

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 224 (Delegate Barron, *et al.*)
Health and Government Operations and
Judiciary

State and Local Government - Correctional Units - Detention Agreements and
Contracting for Privatization of Facilities

This bill prohibits a “correctional unit,” with specified exceptions, from contracting with a private contractor or vendor for the ownership, operation, or management of a State correctional facility, local correctional facility, or county detention center. The bill also prohibits a correctional unit from being reimbursed under a “detention agreement” in an amount greater than the per diem rate for State reimbursement of local correctional facilities. The bill applies prospectively; however, for a detention agreement entered into by a correctional unit before July 1, 2019, the correctional unit is prohibited from extending the term of the detention agreement by exercising an extension option or clause. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: None. The State does not currently contract for the ownership, operation, or management of State correctional facilities. In addition, the State does not receive reimbursement under a detention agreement.

Local Effect: Local government revenues decrease, potentially significantly, to the extent that local governments are currently reimbursed under detention agreements. The overall impact on local revenues cannot be estimated at this time due to a lack of available information. Local expenditures are not anticipated to be affected. **This bill likely imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A correctional unit is authorized to contract with a private contractor or vendor for:

- ancillary services, including commissary, dental, educational, maintenance, medical, pharmacy, repair, and transportation services;
- other services not directly related to the ownership, operation, or management of a State correctional facility, local correctional facility, or county detention center; and
- the ownership, operation, or management of a specified community adult rehabilitation center.

“Correctional unit” means a unit of Maryland State or local government that is directly responsible for the care, custody, and control of individuals committed to the custody of the unit for the commission or alleged commission of a crime or an act that would be a crime if committed by an adult. “Correctional unit” includes:

- the Department of Public Safety and Correctional Services;
- the Department of Juvenile Services; and
- the office of the sheriff of a county or other unit of government with responsibility for operating a local correctional facility or county detention center.

“Detention agreement” means an agreement or contract between the federal government and a correctional unit for the detention of an alien or person believed to be an alien in a state correctional facility, local correctional facility, or county detention center. “Detention agreement” includes a specified agreement between the U.S. Department of Homeland Security (DHS) and a correctional unit.

Current Law/Background:

Prison Privatization: Maryland State law does not prohibit the ownership, operation, or management of a State or local correctional or detention facility by a private contractor. State and local correctional and detention facilities contract with a variety of private entities for ancillary services, including commissary, dental, educational, maintenance, medical, pharmacy, repair, and transportation services.

During the 1980s, incarceration rates increased and resulted in prison overcrowding and rising costs which became problematic for local, state, and federal governments. In response, private-sector involvement in prisons moved from just contracting for services to contracting for the complete management and operation of entire prisons. The first contract to allow a private contractor to take over the complete operation of a jail in a state

was awarded in 1984. At that time, the Corrections Corporation of America (CCA), now known as CoreCivic, was awarded a contract to take over a facility in Shelby County, Tennessee. The following year, CCA unsuccessfully proposed taking over the entire state prison system of Tennessee for \$200 million.

Since 1984, CCA has expanded to operate more than 60 correctional facilities across the United States. Other for-profit prison companies also operate correctional facilities. However, several states, including Illinois, Louisiana, and New York, ban or have a moratorium on the privatization of prisons, correctional facilities, and any services related to the operation of correctional facilities. In 2016, the U.S. Department of Justice announced the intent to end contracts with for-profit prison operators, concluding that the facilities were less safe and less effective at providing correctional services.

Detention Agreements: State law does not limit the amount of reimbursement under a detention agreement that a State or local correctional or detention facility may be reimbursed. The State provides a \$45 per diem grant to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

Although immigration enforcement is a federal responsibility, the U.S. Immigration and Nationality Act authorizes DHS to deputize selected state and local law enforcement officers to enforce federal immigration law. The Act allows DHS and law enforcement agencies to make agreements, which require law enforcement officers to receive training and work under the supervision of U.S. Immigration and Customs Enforcement (ICE). ICE provides the officers with authorization to identify, process, and detain immigration offenders encountered during daily law-enforcement activity.

According to ICE, Anne Arundel, Frederick, and Harford counties currently participate in the program. However, news reports indicate that Anne Arundel County has terminated its participation. Under an agreement with ICE signed in 2017, Anne Arundel County was guaranteed a minimum of \$1.7 million per year to house up to 130 ICE detainees. The county received approximately \$4 million in fiscal 2018. In addition, some detention officers were trained to screen county inmates for immigration violations, warrants, and prior crimes. The Frederick County agreement, signed in 2008, provides reimbursement to the Frederick County Sheriff's Office at \$83 per day per detainee.

According to the American Civil Liberties Union of Maryland, three county detention centers also have contracts with DHS. The three facilities are the Worcester County Detention Center, Frederick County Detention Center, and Howard County Detention Center.

When ICE learns that a local law enforcement agency has custody of an individual who might be in the country illegally, it issues what is commonly referred to as an immigration detainer. An immigration detainer advises local law enforcement that ICE is seeking custody of the individual and asks that the local agency hold the individual “for a period not to exceed 48 hours beyond the time when the subject of the detainer would otherwise have been released” in order to allow ICE officials the opportunity to assume custody. Courts have generally found that immigration detainers are requests only; local officers are not obligated to honor them.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett County; City of Laurel; Department of General Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; U.S. Department of Justice; U.S. Bureau of Justice Statistics; U.S. Immigration and Customs Enforcement; CoreCivic; American Immigration Council; American Civil Liberties Union of Maryland; *Frederick News Post*; *Baltimore Sun*; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2019
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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510