

Department of Legislative Services  
Maryland General Assembly  
2025 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1188  
Judiciary

(Delegate Miller, *et al.*)

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Public Safety - Immigration Enforcement - Cooperation

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This bill repeals the prohibition on specified State and local law enforcement agents inquiring about an individual's immigration status during the performance of regular police functions. Instead, the bill requires, whenever a law enforcement agency, law enforcement agent, or local detention facility takes custody of an individual, that the law enforcement agency, law enforcement agent, or local detention facility run a search of the individual in the National Crime Information Center. If the required search reveals that an individual, not lawfully present in the United States, is the subject of an outstanding criminal warrant, the law enforcement agency, law enforcement agent, or local detention facility must take specified actions. The State, a unit of local government, a county sheriff, or an agency of the State or a unit of local government may not adopt, implement, or enforce any policy that limits or prohibits cooperation with federal immigration authorities in the investigation or apprehension of individuals, not lawfully present in the United States, with outstanding criminal warrants.

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Fiscal Summary

**State Effect:** Any change in State policing activities is not anticipated to materially impact State finances.

**Local Effect:** Any change in local law enforcement policing activities is not anticipated to materially impact local finances. Potential minimal increase in local incarceration expenditures to the extent that a local detention facility holds an individual longer under the bill's provisions. Local revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** If the required search under the bill's provisions reveals that an individual who is not lawfully present in the United States is the subject of an outstanding criminal warrant, the law enforcement agency, law enforcement agent, or local detention facility must notify federal immigration authorities (1) that the law enforcement agency, law enforcement agent, or local detention facility has taken custody of the individual and (2) of the details of the custody, including, if applicable, information on the planned release of the individual. If requested by federal immigration authorities, the law enforcement agency, law enforcement agent, or local detention facility must retain custody of the individual for up to 48 hours beyond the planned release of the individual and cooperate with federal immigration authorities to arrange for the transfer of the individual to federal immigration authorities.

During an investigation, under the bill's provisions, a law enforcement agency, law enforcement agent, or local detention facility must provide an interpreter for any individual who requires one to effectively communicate.

**Current Law:** While immigration is controlled by federal law, the U.S. Immigration, Customs, and Enforcement Division (ICE) and U.S. Department of Homeland Security 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 (OAG) 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*

Chapter 19 further prohibits a law enforcement agent, during the performance of regular police functions from (1) inquiring about an individual’s citizenship, immigration status, or place of birth during a stop, a search, or an arrest; (2) detaining, or prolonging 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) transferring an individual to federal immigration authorities unless required by federal law; or (4) coercing, intimidating, or threatening 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 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.

“Law enforcement agent” means an individual who is certified by the Maryland Police Training and Standards Commission. “Law enforcement agent” does not include an agent or employee of a State correctional facility or local correctional facility. “Arrest” does not include a routine booking procedure.

**Additional Comments:** The OAG guidance memorandum, discussed above, issued in January 2025, pertaining to local enforcement of federal immigration law includes guidance on immigration detainees and advises that enforcement of immigration detainees

that do not include a warrant signed by a judge and are not based on probable cause that a crime has been committed may violate an individual's Fourth Amendment rights and subject a law enforcement agency to civil liability. The government bears the burden of proving that a person's detention beyond their State-law release date does not violate the Fourth Amendment and its Maryland counterpart. The memorandum further advises that law enforcement agencies face potential civil liability if they seek to enforce federal immigration laws, particularly if they do so outside the context of a federal cooperation agreement under 8 U.S.C. § 1357(g)(1).

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Kent, Montgomery, Washington, and Worcester counties; Maryland Municipal League; Town of Bel Air; Alcohol, Tobacco, and Cannabis Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Health; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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