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To: Members of House Judiciary Committee
From: Immigration Law Section Council
Date: February 27, 2025
Subject: **Bill HB1222** – Public Safety – Immigration Enforcement (Maryland Values Act)
Position: **Support with Amendments**

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 supports HB 1222 with important amendments. 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 seminars to attorneys through venues such as the Maryland State Bar Association and MICPEL.

The Immigration Law Section Council supports this bill with the following amendments:

Article – Correctional Services

9-309.

(A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “COVERED INDIVIDUAL” MEANS AN INDIVIDUAL WHO IS NOT A CITIZEN OF THE UNITED STATES, WHO HAS BEEN CONVICTED OF A CRIME OF VIOLENCE AND WHO IS IN THE CUSTODY OF A STATE OR LOCAL CORRECTIONAL FACILITY.

[STRIKE THROUGH ‘IS NOT LAWFULLY PRESENT IN THE UNITED STATES; AND HAS BEEN CONVICTED OF A CRIME OF VIOLENCE”

(3) “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14-401 OF THE CRIMINAL LAW ARTICLE.

(B) IF REQUESTED BY A FEDERAL IMMIGRATION OFFICER AUTHORIZED BY 8 C.F.R. § 287.7(B), AN EMPLOYEE OR AGENT OF A STATE OR LOCAL CORRECTIONAL FACILITY SHALL:

(1) DETERMINE WHETHER DETAINING A COVERED INDIVIDUAL PURSUANT TO SUCH REQUEST DOES NOT VIOLATE ANY OTHER FEDERAL, STATE OR LOCAL LAWS, CONSTITUTIONAL PROVISIONS OR THE MARYLAND DECLARATION OF RIGHTS;

(2) AND IF SUCH DETERMINATION CONCLUDES THAT DETAINING A COVERED INDIVIDUAL PURSUANT TO SUCH REQUEST DOES NOT VIOLATE ANY OTHER FEDERAL, STATE OR LOCAL LAWS, CONSTITUTIONAL PROVISIONS OR THE MARYLAND DECLARATION OF RIGHTS, DETAIN A COVERED INDIVIDUAL FOR A PERIOD NOT TO EXCEED 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS IN ORDER TO PERMIT ASSUMPTION OF CUSTODY BY THE U.S. DEPARTMENT OF HOMELAND SECURITY.

Article – Criminal Procedure

5-104.

(5) (I) IN THIS PARAGRAPH, COVERED INDIVIDUAL HAS THE MEANING STATED IN § 9-309 OF THE CORRECTIONAL SERVICES ARTICLE.

(II) IF REQUESTED BY A FEDERAL IMMIGRATION OFFICER AUTHORIZED BY 8 C.F.R. § 287.7(B), AN EMPLOYEE OR AGENT OF A STATE OR LOCAL CORRECTIONAL FACILITY SHALL:

(1) DETERMINE WHETHER DETAINING A COVERED INDIVIDUAL PURSUANT TO SUCH REQUEST DOES NOT VIOLATE ANY OTHER FEDERAL, STATE OR LOCAL LAWS, CONSTITUTIONAL PROVISIONS OR THE MARYLAND DECLARATION OF RIGHTS;

(2) AND IF SUCH DETERMINATION CONCLUDES THAT DETAINING A COVERED INDIVIDUAL PURSUANT TO SUCH REQUEST DOES NOT VIOLATE ANY OTHER FEDERAL, STATE OR LOCAL LAWS, CONSTITUTIONAL PROVISIONS OR THE MARYLAND DECLARATION OF RIGHTS, DETAIN A COVERED INDIVIDUAL FOR A PERIOD NOT TO EXCEED 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS IN ORDER TO PERMIT ASSUMPTION OF CUSTODY BY THE U.S. DEPARTMENT OF HOMELAND SECURITY.

We have reviewed the bill originally introduced several weeks ago and we believe these amendments are critical to ensure that the bill comports with federal immigration law:

Correctional Services Article Section 9-309 (A) (2) should indicate that it pertains to individuals who are not citizens of the United States, who have been convicted of a crime of violence and who are in the custody of a state or local correctional facility. As drafted, the bill would limit coverage 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. The federal regulations pertaining to detainers do not contain a restriction of not being lawfully present in the United States and this bill does not have to impose such a restriction if it also follows other safeguarding provisions of the regulations.

This section of the bill should also clearly indicate that it pertains to individuals who are currently in the custody of a state or local correctional facility. As drafted, the bill could

conceivably require state or local employees to take a person into custody in order to detain such individual, even if the person has not yet been sentenced or if the person has completed a sentence many years ago.

Section 9-309 (B) generally should indicate that only 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. This amendment would match existing federal law.

Section 9-309 (B) (1) should require that a determination be made that the 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.

Section 9-309 (B) (2) should allow the detainer request to be honored if the determination is made in Section (B)(1), but the detainer should only be for a period up to 48 hours, not including Saturdays, Sundays and holidays, pursuant to 8 C.F.R. § 287.7(d). As drafted, the bill also requires state and local employees to transfer a covered individual to federal immigration authorities, but it should be amended to permit the Department of Homeland Security to take such individuals into custody, consistent with federal regulations at 8 C.F.R. § 287.7(d).

Criminal Procedures Article Section 5-104 should be amended consistent with the proposed amendments for Section 9-309 for the reasons stated above.

We believe these amendments are substantive and important so that the bill comports with federal regulations and does not create requirements that may be in conflict with other laws, constitutional provisions and the Maryland Declaration of Human Rights.

We support the bill as drafted with regard to Criminal Procedures Article Section 5-104.1, which would eliminate Immigration Enforcement Agreements in Maryland. Such agreements require state and local agencies to use their own funds to carry out federal immigration enforcement activities. The federal government has the ability to carry out its own enforcement actions without Maryland doing so and paying for it as well.

The Immigration Law Section Council of the Maryland Bar Association supports the amendments to HB1222 and respectfully requests this Committee to vote favorably on the bill with these amendments.

END OF TESTIMONY