

HOUSE BILL 16

E4

(PRE-FILED)

11r0543
CF 11r0544

By: **Delegate Stewart**

Requested: September 14, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Immigration Detention – Prohibition**
3 **(Dignity Not Detention Act)**

4 FOR the purpose of stating certain findings of the General Assembly; prohibiting certain
5 governmental entities from entering into agreements facilitating
6 immigration-related detention by private entities; prohibiting governmental entities
7 from entering into certain agreements to house immigration-related detainees;
8 requiring governmental entities to terminate certain existing contracts for the
9 detention of immigration-related detainees; providing for the construction of this
10 Act; defining certain terms; making the provisions of this Act severable; and
11 generally relating to the detention of immigration-related detainees in Maryland.

12 BY repealing and reenacting, with amendments,
13 Article – Correctional Services
14 Section 1–101
15 Annotated Code of Maryland
16 (2017 Replacement Volume and 2020 Supplement)

17 BY adding to
18 Article – Correctional Services
19 Section 1–102 and 1–103
20 Annotated Code of Maryland
21 (2017 Replacement Volume and 2020 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Correctional Services**

25 1–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this article the following words have the meanings indicated.

2 (b) “Commissioner of Correction” means the Commissioner of the Division of
3 Correction.

4 (c) “Comptroller” means the Comptroller of the State.

5 (d) “Correctional facility” means a facility that is operated for the purpose of
6 detaining or confining adults who are charged with or found guilty of a crime.

7 (e) “County” means a county of the State and Baltimore City.

8 (f) “Department” means the Department of Public Safety and Correctional
9 Services.

10 (g) “Division of Correction” means the Division of Correction in the Department
11 of Public Safety and Correctional Services.

12 (h) “Division of Parole and Probation” means the Division of Parole and Probation
13 in the Department of Public Safety and Correctional Services.

14 **(I) “IMMIGRATION DETENTION AGREEMENT” MEANS ANY CONTRACT,**
15 **AGREEMENT, INTERGOVERNMENTAL SERVICE AGREEMENT, OR MEMORANDUM OF**
16 **UNDERSTANDING THAT AUTHORIZES A STATE OR LOCAL GOVERNMENT AGENCY TO**
17 **HOUSE OR DETAIN INDIVIDUALS FOR FEDERAL CIVIL IMMIGRATION VIOLATIONS.**

18 **(J) “IMMIGRATION DETENTION FACILITY” MEANS ANY BUILDING, FACILITY,**
19 **OR STRUCTURE USED, IN WHOLE OR IN PART, TO HOUSE OR DETAIN INDIVIDUALS**
20 **FOR FEDERAL CIVIL IMMIGRATION VIOLATIONS.**

21 **[(i)] (K)** “Inmate” means an individual who is actually or constructively
22 detained or confined in a correctional facility.

23 **[(j)] (L)** “Local correctional facility” means a correctional facility that is
24 operated:

25 (1) by one or more counties; or

26 (2) by a municipal corporation.

27 **[(k)] (M)** “Managing official” means the administrator, director, warden,
28 superintendent, sheriff, or other individual responsible for the management of a
29 correctional facility.

30 **[(l)] (N)** “Person” means an individual, receiver, trustee, guardian, personal

1 representative, fiduciary, representative of any kind, partnership, firm, association,
2 corporation, or other entity.

3 [(m)] (O) “Secretary” means the Secretary of Public Safety and Correctional
4 Services.

5 [(n)] (P) “State” means:

6 (1) a state, possession, territory, or commonwealth of the United States; or

7 (2) the District of Columbia.

8 [(o)] (Q) (1) “State correctional facility” means a correctional facility that is
9 operated by the State.

10 (2) “State correctional facility” includes:

11 (i) the Patuxent Institution;

12 (ii) the Baltimore City Detention Center; and

13 (iii) the centralized booking facility in Baltimore City that is operated
14 by the Division of Pretrial Detention and Services in the Department of Public Safety and
15 Correctional Services.

16 [(p)] (R) “Treasurer” means the Treasurer of the State.

17 **1–102.**

18 **IT IS THE FINDING OF THE GENERAL ASSEMBLY THAT:**

19 **(1) THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS IS THE**
20 **EXCLUSIVE RESPONSIBILITY OF THE FEDERAL GOVERNMENT;**

21 **(2) THE MANAGEMENT AND OPERATION OF DETENTION FACILITIES**
22 **FOR IMMIGRANTS INVOLVE FUNCTIONS THAT ARE INHERENTLY GOVERNMENTAL**
23 **AND REQUIRE UNIQUE TRAINING DUE TO THE CIVIL NATURE OF THE DETENTION,**
24 **THE DIVERSE LANGUAGES AND BACKGROUNDS OF DETAINEES, AND THE**
25 **SIGNIFICANT VULNERABILITIES OF ASYLUM SEEKERS AND OTHER PERSONS**
26 **FLEEING PERSECUTION;**

27 **(3) DETENTION REQUIRES THE EXERCISE OF COERCIVE POLICE**
28 **POWERS OVER INDIVIDUALS THAT SHOULD NOT BE DELEGATED TO THE PRIVATE**
29 **SECTOR AND IS DISTINGUISHABLE FROM OTHER GOVERNMENTAL FUNCTIONS THAT**
30 **MAY BE PRIVATIZED;**

1 **(4) GIVEN THE IMPLICATIONS FOR FOREIGN RELATIONS,**
2 **IMMIGRATION ENFORCEMENT AND DETENTION ARE INAPPROPRIATE EXERCISES OF**
3 **A STATE'S POLICE POWERS; AND**

4 **(5) ISSUES OF LIABILITY, ACCOUNTABILITY, AND COST WARRANT A**
5 **PROHIBITION ON THE OWNERSHIP, OPERATION, OR MANAGEMENT OF DETENTION**
6 **FACILITIES BY PRIVATE CONTRACTORS, AS WELL AS A PHASING OUT OF THE**
7 **INVOLVEMENT OF STATE AND LOCAL OFFICIALS IN CIVIL IMMIGRATION DETENTION**
8 **TO THE FULLEST EXTENT PERMITTED UNDER STATE LAW.**

9 **1-103.**

10 **(A) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF, OR AN**
11 **AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL**
12 **GOVERNMENT MAY NOT:**

13 **(1) ENTER INTO AN AGREEMENT OF ANY KIND FOR THE DETENTION**
14 **OF INDIVIDUALS IN AN IMMIGRATION DETENTION FACILITY OWNED, MANAGED, OR**
15 **OPERATED, IN WHOLE OR IN PART, BY A PRIVATE ENTITY;**

16 **(2) PAY, REIMBURSE, SUBSIDIZE, OR DEFRAY IN ANY WAY ANY COSTS**
17 **RELATED TO THE SALE, PURCHASE, CONSTRUCTION, DEVELOPMENT, OWNERSHIP,**
18 **MANAGEMENT, OR OPERATION OF AN IMMIGRATION DETENTION FACILITY THAT IS**
19 **OR WILL BE OWNED, MANAGED, OR OPERATED, IN WHOLE OR IN PART, BY A PRIVATE**
20 **ENTITY;**

21 **(3) RECEIVE ANY PAYMENT RELATED TO THE DETENTION OF**
22 **INDIVIDUALS IN AN IMMIGRATION DETENTION FACILITY OWNED, MANAGED, OR**
23 **OPERATED, IN WHOLE OR IN PART, BY A PRIVATE ENTITY; OR**

24 **(4) OTHERWISE GIVE ANY FINANCIAL INCENTIVE OR BENEFIT TO ANY**
25 **PRIVATE ENTITY OR PERSON IN CONNECTION WITH THE SALE, PURCHASE,**
26 **CONSTRUCTION, DEVELOPMENT, OWNERSHIP, MANAGEMENT, OR OPERATION OF AN**
27 **IMMIGRATION DETENTION FACILITY THAT IS OR WILL BE OWNED, MANAGED, OR**
28 **OPERATED, IN WHOLE OR IN PART, BY A PRIVATE ENTITY.**

29 **(B) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF, OR AN**
30 **AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL**
31 **GOVERNMENT MAY NOT APPROVE A ZONING VARIANCE OR ISSUE A PERMIT FOR THE**
32 **CONSTRUCTION OF A BUILDING OR THE REUSE OF EXISTING BUILDINGS OR**
33 **STRUCTURES BY ANY PRIVATE ENTITY FOR USE AS AN IMMIGRATION DETENTION**
34 **FACILITY UNLESS THE GOVERNMENTAL ENTITY:**

1 **(1) PROVIDES NOTICE TO THE PUBLIC OF THE PROPOSED ZONING**
2 **VARIANCE OR PERMIT ACTION AT LEAST 180 DAYS BEFORE AUTHORIZING THE**
3 **VARIANCE OR ISSUING THE PERMIT; AND**

4 **(2) SOLICITS AND HEARS PUBLIC COMMENTS ON THE PROPOSED**
5 **ZONING VARIANCE OR PERMIT ACTION IN AT LEAST TWO SEPARATE MEETINGS OPEN**
6 **TO THE PUBLIC.**

7 **(C) (1) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF,**
8 **OR AN AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL**
9 **GOVERNMENT MAY NOT ENTER INTO OR RENEW AN IMMIGRATION DETENTION**
10 **AGREEMENT.**

11 **(2) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF,**
12 **OR AN AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL**
13 **GOVERNMENT WITH AN EXISTING IMMIGRATION DETENTION AGREEMENT SHALL**
14 **EXERCISE THE TERMINATION PROVISION CONTAINED IN THE IMMIGRATION**
15 **DETENTION AGREEMENT NOT LATER THAN OCTOBER 1, 2022.**

16 **(D) IN ANY DISPUTE OVER AN IMMIGRATION DETENTION AGREEMENT WITH**
17 **THE STATE, THE PROVISIONS OF THIS SECTION GOVERN.**

18 **(E) NOTHING IN THIS SECTION MAY BE CONSTRUED TO AUTHORIZE OR**
19 **PROHIBIT THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF, OR AN**
20 **AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL**
21 **GOVERNMENT FROM ENTERING INTO AN AGREEMENT UNDER 8 U.S.C. § 1357(G).**

22 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
23 the application thereof to any person or circumstance is held invalid for any reason in a
24 court of competent jurisdiction, the invalidity does not affect other provisions or any other
25 application of this Act that can be given effect without the invalid provision or application,
26 and for this purpose the provisions of this Act are declared severable.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
28 1, 2021.