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To: Members of House Judiciary Committee

From: Immigration Law Section Council

Date: March 5, 2025

Subject: **Bill HB 1188** – Public Safety – Immigration Enforcement- Cooperation

Position: **Oppose**

Good Afternoon, Chairman Clippinger, Vice Chair Bartlett and Members of the Judiciary Committee.

My name is Jonathan Greene. I am here today on behalf of the Maryland State Bar Association Immigration Law Section, which officially opposes HB 1188. Our section is comprised of hundreds of private attorneys, judges and immigration officials who are members of our association.

I am an attorney practicing in the Maryland Bar for more than 25 years. My office is in Columbia. I practice primarily in immigration and family law matters. I am a member of the Section Council of the Maryland State Bar Association Immigration Law Section, and I am the first attorney to serve both as a Chair of the Immigration Law Section and the D.C.-Maryland Chapter of the American Immigration Lawyers Association. I have been an expert witness on immigration issues in state and federal cases, and I have presented many seminars to attorneys through venues such as the Maryland State Bar Association and MICPEL.

I am here today to provide testimony regarding the defects of H.B. 1188, which seeks to turn Maryland law enforcement into federal immigration officers in a manner inconsistent with state and federal law. Our bar section supports ensuring that the federal government carries out its proper immigration law functions and Maryland carries out its separate law enforcement

functions. **The bill does not work with current immigration law and may create unintended violations of state law and the Constitution.**

House Bill 1188 is not enforceable due to the impossibility to carry out the bill's requirements under the federal Immigration and Nationality Act. This federal statute is a complex set of laws that governs who can enter and remain in the United States, the decision to detain or release a person with or without status, and when a non-resident violates immigration law.

HB 1188 pertains to persons "not lawfully present in the United States," which is a term generally not defined in federal immigration law. There is no definition of "lawful presence" or "lawfully present." A single paragraph of the federal statute, 8 USC § 1182 (a)(9)(B), provides that a noncitizen who was "unlawfully present" for certain time periods is inadmissible. The federal statute indicates that for purposes of this particular paragraph, a noncitizen is deemed to be unlawfully present if in the United States after an authorized period of stay or if present without being admitted or paroled. As confusing as these terms might be to interpret, there are also many exceptions to the statutory terminology, and it would take a person skilled in immigration law interpretation to figure out the meanings. For example, unlawful presence does not include time in the United States under the age of 18 and does not apply to people with asylum applications pending, those with family unity protection, people protected by the Violence Against Women Act, and victims of human trafficking, etc. Even the federal detainer regulations do not contain a restriction of not being lawfully present in the United States.

HB 1188 unnecessarily requires law enforcement agents and agencies to search an individual in the National Crime Information Center (NCIC) database to determine if the person is subject to a criminal warrant. Maryland's law enforcement already check the NCIC database and the MILES database for such warrants, which are not related to civil immigration infractions.

HB 1188 erroneously ties criminal warrants to federal immigration enforcement. Even if it were possible to figure out whether a person is "lawfully present" in the United States, the existence of a criminal warrant does not typically translate into a federal immigration enforcement issue, since the U.S. Department of Homeland Security does not consider whether criminal warrants from state and federal agencies should result in detention or deportation. Federal immigration enforcement is focused on civil violations of immigration law since removal and deportation are not criminal law matters.

HB 1188 also turns the voluntary nature of a detainer request into a mandatory obligation in violation of federal law. The federal detainer regulations only refer to a request that can be made to obtain custody of a person and there is no mandatory obligation under federal statute or regulation for a state or local correctional facility to acquiesce to such a voluntary request. HB 1188 seeks to create a mandatory obligation to comply with detainer requests beyond what is required in federal law. Because there is liability for the state or local correctional facility, each such facility must make a determination that any such request to detain

does not violate any other laws, constitutional provisions or the Maryland Declaration of Rights. State and local employees should not agree to the detainer requests if they violate such laws and provisions. This bill unnecessarily places state and local agencies at risk.

For these reasons, on behalf of the Maryland State Bar Association Immigration Law Section, I ask that the committee issue an unfavorable report on H.B. 1188.

END OF TESTIMONY