



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

HANNIBAL KEMERER
CHIEF OF STAFF

ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: HB1222 – Maryland Values Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable with amendments

DATE: February 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, and detain without judicial authorization any arrestee suspected of being removable under civil immigration law. There is no exception for someone arrested based on mistaken identity, even if that person’s case has been dismissed or they have been 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 posing no real risk to public safety.

287(g) is an extremely inefficient tool for targeting people with serious convictions; but it is an exceptionally powerful tool for funneling innocent people and those with very low level offenses into the deportation pipeline. This is because 287(g) agreements only allow ICE to arrest 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 after serving prison sentences, and the Department of Corrections is already very consistent about transferring people to ICE custody upon their release.¹

Far from being risks to public safety, the people being released from local detention centers 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 consideration of numerous factors and determination that the release conditions can reasonably ensure their appearance in court and the safety of the community and any alleged victim or witness²; 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.³ 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 no conviction or only the least serious "Level 3" conviction, which includes traffic offenses and other minor misdemeanors.⁴ 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 with either no criminal conviction or only a minor "Level 3" conviction.⁵

¹ 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.

² See Md. Rule 4-216.

³ 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).

⁴ *Id.*

⁵ *Id.*, filtered by State: All; Apprehension Method: 287(g) Program; and Seriousness Level of MSCC (Most Serious Criminal Conviction).

ICE has many other tools that it can and does use to target those with more serious convictions. The four 287(g) detainers lodged for individuals with “Level 1” convictions over seven years represent only 0.1 percent of the total detainers for defendants with “Level 1” convictions in Maryland over that time period.⁶ 287(g) is therefore not even a significant part, much less a necessary part, of ICE’s enforcement against those with serious convictions.

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 of any crime 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 20,⁷ and ICE is reportedly being pressed to meet arrest quotas, which can only incentivize more indiscriminate enforcement.⁸

ICE’s intent to arrest anyone it can, without regard for innocence, is apparent in what happened in Prince George’s County last week, when ICE agents looking for a particular target pulled over the wrong person, and, *after* determining that they had stopped the 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.⁹ As FOD Elliston told Fox45, “the handcuffs are off. Before, it was you had to meet certain criteria to be arrested. Now [. . .] if

⁶ *Id.*, filtered by State: Maryland; Seriousness Level of MSCC (Most Serious Criminal Conviction): Level 1 Crime; Apprehension Method.

⁷ See Exec. Order No. 14159, 90 Fed. Reg. 8443 (January 20, 2025), “Protecting the American People From Invasion.”

⁸ 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/>.

⁹ 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>.

you're illegally here and we come across you, you're going to get arrested.”¹⁰ In light of these changes, we must expect that going forward, 287(g) agreements will be used even *more* aggressively to put innocent Marylanders and those who have committed only the lowest level offenses 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 undermine public trust in law enforcement and the courts, and ultimately undermine public safety.

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

In its current form, this bill would require that detention facilities “transfer” to ICE—meaning, detain for up to 48 hours without judicial authorization or probable cause that any crime has been committed—any person who has been convicted of a crime of violence as defined in Maryland law. This provision is unconstitutional, unworkable, and unnecessary, and we urge the committee to amend HB1222 to omit it.

ICE detainers are not judicial warrants; they are administrative requests issued by ICE itself, and they relate to suspicion of a civil immigration violation, not probable cause of a crime. Without either judicial authorization or probable cause, holding a person who has been released on their state charges is a clear violation of the 4th Amendment and the Maryland Declaration of Rights, as the Attorney General recently explained in a Guidance Memorandum.¹¹

¹⁰ *Id.*

¹¹ See Md. Office of the Attorney General, “Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials,” January 2025, *available at* https://www.marylandattorneygeneral.gov/News%20Documents/2025_Law_Enforcement_Guidance_Memorandum.pdf.

In addition to being unconstitutional, this provision is unworkable. It ostensibly applies to any person “unlawfully present,” a term which is not defined but clearly refers to complex federal immigration law. It is unreasonable to expect corrections personnel across the state to interpret this term and evaluate the individual immigration status of each detained person, much less to do so fairly and consistently.

The mandatory transfer provision is also unnecessary to ensuring that the most serious offenders end up in ICE custody after their sentences. In a majority of cases, those convicted of crimes of violence are sentenced to prison, where they are already routinely turned over to ICE custody upon release, as ICE has acknowledged. In the relatively few cases where a person receives a local sentence for a crime of violence, that sentence has been imposed based on a judge’s careful weighing of the offense and any mitigating factors. Mandating transfer to ICE custody for that small group of defendants undercuts the judge’s individualized determination that a particular person can be safely released back into the community, and will likely disproportionately impact young people.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB0387.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Stephanie Wolf, Director of Immigration Services,
stephanie.wolf@maryland.gov.**