

**Minutes of the Meeting of
The Commission to Study the Impact of Immigrants in Maryland
Monday June 20, 2011
Margaret Brent Room, Stamp Union
University of Maryland
College Park, Maryland 20742**

The meeting was called to order at 10:45 a.m.

Attendance:

Members	Affiliation
Commission Chair	
Larry Shinagawa Ph.D.	Professor, University of Maryland
Appointed by President of Senate	
Richard Madaleno	Senator
Ex Officio	
Mark Goldstein	Secretary of Maryland Department of Planning Principal Planner
Nancy McCrea	Secretary of Business & Economic Development Research and Information Director
Wendy A. Kronmiller	Secretary of Health & Mental Hygiene Chief of Staff, Office of the Secretary
Martin Ford	Secretary of Human Resources Associate Director
Appointed by the Governor	
Mark Shmueli	Attorney, Maryland Bar Association
J. Henry Montes	Consultant, JHM Consultation
Naima Said, Esq.	Attorney, Naima Said & Associates, PC
Staff	
Hiram Burch	Manager, Department of Legislative Services
Tina Huang	Research Assistant, Asian American Studies/UMCP
Adam Fogel	Sen. Richard Madaleno's Office
Jeffrey Werling	Executive Director, Inforum / UMCP
Xiaojie Zhang	Research Assistant, Inforum / UMCP
Guests	
Lisa Marquardt	Maryland Office of Public Defender (OPD)
Patrick McDonough	Maryland House of Delegates

1. Introduction

Commission Chair welcomed attendees to the Commission meeting. Each attendee provided a brief introduction of themselves.

2. Testimony by Lisa Marquardt, Maryland Office of Public Defender (OPD)

Appendix A is a comprehensive outline of Ms. Marquardt's comments.

Ms. Marquardt opened her discussion with an overview of the OPD. Its mission is to provide superior legal representation to indigent accused persons in Maryland. It safeguards individual rights and ensures access to the protections of the U.S. Constitution and Bill of Rights and the Maryland Constitution and Declaration of Rights.

From 2001 to 2010, the OPD's caseload expanded by 30 percent. Most recently, the burden was expanded by two cases. The first, *OPD v. State* (2010), changed the eligibility criteria and increased the income threshold for OPD clients. The second was related to immigration. In *Padilla v. Kentucky* (2010), the Supreme Court held that the lawyer for an alien charged with crime has an obligation to tell the client that a guilty plea carries a risk that he will be deported. Because they now have to become well versed in immigration law, this law has increased demands on assistant public defenders (APDs).

Consequently, the Maryland OPD created a program to create in-house immigration law resources. The program provides training and timely support to Assistant Public Defenders (APDs) concerning aspects of immigration law that might impact their cases.

There are two separate Criminal Alien Programs (CAP): 1) 287(g) and 2) Secure Communities. The written objective of these programs is to reduce the presence of "dangerous criminal aliens" in American communities. Since 2008, and on a national basis, Secure Communities accounted for over 101 thousand deportations. Of those, 26,500 were persons who were convicted of serious crimes, 46,000 were persons who committed misdemeanors and 29,000 had no criminal conviction. Many of these deportees were legal permanent residents (LPRs).

The PD office is finding that in the dragnet to find "deportable aliens" is resulting in a capricious and inconsistent application of due process standards. Detention without warning or consideration toward family members and for extended periods is common. The programs are also greatly increasing the burden on detention facilities, immigration and state criminal courts. Judges and lawyers are frustrated as well.

The response is variable across the country with some states embracing the programs and others still skeptical. Minnesota, Washington, Illinois and New York have opted out of the Secure Communities program, and California and Massachusetts are re-evaluating participation. Supposedly, Secure Communities will be required nationwide by 2013.

For Maryland, solutions include:

- Opting out of Secure Communities county by county or for the state as a whole.
- Governor's clemency powers could be applied to grant pardons for LPRs with minor crimes.
- Expansion of the PDs capacity to deal with immigration issues.
- Expansion of pro-bono legal services for immigrants.

Hiram Burch asked if the federal government has a PD office to respond to these issues. Marquardt responded that the federal PD office was very small and did not have resources to assist in immigration cases.

3. Testimony by Delegate Patrick McDonough, Maryland House of Delegates

Delegate McDonough state that he opposed the extension of the Commission to Study the Impact of Immigration on Maryland for two reasons:

- a. The problem is not immigration per se, but illegal immigrations. Delgate McDonough has no problem with legal immigration. Rather, the negative effects are caused by illegal immigration. Therefore, the Commission should be addressing this question solely. Indeed, from the response to the petition drive to overturn the Maryland DREAM Act, it appears that Maryland’s citizens feel passionate about this problem.
- b. Given its emphasis on immigration in general, therefore, the Commission does not address the issues that matter.

According to Delegate McDonough, the fundamental problem with illegal immigration is that it degrades the rights of American citizens through the unequal enforcement of federal laws. Immigration laws are on the books for good reasons, and these reasons are clear to see when the law is violated. Take the Maryland DREAM Act for instance. Maryland taxpayers will end up paying more for secondary education even as their children may lose out on positions in the same schools that they subsidize.

In Virginia, state and local policy has resulted in a reduction of illegal immigration in the state. At the same time, Maryland has become the “Disneyland” for illegals. The consequences of this benign neglect are the following:

- Maryland is last in job formation and working families are affected the most. Unemployment rates are especially high for minorities and young people, precisely those who compete with unauthorized immigrants.
- The DREAM Act might help provide unauthorized student with an education, but they will still be ineligible to work within the United States with that education.
- The uncompensated health care bill for Maryland counties is growing, and part of that bill is for treating illegal immigrants and their families.
- While Maryland received hundreds of millions of dollars of federal stimulus money, the employment benefits for Maryland citizens were reduced because the state did not use E-Verify.
- Finally, within the unauthorized community are criminals and gangs who deal in drugs and violence. Worse, are terrorists within these communities especially in Maryland with its target-rich environment.

The Federation for Immigration Reform (FAIR) reports that the annual cost of illegal immigration to Maryland taxpayers is approximately \$2 billion. Most of this cost is paid for education of not only of foreign born children, but to U.S.-born children of unauthorized immigrants. The DREAM Act will increase this cost. He also feels that FAIR was not able to capture some other important costs such as property damage and job displacement.

Delegate McDonough concluded by saying that he is not against immigration. While the system in general can be improved, the emphasis must be placed on discouraging illegal immigration. He requested that the commission uses its experience and research to assess the consequences of illegal immigration and give prominent space to this issue in its report. He reiterated that Maryland's status as a "sanctuary" state should be changed by adopting laws similar to Arizona's.

Further discussion focused on how the federal system could be improved to admit immigrants truly needed by the economy and keep out those not needed so as to reduce the negative impact on low skilled natives. The question of health care and education costs and entitlements for U.S. born children of unauthorized foreign born was also discussed.

The meeting was adjourned at 1:15 p.m.

Appendix A
Local Enforcement of Immigration Law and the Office of the Public Defender
June 20, 2011
Lisa Marquardt, Assistant Public Defender

I. OPD: Overview

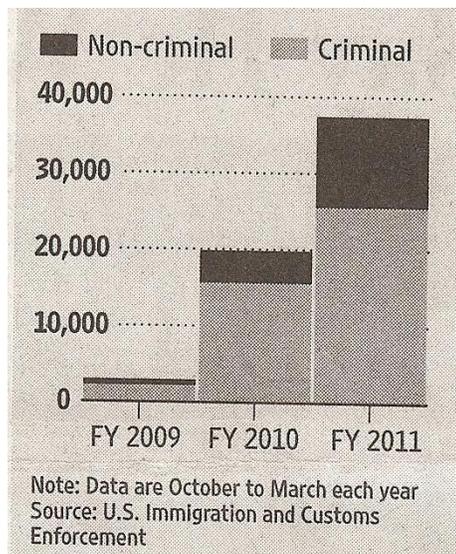
- a. Mission Statement: The mission of the Office of the Public Defender is to provide superior legal representation to the indigent accused in the State of Maryland, to safeguard fundamental individual rights, and ensure access to protections guaranteed by the United States Constitution, the Bill of Rights, the Maryland Constitution and Declaration of Rights and the laws of Maryland
- b. Criminal Procedure Article §16-201
- c. Statistics
 - i. Ten year increase in caseloads: 2001: 182,652 to app. 238, 144 in 2010 (30% increase)
 - ii. 12 District offices and over 1,000 employees statewide
 - iii. Change in eligibility criteria (*OPD v. State* 413 Md 411, 2010) created a 10% increase in caseloads
 - iv. Additional demands on assistant public defenders pursuant to *Padilla v. Kentucky* 130 S.Ct. 1473, (2010)

II. OPD and non-citizen clients

- a. Creation of OPD Immigration Program: an in-house immigration resource
 - i. Timely answers to APDs requesting assistance with proper immigration consequences to criminal convictions
 - ii. Regular training seminars conducted on-site at area offices provided by a combination of volunteer immigration attorneys as well as the University of Maryland School of Law's Immigration Clinic
 - iii. In-person consultations with clients and their attorneys to assist with District court dockets/non-citizen cases

III. Removal Programs: Impact on OPD

- a. Secure Communities



Since 2008:

Secure Communities account for 101, 741 total deportations
26, 473 of those were individuals with convictions for serious crimes
45, 970 misdemeanors
29, 296 no criminal convictions

b. CAP: Criminal Alien Program

- i. Since 1980 accounts for majority of deportations
- ii. In 2008, 221, 085 total deportations; 47% increase over previous year

c. Collateral Review Division: Post Conviction and Coram Nobis

- i. Numerous requests for assistance to file petitions alleging prior guilty plea was not entered into knowingly and voluntarily because the accused was not properly advised about immigration consequences
- ii. Accelerated number of non citizens identified as deportable are referred to our office
- iii. The cases require swift action due to impending deportation orders
- iv. Insufficient resources from non-profits in this area of law

d. Current trends in the identification of non-citizens

- i. Immediate
- ii. Disregard for due process: Some State courts are denying criminal bail not based on dangerousness or risk of flight but because of immigration status
- iii. Capricious/inconsistent application of due process standards
- iv. Detention without warning or consideration toward family members
- v. Increased burden on Maryland detention facilities
- vi. Drain on State and Immigration courts

e. Response across the country

- i. Minnesota, Washington, Illinois and New York have opted out of the Secure Communities program – it is optional –
- ii. California and Massachusetts are re-evaluating participation

IV. Solutions

Maryland opts out of Secure Communities

Governor's clemency powers applied to grant pardons for LPRs with minor crimes

Expansion of *pro bono* legal programs

Expansion of OPD services