

FREEDOM FOR IMMIGRANTS'

# Guide to: **DIGNITY NOT DETENTION**



#ENDDETENTION

## A Guide to Dignity Not Detention In Your State

The Dignity Not Detention Act, passed in 2017 in California, is the first law in the country to halt immigration detention growth and create more transparency and accountability in the U.S. immigration detention system. This is huge because California detains a quarter of all people in U.S. immigration detention each year. What California does has a dramatic effect on the immigration detention context nationally.

The Dignity Not Detention Act in California was co-sponsored by Freedom for Immigrants (formerly Community Initiatives for Visiting Immigrants in Confinement - CIVIC) and the the Immigrant Legal Resource Center (ILRC). It was authored by Senator Ricardo Lara. The first effort to pass this bill in 2016 as SB 1289 was vetoed by Governor Jerry Brown. In 2017, the bill was passed through two separate bills, SB 29, and an amendment to the state budget, AB 103.

The bills that were signed into law in California are not perfect, but they are a huge step forward. Essentially, the bills place a moratorium on immigration detention growth in the state of California. Because three of the four privately-run immigration detention facilities currently operating in California have a contract with a city, we were able to regulate their growth. For the privately-run immigration detention facilities that do not contract with a city, we cannot prevent their expansion. However, we included language to require more public transparency and a specific public comment period for whenever a privately-run immigration detention facility is trying to expand, or buy or lease property or buildings.

SB 29 also made private immigration detention facilities subject to the California Public Records Act, which is the state's open record law. Currently, private immigration detention facilities are not subject to the Freedom of Information Act (FOIA) or most state open record laws.

In addition, the bill gave the State Attorney General the power and resources (\$1,000,000 per year for 10 years) to monitor all private and public immigration detention facilities in the state.

We believe other states can follow in California's footsteps and even go a few steps further. In this guide you will find more information about SB 29 and AB 103 as well as model language for building a Dignity Not Detention Act campaign in your state. Ultimately, our goal is to outlaw immigration detention in the United States through a Congressional bill, making Dignity Not Detention the law of the land.

Freedom for Immigrants wants to work with you to run these bills in your home state. We encourage you to contact Christina Fialho at [CFialho@freedomforimmigrants.org](mailto:CFialho@freedomforimmigrants.org) or Liz Martinez at [LMartinez@freedomforimmigrants.org](mailto:LMartinez@freedomforimmigrants.org) for more information.

*"An economy based upon the confinement of people for profit is immoral, and now in the state of California, its expansion is illegal. Governor Brown, Senator Ricardo Lara, the California Legislature, and human rights advocates across the state have come together to pass one of the most important pieces of pro-immigrant legislation in recent history. There is much more work to be done, but this bill is a step forward in the fight to end our costly, inhumane, and unaccountable detention system."*

**-Christina Fialho, an attorney and the co-founder/executive director of Freedom for Immigrants**



# SB 29 SIGNED!



An economy based upon the confinement of people for profit is immoral, and now in the state of California, its expansion is illegal.

SB 29, coupled with AB 103, tells the federal government loud and clear that California will not be a future partner in the expansion of this broken and abusive system.

## SB 29

Law as of January 2018

Checks private immigration jail growth:

- Local government entities (city, county, law enforcement) will no longer be allowed to enter into any new immigration jail contracts with private prison corporations.
- Local government entities with existing private contracts will be prohibited from expanding the number of contract beds.

Increases transparency:

- If a local government entity tries to convey land or issue a permit for a private prison corporation to run an immigration jail, the local government must first 1) provide public notice 180 days before and 2) must hear public comments in at least two public meetings. This allows communities to get notice and organize!
- Makes clear that any immigration jail contracting with a local government entity is subject to the California Public Records Act (ensuring the public right to request records).

Introduced by State Senator Lara  
Coauthors: State Senator Skinner and  
Assembly members Gipson and Gonzalez  
Fletcher, ILRC, CIVIC

## AB 103

Law right now

Checks public immigration jail growth:

- Local government entities (city, county, law enforcement) will no longer be allowed to enter into any new immigration jail contracts.
- Local government entities with existing public contracts will be prohibited from expanding the number of contract beds.

Increases Accountability in all immigration jails:

- Establishes the first state-funded mandate to review conditions in all immigration jails in California. The Attorney General will review both public/private and adult/juvenile immigration jails. The first review is due March 1, 2019 and all reports will be submitted to the Legislature, the Governor, and will be made public.

Policies advocated by State  
Senators Lara and State Senator  
Skinner

November 2017





## Dignity Not Detention Act Model Legislation

This simple guide is designed to help organizations and communities draft, pass, and get signed into law a Dignity Not Detention Act. The purpose of a state-level Dignity Not Detention Act is to stop or check private and public immigration jail growth as well as increase transparency and accountability in all immigration jails.

Section I of this guide provides a step-by-step guide for best practices for initiating state legislation. Section II provides an overview of the model bill language in easy-to-understand terms. Section II provides model language you can use to propose to your legislators a Dignity Not Detention Act.

### **I. How to Pass Dignity Not Detention**

- Step 1. Contact Freedom for Immigrants so we can help you through each of the following steps.
- Step 2. Research pro-immigrant legislation in your home state and determine what state legislators and organizations have been leading on these issues.
- Step 3. Reach out to the organizations to see if they are interested in working in coalition to pass the bill.
- Step 4. Determine which legislator would be the ideal person to author this bill. Set up a meeting.
- Step 5. In the meeting, provide the legislator with section II and section III of this manual, and explain the importance of this issue to your state. You can determine the number of detention facilities, the number of people held in these detention facilities, and the cost for taxpayers per person per day in these facilities by looking at Freedom for Immigrants' map.
- Step 6. Once you have found an author for the bill, we suggest launching the bill with a press conference. Here is our joint press release with Senator Lara and the ILRC: <http://bit.ly/2FZSHBF>
- Step 7. Create a coalition of organizations, consisting of people directly affected by immigration detention, attorneys, and organizers to help bring the bill forward. Set up regular phone calls about the bill with this coalition, while maintaining communication with the author of the bill.
- Step 8. Create an excel spreadsheet of all legislators, and determine which organizations will be reaching out to each legislator. Work with the bill author to create a one-pager on the bill to bring to each meeting.
- Step 9. When the bill is brought to a committee or floor vote, there may be opportunity to provide public testimony. In addition to the author of the bill, it may make sense for someone who is directly affected to speak and one of the nonprofit leaders of this bill to speak.
- Step 10. Begin collecting letters of support for the bill, and write one of your own. The more letters you can get from organizations, sheriff's departments, and cities the better! You will have an opportunity to provide each arm of the legislature and the governor with these letters.
- Step 11. Consider strategic press events at the state capital, and if the bill passes the legislature, consider meeting directly with the governor or governor's office.

## **II. Overview of What Each Section Accomplishes**

### **SECTION 1.**

Section 1 provides an overview of the intent of the legislature with passing the bill. This section is usually drafted by legislative staff.

### **SECTION 2.**

Sections 2(a) and 2(b) essentially put a moratorium on immigration detention expansion by municipal-run jails. Specifically, section 2(a) prevents cities and counties not currently contracting with ICE or any other federal agency or a private prison company from contracting for immigration detention purposes. Section 2(b) prevents cities and counties currently contracting with ICE or any federal agency for immigration detention purposes from expanding the number of beds in their contracts.

Sections 2(c) and 2(d) seek to eliminate private immigration detention facilities. Section 2(c) prevents cities and counties currently contracting with a private immigration detention facility from renewing their contract at the end of the contract term. ICE chooses to enter into an intergovernmental service agreement with a city, which in turn enters into a contract with the private prison corporation; this is done so that the private prison corporation can circumvent open market competition for federal dollars, and the federal government does not have to issue an RFP and entertain the federal bidding process. While ICE will still be able to contract directly with the private prison, ICE will have to go through a formal federal bidding process. Because of constitutional supremacy clause issues, states may not be able to regulate privately-run immigration detention facilities that are not in contract with a city or county; however, private prison companies have to buy or lease land or obtain a permit for new construction for a city or county. So, section 2(d) requires public notice and comment whenever a city or county issues any permit or sells or lease property to an immigration detention facility. Section 2(d) provides the community with at least a larger window to organize the community in opposition of any permits or other conveyances.

Ultimately, the only way to stop ICE from contracting with private immigration detention facilities in your state is to either pass federal legislation or ban private prisons in your state completely; however, because most state governments use private prisons for state prisons, this is often not tenable, as was the case in California.

Section 2(e) makes any immigration detention facility subject to state open record laws, if the facility has a contract with a city or county.

### **SECTION 3.**

Section 3 concerns accompanied and unaccompanied minors. The Homeland Security Act of 2002 gave the Office of Refugee Resettlement (ORR) custody over unaccompanied minors. Federal law requires that ORR feed, shelter, and provide medical care for unaccompanied children until it is able to release them to safe settings with sponsors (usually family members), while they await immigration proceedings. However, the federal government, including ICE, still detains accompanied and unaccompanied minors in locked facilities, such as juvenile jails.

Section 3(a) prevents cities and counties not currently contracting with the federal government from entering into future contracts to detain immigrants under the age of 18 in juvenile halls or other locked detention facilities. Section 3(b) prevents cities and counties currently contracting with the federal government to detain immigrants under the age of 18 in juvenile halls or other locked detention facilities from expanding the number of beds in their

contracts. Section 3(c) makes it clear that this does not apply to facilities that are not “locked” facilities, such as ORR shelters.

#### **SECTION 4.**

Although cities and counties cannot renew contracts with ICE in order to expand bed space, it can renew the contract. When it does, section 4(a) makes them subject to the 2011 ICE Performance-Based National Detention Standards (PBNDS) and an ICE Directive on solitary confinement, which are currently only guidelines that are not legally enforceable. Section 4(b) allows the facility to go beyond the 2011 PBNDS. Section 4(c) makes it clear that the facility cannot deprive a person in immigration detention of access to attorneys or BIA representatives, and section 4(d) protects LGBTQ immigrants from being placed in solitary confinement or the wrong housing unit. Section 4(e) gives the state Attorney General the ability to bring a lawsuit against any facility that fails to comply with section 4.

#### **SECTION 5.**

This section and its subsections mandate that the state Attorney General shall review all private and public immigration detention facilities, including the private immigration detention facilities that are not in contract with a city or county. And these sections provide guidance on how to do so. California’s AB 103 gave this power over a period of 10 years. If at the end of the 10 years, it is clear that these facilities are not operating properly, then the reasoning is that the state could choose to take more drastic steps against all private prisons and immigration detention facilities. Freedom for Immigrants recommends a 5 to 10 year period, ideally concluding on or before 2028 so that together we can push for the abolition of the immigration detention system.

#### **SECTION 6.**

This section protects against challenges to the bill. If a lawsuit is brought against this bill and a portion of the bill is found to be invalid, this section makes it clear that only that section will be void, rather than the entire bill.

### III. Model Bill Language

#### **SECTION 1.**

The Legislature finds and declares the following:

(a) In keeping with its obligation to safeguard the humane and just treatment of all individuals located in **[State]**, it is the intent of the Legislature that this bill declare that the state does not tolerate profiting from the incarceration of people held in immigration detention and the state's desire to ensure the just and humane treatment of our most vulnerable populations.

(b) It is the further intent of the Legislature to ensure the uniform treatment of individuals detained within immigration detention facilities, operating in **[State]**, in a manner that meets or exceeds the federal national standards and other applicable legal requirements.

#### **SEC. 2.**

(a) A city, county, city and county, or local law enforcement agency that does not, as of **[DATE LAW WILL GO INTO EFFECT]**, have a contract with the federal government or any federal agency or a private corporation to house or detain noncitizens for purposes of civil immigration custody, shall not, on and after **[DATE LAW WILL GO INTO EFFECT]**, enter into a contract with the federal government or any federal agency or a private corporation, to house or detain in a locked detention facility noncitizens for purposes of civil immigration custody.

(b) A city, county, city and county, or local law enforcement agency that, as of **[DATE LAW WILL GO INTO EFFECT]**, has an existing contract with the federal government or any federal agency to detain noncitizens for purposes of civil immigration custody, shall not, on and after **[DATE LAW WILL GO INTO EFFECT]**, renew or modify that contract in a manner that would expand the maximum number of contract beds that may be utilized to house or detain in a locked detention facility noncitizens for purposes of civil immigration custody.

(c) A city, county, city and county, or local law enforcement agency that, as of **[DATE LAW WILL GO INTO EFFECT]**, has an existing contract with a private corporation to detain noncitizens for purposes of civil immigration custody, shall not, on and after **[DATE LAW WILL GO INTO EFFECT]**, shall not enter into or renew a contract, or modify a contract to extend the length of the contract.

(d) A city, county, city and county, or public agency shall not, on and after **[DATE LAW WILL GO INTO EFFECT]**, approve or sign a deed, instrument, or other document related to a conveyance of land or issue a permit for the building or reuse of existing buildings by any private corporation, contractor, or vendor to house or detain noncitizens for purposes of civil immigration proceedings unless the city, county, city and county, or public agency has done both of the following:

(1) Provided notice to the public of the proposed conveyance or permitting action at least 180 days before execution of the conveyance or permit.

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

(e) Any facility that detains a noncitizen pursuant to a contract with a city, county, city and county, or a local law enforcement agency is subject to the **[INSERT YOUR STATE OPEN RECORD OR PUBLIC RECORD LAW]**.

### SEC. 3.

(a) A city, county, city and county, or local law enforcement agency that does not, as of **[DATE LAW WILL GO INTO EFFECT]**, have a contract with the federal government or any federal agency to house or detain any accompanied or unaccompanied minor in the custody of or detained by the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement is prohibited from entering into a contract with the federal government or any federal agency to house minors in a locked detention facility.

(b) A city, county, city and county, or local law enforcement agency that, as of June 15, 2017, has an existing contract with the federal government or any federal agency to house or detain any accompanied or unaccompanied minor in the custody of or detained by the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement shall not renew or modify that contract in such a way as to expand the maximum number of contract beds that may be utilized to house minors in a locked detention facility.

(c) This section does not apply to temporary housing of any accompanied or unaccompanied minor in less restrictive settings when the State Department of Social Services certifies a necessity for a contract based on changing conditions of the population in need and if the housing contract meets the following requirements:

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

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

### SEC. 4.

(a) If a city, county, city and county, or a local law enforcement agency chooses to enter into a contract, renews a contract, or modifies a contract to extend the length of the contract, to detain immigrants in civil immigration proceedings, it shall detain immigrants only pursuant to a contract that requires the immigration detention facility operator to adhere to the standards for detaining those individuals described in the 2011 Operations Manual ICE Performance-Based National Detention Standards as corrected and clarified in February 2013 and ICE Directive 11065.1 (Review of the Use of Segregation for ICE Detainees).

(b) Nothing in this section shall prohibit an immigration detention facility operator from exceeding the 2011 Operations Manual ICE Performance-Based National Detention Standards as corrected and clarified in February 2013 or ICE Directive 11065.1 (Review of the Use of Segregation for ICE Detainees).

(c) An 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 any noncitizens in civil immigration proceedings access to an attorney or any other person authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations, or access to a translator or interpretation services.

(d) A noncitizens shall not be involuntarily placed in segregated housing in an immigration detention facility because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation, as defined in **[some states define these terms, often in the state penal code]**. Transgender and gender nonconforming noncitizens shall be given the option to choose a housing placement consistent with their gender identity.

(e) If an immigration detention facility operator, or agent of an immigration detention facility, or person acting on behalf of an immigration detention facility violates subdivision (c) or (d), the 2011 Operations Manual ICE Performance-Based National Detention Standards as corrected and clarified in February 2013, or ICE Directive



11065.1 (Review of the Use of Segregation for ICE Detainees), the Attorney General, or any district attorney or city attorney, may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section, and the penalty shall be awarded to each individual who has been injured under this section.

## **SEC. 5.**

(a) Until **[5-10 Years from Date Law Goes Into Effect]**, the Attorney General, or his or her designee, shall engage in reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in **[State]**, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement. The order and number of facilities to be reviewed shall be determined by the Department of Justice. The Attorney General, or his or her designee, shall have authority over which facilities may be reviewed and when. The Department of Justice shall provide, during the budget process, updates and information to the Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of these reviews and any relevant findings.

(b) The Attorney General, or his or her designee, shall, on or before **[15 Months from Date Law Goes Into Effect]**, conduct a review of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement. The order and number of facilities to be reviewed shall be determined by the Department of Justice.

(1) This review shall include, but not be limited to, the following:

(A) A review of the conditions of confinement.

(B) A review of the standard of care and due process provided to the individuals described in subdivision (a).

(C) A review of the circumstances around their apprehension and transfer to the facility.

(2) The Attorney General, or his or her designee, shall provide, on or before **[15 Months from Date Law Goes Into Effect]**, the Legislature and the Governor with a comprehensive report outlining the findings of the review described in this subdivision, which shall be posted on the Attorney General's Internet Web site and otherwise made available to the public upon its release to the Legislature and the Governor. The Department of Justice shall provide, during the budget process, updates and information to the Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of the review described in this subdivision and any relevant findings.

(c) The Attorney General, or his or her designee, shall be provided all necessary access for the observations necessary to effectuate reviews required pursuant to this section, including, but not limited to, access to detainees, officials, personnel, and records.

(d) This section shall become inoperative on **[5-10 Years from Date Law Goes Into Effect]**, and, as of **[5-10 Years from Date Law Goes Into Effect]**, is repealed.

**SEC. 6.**

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.