

1 HOUSE BILL 624

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LAW ENFORCEMENT; ENACTING THE IMMIGRATION DETENTION
12 FACILITIES ACT; RESTRICTING CONTRACTS FOR IMMIGRATION DETENTION
13 FACILITIES; IMPOSING REQUIREMENTS FOR IMMIGRATION DETENTION
14 FACILITIES; REQUIRING INSPECTION AND REPORTING BY THE
15 CORRECTIONS DEPARTMENT; CREATING THE NEW MEXICO INDEPENDENT
16 MONITORING COMMISSIONS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
20 cited as the "Immigration Detention Facilities Act".

21 SECTION 2. [NEW MATERIAL] DEFINITION.--As used in the
22 Immigration Detention Facilities Act, "immigration detention
23 facility" means a facility that houses or detains for any
24 length of time non-United States citizens for purposes of civil
25 immigration custody or detention.

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1 SECTION 3. [NEW MATERIAL] CONTRACTS FOR DETENTION

2 FACILITIES--PERMITS FOR DETENTION FACILITIES.--

3 A. A non-federal law enforcement agency that does
4 not, as of July 1, 2019, have a contract with the federal
5 government or a private corporation to house or detain
6 noncitizens for purposes of civil immigration custody shall
7 not, after June 30, 2019, enter into a contract with the
8 federal government or a private corporation to house or detain
9 in an immigration detention facility noncitizens for purposes
10 of civil immigration custody.

11 B. A non-federal law enforcement agency that, as of
12 July 1, 2019, has an existing contract with the federal
13 government or a private corporation to detain noncitizens for
14 purposes of civil immigration custody shall not, after June 30,
15 2019, renew or modify that contract in a manner that would
16 expand the maximum number of contract beds that may be utilized
17 to house or detain in an immigration detention facility
18 noncitizens for purposes of civil immigration custody.

19 C. The state or a political subdivision of the
20 state shall not, after June 30, 2019, approve or sign a deed,
21 instrument or other document related to a conveyance of land,
22 or issue a permit for the building or reuse of existing
23 buildings by any private corporation, contractor or vendor, to
24 house or detain noncitizens for purposes of civil immigration
25 proceedings unless the state or political subdivision has:

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1 (1) provided notice to the public of the
2 proposed conveyance or permitting action at least one hundred
3 eighty days before execution of the conveyance or permit; and

4 (2) solicited and heard public comments on the
5 proposed conveyance or permit action in at least two separate
6 meetings open to the public.

7 SECTION 4. [NEW MATERIAL] CONTRACTS RELATED TO MINORS.--

8 A. A non-federal law enforcement agency that does
9 not, as of July 1, 2019, have a contract with the federal
10 government to house or detain an accompanied or unaccompanied
11 minor in the custody of or detained by the federal office of
12 refugee resettlement or the federal department of homeland
13 security is prohibited from entering into a contract with the
14 federal government to house minors in an immigration detention
15 facility.

16 B. A non-federal law enforcement agency that, as of
17 July 1, 2019, has an existing contract with the federal
18 government to house or detain an accompanied or unaccompanied
19 minor in the custody of or detained by the federal office of
20 refugee resettlement or the federal department of homeland
21 security shall not renew or modify that contract in such a way
22 as to expand the maximum number of contract beds that may be
23 utilized to house minors in an immigration detention facility.

24 C. This section does not apply to temporary housing
25 of any accompanied or unaccompanied minor in less restrictive

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1 settings when the children, youth and families department
2 certifies a necessity for a contract based on changing
3 conditions of the population in need and if the housing
4 contract:

5 (1) is for a period not to exceed three months
6 and is nonrenewable on a long-term or permanent basis; and

7 (2) meets all applicable federal and state
8 standards for that housing.

9 SECTION 5. [NEW MATERIAL] MODIFICATION OR RENEWAL OF
10 DETENTION CONTRACTS--ACCESS TO COUNSEL AND INTERPRETERS--SEXUAL
11 ORIENTATION--CIVIL ENFORCEMENT--PENALTY.--

12 A. If a non-federal law enforcement agency renews a
13 contract, or modifies a contract to extend the length of the
14 contract, to detain immigrants in civil immigration
15 proceedings, it shall detain immigrants only pursuant to a
16 contract that requires the immigration detention facility
17 operator to adhere to applicable federal and state standards
18 for detaining those individuals.

19 B. Nothing in this section shall prohibit an
20 immigration detention facility operator from exceeding
21 applicable federal and state standards for detaining those
22 individuals.

23 C. An immigration detention facility operator, an
24 agent of an immigration detention facility or a person acting
25 on behalf of an immigration detention facility shall not

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1 deprive a noncitizen in civil immigration proceedings access to
2 an attorney or any other person authorized by the federal
3 department of justice or access to a translator or
4 interpretation services.

5 D. A noncitizen shall not be involuntarily placed
6 in segregated housing in an immigration detention facility
7 because of the noncitizen's actual or perceived gender, gender
8 identity, gender expression or sexual orientation. A
9 transgender or gender-nonconforming noncitizen shall be given
10 the option to choose a housing placement consistent with the
11 noncitizen's gender identity.

12 E. If an immigration detention facility operator,
13 agent of an immigration detention facility or person acting on
14 behalf of an immigration detention facility violates applicable
15 federal or state standards for detaining those individuals, the
16 attorney general, a district attorney or a municipal or tribal
17 attorney may bring a civil action for injunctive and other
18 appropriate equitable relief.

19 F. A person who has suffered injury as a result of
20 an immigration detention facility operator, agent of an
21 immigration detention facility or person acting on behalf of an
22 immigration detention facility violating applicable federal or
23 state standards for detaining individuals in an immigration
24 detention facility has the right to pursue a private right of
25 action in district court. Upon a showing that the plaintiff

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1 has suffered injury, the court may award damages and punitive
2 damages and order injunctive relief and shall award the cost of
3 the suit, including reasonable attorney fees. The relief
4 provided in this section is in addition to remedies otherwise
5 available pursuant to common law or other New Mexico statutes.

6 SECTION 6. ~~[NEW MATERIAL]~~ INSPECTION OF IMMIGRATION
7 DETENTION FACILITIES--REPORTING BY THE SECRETARY OF
8 CORRECTIONS.--

9 A. The secretary of corrections shall engage in
10 announced or unannounced reviews of immigration detention
11 facilities in which noncitizens are being housed or detained
12 for purposes of civil immigration proceedings in New Mexico,
13 including an immigration detention facility in which an
14 accompanied or unaccompanied minor is housed or detained on
15 behalf of, or pursuant to a contract with, the federal office
16 of refugee resettlement or federal department of homeland
17 security. Facility reviews by the secretary of corrections may
18 be announced or unannounced to the immigration detention
19 facility. The secretary of corrections shall have authority
20 over which facilities may be reviewed and when. The secretary
21 of corrections shall provide, no later than the thirtieth day
22 of January each year except 2020, updates and information to
23 the legislature and the governor, including a written summary
24 of findings, if appropriate, regarding the progress of these
25 reviews and any relevant findings.

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1 B. By no later than December 31, 2019, the
2 secretary of corrections shall complete a review of immigration
3 detention facilities in which noncitizens are being housed or
4 detained for purposes of civil immigration proceedings in New
5 Mexico, including immigration detention facilities in which an
6 accompanied or unaccompanied minor is housed or detained on
7 behalf of, or pursuant to a contract with, the federal office
8 of refugee resettlement or the federal department of homeland
9 security.

10 C. A review performed pursuant to Subsection B of
11 this section shall be done in consultation with civil, human
12 and migrant rights organizations, or individuals or
13 organizations with a demonstrated commitment to humane
14 treatment of vulnerable populations, and shall include a review
15 of the:

- 16 (1) conditions of confinement;
17 (2) standard of care and due process provided
18 to the individuals described in Subsection B of this section;
19 and
20 (3) circumstances around the apprehension and
21 transfer to the facility of the individuals described in
22 Subsection B of this section.

23 D. By no later than December 31, 2019, the
24 secretary of corrections may provide the legislature and the
25 governor with a comprehensive report outlining the findings of

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1 the review described in Subsection A of this section, which
2 report shall be posted on the website maintained by the
3 corrections department and shall be otherwise made available to
4 the public upon its release to the legislature and the
5 governor.

6 E. The secretary of corrections shall be provided
7 all necessary access for the observations necessary to
8 effectuate reviews required pursuant to this section, including
9 access to detainees, officials, personnel and records.

10 F. As used in this section, "secretary of
11 corrections" means the secretary of corrections or the
12 authorized designee of the secretary.

13 SECTION 7. [NEW MATERIAL] INDEPENDENT MONITORING
14 COMMISSIONS.--

15 A. The "northern New Mexico independent monitoring
16 commission" and the "southern New Mexico independent monitoring
17 commission" are created and are administratively attached to
18 the office of the attorney general.

19 B. Each New Mexico independent monitoring
20 commission consists of seven members from civil, human and
21 migrant rights organizations, or individuals from organizations
22 with a demonstrated commitment to humane treatment of
23 vulnerable populations, appointed by the attorney general.

24 C. The appointed members of the New Mexico
25 independent monitoring commissions shall serve at the pleasure

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1 of the attorney general, and the members' appointments shall be
2 reviewed at the commencement of each term of the attorney
3 general. The attorney general shall designate one member of
4 each commission as the chair, and the position of the chair
5 shall be limited by a term of two years.

6 D. The New Mexico independent monitoring
7 commissions shall meet, pursuant to the Open Meetings Act, at
8 the call of the chair at least four times annually. For the
9 purposes of conducting business, a majority of the members of
10 each commission constitutes a quorum.

11 E. Members of the New Mexico independent monitoring
12 commissions shall not be paid but shall receive per diem and
13 mileage as provided in the Per Diem and Mileage Act.

14 F. A member of the New Mexico independent
15 monitoring commissions may, at any time, enter an immigration
16 detention facility within the geographic jurisdiction of the
17 member's independent monitoring commission and have free access
18 to every part of it and to every individual detained therein.
19 Members of the New Mexico independent monitoring commissions
20 shall have access to individuals contained in any specialized
21 housing, residence or confinement that is part of the
22 immigration detention facility.

23 G. The New Mexico independent monitoring
24 commissions shall:

25 (1) make announced and unannounced visits to

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1 immigration detention facilities;

2 (2) conduct hearings on complaints made by
3 persons detained at the immigration detention facilities;

4 (3) have access to all records, logs,
5 memoranda, video and audio recordings and internal documents
6 within an immigration detention facility except for medical
7 records that may be accessed only with the informed consent of
8 a detained individual; and

9 (4) make an annual report to the attorney
10 general regarding the commission's activities.

11 H. The northern New Mexico independent monitoring
12 commission shall have jurisdiction over all immigration
13 detention facilities located north of the thirty-fourth
14 parallel. The southern New Mexico independent monitoring
15 commission shall have jurisdiction over all immigration
16 detention facilities located south of the thirty-fourth
17 parallel.

18 **SECTION 8. SEVERABILITY.**--If any part or application of
19 this act is held invalid, the remainder or its application to
20 other situations or persons shall not be affected.