

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 817
Judiciary

(Delegate Szeliga, *et al.*)

State and Local Correctional Facilities - Undocumented Immigrants - Transfer
to United States Department of Homeland Security (Keep Our Communities Safe
Act of 2019)

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.

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/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, local jurisdictions share fingerprints of individuals arrested with the Federal Bureau of Investigation (FBI) to check for outstanding warrants or criminal records. Under the Secure Communities program, the FBI automatically sends the fingerprints to DHS to check against its immigration database. If the individual is revealed to be unlawfully present in the United States, ICE may take enforcement action, which may include the issuance of a detainer.

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. The National Conference of State Legislatures also notes that court decisions have deemed immigration detainers to be voluntary, not mandatory.

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. In addition, although State and local expenditures may decrease minimally to the extent that the federal government increases immigration enforcement and deportation efforts and requests the transfer of individuals prior to the completion of any ordered sentence, any such impact is not anticipated to materially impact incarceration costs.

Additional Information

Prior Introductions: HB 1308 of 2018 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore and Charles counties; Department of Public Safety and Correctional Services; National Conference of State Legislatures; U.S. Department of Homeland Security; Department of Legislative Services

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an/hlb

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