

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1012
Judiciary

(Delegate Jenkins)

**Report and Record Immigration Status - Division of Correction and Division of
Parole and Probation**

This bill requires the Division of Parole and Probation (DPP) to forward the following information to the U.S. Immigration and Customs Enforcement Agency (ICE) if a presentence investigation report (PSI) indicates that the individual has an immigration status: (1) the name of the individual; (2) the information collected about the individual's immigration status; and (3) a summary of the facts of the case for which the investigation is being conducted. If the immigration status of an inmate was not collected as part of a PSI report, the Division of Correction (DOC) must include that information as part of the case record for an inmate and must forward the specified immigration information to ICE.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Promptly after an inmate is sentenced to the jurisdiction of DOC, the division must assemble a case record for the inmate that includes (1) a description of the inmate; (2) a photograph of the inmate; (3) the family history of the inmate; (4) any previous record of the inmate; (5) a summary of the facts of each case for which the inmate is serving a sentence; and (6) the results of the required physical, mental, and educational examination of the inmate.

On request of a court, DPP must provide the court with a PSI report. On request, the PSI report must be made available to (1) the defendant; (2) the defendant's attorney; (3) the State's Attorney; (4) a correctional facility; (5) a parole, probation, or pretrial release official of this State, any other state, or the United States; or (6) in specified circumstances, a public or private mental health facility or a community substance abuse treatment provider.

Background: Maryland continues to be a major destination for immigrants. According to U.S. Census estimates, the foreign-born population in Maryland totals approximately 685,000 individuals. The estimated number of those foreign-born residents who are undocumented ranges between 225,000 and 275,000. There are no reliable estimates of the portion of those arrested and detained who are undocumented aliens.

A "criminal alien" is a noncitizen who is residing in the United States legally or illegally and is convicted of a crime. Criminal aliens are eligible for removal from the United States because criminal activity violates immigration law. However, if a criminal alien goes through a trial and receives a sentence, that individual is in the custody of the sentencing jurisdiction until the sentence has been completed.

The Department of Public Safety and Correctional Services attempts to identify citizenship status for any individual sentenced to DOC during the intake process at the Maryland Reception, Diagnostic, and Classification Center. ICE is notified via fax when foreign birth (not illegal citizenship status) is suspected by way of an inmate's own admission, criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution, Hagerstown for males or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the undocumented immigrant and, once the inmate's sentence has been completed or the inmate is paroled, ICE takes custody of the inmate.

According to information provided by DOC, during calendar 2008 (the most recent information readily available), DOC provided notification to ICE regarding the presence of 207 foreign-born inmates. During the same time period, DOC released 157 foreign-born inmates from its custody. Of those individuals, 123 were remanded to the custody of ICE and 34 were released to the community.

In May 2009, the Maryland Parole Commission, DOC, and ICE finalized a memorandum of understanding to implement the “Rapid Removal of Eligible Parolees Accepted for Transfer” (Rapid REPAT) program. Under the program, eligible foreign-born offenders agree to deportation and are granted parole for that purpose. Only offenders with a final deportation order, serving sentences for nonviolent offenses, are eligible for this program. A similar program was implemented in New York in 1995, with savings of over \$140 million reported since that time.

State Fiscal Effect: DOC can handle the bill’s requirements with existing budgeted resources. DOC already notifies ICE when foreign births are suspected and can ensure that the specific information required under the bill’s provisions is forwarded to ICE with no additional fiscal or operational impact.

During calendar 2009, DPP conducted approximately 2,500 PSI reports. Assuming that the bill does not require DPP to perform an investigatory role in ascertaining the immigration status of every defendant for whom the court has ordered a PSI, but only requires DPP to notify ICE when, during the course of conducting a PSI, the defendant’s immigration status becomes known, the bill’s requirements can be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 227 is not designated as a cross file, however, the bills are identical.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Office of the Attorney General; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2010
mpc/hlb

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