

HOUSE BILL 72

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

## INTRODUCED BY

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## AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE IMMIGRATION DETENTION FACILITIES ACT; RESTRICTING CONTRACTS FOR IMMIGRATION DETENTION FACILITIES; IMPOSING REQUIREMENTS FOR IMMIGRATION DETENTION FACILITIES; REQUIRING INSPECTION AND REPORTING BY THE ATTORNEY GENERAL.

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

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

**SECTION 2. [NEW MATERIAL] DEFINITION.**--As used in the Immigration Detention Facilities Act, "immigration detention facility" means a facility that houses or detains for any length of time noncitizens for purposes of civil immigration custody or detention.

SECTION 3. [NEW MATERIAL] LEGISLATIVE INTENT.--

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1                   A. In keeping with its obligation to safeguard the  
2 humane and just treatment of all individuals located in New  
3 Mexico, it is the intent of the legislature that this bill  
4 declare:

5                   (1) that the state does not tolerate profiting  
6 from the incarceration of people held in immigration detention;  
7 and

8                   (2) the state's desire to ensure the just and  
9 humane treatment of its most vulnerable populations.

10                  B. It is the further intent of the legislature to  
11 ensure the uniform treatment of individuals detained within  
12 county, municipal or private immigration detention facilities  
13 operating in New Mexico in a manner that meets or exceeds the  
14 federal standards and other applicable legal requirements.

15                  SECTION 4. [NEW MATERIAL] CONTRACTS FOR DETENTION  
16 FACILITIES--PERMITS FOR DETENTION FACILITIES.--

17                  A. A county or municipality that does not, as of  
18 July 1, 2020, have a contract with the federal government or a  
19 private corporation to house or detain noncitizens for purposes  
20 of civil immigration custody, shall not, after June 30, 2020,  
21 enter into a contract with the federal government or a private  
22 corporation to house or detain in an immigration detention  
23 facility noncitizens for purposes of civil immigration custody.

24                  B. A county or municipality that, as of July 1,  
25 2020, has an existing contract with the federal government or a

1 private corporation to detain noncitizens for purposes of civil  
2 immigration custody, shall not, after June 30, 2020, renew or  
3 modify that contract in a manner that would expand the maximum  
4 number of contract beds that may be utilized to house or detain  
5 in an immigration detention facility noncitizens for purposes  
6 of civil immigration custody.

7 C. A county or municipality that, as of July 1,  
8 2020, has an existing contract with a private corporation to  
9 detain noncitizens for purposes of civil immigration custody,  
10 shall not, after June 30, 2020, enter into or renew a contract  
11 or modify a contract to extend the length of the contract.

12 D. The state or a political subdivision of the  
13 state shall not, after June 30, 2020, approve or sign a deed,  
14 instrument or other document related to a conveyance of land,  
15 or issue a permit for the building or reuse of existing  
16 buildings by any private corporation, contractor or vendor, to  
17 house or detain noncitizens for purposes of civil immigration  
18 proceedings unless the state or political subdivision has:

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

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

25 E. Any immigration detention facility that detains

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1 a noncitizen pursuant to a contract with a county or  
2 municipality is subject to the Inspection of Public Records  
3 Act.

4 **SECTION 5. [NEW MATERIAL] CONTRACTS RELATED TO MINORS.--**

5 A. A county or municipality that does not, as of  
6 July 1, 2020, have a contract with the federal government to  
7 house or detain an accompanied or unaccompanied minor in the  
8 custody of or detained by the federal office of refugee  
9 resettlement or the federal department of homeland security  
10 shall not enter into a contract with the federal government to  
11 house minors in an immigration detention facility.

12 B. A county or municipality that, as of July 1,  
13 2020, has an existing contract with the federal government to  
14 house or detain an accompanied or unaccompanied minor in the  
15 custody of or detained by the federal office of refugee  
16 resettlement or the federal department of homeland security  
17 shall not renew or modify that contract in such a way as to  
18 expand the maximum number of contract beds that may be utilized  
19 to house minors in an immigration detention facility.

20 C. This section does not apply to temporary housing  
21 of any accompanied or unaccompanied minor in less restrictive  
22 settings when the children, youth and families department  
23 certifies a necessity for a contract based on changing  
24 conditions of the population in need and if the housing  
25 contract:

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(1) is temporary in nature and nonrenewable on a long-term or permanent basis; and

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

SECTION 6. [NEW MATERIAL] ACCESS TO COUNSEL AND  
INTERPRETERS--SEXUAL ORIENTATION--CIVIL ENFORCEMENT--PENALTY.--

A. A county, municipal or private immigration detention facility operator, an agent of an immigration detention facility or a person acting on behalf of an immigration detention facility shall not deprive a noncitizen in civil immigration proceedings access to an attorney or any other person authorized by the United States department of justice or access to a translator or interpretation services.

B. A noncitizen shall not be involuntarily placed in segregated housing in a county, municipal or private immigration detention facility because of the noncitizen's actual or perceived gender, gender identity, gender expression or sexual orientation. A transgender or gender-nonconforming noncitizen shall be given the option to choose a housing placement consistent with the noncitizen's gender identity.

C. If a county, municipal or private immigration detention facility operator, an agent of an immigration detention facility or a person acting on behalf of an immigration detention facility violates applicable federal or state standards for detaining noncitizens, the attorney general

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1 or designee, a district attorney or a municipal or tribal  
2 attorney may bring a civil action for injunctive and other  
3 appropriate equitable relief. Any such action may also seek  
4 damages on behalf of noncitizens injured by an immigration  
5 detention facility or a person acting on behalf of an  
6 immigration detention facility. If damages are requested, they  
7 shall be assessed individually against each person that is  
8 determined to have violated this section, and the damages shall  
9 be awarded among individuals who have been injured pursuant to  
10 this section.

11 **SECTION 7. [NEW MATERIAL] INSPECTION OF IMMIGRATION**  
12 **DETENTION FACILITIES--REPORTING BY THE ATTORNEY GENERAL.--**

13 A. The attorney general or designee shall review  
14 county, municipal or private immigration detention facilities  
15 in which noncitizens are being housed or detained for purposes  
16 of civil immigration proceedings in New Mexico, including a  
17 county, municipal or private immigration detention facility in  
18 which an accompanied or unaccompanied minor is housed or  
19 detained on behalf of, or pursuant to a contract with, the  
20 federal office of refugee resettlement or federal department of  
21 homeland security. Facility reviews by the attorney general  
22 may be announced or unannounced to the operator of the  
23 immigration detention facility. The attorney general shall  
24 have authority over which facilities may be reviewed and when.

25 B. By no later than September 30, 2021, the

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1 attorney general shall complete a review of county, municipal  
2 or private immigration detention facilities in which  
3 noncitizens are being housed or detained for purposes of civil  
4 immigration proceedings in New Mexico, including county,  
5 municipal or private immigration detention facilities in which  
6 an 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. The review performed pursuant to Subsection B of  
11 this section shall include a review of the:

12 (1) conditions of confinement;  
13 (2) standard of care and due process provided  
14 to detainees; and  
15 (3) circumstances around detainees'  
16 apprehension and transfer to the facility.

17 D. By no later than January 15, 2022, the attorney  
18 general shall provide the legislature and the governor with a  
19 comprehensive report outlining the findings of the review  
20 described in Subsection B of this section, which report shall  
21 be posted on the website maintained by the attorney general and  
22 shall be otherwise made available to the public upon its  
23 release to the legislature and the governor.

24 E. The attorney general shall conduct annual  
25 reviews of the immigration detention facilities pursuant to

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1 Subsections A and C of this section and shall provide annual  
2 reports to the legislature and the governor, including a  
3 written summary of findings, if appropriate, regarding the  
4 progress of these reviews and any relevant findings. These  
5 reports shall be provided to the legislature and the governor  
6 no later than January 15 of each year. The office of the  
7 attorney general shall post these reports on its website.

8 F. The attorney general shall be provided all  
9 necessary access by a county, municipal or private immigration  
10 detention facility in which noncitizens are being housed or  
11 detained for purposes of civil immigration proceedings in New  
12 Mexico for the observations necessary to effectuate reviews  
13 required pursuant to this section, including access to  
14 detainees, officials, personnel and records. The attorney  
15 general may promulgate rules pursuant to this section. The  
16 attorney general may initiate appropriate proceedings to  
17 enforce the provisions of this section and any rules the  
18 attorney general promulgates pursuant to this section.

19 **SECTION 8. SEVERABILITY.**--If any part or application of  
20 the Immigration Detention Facilities Act is held invalid, the  
21 remainder or its application to other situations or persons  
22 shall not be affected.