

SENATE BILL REPORT

SB 6189

As Reported by Senate Committee On:
Human Services, January 25, 2024

Title: An act relating to transparency, public safety, and independent oversight of the city, county, and regional jail system in Washington state.

Brief Description: Concerning transparency, public safety, and independent oversight of the city, county, and regional jail system in Washington state.

Sponsors: Senators Saldaña, Wilson, C., Frame, Hasegawa, Nguyen, Nobles, Trudeau and Valdez.

Brief History:

Committee Activity: Human Services: 1/22/24, 1/25/24 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Creates the Jail Oversight Board within the Office of the Governor to be responsible for monitoring jails, investigating and receiving complaints, and maintaining a statewide uniform jail reporting system, among other duties.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 6189 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame and Nguyen.

Minority Report: That it be referred without recommendation.

Signed by Senators Boehnke, Ranking Member; Warnick and Wilson, J..

Staff: Kelsey-anne Fung (786-7479)

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.

Background: Local Jail Standards. Cities and counties are authorized to acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities at any place within the county that is designated by the county or municipal legislative authority.

Local governments that own or operate adult correctional facilities must adopt operation standards for those facilities. These standards must be the minimums necessary to meet federal and state constitutional requirements relating to the health, safety, and welfare of confined persons and staff, as well as state and federal statutory requirements, and to provide for the public's health, safety, and welfare.

A city or county primarily responsible for the operation of a jail may create a department of corrections to be in charge of the jail and persons confined in the jail. If a city or county does not create a department of corrections, the chief law enforcement officer of the city or county is in charge of the jail and persons confined in the jail.

Local governments may also execute interlocal contracts for jail services between other cities and counties that give one local government the responsibility for the operation of the jail and include the applicable charges for maintaining custody of the persons confined in the jail. Further, local governments may create and operate regional jails that are governed by representatives from multiple jurisdictions.

Corrections Standards Board. In 1977, the Legislature passed the City and County Jails Act which created the Washington State Jail Commission. The Jail Commission was charged with promulgating mandatory and advisory jail standards, inspecting jails for compliance, and distributing state bond funds for local jail construction. The Jail Commission also drafted minimum physical plant and custodial care standards that the Legislature approved in 1979.

In 1981, the Legislature created the Washington State Corrections Standards Board (CSB) as a board within the Jail Commission. CSB had authority to recommend advisory prison standards. The 1981 legislation also required CSB to assume the functions of the Jail Commission on July 1, 1983. The statute included a sunset date for the CSB for July 1, 1987.

CSB was composed of nine voting members appointed by the Governor and five nonvoting members representing the Legislature and the Department of Corrections (DOC). CSB had ten staff that included prison and jail inspectors. CSB inspectors conducted annual jail inspections to monitor and enforce compliance with standards. Noncompliant jails were given time to correct deficiencies or risk closure. The board also set physical plant standards for jails, including standards for square footage per incarcerated individual for general population dormitories, to respond to capacity and overcrowding issues. State funding was provided through the local jail construction program for new construction or remodeling of local jails to meet and implement the physical plant standards.

In addition to inspections, CSB operated two statewide jail data systems—the Jail Population Accounting System and Convicted Felony Reporting. These systems provided information for monitoring jail crowding and general population trends, planning, forecasting future jail felony populations, and addressing legislative and policy issues.

In 1986, the Legislative Budget Committee conducted a sunset review and recommended that CSB be terminated and its various functions be transferred to other agencies. The following legislative session, the Legislature passed HB 738 which:

- terminated the CSB;
- transferred the juvenile confinement compliance function to the Department of Social and Health Services;
- transferred the jail population data collection function and local jail construction funding program to the Office of Financial Management;
- eliminated state mandated operating standards for local jails and required local governments to adopt their own jail operating standards; and
- required DOC to adopt operating standards for its prison facilities.

Unexpected Fatality Reports. Legislation passed in 2021 requires a city or county department of corrections or chief law enforcement officer responsible for the operation of a jail to conduct an unexpected fatality review in any case where the death of an individual confined in the jail is unexpected. An unexpected fatality review team must be convened with individuals with appropriate expertise who have no previous involvement in the case. A report must be issued within 120 days following the fatality, unless an extension has been granted. The Department of Health must create a public website where all reports shall be posted and maintained.

Jail Standards Task Force. The Joint Legislative Task Force on Jail Standards (Task Force) was established through a budget proviso in the 2021-23 operating budget. The Task Force was charged with reviewing the adequacy of standards used by jails, current data on jails in the state, how jails compared with jails in other states, and revenue sources and funding for jails in other states, among other issues.

The Task force was also charged with making recommendations on:

- statewide minimum jail standards, oversight, and other policy changes to ensure jail conditions meet state and federal constitutional and statutory standards and include adequate safety and welfare safeguards for incarcerated persons and staff; and
- restoration of a statewide authority to set mandatory minimum jail standards and conduct inspections of jails for compliance and enforcement of those standards.

The 18-member Task Force was staffed by the Attorney General's Office and held 13 meetings between August 2022 and October 2023. The Task Force submitted its final report on December 1, 2023.

Summary of Bill (First Substitute): Subject to appropriations, the Jail Oversight Board

(Board) is created within the Office of the Governor to ensure transparency and independent oversight of the jail system, support safe and humane conditions for jail employees and incarcerated individuals, and promote reform towards a more rehabilitative and therapeutic jail system.

The Jail Oversight Board Members. The Board must be composed of even members appointed by the Governor:

- a current or former jail administrator;
- a current or former medical provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last ten years;
- a current or former behavioral health service provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last ten years;
- two persons with lived experience being incarcerated in a Washington jail;
- a licensed attorney with a background in investigating or advocating matters related to enhancing jail practices or conditions in the state and has not been employed by a state or correctional or law enforcement agency in the last ten years; and
- a current or former jail employee.

The initial appointed members shall have staggered terms. Successors to the initial members shall be appointed for five-year terms, unless a successor is filling a vacancy. Members are eligible for reappointment. A member may only be removed by the Governor for neglect of duty, misconduct, or the inability to perform duties after being given a written statement of the charges and an opportunity to be heard at a public hearing. The Board shall select a chair and vice chair from among its members.

The Board may create advisory councils to advise and support the work of the Board. An advisory council may include specified individuals. Members of the Board or any advisory council must receive compensation in accordance with state law and be reimbursed for travel expenses.

The Jail Oversight Board Director. Subject to appropriations, the Governor shall appoint a full-time director from a list of at least three nominees submitted by the Board. If the Governor declines to select anyone from the list, the Governor may request additional candidates or suggest candidates to the Board for consideration. The director must hold office for five-year terms and may only be removed by the Governor for neglect of duty, misconduct, or the inability to perform duties. Subject to appropriations, the director shall employ staff.

The Jail Oversight Board Duties. The Board must meet at least quarterly to make recommendations, receive reports from the director, and transact business properly brought before the Board. The Board or its staff must:

- establish priorities for the use of limited resources available to the Board;

- maintain a website, mailing address, toll-free telephone number, and a collect telephone number for the receipt of complaints and inquiries and sharing of information;
- administer a statewide uniform jail reporting system for the collection and reporting of jail information;
- maintain a database that is publicly searchable, machine readable, exportable, and accompanied by a complete plain language dictionary of information maintained in the statewide uniform jail reporting system;
- monitor each jail in the state at least once every three years to monitor and report on jail compliance with local standards and applicable state and federal legal and constitutional requirements, rules, regulations, policies, and best practices related to the health, safety, welfare, and reentry of incarcerated individuals;
- write and publish reports within two months of monitoring visits that must include nonidentifiable case studies or other information necessary to support any findings and any written response from a jail administrator or their designee to such reports;
- serve as a member of all unexpected fatality review teams;
- investigate and report on specific and systemic issues relating to jails including issues and trends identified through monitoring, complaints, fatality reviews, and the statewide uniform jail reporting system;
- provide technical assistance and consultation;
- share information with jail administrators or their designees regarding individual complaints or concerns within the discretion of the director or their designee and with the consent of the complainant;
- provide public comment and testimony, write and issue reports and recommendations, share information, and make recommendations for statutory changes;
- adopt rules, policies, and procedures; and
- submit an annual report to the Governor and Legislature with a statement of actions taken by the Board for the prior year and any recommendations for necessary or desirable statutory changes.

Statewide Uniform Jail Reporting System. The Board must develop and administer a statewide uniform jail reporting system for the reporting and dissemination of jail data. The Board must consult with interested stakeholders, including jail administrators and organizations representing jail employees, to develop the uniform jail reporting system. The Board may provide assistance to jail administrators to develop new sources of data and to compile and effectively report data. The Board may collaborate, consult, or contract with outside entities. A jail administrator or their designee must provide accurate, complete, and timely information and data for the uniform data reporting system.

Access to Facilities. The director and their designees shall have reasonable access to all areas of the jail accessible to or used by incarcerated individuals. Access may be subject to reasonable security and background investigation requirements of the jail, provided that such access must not be unreasonably withheld. Denial of access to individuals with lived experience, including conviction or incarceration histories, who do not present active

security concerns, shall be deemed unreasonable. Any initial background investigation must be completed within 48 hours, and any subsequent investigation of the same person must be performed promptly and must not result in a delay of more than two hours.

The jails must also provide the director or their designee:

- reasonable opportunity to survey or interview privately and confidentially any incarcerated individual, jail employee, or other person by mail, telephone, and in person;
- the ability to make audio and visual recordings of areas accessible to or used by incarcerated individuals, provided that the visual recordings do not depict location or angles of security cameras; and
- the right to access, inspect, and copy information, records, or documents in the possession or control of jail administrators, their agents, or a state or local government agent that the Board considers necessary to carry out its purpose or support its recommendations.

If there is a written demand from the director or their designee for access to information, records, or documents, the entity receiving the request must provide the information within 20 business days of the demand. If the information pertains to a death, threats of bodily harm, or the denial of necessary medical treatment, the information must be provided within five days.

A jail administrator or their designee must provide a written response to a monitoring report issued by the Board within one month of receiving the report.

Health Oversight Agency and Confidentiality. The Board is a health oversight agency so that federal law does not preclude jails, health care providers, or others from providing information requested by the Board, or require these entities to seek or obtain consent from incarcerated individuals before providing information to the Board. When information and records are provided to the Board, it is subject to all state and federal laws governing confidentiality and disclosure to the same extent as the entity responding to the request from the Board.

The Board must maintain the confidentiality of all matters under investigation, complaints, and the identities of complainants, informants, or witnesses except to the extent that disclosures are necessary to carry out the Board's duties or recommendations. Such information shall be exempt from public disclosure under the Public Records Act.

The Board or its staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding regarding the exercise of official duties. All related memoranda, work product, notes, and case files of the Board are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence.

Nothing shall prevent the Board from publishing a report or database, or reporting the results of an investigation, which maintains the confidentiality of identities of incarcerated individuals. Information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, law enforcement, or criminal prosecution, provided that nothing shall be deemed to reduce or modify the contractual, statutory, or due process rights of any jail employee with respect to any proceeding related to employee discipline, employee licensing or certification, or criminal prosecution. The director must contact the jail employee and the bargaining unit representative before reporting the results of an investigation that reveals information warranting possible sanctions or corrective action about a jail employee.

Civil Immunity. No civil action may be brought against any Board employee for good faith performance of responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against a jail employee, subcontractor, volunteer, incarcerated individual, or family member or representation of an incarcerated individual for any communication made, or information given or disclosed, to aid the Board in carrying out its responsibilities. All individuals, legal entities, and government agencies are immune from civil liability for providing information to the Board in good faith.

Unexpected Fatality Reports. When an unexpected fatality review team is convened for an unexpected death of an individual confined in a jail, the team must include the director of the Board or their designee. Instead of the Department of Health, the Board must create a public website where all unexpected fatality reports must be posted and maintained.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

- Adds an additional person with lived experience of being incarcerated in a Washington jail to the Board.
- Adds a current or former jail employee to the Board.
- Requires the Board to monitor and report on jail compliance with local standards, in addition to applicable state and federal legal and constitutional requirements, rules, regulations, policies, and best practices.
- Requires the Board to consult with organizations representing jail employees, in addition to jail administrators, to develop the statewide uniform jail reporting system.
- Provides that nothing shall be deemed to reduce or modify the contractual, statutory, or due process rights of any jail employee with respect to any proceeding related to employee discipline, employee licensing or certification, or criminal prosecution.
- Requires the director to contact the jail employee and the bargaining unit representative before reporting the results of an investigation that reveals information warranting possible sanctions or corrective action about a jail employee.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There are over 130,000 individuals confined in jails either waiting for trial or serving jail time, and these individuals need to be supported. The Task Force heard reports of unsanitary facilities, inadequate health care, trauma from the overuse of solitary confinement, and experiences of assault and extended isolation from family members. While the time in custody at a jail is usually limited, the harms experienced while confined can be life long and lasting impacts on individuals, families, and communities. Statewide oversight and data collection are necessary to give the Legislature the information it needs to adopt statewide standards. This is not a new concept and will promote accountability, transparency, and public access to jail data and information. The Office of Corrections Ombuds has successfully used a similar form of oversight and access for prisons, and this bill would extend it to jails.

This is the best chance of avoiding future litigation and supports jail staff with the very serious task they have been charged with. Washington State has the fourth highest jail death rate in the country. No one should lose their life while detained in a jail. This bill reflects national best practices for an independent corrections oversight body. This bill will make Washington State a national leader in jails oversight just like the Office of Corrections Ombuds has made Washington State a national leader in prisons oversight.

Many counties have small jails and would have difficulty achieving standards without funding. This bill should be blended with other bills to support interagency connections. For the unexpected fatality reviews, there needs to be more representation from people with expertise in jails. Rather than have the expertise at the individual jails, having it at the Board would be more effective. The board should include two individuals with lived experience of incarceration—one who has been housed in a male unit and one who has been housed in a female unit.

CON: The one jail administrator appointed to the five-member Board cannot speak for all jails in the state. There is improper balance on the board membership by only having one corrections professional on the board. An oversight board is not needed because voices will be left out. Instead, a workgroup of jail administrators and stakeholders is needed to focus on the impact on those incarcerated and the root cause of incarceration. The Task Force recommendations did not focus on improving current standards or creating consistent system practices at the jails but rather created an oversight board consisting of mostly non-corrections professionals.

We support the concepts of transparency, safety, and humane conditions, but this bill puts

the cart before the horse. The Task Force was charged with making recommendations on statewide minimum jail standards, but they did not do that. They instead created a board with investigatory authority before the standards are created. This bill disregards federal case law that gives deference to jail operators. This bill requires the board to measure jail compliance with state and federal standards, but does not include local standards.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Hailey Ockinga, Beyond These Walls; Heather McKimmie, Disability Rights Washington; Marc Stern; Michele Deitch, Prison and Jail Innovation Lab; Laurel Jones, Columbia Legal Services; Jordan Landry; Anthony Blankenship, Civil Survival Project; Chanel Rhymes, Northwest Community Bail Fund.

CON: Penelope Sapp, Kitsap County Sheriff's Office; Jose Briones, Island County Sheriff's Office; Taylor Gardner, WA Assn of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: CON: Susanna Jones.