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POSITION ON PROPOSED LEGISLATION

BILL: HB1222 – Maryland Values Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable with amendment

DATE: March 27, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on HB1222, with an important amendment.

287(g) Agreements Are Contrary to Maryland Values

287(g) agreements undermine due process and make innocence irrelevant, by *requiring* local law enforcement officials to screen, interrogate, detain without judicial authorization, and transfer into ICE custody for deportation, any arrested person suspected to be deportable under civil immigration law.¹ 287(g) agreements contain no exception for someone arrested based on mistaken identity, even if that person’s case has been dismissed or they are found not guilty of the crime. There is no exception for a person arrested for a minor traffic offense like driving without a license, or for the victim of a false citizen complaint, or for a houseless person accused of trespass while seeking shelter from the elements, or any of the other innumerable scenarios in which a person might be arrested despite being innocent or posing no real risk to public safety.

287(g) is an extremely ineffective tool for targeting people with serious convictions; but it is a powerful tool for funneling innocent people and those with very low level offenses into the deportation pipeline. This is because 287(g) agreements only assist ICE in arresting

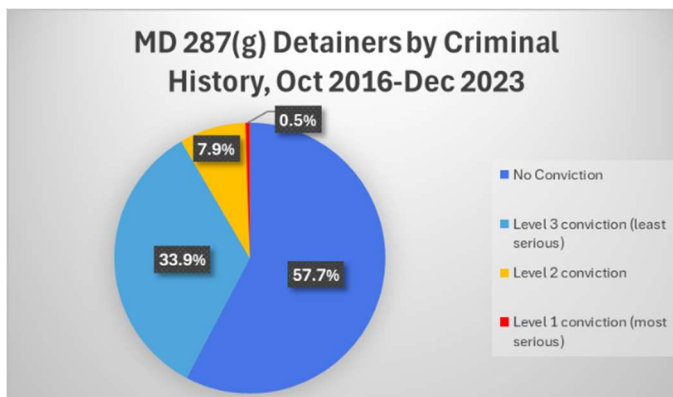
¹ The group of people that ICE deems ‘deportable’ is expanding, and it is not limited to those who entered the United States without permission. Well over half a million people who had been living in the United States with authorization, many of whom applied for and received permission to enter in advance, will become deportable over the next few weeks, as DHS has announced the termination of parole and Temporary Protected Status for certain groups. See <https://www.reuters.com/world/us/trump-revokes-legal-status-530000-cubans-haitians-nicaraguans-venezuelans-2025-03-21/>; <https://www.washingtonpost.com/immigration/2025/02/02/venezuela-tps-immigration-trump-noem/>.

people being released from a local detention center. People being released from a local detention centers are *not* the people who have been convicted of serious crimes that might constitute a risk to public safety—most of those people are released from the Department of Corrections (“DOC”) after serving prison sentences, and DOC is already very consistent about transferring people to ICE custody upon their release.²

Far from being risks to public safety, the people being released from local detention centers—and therefore the people who are being arrested by ICE via 287(g) cooperation—have generally either:

- 1) been found not guilty;
- 2) had their charges dismissed or placed on the stet docket;
- 3) been released by a judicial officer while awaiting their day in court, based on the judge or commissioner’s determination that the release conditions can reasonably ensure their appearance in court and public safety³; or
- 4) completed a short local sentence for a less serious offense.

The data bears this out, both in Maryland and nationwide. From October of 2016–December of 2023, only *four* of the 771 287(g) detainees in Maryland were for defendants with the most serious “Level 1” convictions.⁴ The majority, 445, were for people with no conviction at all, and the overwhelming majority—706 out of 771, or 92%--were for people with either



See n. 4 for data source

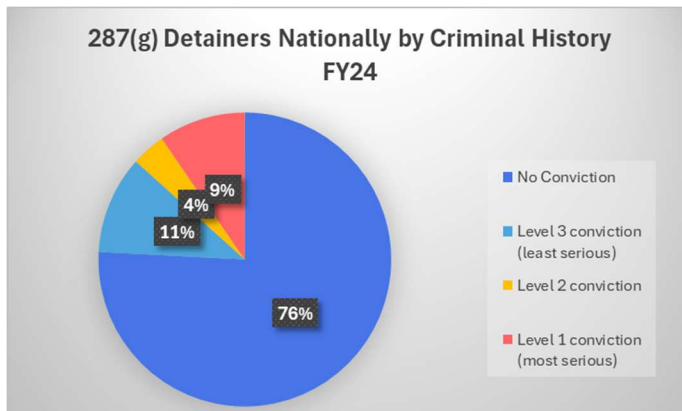
² ICE Baltimore Field Office Director Elliston confirmed as much in his testimony on SB387 on February 4, 2025, when he said “the state penal system works with us very well, and we work hand in hand as much as we can and I really appreciate the work that Maryland has done.” Available at https://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=jpr&ys=2025RS&clip=JPR_2_4_2025_meeting_1&billNumber=sb0387, at 4:21:55.

³ See Md. Rule 4-216.

⁴ This and all other data referenced here is drawn from the Transactional Records Access Clearinghouse’s Immigration and Customs Enforcement Detainers Tool, available at <https://tracreports.org/phptools/immigration/newdetain/>. Additional information on the source of the data is available here: https://tracreports.org/phptools/immigration/newdetain/about_data.html. These numbers were obtained by filtering by State: Maryland; Apprehension Method: 287(g) Program; and Seriousness Level of MSCC (Most Serious Criminal Conviction).

no conviction or only the least serious “Level 3” conviction, which includes traffic offenses and other minor misdemeanors.⁵

Nationally, over the same seven year period, less than two percent of detainees issued under 287(g) programs were for people convicted of “Level 1” offenses, and 82% were issued for those



See n. 6 for data source

with either no criminal conviction or only a minor “Level 3” conviction, as illustrated in Figure 2.⁶ (The slightly higher nationwide percentage of 287(g) detainees for those convicted of more serious crimes is likely due to the fact that some state prison systems, which house those convicted of more serious offenses, do have 287(g) agreements.)

The majority of these minimally culpable individuals are *not* people that ICE would be likely to individually target for arrest on the basis of their criminal history. They become attractive targets for arrest in the context of a 287(g) program, which makes their arrest easy for ICE at local expense. Under a Jail Enforcement Model, local officials identify and investigate the subject’s immigration status, generate the administrative detainer and warrant paperwork, perhaps generate a Notice to Appear in removal proceedings, and offer ICE a convenient 48 hour window within which to take custody. By making these individuals into such low-hanging fruit, 287(g) agreements encourage ICE to arrest minimally culpable Marylanders whom it otherwise would not specifically seek out.

ICE has many other tools that it can and does use to target those with more serious convictions. The four 287(g) detainees lodged for individuals with “Level 1” convictions over seven years represent only 0.5 percent of the total detainees for defendants with “Level 1” convictions in Maryland over that period.⁷ 287(g) is therefore not even a significant part, much less a necessary part, of ICE’s enforcement against those with serious convictions. Instead, it is a convenient way for ICE to make arrests of those who have been convicted of no crime or of only a

⁵ *Id.*

⁶ *Id.*, filtered by State: All; Apprehension Method: 287(g) Program; and Seriousness Level of MSCC (Most Serious Criminal Conviction).

⁷ *Id.*, filtered by State: Maryland; Seriousness Level of MSCC (Most Serious Criminal Conviction): Level 1 Crime; Apprehension Method.

low-level offense, allowing ICE to stretch its considerable resources even farther by outsourcing legwork to local law enforcement agencies.

ICE has a budget of nearly \$10 billion.⁸ Where local law enforcement agencies are not obligated by a 287(g) agreement to subsidize ICE by expending time and resources interrogating arrestees, investigating their immigration status, and generating administrative warrants, detainers, and other paperwork on behalf of the federal government, ICE can and should simply do that work itself. ICE's "Criminal Alien Program" ("CAP"), among other resources, works to identify and place ICE detainers on foreign nationals in jails and prisons—the same functions outsourced to local officials under the 287(g) program. This system is effective, as illustrated by the fact that deportable people in DOC, which does not have a 287(g) agreement, are still consistently identified transferred to ICE custody upon completion of their criminal sentence.

287(g) agreements hand the reins of local law enforcement over to ICE and the federal government, replacing Maryland's priorities—and values—with national politics.

There is no question that ICE's current marching orders are to step up its use of all available tools, including 287(g), to detain and remove as many people as possible, even those who are innocent and/or pose no risk to public safety. While 287(g) programs have always given ICE the ability to detain the innocent and the lowest level offenders, ICE has in the past exercised at least some degree of forbearance, sometimes declining to arrest those who were not removal priorities. This has likely limited the damage done by 287(g) programs. However, the guidance instructing ICE to prioritize removal of those who it deemed to be, under the totality of the circumstances, a risk to public safety, national security, or border security, was repealed by Executive Order on January 20,⁹ and ICE is reportedly being pressed to meet arrest quotas or goals, which can only incentivize more indiscriminate enforcement.¹⁰

ICE's intent to arrest anyone it can, without regard for innocence, is apparent in what happened in Prince George's County on February 19, 2025, when ICE agents looking for a particular target pulled over the wrong person, and, *after* determining that they had stopped the

⁸ See <https://www.congress.gov/crs-product/R48115>, Table 2.

⁹ See Exec. Order No. 14159, 90 Fed. Reg. 8443 (January 20, 2025), "Protecting the American People from Invasion."

¹⁰ Nick Miroff and Maria Sacchetti, "Trump officials issue quotas to ICE officers to ramp up arrests," Washington Post (Jan. 26, 2025), available at <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

wrong man, demanded information about his immigration status, broke his car window, and dragged him through it to detain him on suspicion of a civil immigration violation.¹¹ As FOD Elliston told Fox45, “the handcuffs are off. Before, it was you had to meet certain criteria to be arrested. Now [. . .] if you’re illegally here and we come across you, you’re going to get arrested.”¹²

287(g) agreements ensure that every encounter with a local correctional officer is an encounter with ICE, and ICE has announced its intention to begin arresting anyone it comes across who is deportable, regardless of their circumstances. In light of these changes, we must expect that going forward, 287(g) agreements will be used even *more* aggressively to put those with little or no culpability into the deportation pipeline.

The enforcement of civil immigration law is a federal responsibility, and ICE can and will continue to conduct enforcement in accordance with the priorities of the presidential administration. **The Maryland legal system, however, should not lend its own personnel, resources, and reputation to the type of indiscriminate immigration enforcement that will separate families and terrify communities with little benefit to public safety.** For the same reasons that it is important to protect courthouses to the extent possible from becoming associated with the risk of an ICE arrest, it is important to ensure that local law enforcement does not become indistinguishable from ICE in the eyes of the community. 287(g) agreements create not only the perception, but the reality, that any interaction with law enforcement is as dangerous as an interaction with ICE, even if one’s name is ultimately cleared through the state courts. This can only erode public trust in law enforcement and the courts, and ultimately undermine public safety.

Requiring Notice and Transfer to ICE Custody for Certain Defendants is Unnecessary

In its current form, this bill would require all jurisdictions to notify ICE in advance of a person’s release, if they have been convicted of certain enumerated crimes, and facilitate the person’s transfer to ICE custody. The bill should be amended to omit this mandatory notification and transfer provision, rather than unnecessarily attempting the difficult task of determining in advance when notification and transfer to ICE custody are warranted. This complicated exercise is unnecessary, because eliminating 287(g) does nothing to prohibit the notifications and transfers that

¹¹ See “Maryland counties face possible federal litigation as ICE ramps up enforcement under Trump,” Mikenzie Frost, Fox45 News, Feb. 19, 2025, <https://foxbaltimore.com/news/local/maryland-counties-face-possible-federal-litigation-as-ice-ramps-up-enforcement-under-trump>.

¹² *Id.*

the bill seeks to mandate—jurisdictions without 287(g) remain free to notify ICE and facilitate transfers under any circumstances that they deem appropriate, even beyond those mentioned in the current version of this bill. The mandatory transfer provisions are also not necessary to ensure that serious offenders end up in ICE custody after their prison sentences, because those offenders are already consistently transferred from DOC, as discussed above.

Mandating transfer based on this very broad array of misdemeanor and felony convictions will hinder local officials' ability to adjust their policies in response to new information. For example, if a county observes over time that rising fear of immigration enforcement is decreasing the willingness of immigrant communities to engage with law enforcement, to the detriment of public safety, it might reasonably wish to take steps to distance itself from ICE in order to reestablish public trust. However, the county's ability to do so would be hamstrung by the mandatory transfer provisions of this bill, which would continue to require local law enforcement and jails to facilitate the transfer of any person that ICE wishes to arrest who has, e.g., been convicted of a DUI.

This committee should prohibit 287(g) agreements, which subsidize ICE and assist it in boosting apprehension numbers with easy arrests of Marylanders who have little or no culpability, without attempting to regulate a jurisdiction's ordinary, voluntary notification and transfer practices.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendment on HB1222.

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