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**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

ANTHONY G. BROWN
Attorney General

February 6, 2025

The Honorable William C. Smith, Jr.
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

*Re: Senate Bill 786 - Correctional Services – Private Detention Facilities Deprivation
of Rights, Privileges, and Immunities*

Dear Chair Smith:

The Office of the Attorney General of Maryland supports Senate Bill 786 - Correctional Services – Private Detention Facilities Deprivation of Rights, Privileges, and Immunities. This bill, if enacted, will give the Office of the Attorney General the authority to protect the rights of Marylanders in the custody of a private detention center and ensure that their treatment and conditions comply with the constitutions and laws of Maryland and the United States.

The Maryland and United States Constitutions and laws protect persons who are incarcerated from abuse and require that basic human needs are provided for. This includes protections against physical and sexual assault, necessary medical care, nutrition, access to counsel, and the ability to communicate with persons in the community. The General Assembly has long recognized the importance of these rights, most recently demonstrated by the legislation to establish independent oversight of the State's prison system through the creation of the Correctional Ombudsman. Md. Code, State Gov't § 9-3801 et seq. As I stated in my testimony in favor of the legislation, transparency and oversight is necessary to ensure that the operation of facilities that hold people in custody "more closely mirrors our Maryland values of fairness, equity, and justice for all."

State and local correctional facilities must meet minimum standards as promulgated by the Maryland Commission on Correctional Standards. Md. Code Ann., Corr. Servs. § 8-103. The General Assembly mandated the creation of standards “to better protect the health, safety, and welfare of the public by reducing incidents of crime.” The Commission drafted an extensive set of standards to address a broad scope of prison and jail operations.¹

There is no parallel mechanism to ensure that conditions in private detention centers meet the minimum standards required by law. While State and local jurisdictions are prohibited from entering into an agreement with a private detention facility for the purposes of housing detained immigrants, nothing in Maryland law prohibits the creation of private detention for any other purpose or for there to be private detention facilities to house immigrants separate from a State or local government. The only limitation on the construction or operation of a private detention facility in Maryland is the requirement that there be six months’ notice to the public before permits or zoning variances can be issued for the construction of an immigration detention center. Md. Code Ann., Corr. Servs. § 8-102(b)(1)(2).

There are currently no private detention centers in Maryland. However, President Trump has announced plans to engage in mass detention and mass deportation. Executive Order 14161 (January 20, 2025). It has been widely reported that there is a shortage of immigration detention beds and mandatory detention will increase as a result of the provisions of the Laken Riley Act which requires detention of immigrants who are accused of crime, including minor crimes like shoplifting. 8 U.S.C. § 236(c)(1) and 8 U.S.C. § 1226(c)(1)(B). The bed shortage is projected to be so severe that President Trump has proposed sending some immigrant detainees to Guantanamo, Cuba.² There is a reasonable likelihood that the Trump Administration will turn to private detention companies to construct new detention facilities to house the increased numbers of detained immigrants, including in Maryland.³

The record on private detention, including immigration detention, is concerning. There have been numerous reports of sexual abuse, denial of basic medical care, illegal forced labor, overcrowding, and violence by staff and between detainees.⁴ The federal government has, historically, failed to enforce any standards of confinement, leading to great suffering of the people who are held in custody.⁵

¹ COMAR 12.13.03, Correctional Standards.

² W. Weissert, “While signing Laken Riley Act, Trump says he’ll send ‘worst criminal aliens’ to Guantanamo, Associated Press, January 29, 2025, <https://apnews.com/article/trump-signs-laken-riley-act-immigration-crackdown-30a34248fa984d8d46b809c3e6d8731a>.

³ M. Anderson, “Trump’s challenge: where to house millions of immigrant detainees” NPR, January 16, 2025 <https://www.npr.org/2025/01/16/nx-s1-5218641/immigrant-detention-trump-deportation-plans>

⁴ Immigrant Justice Center, Policy Brief| Snapshot of ICE Detention: Inhumane Conditions and Alarming Expansion, September 2024, <https://immigrantjustice.org/research-items/policy-brief-snapshot-ice-detention-inhumane-conditions-and-alarming-expansion>; Human Rights Watch, Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention, https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention?gad_source=1&gclid=Cj0KCQiAo5u6BhDJARIsAAVoDWs8Xq7vBXuqesO0f5Fg7XCRp4_z3hW7-NUaRy8VMw8PPuWGTKr6AdYaAuCVEALw_wcB; A. Shahshahani & K. Burke, Deploying International Law to Combat Forced Labor in Immigration Detention Centers, Vol. 37, Georgetown Immigration Law Journal, page 57; ACLU of Northern California, Resistance, Retaliation, Repression: Two Years in California Immigration Detention, August 28, 2024, <https://www.aclunc.org/publications/resistance-retaliation-repression-two-years-california-immigration-detention>.

⁵ Z. Warsi, “Hundreds of immigrants have reported sexual abuse at ICE Facilities. Most are not investigated,” PBS News, July 21, 2023 <https://www.pbs.org/newshour/nation/hundreds-of-immigrants-have-reported-sexual-abuse-at-ice-facilities-most-cases-arent-investigated>.

It is important to note two things about this bill:

First, the legislation does not create any new obligations or requirements. It simply establishes a mechanism for the Attorney General to enforce existing laws to protect detained Marylanders. The Supremacy Clause of the United States Constitution imposes limitations on States from regulating the conduct of the United States Government and Government contractors. Article VI, Clause 2 of the U.S. Constitution. The state cannot create laws or regulations that conflict with federal law. *United States v. Washington*, 596 U.S. 832 (2022).

Second, the legislation applies to all private detention centers, not just those that are operated by contractors for the federal government. States are prohibited by the intergovernmental immunity doctrine from singling out federal contractors for special treatment. *Id.* Legislation that exclusively focused on immigration detention has been struck down as unconstitutional. *United States v. California*, 921 F.3d 865, 882 (9th Cir 2019); *GEO Grp., Inc. v. Newsom*, 15 F.4th 919, 924 (9th Cir. 2021).

As the Attorney General, I have an obligation to ensure that the rights of all Marylanders are respected and protected, even those who are in detention. Should private detention facilities be established in Maryland, it is essential that there be a mechanism to ensure that those detained are treated with the dignity and respect that our constitution requires.

For these reasons, I urge a favorable report on **Senate Bill 786**.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown", with a stylized, cursive script.

Anthony G. Brown