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To: Members of House Judiciary Committee

From: Immigration Law Section Council

Date: March 5, 2025

Subject: **Bill HB 403** – Correctional Services – Transfers to Federal Immigration Authorities – Undocumented Immigrants (Protecting Marylanders from Violent Offenders Act of 2025)

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 403. 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. 403, which seeks to turn Maryland correctional facilities into an arm of the Department of Homeland Security in a

manner inconsistent with 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 403 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 403 uses defective terminology in requiring that state and local correctional facilities with custody of certain "undocumented immigrants" shall transfer them to the custody of the U.S. Department of Homeland Security. Federal law does not contain a definition of the term "undocumented immigrant" and thus the bill sets out an impossible condition as a requirement.

HB 403 also impermissibly broadens who can request transfer of persons to the custody of the Department of Homeland Security. The bill creates a general requirement to make a transfer upon request by the Department of Homeland Security. However, only specific federal immigration officers authorized by the federal regulations at 8 C.F.R. § 287.7(b) can make the request for imposition of a detainer in order to facilitate a transfer of custody. There is no basis in law to expand the category of persons who can initiate such requests.

HB 403 also turns the voluntary nature of the 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 403 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.

HB 403 also requires transfer of custody to the Department of Homeland Security while a sentence is being served. Federal detainer regulations refer to placing a hold on the release of a person who has completed a sentence of confinement. The bill would require transfer of custody for a person who is still serving a sentence. Maryland law does not permit early termination of custody for transfer to the Department of Homeland Security to pursue a civil removal action and federal detainer regulations do not contemplate such an early release.

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. 403.

END OF TESTIMONY