

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 197

(Senator Hough, *et al.*)

Judicial Proceedings

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

This bill requires a State or local correctional facility, after being notified by the U.S. Department of Homeland Security (DHS) that an individual in their custody is subject to an immigration detainer, to provide notice to DHS at least 72 hours before the individual is released if the individual is charged with or convicted of (1) a crime of violence or (2) a violation of specified criminal gang offenses. Otherwise, State or local correctional facilities may notify DHS at least 72 hours before an individual is released from the facility if the individual in their custody is subject to an immigration detainer. If the individual is subject to a court-issued warrant, the State or local correctional facility may maintain custody for up to 48 hours *after* the time the individual would have otherwise been released from the control of the facility.

Fiscal Summary

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

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.

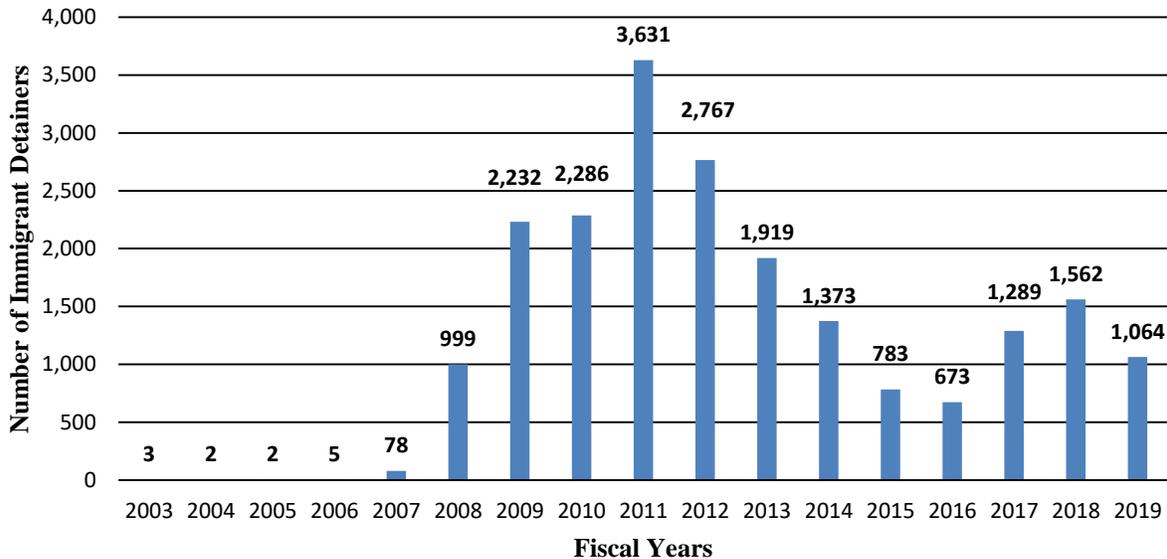
Analysis

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 Donald J. Trump directed the Secretary of Homeland Security to immediately take all appropriate action to reinstitute the Secure Communities program. Under this program, originally launched in March 2008 and discontinued November 2014, 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.

Exhibit 1 shows the total number of immigrant detainees issued in Maryland from fiscal 2003 to 2019.

Exhibit 1 Immigrant Detainers Issued in Maryland



Sources: Transactional Records Access Clearinghouse (TRAC); Department of Legislative Services

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 reissued a letter of advice in [December 2018](#) 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 \$50 to over \$200 per inmate in recent years. Any specific impact will depend on the number of immigration detainers received by a jurisdiction.

For example, Montgomery County advises that it received an average of 15 immigration detainer requests from ICE per month in 2019. Retaining custody of 15 individuals for an additional 48 hours increases expenditures by approximately \$6,400, which assumes a per diem of \$214. The county further notes the bill is in conflict with [Montgomery County Executive Order 135–19](#), which prohibits any county agent or department from detaining a person based on an ICE detainer after they become eligible for release. Anne Arundel County advises that it received an average of 7 immigration detainer requests from ICE per month in 2019. Similarly retaining custody of 7 individuals for an additional 48 hours increases expenditures by approximately \$2,300, which assumes a per diem of \$167. The Department of Legislative Services (DLS), 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. DPSCS advises that the bill will not materially impact its expenditures.

Anne Arundel County has noted that it will not be possible to fully comply with the specific notification requirements established under the bill because the Jennifer Road Detention Center is used primarily as a pretrial detention facility, meaning 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. DLS 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 Comment: The Administrative Office of the Courts advises the bill may result in increased court challenges from individuals held beyond their designated release date.

Additional Information

Prior Introductions: SB 830 of 2017, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Transactional Records Access Clearinghouse; Department of Legislative Services

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an/hlb

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