

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1011

(The Speaker)(By Request - Office of the Attorney
General)

Judiciary

**Correctional Services - Private Detention Facilities - Deprivation of Rights,
Privileges, and Immunities**

This bill prohibits a person from depriving an individual housed or detained in a private detention facility of any right, privilege, or immunity secured or protected by the U.S. Constitution, the Maryland Constitution, the Maryland Declaration of Rights, or any state or federal law. The bill authorizes the Office of the Attorney General (OAG) to investigate conduct that constitutes a violation of the bill's provisions and sets forth procedures for conducting an investigation. Generally, with specified exceptions, if OAG has reasonable cause to believe that a violation has occurred and is likely to reoccur, the office may file a civil action to enforce the bill's provisions in the circuit court for any county in which the violation is alleged, as specified. The bill also authorizes certain remedies for violations, as well as the imposition of a civil penalty. The bill may not be construed to limit the damages or penalties available under any other provision of law.

Fiscal Summary

State Effect: OAG can handle the bill's requirements with existing resources. State finances are not otherwise anticipated to be materially affected.

Local Effect: Local government finances are not anticipated to be materially affected.

Small Business Effect: None.

Analysis

Bill Summary: “Private detention facility” means a facility that is owned, managed, or operated, in whole or in part, by a private entity under a contract, an agreement, or a memorandum of understanding (MOU) with another private entity, the State, a political subdivision of the State, or the U.S. government to house or detain individuals in relation to a violation of State or federal law.

Investigation: To investigate a violation of the bill’s provisions, OAG may (1) issue subpoenas; (2) administer oaths; (3) compel the attendance and testimony of witnesses; (4) compel production of records, books, papers, contracts, and other documents; (5) enter a private detention facility and any area within a private detention facility; and (6) conduct private interviews with any individual detained in a private detention facility.

A subpoena issued under the bill’s provisions must be served by (1) certified mail, return receipt requested; (2) any adult who is not a party to the proceeding; or (3) the sheriff or deputy sheriff of the county in which the subpoena is issued. If a person fails or refuses to comply with a subpoena, OAG may apply to a circuit court in the county in which the subpoena was served to enforce compliance.

Notification: If OAG finds that a violation occurred, OAG must notify the local governing body of the county in which the violation occurred in writing with (1) a summary of the activity constituting the violation; (2) if the violation is ongoing or likely to reoccur, the remedial measures necessary to correct the violation or prevent a recurrence of the violation; and (3) any other relevant information.

Civil Action: OAG may not file a civil action to enforce the bill’s provisions unless OAG has (1) conducted an investigation, as specified; (2) provided notice at least 30 days before filing the complaint to the local governing body of the county where the violation is alleged to have occurred, as specified; and (3) made reasonable efforts to notify an alleged violator of the violation and give the alleged violator a reasonable amount of time to correct the violation. As part of a civil action to enforce the bill’s provisions, OAG must certify in writing whether the office has complied with these requirements. However, if OAG determines that a delay in the civil action would pose an imminent and serious threat to life, health, or public safety, the office may file a civil action to enforce the bill’s provisions without complying with the requirements listed above.

Award of Damages and Civil Penalty: The court may award economic and noneconomic damages to any person harmed by the violation of the bill’s provisions or damages for the cost of enforcing the bill’s provisions. In addition to any award of damages imposed by the court, a person who violates the bill’s provisions is subject to a maximum civil penalty of \$25,000 for each violation. The court may grant injunctive relief to prohibit a person who

has violated or is violating the bill's provisions from continuing to violate the bill's provisions.

Current Law/Background: Chapter 19 of the 2021 special session prohibits the State, local governments, and specified State and local agents from (1) entering into an agreement of any kind for the detention of individuals in an immigration detention facility owned, managed, or operated, in whole or in part, by a private entity; (2) paying, reimbursing, subsidizing, or defraying in any way any costs related to the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity; (3) receiving any payment related to the detention of individuals in an immigration detention facility owned, managed, or operated in whole or in part, by a private entity; or (4) otherwise giving any financial incentive or benefit to any private entity or person in connection with the sale, purchase, construction, development, ownership, management, or operation of an immigration detention facility that is or will be owned, managed, or operated, in whole or in part, by a private entity.

The State, local governments, and specified State and local agents are prohibited from approving a zoning variance or issuing a permit for the construction of a building or the reuse of existing buildings or structures by any private entity for use as an immigration detention facility unless the entity (1) provides notice to the public of the proposed zoning variance or permit action at least 180 days before authorizing the variance or issuing the permit and (2) solicits and hears public comments on the proposed zoning variance or permit action in at least two separate meetings open to the public.

The State, local governments, and specified State and local agents are prohibited from entering into or renewing an immigration detention agreement. In any dispute over an immigration detention agreement with the State, these provisions govern. However, the provisions may not be construed to authorize or prohibit the State, local governments, and specified State and local agents from entering into an agreement with the federal government under 8 U.S.C. § 1357(g).

“Immigration detention agreement” means any contract, agreement, intergovernmental service agreement, or MOU that authorizes a State or local government agency to house or detain individuals for federal civil immigration violations. “Immigration detention facility” means any building, facility, or structure used, in whole or in part, to house or detain individuals for federal civil immigration violations.

Although the above provisions prohibit State and local governments from entering into such contracts for private detention, according to OAG, a significant portion of private immigration detention is not through a state or local contract, but directly through U.S. Immigrations and Customs Enforcement.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 786 (The President)(By Request - Office of the Attorney General) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, Cecil, and Frederick counties; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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js/jkb

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