

# FINAL BILL REPORT

## 2SHB 1470

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Synopsis as Enacted

**Brief Description:** Concerning private detention facilities.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Ortiz-Self, Chopp, Simmons, Santos, Ryu, Orwall, Chapman, Gregerson, Doglio, Peterson, Ramel, Macri, Ormsby, Berg, Leavitt, Bateman, Morgan and Fey).

**House Committee on Community Safety, Justice, & Reentry**  
**House Committee on Appropriations**  
**Senate Committee on Human Services**  
**Senate Committee on Ways & Means**

**Background:**

Correctional and Detention Facilities.

Correctional and detention facilities are used to detain persons for a variety of purposes, including pretrial detention and sentencing. Pretrial detention and sentences up to one year are carried out by locally and publicly operated jail facilities. Sentences over one year are served in state prison facilities operated and managed by the Department of Corrections (DOC). Juvenile sentences of 30 days or less are served in locally operated juvenile detention facilities, and longer sentences are served in Juvenile Rehabilitation facilities operated and managed by the Department of Children, Youth, and Families.

"Detention facility" means any facility in which persons are incarcerated or otherwise involuntarily confined for purposes such as prior to trial or sentencing, fulfilling the terms of a sentence imposed by a court, or for other judicial or administrative processes or proceedings. "Private detention facility" means a detention facility that is operated by a private, nongovernmental, for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.

Prohibition on Private Detention Facilities.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Legislation was enacted in 2021 prohibiting any person, business, state, or local government entity from operating a private detention facility or contracting with federal, state, and local governments to provide detention services or ancillary services inside a private detention facility. A private detention facility operating pursuant to a valid contract with a governmental entity that was in effect prior to January 1, 2021, may remain in operation for the duration of that contract. Existing contracts may not be extended or modified. No new private detention facilities are permitted within the state, and no state or local governmental entity may enter into a contract with a private detention facility outside the state.

The DOC may transfer prisoners to an out-of-state private correctional facility meeting certain requirements. The federal government may enter into contracts for detention services, which may include detaining persons pursuant to immigration-related proceedings.

The restriction on contracting does not apply to:

- a facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles;
- a facility providing services to a person who has been detained or civilly committed for involuntary mental health treatment or forensic evaluation;
- a facility used for the quarantine or isolation of persons for public health reasons;
- a facility used for work release;
- a facility used for extraordinary medical placement;
- a facility used for residential substance use disorder treatment;
- a facility used for the housing, care, and security of persons held in the custody of United States Marshals; and
- a facility owned and operated by a federally recognized tribe and contracting with the government.

In 2022 the Ninth Circuit Court (Ninth Circuit) held that a state law that gave the state a power of review over the federal Immigration and Customs Enforcement's (ICE) operations regarding detention violated the supremacy clause. The supremacy clause prohibits states from interfering with or controlling the operations of the federal government. The Ninth Circuit held that the California law violated the supremacy clause under two separate doctrines because it controlled federal contractors' operations.

#### Facility Inspections.

Certain state agencies have the authority to conduct unannounced inspections of facilities that are licensed by those agencies. The Department of Health inspects hospitals, transient accommodations, and migrant farmworker housing facilities. The Division of Occupational Safety and Health of the Department of Labor and Industries has jurisdiction over employees of private detention facilities and conducts inspections of the federal facility.

#### Public Records Act.

The Public Records Act (PRA) applies to all state and local agencies, including the DOC. A person may request a "public record" from an agency. A "public record" is a writing

containing information relating to the conduct of government or the performance of any governmental or proprietary function that is prepared, owned, used, or retained by any state or local agency. Certain information and records are exempt from disclosure under the PRA, including body scanner images from x-ray or similar systems, records related to the Federal Prison Rape Elimination Act, and an incarcerated individual's health information. When a private business provides a governmental function, it is treated as the functional equivalent of an agency for purposes of the PRA.

## **Summary:**

### Operational Conditions for Private Detention Facilities.

The Department of Health (DOH) is required to adopt rules governing private detention facilities' operations related to sanitary, hygienic, and safe conditions. The rules must address use of personal belongings; cleaning and sanitizing of living areas; laundry facilities; provision of personal hygiene items; provision of a nutritious, balanced, or special diet; food handling and hygiene practices; number and timing of meals; indoor air quality; room temperature; and an infection control program. The Office of the Attorney General (AGO) may enforce violations of these rules.

Private detention facilities with contracts with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates prior to January 1, 2023, must comply with certain conditions. The conditions address issuance of clothing and footwear, price of food items in the commissary, free telecommunications services for 60 minutes daily, in-person visitation allowing children and personal contact, prohibition on solitary confinement, provision of telephones and handheld radios at no cost, invitations to outside speakers and presenters, provision of computer and internet, availability of a law library, communication in each detained individual's primary language, reporting of sexual violence and harassment grievances, provision of mental health evaluations and free culturally competent mental health therapy, prompt medical care, natural light and windows in sleeping rooms, and emergency response. The AGO may enforce violations of these conditions.

Definitions are added for basic personal hygiene items, culturally competent, detained person, fresh fruits and vegetables, personal protective equipment, solitary confinement, and telecommunications services.

### Inspection by State and Local Agencies.

Two state agencies must inspect private detention facilities. The DOH is required to adopt rules related to the inspection of food services and handling, sanitation and hygiene, nutrition, complaints, food provided, and testing of water and air. The DOH must post inspection results on its website and at the private detention facilities in conspicuous places. Results must be posted in multiple languages. The DOH may delegate food safety inspections to local health jurisdictions.

The Department of Labor and Industries is required to conduct inspections for workplace conditions and work undertaken by detained persons. The AGO may enforce violations found in the agencies' inspections.

Private Right of Action and Civil Penalties.

A private right of action is created, allowing a detained person to recover a monetary award for violations. A negligent violation permits recovery of \$1,000 or actual damages, while an intentional or reckless violation permits recovery of \$10,000 or actual damage. If the detained person prevails, the person is entitled to reasonable attorneys' fees and costs. The court may grant injunctive relief without a bond. The private right of action has a three-year statute of limitations, and is only available against the owner, operator, contractor, subcontractor, or employee of a private detention facility, not the state or agencies.

The DOH may create penalties for failure to comply with the act, including a penalty of \$1,000 per violation per day. If the DOH collects the penalty, it must be deposited into the State General Fund. If the civil penalty is not paid, the AGO may pursue recovery of the penalty in superior court. Any recovery by the AGO must be deposited into the Washington State Attorney General Humane Detention Account, which must be used to enforce the act. Penalties may only be imposed against the private detention facility owner, operator, contractor, or employees, not the state or agencies.

Exempted Facilities.

Seven types of facilities are exempted from the health and sanitation rules, agency inspections, operational standards, civil penalties, and private rights of action:

- juvenile facilities that provide rehabilitative, counseling, treatment, mental health, educational, or medical services;
- facilities that provide evaluation and treatment for civil detention or a court commitment order, or certain facilities regulated by the Department of Health;
- facilities for public health quarantine or isolation;
- work release facilities;
- facilities for extraordinary medical placement;
- facilities for residential substance use disorder treatment; and
- facilities owned and operated by federally recognized tribes with a government contract.

Public Records Act Application to Private Detention Facilities.

Private detention facilities operating pursuant to a contract with a state or local agency are subject to the Public Records Act. The exemptions available for individuals incarcerated in the DOC's facilities are also available to individuals detained in private facilities, protecting confidential health information from disclosure.

**Votes on Final Passage:**

House 58 39

Senate 29 20 (Senate amended)  
House 56 40 (House concurred)

**Effective:** May 11, 2023