

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 718 (Senator Washington)
Judicial Proceedings

Criminal Procedure - Government Agents - Requests for and Use of Immigration
Status Information

This bill prohibits a government agent from requesting or coercing information relating to the immigration or citizenship status of a person, a person's family, or a person's acquaintances, unless required by law. An aggrieved person may seek redress by means of any appropriate legal remedy and recover court costs and reasonable attorney's fees.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill is not anticipated to have a material fiscal or operational impact on local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A "government agent" includes (1) employees of public schools and public institutions of higher education (including related police or security employees); (2) law enforcement officers and related employees; (3) agents or employees of a court or prosecutors; (4) agents or employees of a State or local correctional facility; (5) agents or employees of the Department of Juvenile Services or Department of Human Services; and (6) agents or employees of hospitals.

The bill prohibits a government agent from requesting information about the immigration or citizenship status of a person or a person's family members or acquaintances, unless

required by law. The bill also prohibits a government agent from coercing information or action from a person by using (1) the actual or presumed immigration or citizenship status of the person or (2) information about potential immigration consequences.

If a government agent violates the bill, an aggrieved person may seek redress by means of any appropriate legal remedy and recover court costs and reasonable attorney's fees.

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 PEP, 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.

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. Anne Arundel County previously participated in the federal program starting in December 2017 but later withdrew in December 2018.

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.

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.

Additional Comments: The Administrative Office of the Courts advises the bill may limit their ability to offer Special Immigrant Juvenile status from the federal government to qualified individuals. The office also advises the bill may also prohibit the court from making inquiries that are necessary in guardianship proceedings.

Additional Information

Prior Introductions: None.

Cross File: HB 1165 (Delegate Atterbeary, *et al.*) - Judiciary.

Information Source(s): Montgomery County; cities of Bowie and Takoma Park; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Maryland State Department of Education; Department of Human Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Anne Arundel County Public Schools; Montgomery County Public Schools; Department of Legislative Services

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