES ATTORNEY GENERAL.

6 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO MAINTAIN
7 COMMUNITY TRUST IN MARYLAND GOVERNMENTAL OPERATIONS AND LAW
8 ENFORCEMENT BY CLARIFYING THE PARAMETERS OF STATE AND LOCAL
9 PARTICIPATION IN FEDERAL IMMIGRATION ENFORCEMENT EFFORTS.

10 (C) A LAW ENFORCEMENT AGENT MAY NOT, DURING THE PERFORMANCE OF
11 REGULAR POLICE FUNCTIONS:

12 (1) INQUIRE ABOUT AN INDIVIDUAL'S IMMIGRATION STATUS,
13 CITIZENSHIP STATUS, OR PLACE OF BIRTH DURING A STOP, SEARCH, OR ARREST; OR

14 (2) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION
15 AUTHORITIES UNLESS REQUIRED BY FEDERAL LAW.

16 (D) WITHOUT A JUDICIAL WARRANT, A LAW ENFORCEMENT AGENT MAY
17 NOT, PURSUANT TO A REQUEST BY FEDERAL IMMIGRATION AUTHORITIES MADE
18 SOLELY FOR IMMIGRATION ENFORCEMENT PURPOSES:

19 (1) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION
20 AUTHORITIES FOR PURPOSES OF IMMIGRATION ENFORCEMENT;

21 (2) DETAIN AN INDIVIDUAL SOLELY FOR THE PURPOSE OF
22 IMMIGRATION ENFORCEMENT; OR

23 (3) NOTIFY FEDERAL IMMIGRATION AUTHORITIES OF AN
24 INDIVIDUAL'S LOCATION OR ADDRESS.

25 (E) WITHOUT A JUDICIAL WARRANT, A STATE OR LOCAL CORRECTIONAL
26 AGENT OR EMPLOYEE MAY NOT:

27 (1) DETAIN AN INDIVIDUAL PURSUANT TO AN ADMINISTRATIVE
28 IMMIGRATION DETAINER; OR

29 (2) DETAIN AN INDIVIDUAL BEYOND THE PERIOD PRESCRIBED BY
30 APPLICABLE STATE OR LOCAL LAW.

31 (F) NOTHING IN THIS SECTION SHALL PREVENT A LAW ENFORCEMENT
32 AGENT OR A STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE FROM:

1 **(1) RESPONDING TO:**

2 **(I) A REQUEST FROM FEDERAL IMMIGRATION AUTHORITIES**
3 **FOR INFORMATION ABOUT A SPECIFIC PERSON'S CRIMINAL RECORD WHEN**
4 **ALLOWED BY STATE LAW; OR**

5 **(II) A LAWFUL SUBPOENA; OR**

6 **(2) SENDING TO, OR RECEIVING FROM, ANY LOCAL, STATE, OR**
7 **FEDERAL AGENCY INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION**
8 **STATUS, LAWFUL OR UNLAWFUL, OF AN INDIVIDUAL IN ACCORDANCE WITH FEDERAL**
9 **LAW.**

10 **Article – State Finance and Procurement**

11 **7-239.**

12 **(A) AN OFFICER OR UNIT OF STATE GOVERNMENT MAY NOT SPEND MONEY**
13 **FROM AN APPROPRIATION, AND A PERSON THAT RECEIVES STATE FUNDS MAY NOT**
14 **USE THE STATE FUNDS, TO:**

15 **(1) KNOWINGLY CREATE OR MAINTAIN A REGISTRY FOR THE**
16 **PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION,**
17 **RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR**
18 **ETHNIC ORIGIN; OR**

19 **(2) KNOWINGLY PROVIDE INFORMATION TO THE FEDERAL**
20 **GOVERNMENT OR ANOTHER STATE FOR THE CREATION OR MAINTENANCE OF A**
21 **REGISTRY FOR THE PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE**
22 **BASIS OF RELIGION, RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS,**
23 **OR NATIONAL OR ETHNIC ORIGIN.**

24 **(B) (1) THE STATE MAY NOT REIMBURSE ANY EXPENDITURE TO THE**
25 **EXTENT THAT THE EXPENDITURE VIOLATES SUBSECTION (A) OF THIS SECTION.**

26 **(2) THE STATE IS NOT OBLIGATED TO APPROPRIATE MONEY TO PAY**
27 **AN EXPENDITURE THAT VIOLATES SUBSECTION (A) OF THIS SECTION.**

28 **(C) EACH EMPLOYEE OR OFFICER OF THE STATE GOVERNMENT WHO MAKES**
29 **AN EXPENDITURE OR RECEIVES STATE FUNDS THAT VIOLATE SUBSECTION (A) OF**
30 **THIS SECTION IS SUBJECT TO DISCIPLINARY ACTION, INCLUDING TERMINATION,**
31 **UNDER THE APPLICABLE DISCIPLINARY AND GRIEVANCE PROCEDURES IN TITLES**
32 **11 AND 12 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General, in
2 consultation with the appropriate stakeholders, shall develop guidelines to assist public
3 schools, hospitals, and courthouses to draft policies that limit civil immigration
4 enforcement activities on their premises in order to ensure these facilities remain safe and
5 accessible to all, regardless of immigration status.

6 SECTION 3. AND BE IT FURTHER ENACTED, That public schools, hospitals, and
7 courthouses may establish and publish policies that limit immigration enforcement on their
8 premises to the fullest extent possible consistent with federal and State law based on the
9 guidelines developed by the Attorney General.

10 SECTION 4. AND BE IT FURTHER ENACTED, That, in order to ensure that
11 eligible individuals are not deterred from seeking services or engaging with State agencies,
12 all State agencies shall review their confidentiality policies and identify any changes
13 necessary to ensure that information collected from individuals is limited to that which is
14 necessary to perform agency duties, does not include inquiries into immigration status
15 unless required by federal law or necessary to make a determination of eligibility, and is
16 not used or disclosed for any other purpose. Any necessary changes to those policies shall
17 be made as expeditiously as possible, consistent with agency or department procedures.

18 SECTION 5. AND BE IT FURTHER ENACTED, That memoranda of agreement
19 between the Office of the United States Attorney General and local jurisdictions seeking to
20 support or assist in civil immigration enforcement operations pursuant to federal
21 immigration law or any other formal or informal law, regulation, or policy, shall be initiated
22 and periodically evaluated through a process that is transparent, subject to public
23 comment, and provides reasonable advance notice to the public.

24 SECTION 6. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
25 the application thereof to any person or circumstance is held invalid for any reason in a
26 court of competent jurisdiction, the invalidity does not affect other provisions or any other
27 application of this Act that can be given effect without the invalid provision or application,
28 and for this purpose the provisions of this Act are declared severable.

29 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2018.