



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

June 10, 2020

MEMORANDUM

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin
Senior Legislative Budget and Policy Analyst

FROM: Cassandra Fields
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-21-2020, Community Inclusiveness

[Handwritten initials: JH and KF]

CB-21-2020 sponsored by: Council Chair Turner

Assigned to Committee of the Whole (COW)

For the purpose of amending certain Sections in Subtitle 2, Division 46 of the Prince George's County Code to comply with federal law.

Fiscal Summary

Direct Impact:

Expenditures: Potentially positive

Revenues: None

Indirect Impact:

Potentially positive

Legislative Summary

CB-21-2020, sponsored by Chair Turner was presented on May 18, 2020 to the County Council and subsequently referred to the Committee of the Whole (COW).

As proposed, CB-21-2020 would make amendments to certain provisions of the County Code, Subtitle 2, Division 46, in an effort to maintain the County's policy of promoting inclusiveness for all residents by not participating in civil immigration enforcement matters while ensuring compliance with federal and State law. The general intent of the Bill is to minimize the risk to the County of losing any federal funding for programs or services. The Trump administration has repeatedly threatened to withhold funding from local jurisdictions with similar laws.

Background/Current Law

On November 19, 2019, the Council enacted CB-62-2019, which generally prohibits the County Police Department (and all other County agencies) from participating in civil immigration enforcement matters. As enacted, CB-62-2019 also: (1) generally prohibits County agencies from inquiring into a person's citizenship or immigration status unless required to do so by law or court order; (2) prohibits County agencies from threatening or coercing a person based on actual or perceived citizenship or immigration status; (3) generally prohibits County agencies from conditioning the provision of benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by State or federal law or court order; (4) prohibits County agencies from aiding the federal government in investigation or enforcement of any federal programs requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin; and (5) imposes certain requirements related to County forms and record-sharing related to immigration enforcement. The enactment of CB-62-2019 was in response to federal measures designed to restrict immigration and intensify the enforcement of federal immigration laws.

County involvement in immigration enforcement

In 2018, Maryland Attorney General Brian Frosh issued a Guidance Memorandum entitled "Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials."¹ The Memorandum updated a 2014 advice letter and described the legal implications of local participation in federal immigration matters. The Memorandum made several legal conclusions, including the following:

- State and local law enforcement agencies (LEAs) face potential liability exposure 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).
- LEAs must absorb all costs associated with federal cooperation agreements under 8 U.S.C. § 1357(g)(1). The federal government does not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional profiling.

¹ The Guidance Memorandum was subsequently updated in 2018.

http://www.marylandattorneygeneral.gov/Reports/Immigration_Law_Guidance.pdf

- LEAs face potential liability exposure if they honor ICE or CBP detainer requests unless the request is accompanied by a judicial warrant or supported by information providing probable cause that the subject of the detainer has *committed a crime*.
- State and local officers may not be prohibited from *sharing* information about a detainee's citizenship or immigration status with federal immigration officials, but they *are not required* to do so.
- Local governments may adopt policies prohibiting their officers and employees from *inquiring* about a person's immigration status except where required by law
- As an overriding principle, the government bears the burden of proving that the detention of someone beyond the person's State-law release date does not violate the Fourth Amendment and its Maryland counterpart.

Discussion/Policy Analysis

As drafted, CB-21-2020 does not represent a change in County policy, but serves to modify the existing law to further clarify that County law enforcement agencies (and all other County agencies and/or their representatives) shall generally not participate in civilian immigration enforcement matters, inquire as to a person's immigration status, or condition the receipt of County services or benefits on citizenship or immigration status. The changes proposed in CB-21-2020 are primarily legal and technical amendments and do not represent a substantive shift in policy.

Textual Modifications to Existing Code

CB-21-2020 would make the following changes to the existing law:

- Substitute the word ***related*** for the word ***material*** in Sections 2-521 and 2-524 (see page 1, line 18 and page 2, line 15).
- Add the qualification ***solely*** to the conditions in which a County agency or agent may stop, search, detain a person (page 2, line 17) or detain a person otherwise eligible for release (page 3, line 1). This would clarify or narrow the existing law, which prohibits those actions "based on an Administrative Warrant or an Immigration Detainer." The addition of this qualification would eliminate the possibility that a person could use the existence of an Administrative Warrant or Immigration Detainer as a shield against an *otherwise justified* stop, search, detention, or arrest.
- Permit a County agency or agent to notify immigration enforcement officials that an individual has been released from custody if that individual has been ***charged with*** a violent crime under Maryland law (see page 3, line 18). Current law only allows this notification if the individual has been *convicted* of such a crime, so this would be a significant expansion of the existing exception.
- Extend the amount of time allowed for a County agency to respond to any request from information from either the County Council or County Executive from twenty-four (24) hours to seven (7) days (see page 3, line 27). This amendment would presumably ease the administrative burden on agencies while still ensuring a timely response to inquiries.
- Amend Section 2-527 by striking:
shall be interpreted as preventing a law enforcement agent from sending to or receiving from any local, state, or Federal agency information regarding the citizenship immigration status of an individual pursuant to

and emphasizing that no provision of the code:

applies if it prohibits a county agency, officer, employee, or official from complying with a federal law or regulation, state law or regulation,

extradition agreement and court order, to include Sections 1373 and 1644 of Title 8 of the United States Code. (see page 3, line 29 to page 4, line 4)

Resource Personnel

Council District 4 Staff

Assumptions and Methodology

It was noted previously that Section 2-526 of CB-21-2020 could potentially present an administrative burden on a County Agency if a potentially significant amount of information needs to be deleted, exchanged, or reported in accordance with the proposed provisions. CB-21-2020 extends the time period for compliance with this requirement from 24 hours to seven (7) days.

Fiscal Impact

- Direct Impact

Enactment of CB-21-2020 could have a positive fiscal impact to the extent that the provision extending the time to respond to information requests from 24 hours to seven (7) days allows County agencies to absorb this requirement without the need for additional resources. Otherwise, the Bill is not likely to have any direct fiscal impact.

- Indirect Impact

Enactment of CB-21-2020 may have a positive indirect fiscal impact in the event that it protects County revenue sources such as federal grant funds which might otherwise be withheld.

Appropriated in the Current Fiscal Year Budget

No.

Effective Date of Proposed Legislation

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please call me.