

HOUSE BILL 1362

E2
HB 29/14 – JUD

7lr3452
CF SB 835

By: Delegates Morales, Sanchez, Pena–Melnyk, Gutierrez, Anderson, Angel, Atterbeary, Barkley, B. Barnes, D. Barnes, Barve, Beidle, Brooks, Carr, Clippinger, Conaway, Cullison, Davis, Dumais, Ebersole, Fennell, Fraser–Hidalgo, Frush, Gaines, Gilchrist, Glenn, Hayes, Haynes, Healey, Hettleman, Hill, Hixson, Holmes, C. Howard, Jackson, Jameson, Jones, Kaiser, Kelly, Knotts, Korman, Kramer, Lafferty, Lam, R. Lewis, Lierman, Luedtke, McCray, McIntosh, A. Miller, Moon, Morhaim, Mosby, Oaks, Patterson, Pendergrass, Platt, Proctor, Queen, Reznik, Robinson, Rosenberg, Sample–Hughes, Sophocleus, Stein, Sydnor, Tarlau, Turner, Valderrama, Valentino–Smith, Vallario, Waldstreicher, A. Washington, M. Washington, Wilkins, K. Young, P. Young, and Ali

Introduced and read first time: February 10, 2017

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2017

CHAPTER _____

1 AN ACT concerning

2 ~~Maryland Law Enforcement and Governmental Trust Act~~
3 ~~Criminal Procedure – Immigration – Community Trust~~

4 FOR the purpose of providing that a certain official is immune from criminal and civil
5 liability for refusing to provide information to the federal government or another
6 state that will be used for a certain purpose; authorizing the State to indemnify a
7 certain official for certain costs or a certain judgment; expressing the intent of the
8 General Assembly to ~~restore~~ maintain community trust in Maryland governmental
9 operations and law enforcement and government by clarifying the parameters of
10 State and local participation in federal immigration enforcement efforts; ~~prohibiting~~
11 ~~a certain government agent from taking certain actions for certain purposes;~~
12 prohibiting a law enforcement official from stopping, arresting, searching, or
13 ~~detaining an individual for the purpose of investigating a suspected immigration~~
14 ~~violation or inquiring about certain matters; prohibiting a government agent from~~
15 ~~using certain funds, facilities, property, equipment, or personnel for certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~purposes; prohibiting a government agent from making a certain database available for a certain purpose; prohibiting a State or local law enforcement agency from placing a law enforcement officer under a certain supervision or employing a certain law enforcement officer under certain circumstances; prohibiting a certain agent from taking certain actions without a judicial warrant; agent from taking certain actions at a certain time under certain circumstances; prohibiting a State or local correctional agent or employee from taking certain actions under certain circumstances; prohibiting a certain officer or unit of State government from spending certain funds for a certain purpose; prohibiting the State from reimbursing certain expenditures; providing that the State is not obligated to appropriate money to pay a certain expenditure; providing that a certain employee or officer who makes a certain expenditure or receives certain funds is subject to certain disciplinary action under certain provisions of law; requiring the Attorney General to develop certain policies in consultation with certain stakeholders; requiring authorizing all public schools, hospitals, and courthouses to establish and publish certain policies; providing that nothing in this Act shall prevent a certain State agent or employee from responding to a certain request or sending or receiving certain information; requiring all State agencies to review certain policies, identify certain changes, and make certain changes at a certain time for certain purposes; establishing that a certain agreement that conflicts with a certain provision of this Act is null and void at a certain time; requiring certain memoranda of agreement to be initiated and evaluated in a certain manner; defining certain terms; making the provisions of this Act severable; and generally relating to State and local participation in federal immigration enforcement efforts.~~

BY adding to

Article – Courts and Judicial Proceedings
Section 5-527
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY adding to

Article – Criminal Procedure
Section 5-103
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

BY adding to

Article – State Finance and Procurement
Section 7-239
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5-527.

(A) AN OFFICIAL OF STATE GOVERNMENT OR A LOCAL GOVERNMENT IS IMMUNE FROM CRIMINAL AND CIVIL LIABILITY FOR REFUSING TO PROVIDE INFORMATION TO THE FEDERAL GOVERNMENT OR ANOTHER STATE THAT WILL BE USED FOR THE CREATION OR MAINTENANCE OF A REGISTRY FOR THE PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN.

(B) THE STATE MAY INDEMNIFY AN OFFICIAL OF STATE GOVERNMENT OR A LOCAL GOVERNMENT FOR ANY COSTS ASSOCIATED WITH OR ANY JUDGMENT IN AN ACTION OR SUIT FILED BASED ON THE OFFICIAL'S REFUSAL TO PROVIDE INFORMATION TO THE FEDERAL GOVERNMENT OR ANOTHER STATE THAT WILL BE USED FOR THE CREATION OR MAINTENANCE OF A REGISTRY FOR THE PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN.

Article – Criminal Procedure

5-103.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(2) (I) "CIVIL IMMIGRATION WARRANT" MEANS A WARRANT FOR A VIOLATION OF FEDERAL CIVIL IMMIGRATION LAW THAT WAS NOT ISSUED BY A UNITED STATES DISTRICT COURT JUDGE.~~

~~(II) "CIVIL IMMIGRATION WARRANT" INCLUDES A CIVIL IMMIGRATION WARRANT ENTERED IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.~~

~~(3) "FEDERAL IMMIGRATION AUTHORITY" MEANS AN OFFICER, EMPLOYEE, OR OTHER PERSON PAID BY OR ACTING AS AN AGENT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY WHO IS CHARGED WITH IMMIGRATION ENFORCEMENT.~~

~~(4) (I) "GOVERNMENT AGENT" MEANS AN AGENT OR EMPLOYEE OF THE STATE, A COUNTY, OR A MUNICIPALITY.~~

~~(II) "GOVERNMENT AGENT" INCLUDES:~~

~~1. AN AGENT OR EMPLOYEE OF A POLICE OR SECURITY DEPARTMENT OF A PUBLIC PRIMARY SCHOOL, A PUBLIC SECONDARY SCHOOL, OR A PUBLIC INSTITUTION OF HIGHER EDUCATION;~~

~~2. A LAW ENFORCEMENT OFFICER, AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE;~~

~~3. AN AGENT OR EMPLOYEE OF A STATE OR LOCAL LAW ENFORCEMENT AGENCY;~~

~~4. AN AGENT OR EMPLOYEE OF A COURT;~~

~~5. AN AGENT OR EMPLOYEE OF A STATE CORRECTIONAL FACILITY OR LOCAL CORRECTIONAL FACILITY, AS DEFINED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE; AND~~

~~6. AN AGENT OR EMPLOYEE OF THE DEPARTMENT OF JUVENILE SERVICES.~~

(2) “ADMINISTRATIVE IMMIGRATION DETAINER” MEANS A DETAINER FOR A VIOLATION OF FEDERAL IMMIGRATION LAW THAT WAS NOT ISSUED BY A FEDERAL JUDGE OR FEDERAL MAGISTRATE JUDGE.

~~(5) (3) “IMMIGRATION ENFORCEMENT” INCLUDES ALL EFFORTS TO INVESTIGATE, ENFORCE, OR ASSIST IN THE INVESTIGATION OR ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW, INCLUDING VIOLATIONS OF TITLE 8, §§ 1253, 1324(C), 1325, AND 1326 OF THE UNITED STATES CODE.~~

~~(6) (4) “JUDICIAL WARRANT” MEANS A WARRANT BASED ON PROBABLE CAUSE AND ISSUED BY A FEDERAL JUDGE OR A FEDERAL MAGISTRATE JUDGE THAT AUTHORIZES FEDERAL IMMIGRATION AUTHORITIES TO TAKE INTO CUSTODY THE PERSON WHO IS THE SUBJECT OF THE WARRANT.~~

~~(7) “LOCAL LAW ENFORCEMENT AGENCY” INCLUDES A LOCAL CORRECTIONAL FACILITY.~~

(5) “LAW ENFORCEMENT AGENT” INCLUDES:

(I) A LAW ENFORCEMENT OFFICER, AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE;

(II) A CHIEF OF A LAW ENFORCEMENT AGENCY, AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE; AND

1 (III) AN AGENT OR EMPLOYEE OF A STATE OR LOCAL LAW
2 ENFORCEMENT AGENCY.

3 (6) “LOCAL CORRECTIONAL FACILITY” HAS THE MEANING STATED IN
4 § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

5 (7) “STATE CORRECTIONAL FACILITY” HAS THE MEANING STATED IN
6 § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

7 (8) (I) “STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE”
8 MEANS AN AGENT OR EMPLOYEE OF A STATE CORRECTIONAL FACILITY OR LOCAL
9 CORRECTIONAL FACILITY.

10 (II) “STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE”
11 DOES NOT INCLUDE A SHERIFF OR AN AGENT OR EMPLOYEE OF A STATE
12 CORRECTIONAL FACILITY OR A LOCAL CORRECTIONAL FACILITY IF THE SHERIFF,
13 AGENT, OR EMPLOYEE IS AUTHORIZED, TRAINED, AND SWORN TO PERFORM THE
14 FUNCTIONS OF AN IMMIGRATION OFFICER PURSUANT TO A MEMORANDUM OF
15 AGREEMENT WITH THE OFFICE OF THE UNITED STATES ATTORNEY GENERAL.

16 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ~~RESTORE~~ MAINTAIN
17 COMMUNITY TRUST IN MARYLAND LAW ENFORCEMENT AND GOVERNMENT
18 GOVERNMENTAL OPERATIONS AND LAW ENFORCEMENT BY CLARIFYING THE
19 PARAMETERS OF STATE AND LOCAL PARTICIPATION IN FEDERAL IMMIGRATION
20 ENFORCEMENT EFFORTS.

21 ~~(C) A GOVERNMENT AGENT MAY NOT, FOR IMMIGRATION ENFORCEMENT~~
22 ~~PURPOSES;~~

23 ~~(1) USE PUBLIC FUNDS, FACILITIES, PROPERTY, EQUIPMENT, OR~~
24 ~~PERSONNEL TO STOP, INVESTIGATE, DETAIN, DETECT, REPORT, OR ARREST A~~
25 ~~PERSON;~~

26 ~~(2) RESPOND TO A HOLD, NOTIFICATION, OR TRANSFER REQUEST~~
27 ~~FROM FEDERAL IMMIGRATION AUTHORITIES;~~

28 ~~(3) RESPOND TO A REQUEST FOR NONPUBLICLY AVAILABLE~~
29 ~~INFORMATION ABOUT A PERSON, INCLUDING INFORMATION ABOUT THE PERSON’S~~
30 ~~DATE OF RELEASE FROM INCARCERATION, HOME ADDRESS, OR WORK ADDRESS;~~

31 ~~(4) MAKE AN ARREST BASED ON A CIVIL IMMIGRATION WARRANT;~~

~~(5) GIVE FEDERAL IMMIGRATION AUTHORITIES ACCESS TO INTERVIEW A PERSON IN AGENCY OR DEPARTMENT CUSTODY;~~

~~(6) PERFORM THE FUNCTIONS OF AN IMMIGRATION OFFICER, WHETHER PURSUANT TO TITLE 8, § 1357(C) OF THE UNITED STATES CODE OR ANY OTHER FORMAL OR INFORMAL LAW, REGULATION, OR POLICY; OR~~

~~(7) SUPPORT OR ASSIST IN CIVIL IMMIGRATION ENFORCEMENT OPERATIONS, INCLUDING THE ESTABLISHMENT OF TRAFFIC PERIMETERS.~~

~~(D) A LAW ENFORCEMENT OFFICIAL MAY NOT STOP, ARREST, SEARCH, OR DETAIN AN INDIVIDUAL TO:~~

~~(1) INVESTIGATE A SUSPECTED IMMIGRATION VIOLATION; OR~~

~~(2) INQUIRE ABOUT IMMIGRATION OR CITIZENSHIP STATUS OR PLACE OF BIRTH OF AN ARRESTEE OR VICTIM OF CRIME.~~

~~(E) A GOVERNMENT AGENT MAY NOT:~~

~~(1) USE GOVERNMENTAL FUNDS, FACILITIES, PROPERTY, EQUIPMENT, OR PERSONNEL TO INVESTIGATE, ENFORCE, OR ASSIST IN THE INVESTIGATION OR ENFORCEMENT OF ANY FEDERAL PROGRAM REQUIRING REGISTRATION OF INDIVIDUALS ON THE BASIS OF RACE, GENDER, SEXUAL ORIENTATION, RELIGION, OR NATIONAL OR ETHNIC ORIGIN; OR~~

~~(2) MAKE A GOVERNMENTAL DATABASE AVAILABLE TO ANY PERSON OR ENTITY FOR THE PURPOSE OF IMMIGRATION ENFORCEMENT OR INVESTIGATION OR ENFORCEMENT OF ANY FEDERAL PROGRAM REQUIRING REGISTRATION OF INDIVIDUALS ON THE BASIS OF RACE, GENDER, SEXUAL ORIENTATION, RELIGION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN.~~

~~(F) A STATE OR LOCAL LAW ENFORCEMENT AGENCY MAY NOT PLACE A LAW ENFORCEMENT OFFICER UNDER THE SUPERVISION OF A FEDERAL AGENCY OR EMPLOY A LAW ENFORCEMENT OFFICER DEPUTIZED AS A SPECIAL FEDERAL OFFICER OR SPECIAL FEDERAL DEPUTY EXCEPT TO THE EXTENT THAT SUCH A LAW ENFORCEMENT OFFICER REMAINS SUBJECT TO MARYLAND LAW GOVERNING THE OFFICER'S CONDUCT AND THE POLICIES OF THE EMPLOYING AGENCY.~~

~~(G) NOTWITHSTANDING ANY OTHER LAW, A GOVERNMENT AGENT MAY NOT, AT THE REQUEST OF FEDERAL IMMIGRATION AUTHORITIES, WITHOUT A JUDICIAL WARRANT;~~

~~(1) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION
AUTHORITIES FOR PURPOSES OF IMMIGRATION ENFORCEMENT;~~

~~(2) DETAIN AN INDIVIDUAL; OR~~

~~(3) NOTIFY FEDERAL IMMIGRATION AUTHORITIES OF RELEASE
INFORMATION.~~

~~(H) (1) THE ATTORNEY GENERAL, IN CONSULTATION WITH THE
APPROPRIATE STAKEHOLDERS, SHALL DEVELOP AND ADOPT MODEL POLICIES TO
ENSURE THAT ALL PUBLIC SCHOOLS, HOSPITALS, AND COURTHOUSES REMAIN SAFE
AND ACCESSIBLE TO ALL MARYLAND RESIDENTS, REGARDLESS OF IMMIGRATION
STATUS.~~

~~(2) ALL PUBLIC SCHOOLS, HOSPITALS, AND COURTHOUSES SHALL
ESTABLISH AND PUBLISH POLICIES THAT LIMIT IMMIGRATION ENFORCEMENT ON
THEIR PREMISES TO THE FULLEST EXTENT POSSIBLE CONSISTENT WITH FEDERAL
AND STATE LAW.~~

(C) A LAW ENFORCEMENT AGENT MAY NOT, DURING THE PERFORMANCE OF
REGULAR POLICE FUNCTIONS:

(1) INQUIRE ABOUT AN INDIVIDUAL'S IMMIGRATION STATUS,
CITIZENSHIP STATUS, OR PLACE OF BIRTH DURING A STOP, SEARCH, OR ARREST; OR

(2) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION
AUTHORITIES UNLESS REQUIRED BY FEDERAL LAW.

(D) WITHOUT A JUDICIAL WARRANT, A LAW ENFORCEMENT AGENT MAY
NOT, PURSUANT TO A REQUEST BY FEDERAL IMMIGRATION AUTHORITIES MADE
SOLELY FOR IMMIGRATION ENFORCEMENT PURPOSES:

(1) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION
AUTHORITIES FOR PURPOSES OF IMMIGRATION ENFORCEMENT;

(2) DETAIN AN INDIVIDUAL SOLELY FOR THE PURPOSE OF
IMMIGRATION ENFORCEMENT; OR

(3) NOTIFY FEDERAL IMMIGRATION AUTHORITIES OF AN
INDIVIDUAL'S LOCATION OR ADDRESS.

(E) WITHOUT A JUDICIAL WARRANT, A STATE OR LOCAL CORRECTIONAL
AGENT OR EMPLOYEE MAY NOT:

(1) DETAIN AN INDIVIDUAL PURSUANT TO AN ADMINISTRATIVE IMMIGRATION DETAINER; OR

(2) DETAIN AN INDIVIDUAL BEYOND THE PERIOD PRESCRIBED BY APPLICABLE STATE OR LOCAL LAW.

~~(H)~~ (F) NOTHING IN THIS SECTION SHALL PREVENT A GOVERNMENT AGENT LAW ENFORCEMENT AGENT OR A STATE OR LOCAL CORRECTIONAL AGENT OR EMPLOYEE FROM:

(1) RESPONDING TO:

(I) A REQUEST FROM FEDERAL IMMIGRATION AUTHORITIES FOR INFORMATION ABOUT A SPECIFIC PERSON'S CRIMINAL RECORD WHEN ALLOWED BY STATE LAW; OR

(II) A LAWFUL SUBPOENA; OR

(2) SENDING TO, OR RECEIVING FROM, ANY LOCAL, STATE, OR FEDERAL AGENCY INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF AN INDIVIDUAL PURSUANT TO §§ 1373 AND 1644 OF TITLE 8 OF THE UNITED STATES CODE IN ACCORDANCE WITH FEDERAL LAW.

Article – State Finance and Procurement

7-239.

(A) AN OFFICER OR UNIT OF STATE GOVERNMENT MAY NOT SPEND MONEY FROM AN APPROPRIATION, AND A PERSON THAT RECEIVES STATE FUNDS MAY NOT USE THE STATE FUNDS, TO:

(1) KNOWINGLY CREATE OR MAINTAIN A REGISTRY FOR THE PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN; OR

(2) KNOWINGLY PROVIDE INFORMATION TO THE FEDERAL GOVERNMENT OR ANOTHER STATE FOR THE CREATION OR MAINTENANCE OF A REGISTRY FOR THE PURPOSE OF DISCRIMINATING AGAINST INDIVIDUALS ON THE BASIS OF RELIGION, RACE, GENDER, SEXUAL ORIENTATION, IMMIGRATION STATUS, OR NATIONAL OR ETHNIC ORIGIN.

(B) (1) THE STATE MAY NOT REIMBURSE ANY EXPENDITURE TO THE EXTENT THAT THE EXPENDITURE VIOLATES SUBSECTION (A) OF THIS SECTION.

1 **(2) THE STATE IS NOT OBLIGATED TO APPROPRIATE MONEY TO PAY**
2 **AN EXPENDITURE THAT VIOLATES SUBSECTION (A) OF THIS SECTION.**

3 **(C) EACH EMPLOYEE OR OFFICER OF THE STATE GOVERNMENT WHO MAKES**
4 **AN EXPENDITURE OR RECEIVES STATE FUNDS THAT VIOLATE SUBSECTION (A) OF**
5 **THIS SECTION IS SUBJECT TO DISCIPLINARY ACTION, INCLUDING TERMINATION,**
6 **UNDER THE APPLICABLE DISCIPLINARY AND GRIEVANCE PROCEDURES IN TITLES**
7 **11 AND 12 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General, in
9 consultation with the appropriate stakeholders, shall develop guidelines to assist public
10 schools, hospitals, and courthouses to draft policies that limit civil immigration
11 enforcement activities on their premises in order to ensure these facilities remain safe and
12 accessible to all, regardless of immigration status.

13 SECTION 3. AND BE IT FURTHER ENACTED, That public schools, hospitals, and
14 courthouses may establish and publish policies that limit immigration enforcement on their
15 premises to the fullest extent possible consistent with federal and State law based on the
16 guidelines developed by the Attorney General.

17 SECTION 2. 4. AND BE IT FURTHER ENACTED, That, in order to ensure that
18 eligible individuals are not deterred from seeking services or engaging with State agencies,
19 all State agencies shall review their confidentiality policies and identify any changes
20 necessary to ensure that information collected from individuals is limited to that which is
21 necessary to perform agency duties, does not include inquiries into immigration status
22 unless required by federal law or necessary to make a determination of eligibility, and is
23 not used or disclosed for any other purpose. Any necessary changes to those policies shall
24 be made as expeditiously as possible, consistent with agency or department procedures.

25 ~~SECTION 3. AND BE IT FURTHER ENACTED, That any agreement in existence~~
26 ~~on the effective date of this Act that makes any governmental database available in conflict~~
27 ~~with § 5-103 of the Criminal Procedure Article as enacted by Section 1 of this Act shall be~~
28 ~~null and void as of the effective date of this Act.~~

29 SECTION 5. AND BE IT FURTHER ENACTED, That memoranda of agreement
30 between the Office of the United States Attorney General and local jurisdictions seeking to
31 support or assist in civil immigration enforcement operations pursuant to federal
32 immigration law or any other formal or informal law, regulation, or policy, shall be initiated
33 and periodically evaluated through a process that is transparent, subject to public
34 comment, and provides reasonable advance notice to the public.

35 SECTION 4. 6. AND BE IT FURTHER ENACTED, That, if any provision of this Act
36 or the application thereof to any person or circumstance is held invalid for any reason in a
37 court of competent jurisdiction, the invalidity does not affect other provisions or any other

1 application of this Act that can be given effect without the invalid provision or application,
2 and for this purpose the provisions of this Act are declared severable.

3 SECTION ~~5~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.