



**SB 720 - Testimony for the Senate Judicial Proceedings Committee  
Criminal Procedure - Alien Defendants - Nullity of Bail Bonds  
March 7, 2013**

**SUPPORT**

The American Civil Liberties Union of Maryland supports this well-informed and much-needed proposal to ensure that the families of immigrant persons who fail to appear at their criminal trial, through no fault of their own or their families, are not unjustly deprived of what little resources they have. Local arrestees are increasingly being turned over to federal immigration authorities before their criminal trials. When that happens, individuals who post bail are frequently unable to appear at trial for no reason other than that they are in federal immigration custody or that they have been deported. As a result of this failure to appear, they and their families forfeit the bail they posted despite the fact that they are not at fault for violating the terms of the bond agreement. This fundamentally unjust situation can be remedied by passage of the proposed law.

Immigration and Customs Enforcement (ICE) frequently takes custody of immigrants before their state criminal proceedings have concluded. Under the Secure Communities interoperability program, the fingerprints of every individual arrested for any reason by local law enforcement are run through DHS's database. Once ICE receives the fingerprints from a locality, it issues a detainer asking the locality to detain the individual for 48 hours so that ICE may assume custody if it determines that it has an interest in the individual. ICE frequently assumes custody within a short period of time, and frequently before the person has been tried for the local misdemeanor or crime for which he or she was arrested. By ICE estimates, in approximately 30 to 40 percent of cases, the detained individual is quickly transferred into ICE custody.<sup>1</sup> The individual is often never prosecuted for the crime for which they were originally arrested.<sup>2</sup> As stated by an ICE employee, "[t]his has resulted in ICE becoming a dumping ground for individuals arrested on criminal charges who were never cleared of those charges in a court of law."<sup>3</sup>

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<sup>1</sup> *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law: Hearing Before the H. Comm. on Homeland Sec.*, 111th Cong. 33 (2009).

<sup>2</sup> *See Moving More Effective Immigration Detention Mgmt.: Hearing Before the H. Subcomm. on Border, Maritime & Global Counterterrorism of the H. Comm. on Homeland Sec.*, 111th Cong. (2009) (statement of Chris Crane, Vice President of Detention and Removal Operations, National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees), available at <http://homeland.house.gov/SiteDocuments/20091210105603-99475.pdf>.

<sup>3</sup> *Id.*

One of the many problematic effects of this process is that it can often result in bond forfeiture. Bond is frequently set before ICE assumes custody of a person in whom the agency has determined it has an interest. Accordingly, persons may seek and post bail on their state misdemeanor or criminal charge and then, instead of being released, be handed over to ICE. The end result for individuals who end up in ICE custody is often that they are unable to appear at trial. As a result, they or their families end up forfeiting any bond they have posted despite the fact that they have not attempted to flee law enforcement authorities and are unable to appear for trial through no fault of their own.

While Maryland law allows the party who posted bail to present evidence of “reasonable grounds” justifying the defendant’s failure to appear,<sup>4</sup> the law in the area is confusing. The Maryland Rules does provide that a bond may be stricken if an individual shows reasonable grounds for the defendant’s failure to appear.<sup>5</sup> However, the Maryland Code explicitly voids a bail bond only where the individual is incarcerated *outside* the state.<sup>6</sup> While Maryland case law suggests that a bail bond may be stricken even where the person is incarcerated inside the state, it is unclear whether this applies to federal facilities.<sup>7</sup> Both the Maryland Code and the case law refer only to incarceration in a penal institution.<sup>8</sup> It is therefore unclear whether ICE detention centers meet this standard, since immigration detention is civil and not criminal. Given this lack of clarity, it is important for the legislature to clearly state that individuals in these circumstances will not forfeit their bond.

Many immigrants come to the United States with little or no independent financial resources.<sup>9</sup> Accordingly, their general family income is usually low even before a family member’s detention or deportation. This may be the case even if some members of the family are lawfully present within the United States.<sup>10</sup> Ensuring that such families are able to recover bond and any premiums they may have paid in connection with the bond is critical, because it ensures that they are not unjustly deprived of what little remaining resources they have. Because there is nothing these families or individuals can do to ensure that the person on whose behalf bond has been posted will appear at their criminal trial, it would be unfair to have them forfeit the bond they posted. In addition, the risk of forfeiture may lead bail bondsmen to refuse to provide surety to all immigrants, even in cases when ICE does not ultimately detain them and they end up prevailing on the original charge for which they were arrested. This would result in needless detention of individuals who pose no flight risk and no danger to the community.

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<sup>4</sup> Md. CRIMINAL PROCEDURE Code Ann. § 5-208.

<sup>5</sup> Md. Rule 4-217(i)(2).

<sup>6</sup> Md. CRIMINAL PROCEDURE Code Ann. § 5-208(e).

<sup>7</sup> *Prof'l Bail Bonds, Inc. v. State*, 185 Md. App. 226 (2009).

<sup>8</sup> See *supra* notes 9 and 10.

<sup>9</sup> Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 593 (1997).

<sup>10</sup> David B. Thronson, *Custody and Contradictions: Exploring Immigration Law as Federal Family Law in the Context of Child Custody*, 59 HASTINGS L.J. 453, 471 (2007-2008) (quoting Michael E. Fix & Wendy Zimmerman, *All Under One Roof: Mixed-Status Families in an Era of Reform*, URB. INST., 2 (Oct. 6, 1999), <http://www.urban.org/UploadedPDF/409100.pdf>).

For the foregoing reasons, we urge that the committee give the proposed legislation a favorable report.