

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 388
Judiciary

(Delegate Pena-Melnyk, *et al.*)

Criminal Procedure - Civil Immigration Enforcement - Restrictions

This bill prohibits law enforcement agents from (1) inquiring about an individual's immigration status, citizenship status, or place of birth during a stop, search, or an arrest; or (2) transferring an individual to federal immigration authorities unless required by federal law. The bill also prohibits a law enforcement agent, without a judicial warrant, from taking specified actions pursuant to a request by federal immigration authorities made solely for immigration enforcement purposes. These prohibited actions include (1) transferring an individual to federal immigration authorities; (2) detaining an individual; (3) notifying federal immigration authorities of an individual's location, address, or release date; or (4) otherwise using law enforcement resources to further civil immigration enforcement.

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: A "judicial warrant" is defined as a warrant based on probable cause and issued by a federal judge or federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant. A "law

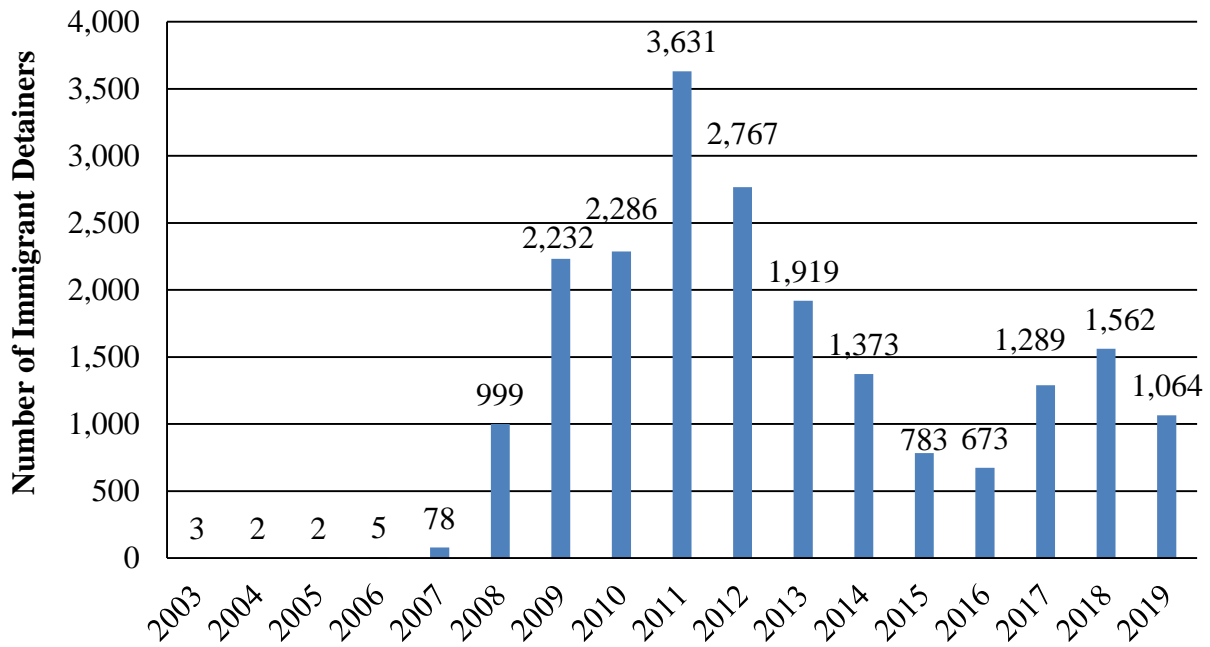
enforcement agent” is defined as a law enforcement officer, chief, or an agent or employee of a State or local law enforcement agency.

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 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 detainers issued in Maryland from fiscal 2003 to 2019.

Exhibit 1
Immigrant Detainers Issued in Maryland
Fiscal 2003-2019



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

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 three jurisdictions – Cecil, 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. Cecil County began participating in the 287(g) program in February 2019. Anne Arundel County previously participated in the federal program starting in December 2017 but later withdrew in December 2018.

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 detainees. Such detainees 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 detainees.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Harford, Montgomery, Talbot, and Wicomico counties; cities of College Park and Rockville; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Comptroller’s Office; Department of General Services; Maryland Department of Health; Maryland Department of Labor; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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