

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 387

(Senator Folden)

Judicial Proceedings

**Correctional Services - Transfers to Federal Authorities - Undocumented
Immigrants (Protecting Marylanders From Violent Offenders Act of 2025)**

This bill requires a State or local correctional facility with custody of an undocumented immigrant who is serving a sentence in the facility for conviction of a crime to transfer the individual to the U.S. Department of Homeland Security (DHS) on request if the individual (1) has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security; (2) has been convicted of an offense which an element is active participation in a criminal street gang, as specified; (3) is at least 16 years of age and intentionally participated in a criminal street gang, as specified, to further illegal activities; or (4) has been convicted of an aggravated felony, as specified.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State incarceration costs.

Local Effect: The bill is not anticipated to materially impact local incarceration costs.

Small Business Effect: None.

Analysis

Current Law: While immigration is controlled by federal law, the U.S. Immigration, Customs, and Enforcement Division (ICE) and DHS have initiated numerous programs that involve state and local law enforcement agencies as allies and additional resources. For example, the Criminal Alien Program (CAP) supports ICE Enforcement and Removal Operations in executing its mission through the arrest and removal of undocumented immigrants who threaten the safety of the nation's communities and the integrity of

U.S. immigration laws. CAP focuses on the identification, arrest, and removal of incarcerated undocumented immigrants at federal, state, and local levels, as well as at-large criminal undocumented immigrants.

Federal law 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 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.

Responding to Immigration Detainers

The Office of the Attorney General of Maryland issued a guidance memorandum in [January 2025](#) pertaining to local enforcement of federal immigration law and includes guidance on 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 individual named in the detainer for up to 48 hours past the date that the individual is otherwise eligible for release. The memorandum notes that immigration detainers are requests only and local officers are not obligated to honor them and may risk violating constitutional rights by doing so. A law enforcement agency's decision to comply with a detainer request and hold an individual beyond the individual's normal release date constitutes a new "seizure." That new seizure must be justified under the Fourth Amendment of the U.S. Constitution and the analogous provisions of Article 26 of the Maryland Declaration of Rights. The Attorney General specifically notes that the requirements of the Fourth Amendment do not change because ICE has issued a detainer request to a law enforcement agency.

Federal Immigration Detention Agreements

Chapter 19 of the 2021 special session prohibits the State, local governments, and specified State and local agents from (1) entering into an agreement of any kind for the detention of individuals in an immigration detention facility owned, managed, or operated, in whole or in part, by a private entity; (2) paying, reimbursing, subsidizing, or defraying in any way any costs related to the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity; (3) receiving any payment related to the detention of individuals in an immigration detention facility owned, managed, or operated in whole or in part, by a private entity; or (4) otherwise giving any financial

incentive or benefit to any private entity or person in connection with the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity.

The State, local governments, and specified State and local agents are prohibited from approving a zoning variance or issuing a permit for the construction of a building or the reuse of existing buildings or structures by any private entity for use as an immigration detention facility unless the entity (1) provides notice to the public of the proposed zoning variance or permit action at least 180 days before authorizing the variance or issuing the permit and (2) solicits and hears public comments on the proposed zoning variance or permit action in at least two separate meetings open to the public.

The State, local governments, and specified State and local agents are prohibited from entering into or renewing an immigration detention agreement. Those with an existing immigration detention agreement must exercise the termination provision contained in the immigration detention agreement no later than October 1, 2022. In any dispute over an immigration detention agreement with the State, these provisions govern. However, the provisions may not be construed to authorize or prohibit the State, local governments, and specified State and local agents from entering into an agreement with the federal government under 8 U.S.C. § 1357(g).

“Immigration detention agreement” means any contract, agreement, intergovernmental service agreement, or memorandum of understanding that authorizes a State or local government agency to house or detain individuals for federal civil immigration violations. “Immigration detention facility” means any building, facility, or structure used, in whole or in part, to house or detain individuals for federal civil immigration violations.

Immigration Status and Law Enforcement Agents

A law enforcement agent may not, during the performance of regular police functions (1) inquire about an individual’s citizenship, immigration status, or place of birth during a stop, a search, or an arrest; (2) detain, or prolong the detention of an individual for the purpose of investigating the individual’s citizenship or immigration status, or based on the suspicion that the individual has committed a civil immigration violation; (3) transfer an individual to federal immigration authorities unless required by federal law; or (4) coerce, intimidate, or threaten any individual based on the actual or perceived citizenship or immigration status of the individual or specified individuals that are generally related to the individual.

Nothing in the provisions must prevent a law enforcement agent from inquiring about any information that is material to a criminal investigation.

If the citizenship or immigration status of an individual is relevant to a protection accorded to the individual under State or federal law, or subject to a requirement imposed by international treaty, a law enforcement agent may (1) notify the individual of the protection or requirement and (2) provide the individual an opportunity to voluntarily disclose the individual's citizenship or immigration status for the purpose of receiving the protection or complying with the requirement.

“Civil immigration violation” means a violation of federal civil immigration law.

Criminal Street Gang – Defined

Under 18 U.S.C. §521, “criminal street gang” means an ongoing group, club, organization, or association of five or more persons:

- that has as one of its primary purposes the commission of one or more of the following criminal offenses: (1) a federal felony involving a controlled substance, as specified, for which the maximum penalty is not less than five years; (2) a federal felony crime of violence that has as an element the use or attempted use of physical force against the person of another; (3) a federal offense involving human trafficking, sexual abuse, sexual exploitation, or transportation for prostitution or any illegal sexual activity; and (4) a conspiracy to commit an offense described in items (1), (2), or (3);
- the members of which engage, or have engaged within the past five years, in a continuing series of offenses described above; and
- the activities of which affect interstate or foreign commerce.

State and Local Fiscal Effect: Because the bill's applicability is limited to individuals who have been convicted (and likely have more definitive release dates), for purposes of this fiscal and policy note it is assumed that ICE can provide sufficient notice of a transfer request so as not to require individuals to be held past the date on which the individual would otherwise be eligible for release. Accordingly, it is assumed that the bill's provisions can be accomplished with existing resources.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB1505 of 2024.

Designated Cross File: HB 403 (Delegate Pippy, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Garrett, and Howard counties; Maryland Association of Counties; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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js/hlb

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