

# HOUSE BILL 16

E4

(11r0543)

## ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegate Stewart**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

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; *prohibiting a law enforcement agent*  
10 *from performing certain acts, subject to certain exceptions;* providing for the  
11 construction of this Act; defining certain terms; making the provisions of this Act  
12 severable; and generally relating to the detention of immigration-related detainees  
13 in Maryland.

14 BY repealing and reenacting, with amendments,

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber/conference committee amendments.



1 Article – Correctional Services  
 2 Section 1–101  
 3 Annotated Code of Maryland  
 4 (2017 Replacement Volume and 2020 Supplement)

5 BY adding to  
 6 Article – Correctional Services  
 7 Section 1–102 ~~and 1–103~~  
 8 Annotated Code of Maryland  
 9 (2017 Replacement Volume and 2020 Supplement)

10 BY adding to  
 11 Article – Criminal Procedure  
 12 Section 5–104  
 13 Annotated Code of Maryland  
 14 (2018 Replacement Volume and 2020 Supplement)

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

17 **Article – Correctional Services**

18 1–101.

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

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

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

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

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

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

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

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

32 (I) “IMMIGRATION DETENTION AGREEMENT” MEANS ANY CONTRACT,  
 33 AGREEMENT, INTERGOVERNMENTAL SERVICE AGREEMENT, OR MEMORANDUM OF

1 UNDERSTANDING THAT AUTHORIZES A STATE OR LOCAL GOVERNMENT AGENCY TO  
2 HOUSE OR DETAIN INDIVIDUALS FOR FEDERAL CIVIL IMMIGRATION VIOLATIONS.

3 (J) "IMMIGRATION DETENTION FACILITY" MEANS ANY BUILDING, FACILITY,  
4 OR STRUCTURE USED, IN WHOLE OR IN PART, TO HOUSE OR DETAIN INDIVIDUALS  
5 FOR FEDERAL CIVIL IMMIGRATION VIOLATIONS.

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

8 [(j)] (L) "Local correctional facility" means a correctional facility that is  
9 operated:

10 (1) by one or more counties; or

11 (2) by a municipal corporation.

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

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

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

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

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

22 (2) the District of Columbia.

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

25 (2) "State correctional facility" includes:

26 (i) the Patuxent Institution;

27 (ii) the Baltimore City Detention Center; and

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

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

2    ~~1-102.~~

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

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

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

12            ~~(3) DETENTION REQUIRES THE EXERCISE OF COERCIVE POLICE~~  
13 ~~POWERS OVER INDIVIDUALS THAT SHOULD NOT BE DELEGATED TO THE PRIVATE~~  
14 ~~SECTOR AND IS DISTINGUISHABLE FROM OTHER GOVERNMENTAL FUNCTIONS THAT~~  
15 ~~MAY BE PRIVATIZED;~~

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

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

24    ~~1-103.~~ 1-102.

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

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

31            (2) PAY, REIMBURSE, SUBSIDIZE, OR DEFRAY IN ANY WAY ANY COSTS  
32 RELATED TO THE SALE, PURCHASE, CONSTRUCTION, DEVELOPMENT, OWNERSHIP,

1 MANAGEMENT, OR OPERATION OF AN IMMIGRATION DETENTION FACILITY THAT IS  
2 OR WILL BE OWNED, MANAGED, OR OPERATED, IN WHOLE OR IN PART, BY A PRIVATE  
3 ENTITY;

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

7 (4) OTHERWISE GIVE ANY FINANCIAL INCENTIVE OR BENEFIT TO ANY  
8 PRIVATE ENTITY OR PERSON IN CONNECTION WITH THE SALE, PURCHASE,  
9 CONSTRUCTION, DEVELOPMENT, OWNERSHIP, MANAGEMENT, OR OPERATION OF AN  
10 IMMIGRATION DETENTION FACILITY THAT IS OR WILL BE OWNED, MANAGED, OR  
11 OPERATED, IN WHOLE OR IN PART, BY A PRIVATE ENTITY.

12 (B) THE STATE, A UNIT OF LOCAL GOVERNMENT, A COUNTY SHERIFF, OR AN  
13 AGENCY, OFFICER, EMPLOYEE, OR AGENT OF THE STATE OR A UNIT OF LOCAL  
14 GOVERNMENT MAY NOT APPROVE A ZONING VARIANCE OR ISSUE A PERMIT FOR THE  
15 CONSTRUCTION OF A BUILDING OR THE REUSE OF EXISTING BUILDINGS OR  
16 STRUCTURES BY ANY PRIVATE ENTITY FOR USE AS AN IMMIGRATION DETENTION  
17 FACILITY UNLESS THE GOVERNMENTAL ENTITY:

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

21 (2) SOLICITS AND HEARS PUBLIC COMMENTS ON THE PROPOSED  
22 ZONING VARIANCE OR PERMIT ACTION IN AT LEAST TWO SEPARATE MEETINGS OPEN  
23 TO THE PUBLIC.

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

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

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

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

5 *Article – Criminal Procedure*

6 5-104.

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

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

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

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

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

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

21 (6) “LOCAL CORRECTIONAL FACILITY” HAS THE MEANING STATED IN  
22 § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

23 (7) “STATE CORRECTIONAL FACILITY” HAS THE MEANING STATED IN  
24 § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

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

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

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

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

5                   1. FOR THE PURPOSE OF INVESTIGATING THE  
6 INDIVIDUAL'S CITIZENSHIP OR IMMIGRATION STATUS; OR

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

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

11                   (IV) COERCE, INTIMIDATE, OR THREATEN ANY INDIVIDUAL  
12 BASED ON THE ACTUAL OR PERCEIVED CITIZENSHIP OR IMMIGRATION STATUS OF  
13 THE INDIVIDUAL OR:

14                   1. THE INDIVIDUAL'S FAMILY MEMBER;

15                   2. THE INDIVIDUAL'S HOUSEHOLD MEMBER;

16                   3. THE INDIVIDUAL'S LEGAL GUARDIAN; OR

17                   4. ANOTHER INDIVIDUAL FOR WHOM THE INDIVIDUAL IS  
18 A LEGAL GUARDIAN.

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

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

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

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

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

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
7 1, 2021.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.