



**Testimony for the House Judiciary Committee
February 11, 2020**

**HB 388 – Criminal Procedure – Civil Immigration Enforcement –
Restrictions**

FAVORABLE

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The ACLU of Maryland supports HB 388, which would limit how local and state law enforcement may collaborate with federal immigration enforcement efforts.

Specifically, this bill would:

- (1) Prevent an officer from
 - (a) Asking about an individual's immigration status during routine police encounters, and
 - (b) Transferring an individual to federal immigration authorities unless required by federal law
- (2) Require a judicial warrant in order for law enforcement to:
 - (a) Transfer an individual to federal immigration authorities,
 - (b) Detain an individual, and
 - (c) Notify federal immigration authorities about an individual's location, address, or release date.

In so doing, this bill would help ensure that all Marylanders have the Constitutional rights to which they are entitled, and provide important protections that build trust between law enforcement and the communities they serve.

The 287(g) program leads to racial profiling, and furthers distrust between law enforcement and local communities.

Under federal immigration law, state and local law enforcement agencies may enter into an agreement with federal immigration authorities to enforce immigration law within their jurisdictions.¹ The 287(g) program turns local officers into immigration officers with minimal training, and virtually no oversight or accountability.² From the beginning, it has produced countless

¹ 8 U.S.C. § 1357(g).

² See DHS, Officer of Inspector General, *The Performance of 287(g) Agreements: Report Update* (Sept. 2010), 10-11, available at http://www.oig.dhs.gov/assets/mgmt/oig_10-63_mar10.pdf



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complaints of abusive police practices, racial profiling, and deteriorating relationships between police and local communities.

For instance, a Frederick County grandmother who was driving with her daughter and grandchildren in the car was pulled over. The officer lied about why he pulled her over (a broken taillight that was working just fine), proceeded to interrogate her about her immigration status, and detained her illegally, making her believe she would be separated permanently from her family.³ Although she was eventually released, this is just one of many examples of abusive police practices that terrify communities, and make residents view law enforcement as a threat, rather than protection.

Maryland's law enforcement agencies must serve all individuals equally and without discrimination. We also must ensure that public safety decisions are made and resources are spent to advance the interests of *Maryland's communities* first, not the federal government's anti-immigrant stance.

State and local law enforcement may not arrest individuals on the basis of civil immigration warrants alone.

The U.S. Supreme Court has held that state and local law enforcement do not have the authority to arrest or detain an individual based solely on a civil immigration warrant.⁴ It is not a crime for an undocumented immigrant to remain present in the United States. The Fourth Circuit also held that municipalities are liable for damages that arise from these unlawful arrests.⁵ By codifying these rulings, this bill would ensure uniform implementation across the state.

Detaining an individual on a federal immigration hold request is unconstitutional.

Federal immigration authorities routinely issue hold requests for state and local law enforcement to detain a person past their release date from custody. This constitutes a new arrest and detention that must meet the requirements under the Fourth Amendment. This hold request must either:

- (1) Be based on a warrant supported by probable cause and issued by a neutral judge, or
- (2) Meet the requirements for a warrantless arrest.

³ *Medrano et al v. Jenkins et al*, 1:19-cv-02038 (Maryland).

⁴ *Arizona v. United States*, 567 U.S. 387 (2012).

⁵ *Santos v. Frederick Cnty. Bd. Of Comm'rs*, 725 F.3d 451 (4th Cir. 2013).



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However, several courts have held that it does not meet either requirement.⁶ There is neither a probable cause requirement, nor a process through which to find probable cause in order to issue a federal immigration hold request.⁷ This means they do not meet basic Fourth Amendment requirements for a valid warrant.⁸ They also do not meet the requirements for a warrantless arrest, which would require bringing the individual before a neutral judge, not an employee of the arresting agency which is the case of ICE hold requests. Therefore, by eliminating compliance with ICE hold requests, this bill would ensure that state and local law enforcement agencies uphold the constitutional rights of those in their custody.

Except in limited circumstances, state and local law enforcement are not required to share information with federal immigration authorities.

State and local agencies may restrict information-sharing with federal immigration authorities, and doing so is critical to rebuilding trust between law enforcement and community members. While federal law prohibits restrictions on communication about immigration or citizenship status of individuals, it does not prohibit limiting communications regarding release dates, custody status, or criminal case information for individuals in state or local custody. By preventing state and local law enforcement from sharing this type of information, this bill would help prevent the damaging pipeline that leads from a routine police encounter to immigration detention and deportation.

Every day, Marylanders across our state live in fear of being unlawfully detained, separated from their families, and deported, because of draconian immigration laws and practices. These risks prevent even lawful residents and crime victims from interacting with local police. This bill would help protect Maryland residents from lifelong negative consequences, and rebuild trust between law enforcement and the communities they serve.

For the foregoing reasons, we urge a favorable report on HB 388.

⁶ See, e.g., *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir. 2013); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Jimenez-Moreno v. Napolitano*, ___F.Supp.3d___, 2016 WL 572465 (N.D.Ill. Sept. 30, 2016).

⁷ See Form I-247 (issued by an ICE employee, which only requires an ICE employee's signature, no oath or affirmation of probable cause, and no review by a neutral judge), accessed at <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>

⁸ See *Gerstein v. Pugh*, 420 U.S. 103, 116 n. 18, 117 (1975).