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POSITION ON PROPOSED LEGISLATION

BILL: HB85 - Rachel Morin Act: Sanctuary Policies and Enforcement of Federal Immigration

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 17, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on HB85.

This bill forces each county and municipality to choose between its residents and its budget, while hampering them from setting their own priorities and seeking justice. Two aspects raise particular concerns: first, the breadth of what the law targets as a “sanctuary policy,” and second, its chilling effect on cooperation with the legal system.

The definition of “sanctuary policy” under HB85 is vague, overbroad, and troubling – beginning with the definition’s inclusion of “informally adopted” policies and practices “otherwise effectuated,” which could endanger the funds of a county or municipality based on the complaint of a single individual who may allege the existence of a policy that has not even been “informally adopted” but merely “otherwise effectuated.”

Several of the bill’s substantive “sanctuary policy” examples are in direct conflict with core rights and civil liberties. For example, the bill would make it illegal for a jurisdiction to require that federal immigration authorities “obtain a warrant or demonstrate probable cause before complying with detainers to maintain custody of any individual.” This turns on its head the guarantees of the Fourth Amendment, along with related provisions in the Maryland Declaration of Rights. It is foundational that, before a person can be held in jail, law enforcement must seek a warrant or convince a neutral arbiter of probable cause. Instead, HB85 envisions the opposite – a system where the law coerces county officials to erase probable cause and warrant requirements, permitting, and in some cases requiring, local police to jail Maryland residents based on a federal agent’s unsubstantiated allegation

of a civil immigration violation, all free from neutral oversight. Our state laws must center the rights enshrined in our founding documents – not tear them down, as HB85 proposes.

Perhaps most pervasive, HB85 would erase the existing limits on inquiring into any individual's immigration status. HB85 encourages local law enforcement to trample over individuals' Fifth Amendment rights and seek sensitive admissions unrelated to any criminal investigation. This provision threatens to turn every traffic stop into an immigration checkpoint, any trip to the courthouse into a trip into immigration detention, and any call for help into an interrogation. This impacts every person in Maryland – not non-citizens alone. However, the burden to repeatedly prove one's status and justify one's presence in the state will fall hardest on individuals of color, as this shift in policy devolves into an exercise in racial profiling.

Regardless of the intention, blurring the boundaries between federal and local law enforcement will foster an atmosphere of fear and distrust of both systems, and it will fracture the relationship between law enforcement, courts, and the community. Fear and confusion about the risk of detention is already making Marylanders, including those facing only traffic citations, reluctant to appear in court to resolve their cases. A victim of domestic violence should not have to weigh their safety against their apprehension that a request for help may result in their partner's permanent deportation – or their own. If a witness to a crime is too afraid to speak with police, prosecutors, or defense investigators, it will be more difficult for courts to determine the truth. And that same fear reduces the likelihood that non-citizens or citizens living in mixed-status households will feel comfortable participating in probation or proactively seeking treatment services, which improve public health and public safety. The justice system cannot function smoothly if some individuals are too terrified to trust in it. HB85 will not improve public safety – it will threaten it.

Local law enforcement officials are tasked with investigating and enforcing state and local laws, assisting community members, and protecting the public. Adding demands that they investigate and enforce federal immigration violations would overburden them and decrease their effectiveness. The existing law – which this bill would repeal – makes clear that law enforcement agents are able to inquire about any information that is material to a criminal investigation. In the rare situation that immigration status is material to a criminal investigation, existing law raises no impediment to law enforcement doing its job. Instead, existing law allows officials to delve into immigration issues as necessary, without the weight of a mandate burdening their inherently limited time. Further shoehorning federal policy priorities into local policework, as HB85 requires, blurs important

distinctions, exhausts local resources, and erodes trust – ultimately weakening the efficacy of our legal system.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB85.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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