



DETENTION
WATCH NETWORK

State Legislation Bans on Immigration Detention



Immigration and Customs Enforcement (ICE) operates a system of approximately 200 immigration jails across the country, depriving thousands of people of their liberty. Over the last three decades, the ICE detention system has grown drastically as Congress has continued to massively [fund immigration enforcement agencies](#) and multiple presidential administrations have increased their reliance on detention. During this time, advocates, people in detention, and journalists have documented the extensive history of abuse, neglect, and death inside ICE detention centers, leading to a consensus that immigration detention must be phased out. Across the country, communities are leading the charge to reduce immigration detention by passing state legislation to limit the ability of local governments and private prison companies to enter into agreements with ICE.

ICE detention facilities operate through a variety of contracting structures. Nearly 80% of ICE facilities are operated through [contracts with private prison corporations](#) and over 55% of ICE detention facilities are operated through [contracts with ICE and local governments](#), with local governments often contracting with private prison companies to operate the facilities. In response, advocates have introduced two types of anti-detention bills at the state level: intergovernmental service agreement (IGSA) bans and private prison bans. In an IGSA ban, the state prohibits local governments or law enforcement agencies from entering into an agreement, contract, or memorandum to detain people in federal immigration custody for civil immigration violations. In a private prison ban, the state bans any person, business, or local government entity from operating a private immigrant detention facility and prison.

With a lack of action at the federal level, led by advocates and people directly impacted by the system, states have played an important role in reducing immigration detention. California was the first to pass an IGSA ban in 2017 and a private prison ban in 2019. Since then, Illinois, Maryland, New Jersey, New Mexico, New York, Oregon, Washington, and Wisconsin have introduced bills to shut down immigrant detention centers, both private and public. These bills are an indicator of a growing national consensus to dismantle immigration detention. This resource includes an overview of ICE contract structures, legislation advocates have pursued to reduce ICE detention, and lessons learned.



Photo: Fernando Lopez

Deciding the Type of Legislation to Pursue

In deciding whether and what type of legislation to pursue, consider the legislative route that would most impact detention capacity. A significant factor to consider is the type of detention contracts that exist in your state.

There are four types of ICE detention contracts:

1 Intergovernmental Service Agreements (IGSA)

a. ICE contracts with local governments to detain people under ICE custody. Facilities can include local jails or dedicated ICE detention centers. Local governments may contract with private prison companies to operate the facilities.

2 Contract Detention Facilities (CDF)

a. ICE contracts directly with private prison companies to detain people under ICE custody in facilities owned and managed by private prison companies.

3 Service Processing Centers (SPC)

a. Facilities owned by ICE. ICE often contracts with private companies for facility management services (guards, food, maintenance).

4 U.S. Marshals Service Intergovernmental Agreement (USMS IGA)

a. ICE joins an existing USMS contract with a local government or private prison corporation through a contract rider allowing ICE to detain people in a local prison, jail, or private detention facility.

If most of the facilities in your state are IGSAs between the local government or law enforcement agency and ICE, then an IGSA ban could have a greater impact in reducing detention in your community. If private prison companies operate most facilities, then a private prison ban could be most impactful. Also, consider political feasibility and prioritize local community needs. Several states have approached anti-detention legislation as multi-year campaigns, usually introducing an IGSA ban first and followed by a private prison ban as the local fights against private prison corporations that operate larger facilities gain traction.

Intergovernmental Service Agreements Bans

IGSAs with state and local governments account for the majority of ICE detention capacity. [In 2019, ICE had agreements with at least 133 facilities.](#) These types of agreements are more common because they have fewer requirements compared to other contract structures. In an IGSA a state or local government enters into an agreement with ICE. The local government can then subcontract with a private prison company, usually establishing a per diem rate for each person in detention. Private prison companies and ICE have [used IGSAs to prey on local governments experiencing economic hardship.](#)

For example, the City of Adelanto, CA was on the brink of bankruptcy. Seeing the contract with ICE as an opportunity to address their financial turmoil, the city decided to contract with ICE and the GEO Group to detain people at the Adelanto Detention Center. However, like other local governments, the city found that the [ICE detention contract did not generate long-term revenue.](#) When introducing an IGSA ban, debunk and challenge the false narrative that ICE detention contracts generate revenue for the local economy by including an alternative vision for a just transition from a detention-based economy and prioritizing tax dollars for the investment in real community needs.

States that have introduced bills to ban IGSAs:

State	Bill	Year	Status	Notes
California	Senate Bill 29	2017	Passed	
Washington	Senate Bill 5497	2019	Passed	
Wisconsin	Senate Bill 402	2020	Failed to pass	
Illinois	Senate Bill 667	2021	Passed, currently being litigated	
Maryland	House Bill 16	2021	Passed	Includes language that prohibits the local government from contracting with private entities for immigrant detention
New Jersey	Assembly Bill 5207	2021	Passed	Includes language that prohibits private detention facilities from entering or renewing contracts for immigration detention
New York	Assembly Bill 7099	2021	Failed to pass	Includes language that prohibits a person, business, or private entity from owning or operating an immigrant detention facility
Oregon	House Bill 3265	2021	Passed	Includes language that prohibits a person from operating a private immigrant detention facility within the state



Photo: Fernando Lopez

Private Prison Bans

No matter who operates ICE detention facilities, the immigration detention system is inherently flawed, cruel, and unnecessary. Companies like the GEO Group, Inc. (GEO), CoreCivic, and the Management and Training Corporation (MTC) have benefited from expanding the immigrant detention system. Given that private prison companies currently operate nearly 80% of detention beds across the United States, either through IGSAs or contracts directly with ICE, banning private detention can have a massive impact toward ending immigration detention completely.

A private prison ban essentially bans any person, business, or local government entity from operating a private immigrant detention facility and/or prison. There is a growing trend of states passing laws prohibiting private prisons in both the immigration detention and criminal punishment systems. When introducing a private prison ban, first assess any [existing legislation that prohibits private prisons operating under your state’s department of corrections](#). In Illinois, the Private Facility Moratorium Act banned for-profit prison corporations from operating state prisons in the 1990s. In 2019, the [Illinois legislature introduced HB 2040](#) to expand the moratorium to include privately operated immigrant detention centers. If there are no private prison bans, it provides a crucial point of collaboration across movements between immigrant rights advocates and those working on decarceration. This collaboration is especially important because often when contracts end for facilities that incarcerate people in criminal custody they shift to incarcerating people under ICE custody and vice versa.

State that have introduced bills to ban private prisons:

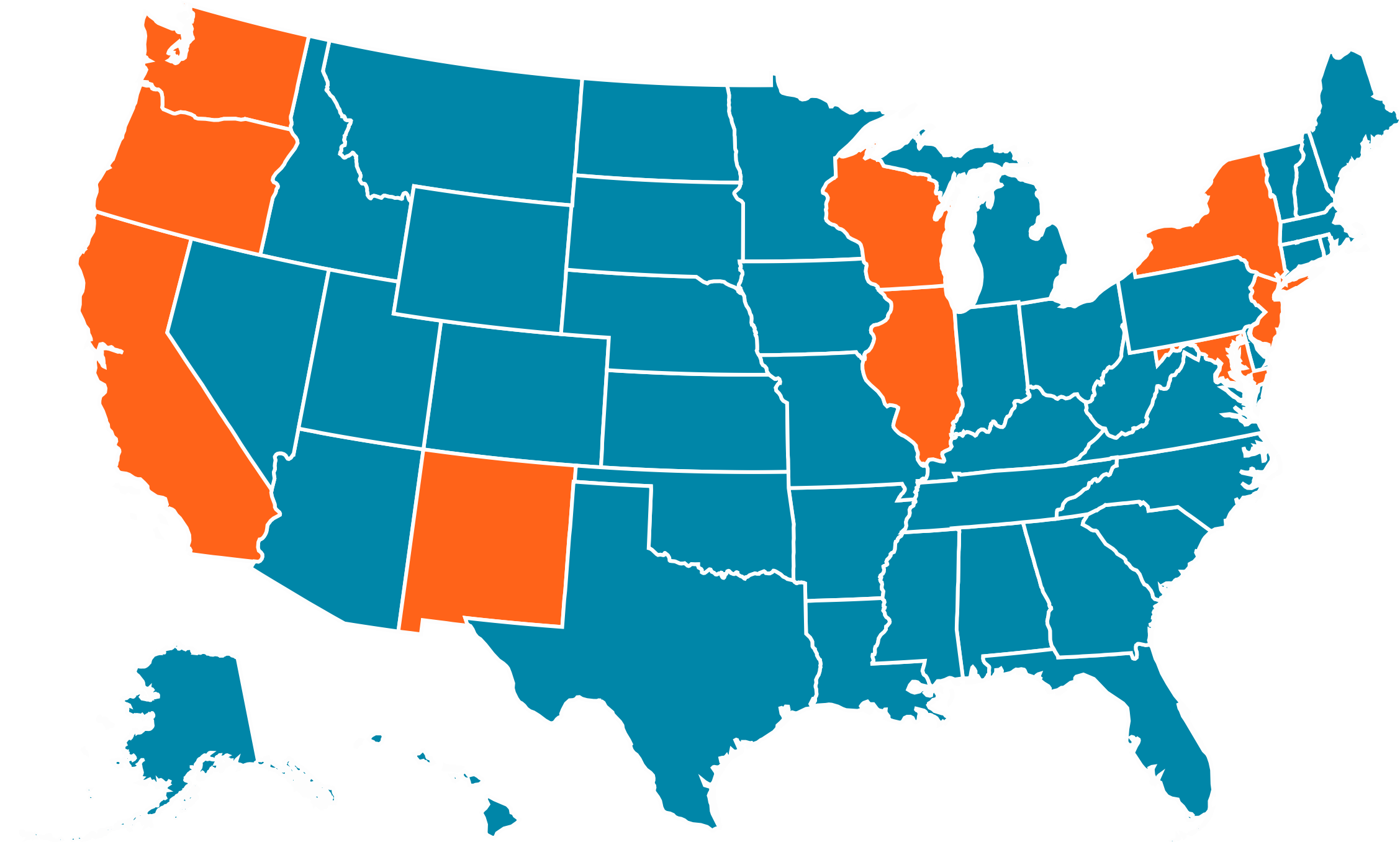
State	Bill	Year	Status
California	Assembly Bill 32	2019	Passed, currently being litigated
New Mexico	House Bill 40	2021	Failed to pass
Illinois	House Bill 2040	2019	Passed
Washington	House Bill 1090	2021	Passed, currently being litigated



Photo: Fernando Lopez

Pending Litigation

Six states including California, Illinois, Maryland, New Jersey, Oregon, and Washington have successfully passed either private prison bans or IGSA bans, while three states including New Mexico, New York and Wisconsin have introduced legislation. These anti-detention wins have been met with legal challenges from private prison companies as well as local and federal governments. In December 2019, the GEO Group filed a lawsuit, followed by Trump's Department of Justice (DOJ), against California for their AB 32 private prison ban. The Biden administration has continued to litigate this case. GEO alleged that AB 32's private prison ban violates the U.S. Constitution's supremacy clause by interfering with the federal government's legal authority to contract with private prison companies to detain people. Almost a year later, the U.S. District Court judge [largely upheld AB32](#), except as applied to private U.S. Marshal facilities. GEO and Biden's DOJ appealed the decision, and on October 5, 2021, in a three-judge panel, including two Trump-appointed judges, the Ninth Circuit ruled that AB32 could not be enforced. [AB 32 will likely be subject to a preliminary injunction](#), putting the law on hold while the district court decides whether the law will be blocked permanently as it follows orders from the Ninth Circuit.



Similarly, the recent wins in Illinois and Washington have also encountered legal challenges from GEO and local governments. Both states are now joining California in long-term legal battles to defend their bills.

Lessons Learned

ICE Circumvention of Anti-detention Legislation

California's AB 32 prohibits new contracts or renewals of existing facilities after January 1, 2020. Only five days after Governor Newsom Signed AB 32, ICE posted a rushed solicitation to expand detention bed capacity in California and extend the contracts' length. ICE used the period between when California passed the law and when it would take effect to secure long-term detention contracts in the state. Similarly, while New Jersey's A5207 awaited Governor Murphy's signature, [ICE extended the Elizabeth Detention Facility contract](#). This means the law won't apply to the Elizabeth Detention Facility until its contract expires in 2023.

If there is momentum for your state to pass an anti-detention bill, prepare for ICE's plans to keep the detention facilities in operation and monitor your local government's activities and ICE solicitations to avoid circumvention. If you have overwhelming support from your general assembly, consider including language to state that the law will become effective as soon as the governor signs it. Usually, states will require a two-thirds vote for a bill to take effect immediately, but check your state laws. In Washington, HB 1090 included the following emergency clause: "It is necessary for the public peace, health and safety that this act takes effect immediately." The emergency clause creates urgency and prevents ICE from modifying or renewing any contract after an anti-detention bill becomes law.



Just Closures

Many local organizers are increasingly looking to end detention center contracts with ICE in order to limit both detention and deportation in their communities and continue to throw a wrench in ICE's enforcement apparatus (building off efforts to end 287g, Secure Communities, and reform detainer policies). While closure is a key strategy to advance efforts towards detention abolition, it can also lead to transfers rather than releases, loss of attorney access and representation, and further the distance between detained people and their loved ones.

In order to mitigate the harm of detention center closures, Detention Watch Network has identified some strategies and best practices for closure efforts. For more information and resources on just closures, contact DWN at campaign@detentionwatchnetwork.org.



Photo: André Chung

Multi-pronged Approach to Advocacy

A growing number of states are joining the fight to pass anti-detention laws that are morally necessary and legally sound to end immigrant detention. People are defending and envisioning healthy communities and economies that don't rely on the incarceration of people. State legislation is one of many tools to end or stop the expansion of immigration detention centers and jails. The reality is that to ensure the freedom of our loved ones, a multi-pronged advocacy approach is needed that operates on the local, state, and national level.

At the local level, organizations across the country through our [Communities Not Cages Campaign](#) advocate for closure and to stop proposed facilities for immigration detention. The local advocacy ranges from increasing visibility, on the ground actions, passage of ordinances, and holding local elected officials to their values to terminate contracts. At the national level, the funding granted to ICE and CBP has created a massive infrastructure for the detention and deportation of our people. Through the [Defund Hate Campaign](#), our communities can challenge the budget process by holding Members of Congress accountable for the money they funnel into ICE and CBP. We disrupt the appropriations process by exposing the wasteful funding, engaging Members of Congress, and sharing our vision for a budget that funds healthy communities.

As local organizing increases, states continue to pass anti-detention bills, and we continue to propel community needs in federal processes, the call for an end to all immigration detention is becoming louder. This multi-pronged approach will get us closer to abolishing all detention in the United States.

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