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To: The Honorable William C. Smith
Chair, Judicial Proceedings Committee

From: The Office of the Attorney General

Re: Senate Bill 901 – State and Local Government – Participation in Federal Immigration Enforcement

Senate Bill 901 seeks to strengthen the trust between law enforcement agencies and the communities that they serve by clarifying the limits on State and local participation in federal immigration enforcement activities. The Office of the Attorney general supports that objective.

In May of 2017, the Office of the Attorney General issued an Immigration Guidance Memorandum for Maryland State and local governments. The Guidance Memorandum, which the Office updated in December of 2018, describes the legal landscape governing the participation of law enforcement officials in immigration enforcement and is intended to help those officials make decisions about how to engage with federal immigration officers.¹ The 2018 guidance on federal immigration enforcement followed guidance issued by the Office in 2015 aimed at ending discriminatory profiling by state and local law enforcement agencies. The 2015 guidance advised that, consistent with state and federal constitutional law, local law enforcement may not consider race, ethnicity, national origin, religion, gender, gender identity, sexual orientation or disability when conducting routine police activity.² Together, these documents outline basic legal principles governing law enforcement interaction with the

¹ http://www.marylandattorneygeneral.gov/Reports/Immigration_Law_Guidance.pdf

² http://www.marylandattorneygeneral.gov/Reports/Ending_Discriminatory_Profiling.pdf



members of the public – parameters that are critical to assisting law enforcement and residents in navigating the uncertainty and confusion resulting from recent federal measures designed to restrict immigration and intensify the enforcement of federal immigration laws.

The following provisions advanced by Senate Bill 901 either address directly areas that are the subject of the Office’s 2015 and 2018 guidance memoranda, or are otherwise consistent with that guidance:

1. Prohibiting State and local law enforcement from acting for the sole purpose of enforcing civil immigration law;³
2. Addressing the circumstances under which State and local law enforcement may honor U.S. Immigration Customs Enforcement ("ICE") detainer requests;⁴
3. Prohibiting State and local government resources from being used to create a federal registry of individuals based on race, ethnicity, gender or other personal characteristics for the purpose of discriminating against those individuals; and
4. Encouraging public schools, hospitals and courthouses to develop policies that establish parameters regarding civil immigration enforcement on their premises.

Indeed, the Office has consistently advised that such policies take into appropriate consideration both the promotion of public safety and the State’s obligation and commitment to protecting vulnerable communities. They also reflect a growing trend among the State’s cities and counties to make clear the limits on local enforcement of federal immigration law.

³ As noted in our 2018 guidance, the federal government may not force State and local officials to carry out immigration law. Moreover, in determining whether to voluntarily engage in such activities, agencies should consider that providing immigration enforcement support with officers who have only limited expertise and training in immigration enforcement risks the type of racial profiling that is unconstitutional, as stated in the Office’s 2015 guidance. Many reports have described how formal participation in federal immigration enforcement—particularly by patrol officers—can also discourage immigrant communities from coming forward with information about criminal activity.

⁴ The Office’s 2018 guidance cautioned that law enforcement agencies face potential liability exposure if they honor ICE 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.

Recent actions by the Trump Administration have created great uncertainty around how and when immigration enforcement activities can occur, inspiring fear and confusion among many Maryland residents. The provisions of Senate Bill 901 set forth above will provide guidance to law enforcement and public agencies on the extent to which they may participate in civil immigration enforcement within the State, ensure that those activities are conducted in accordance with federal constitutional law, advance the State's commitment to maintaining trust between law enforcement and our most vulnerable communities, and promote public safety for all residents.

cc: Members of the Judicial Proceedings Committee