



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman and Members of the Judiciary Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 11, 2020

RE: **HB 388 – Criminal Procedure – Civil Immigration Enforcement - Restrictions**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE HB 388. This bill would prohibit a law enforcement agent from inquiring about an individual's immigration status, citizenship status, or place of birth during a stop, a search, or an arrest conducted in the performance of regular police functions. In addition, the bill would prohibit a law enforcement agent from transferring an individual to federal immigration authorities, detaining an individual, notifying federal immigration authorities of individual's release date, location, or address, or use law enforcement resources to further civil immigration enforcement without a federal judicial warrant.

MCPA and MSA's main objection to this bill is the federal judicial warrant requirement. Judicial warrants are only issued for federal prosecution purposes. The majority of matters are handled through a Department of Homeland Security (DHS) Immigration Detainer Form. DHS requests that they be notified of an individual's release date for a number of circumstances including:

- Engaged in suspected terrorism or espionage, or otherwise poses a danger to national security;
- Has been convicted of an offense of which an element was active participation in a criminal street gang;
- Has been convicted of an offense classified as a felony;
- Has been convicted of an aggravated felony;
- Has been convicted of a "significant misdemeanor" as defined under DHS policy;
- Has been convicted of 3 or more misdemeanors, not including minor traffic offenses; and, state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.

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Under this bill, a local correctional facility would be prohibited from providing release dates to DHS although individuals may have committed serious crimes.

Law enforcement does not inquire about immigration status, citizenship status, or place of birth during a stop or search, but they may have reason to do so during an arrest. Under the 1963 Vienna Convention on Consular Relations (VCCR), a multilateral treaty to which the United States and more than 170 other countries are party, law enforcement may be required to notify an embassy or consular official for a foreign country, when involved with a foreign national. This obligation arises when taking official actions relating to a foreign national with regard to (1) the arrest and detention of foreign nationals; (2) the appointment of guardians for foreign nationals in the who are minors or incompetent adults; (3) deaths of or serious injuries to foreign nationals in the United States; and (4) crashes of foreign aircraft or wrecks of foreign ships in U.S. territory. These *reciprocal* obligations are intended to ensure that foreign governments can extend appropriate consular services to their nationals in the United States and that the United States complies with its legal obligations to such governments. If law enforcement is not able to inquire about citizenship status, they will not be able to extend these services.

For these reasons, MCPA and MSA OPPOSE HB 388 and URGE an UNFAVORABLE committee report.

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