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**Before the Senate Judicial Proceedings Committee
Testimony of Jonathan M. Smith, Chief, Civil Rights Division
Senate Bill 786 – Correctional Service – Private Detention Facilities Deprivation of Rights,
Privileges, and Immunities
February 19, 2025**

Senate Bill 786 creates a mechanism for the Attorney General of the State of Maryland to investigate the treatment of persons confined in private detention facilities and to remediate conditions that violate the laws or constitutions of the State of Maryland or the United States. While Maryland currently has no private detention facilities, the private prison industry continues to grow. President Trump's proposal for mass detention is already putting pressure on the immigration detention system, which is leading to the prospect of the increased use of private facilities.¹ Given the long record of abusive condition is private detention,² Senate Bill 786 provides essential safeguards to protect Maryland residents.

Senate Bill 786 carefully balances the interests of the State to ensure that private detention conditions comply with the constitution and laws, while at the same time avoiding operational oversight that will intrude on ordinary detention center operations or come into conflict with federal interests.

Senate Bill 786 gives the Attorney General the authority to conduct and investigate: The legislation provides the Attorney General with the mechanisms to investigate conditions before bringing a civil action. If enacted, the Attorney General will have the authority to issue subpoenas, take testimony,

¹ PBS News, Immigration detention beds may be maxed out as Trump promises mass deportation, January 23, 2025 [Immigrant detention beds may be maxed out as Trump promises mass deportations | PBS News](https://www.pbs.org/news/immigration-detention-beds-may-be-maxed-out-as-trump-promises-mass-deportations/).

² 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>.

and engage in a tour of the facilities. Pre-litigation investigative powers will make the enforcement more efficient but also encourage non-litigation remediation. The investigation can either fulsomely identify the issues and encourage the detention center to address them or confirm that conditions do not violate the law and avoid unnecessary litigation.

If the Attorney General finds reasonable cause to believe that there is a violation of the constitution or laws, the Attorney General is required to provide a report summarizing the violation and the remedial measures necessary to address them: In order to provide an opportunity for the detention center to correct any violation found by the Attorney General, the Bill requires that the Attorney General provide a report of his findings and identifies necessary remedial measure. The Attorney General must then give the detention center a reasonable time to address the findings before bringing litigation.

This approach is modeled after the federal Civil Rights for Institutionalized Persons Act (CRIPA).³ Since CRIPA was enacted in 1980, the federal Department of Justice has engaged in scores of investigations. As a result of the requirement to provide a findings letter and an opportunity to resolve the dispute pre-litigation, the vast majority of prison and jail conditions matters have been addressed through prelitigation settlements.⁴

The Attorney General can bring an action without a findings report in emergency circumstances: The legislation does not tie the hands of the Attorney General in emergency situations. Where there is an imminent and serious threat to life, health, or public safety, he may bring an action without the requirement of issuing a findings report.

Proposed Amendment

Finally, we recommend a minor amendment to the Bill. The term “detention facility operator” should replace “local governing body of the County in which the violation occurred” on page 3 lines 3-4 and 23–24. This will ensure that the report is provided to the entity responsible for the violation.

³ 42 USC § 1977a.

⁴ [Civil Rights Division | Special Litigation Section Cases and Matters](#)