

Chapter 19

(House Bill 16 of the 2021 Regular Session)

AN ACT concerning

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

FOR the purpose of ~~stating certain findings of the General Assembly;~~ prohibiting certain governmental entities from entering into agreements facilitating immigration-related detention by private entities; prohibiting governmental entities from entering into certain agreements to house immigration-related detainees; requiring governmental entities to terminate certain existing contracts for the detention of immigration-related detainees; prohibiting a law enforcement agent from performing certain acts, subject to certain exceptions; providing for the construction of this Act; defining certain terms; making the provisions of this Act severable; and generally relating to the detention of immigration-related detainees in Maryland.

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

BY adding to
 Article – Correctional Services
 Section 1–102 ~~and 1–103~~
 Annotated Code of Maryland
 (2017 Replacement Volume and 2020 Supplement)

BY adding to
Article – Criminal Procedure
Section 5–104
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

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

Article – Correctional Services

1–101.

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

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

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

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

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

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

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

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

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

(J) “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.

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

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

(1) by one or more counties; or

(2) by a municipal corporation.

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

[(l)] (N) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity.

[(m)] (O) "Secretary" means the Secretary of Public Safety and Correctional Services.

[(n)] (P) "State" means:

- (1) a state, possession, territory, or commonwealth of the United States; or
- (2) the District of Columbia.

[(o)] (Q) (1) "State correctional facility" means a correctional facility that is operated by the State.

(2) "State correctional facility" includes:

- (i) the Patuxent Institution;
- (ii) the Baltimore City Detention Center; and

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

[(p)] (R) "Treasurer" means the Treasurer of the State.

~~1-102.~~

~~IT IS THE FINDING OF THE GENERAL ASSEMBLY THAT:~~

~~(1) THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS IS THE EXCLUSIVE RESPONSIBILITY OF THE FEDERAL GOVERNMENT;~~

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

~~(3) DETENTION REQUIRES THE EXERCISE OF COERCIVE POLICE POWERS OVER INDIVIDUALS THAT SHOULD NOT BE DELEGATED TO THE PRIVATE~~

~~SECTOR AND IS DISTINGUISHABLE FROM OTHER GOVERNMENTAL FUNCTIONS THAT MAY BE PRIVATIZED;~~

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

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

~~1-103.~~ 1-102.

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

(1) ENTER 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) PAY, REIMBURSE, SUBSIDIZE, OR DEFRAY 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) RECEIVE 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 GIVE 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.

(B) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF, OR AN AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL GOVERNMENT MAY NOT APPROVE A ZONING VARIANCE OR ISSUE 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 GOVERNMENTAL 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.

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

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

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

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

Article – Criminal Procedure

5-104.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CIVIL IMMIGRATION VIOLATION” MEANS A VIOLATION OF FEDERAL CIVIL IMMIGRATION LAW.

(3) “FAMILY MEMBER” MEANS A RELATIVE BY BLOOD, ADOPTION, OR MARRIAGE.

(4) “HOUSEHOLD MEMBER” MEANS A PERSON WHO LIVES WITH ANOTHER OR IS A REGULAR PRESENCE IN THE HOME OF ANOTHER.

(5) (I) “LAW ENFORCEMENT AGENT” MEANS AN INDIVIDUAL WHO IS CERTIFIED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION UNDER § 3-209 OF THE PUBLIC SAFETY ARTICLE.

(II) “LAW ENFORCEMENT AGENT” DOES NOT INCLUDE AN AGENT OR EMPLOYEE OF A STATE CORRECTIONAL FACILITY OR A LOCAL CORRECTIONAL FACILITY.

(6) “LOCAL CORRECTIONAL FACILITY” HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

(7) “STATE CORRECTIONAL FACILITY” HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

(B) (1) IN THIS SUBSECTION, “ARREST” DOES NOT INCLUDE A ROUTINE BOOKING PROCEDURE.

(2) EXCEPT AS PROVIDED IN PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, A LAW ENFORCEMENT AGENT MAY NOT, DURING THE PERFORMANCE OF REGULAR POLICE FUNCTIONS:

(I) INQUIRE ABOUT AN INDIVIDUAL’S CITIZENSHIP, IMMIGRATION STATUS, OR PLACE OF BIRTH DURING A STOP, A SEARCH, OR AN ARREST;

(II) DETAIN, OR PROLONG THE DETENTION OF, AN INDIVIDUAL:

1. FOR THE PURPOSE OF INVESTIGATING THE INDIVIDUAL’S CITIZENSHIP OR IMMIGRATION STATUS; OR

2. BASED ON THE SUSPICION THAT THE INDIVIDUAL HAS COMMITTED A CIVIL IMMIGRATION VIOLATION;

(III) TRANSFER AN INDIVIDUAL TO FEDERAL IMMIGRATION AUTHORITIES UNLESS REQUIRED BY FEDERAL LAW; OR

(IV) COERCE, INTIMIDATE, OR THREATEN ANY INDIVIDUAL BASED ON THE ACTUAL OR PERCEIVED CITIZENSHIP OR IMMIGRATION STATUS OF THE INDIVIDUAL OR;

1. THE INDIVIDUAL'S FAMILY MEMBER;
2. THE INDIVIDUAL'S HOUSEHOLD MEMBER;
3. THE INDIVIDUAL'S LEGAL GUARDIAN; OR
4. ANOTHER INDIVIDUAL FOR WHOM THE INDIVIDUAL IS A LEGAL GUARDIAN.

(3) NOTHING IN THIS SUBSECTION SHALL PREVENT A LAW ENFORCEMENT AGENT FROM INQUIRING ABOUT ANY INFORMATION THAT IS MATERIAL TO A CRIMINAL INVESTIGATION.

(4) IF THE CITIZENSHIP OR IMMIGRATION STATUS OF AN INDIVIDUAL IS RELEVANT TO A PROTECTION ACCORDED TO THE INDIVIDUAL UNDER STATE OR FEDERAL LAW, OR SUBJECT TO A REQUIREMENT IMPOSED BY INTERNATIONAL TREATY, A LAW ENFORCEMENT AGENT MAY:

(I) NOTIFY THE INDIVIDUAL OF THE PROTECTION OR REQUIREMENT; AND

(II) PROVIDE THE INDIVIDUAL AN OPPORTUNITY TO VOLUNTARILY DISCLOSE THE INDIVIDUAL'S CITIZENSHIP OR IMMIGRATION STATUS FOR THE PURPOSE OF RECEIVING THE PROTECTION OR COMPLYING WITH THE REQUIREMENT.

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

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

Gubernatorial Veto Override, December 6, 2021.