
SECOND SUBSTITUTE HOUSE BILL 1470

State of Washington

68th Legislature

2023 Regular Session

By House 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)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to private detention facilities; amending RCW
2 42.56.475, 70.395.010, and 70.395.020; adding new sections to chapter
3 70.395 RCW; creating new sections; prescribing penalties; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 42.56.475 and 2022 c 272 s 1 are each amended to
7 read as follows:

8 (1) The following information or records created or maintained by
9 the department of corrections or a private detention facility is
10 exempt from public inspection and copying under this chapter:

11 (a) Body scanner images from any system designed to detect and
12 visualize contraband hidden in body cavities or beneath clothing,
13 including backscatter X-ray, millimeter wave, and transmission X-ray
14 systems;

15 (b) The following information and records created or maintained
16 pursuant to the federal prison rape elimination act, 34 U.S.C. Sec.
17 30301 et seq., and its regulations:

18 (i) Risk assessments, risk indicators, and monitoring plans;

19 (ii) Reports of sexual abuse or sexual harassment, as defined
20 under 28 C.F.R. 115.6;

1 (iii) Records of open prison rape elimination act investigations;
2 and

3 (iv) The identities of individuals other than department of
4 corrections or private detention facility staff, contractors, and
5 volunteers, in closed prison rape elimination act investigation
6 reports and related investigative materials; however, the identity of
7 an accused individual is not exempt if the allegation is determined
8 to have been substantiated; and

9 (c) Health information in records other than an incarcerated
10 individual's or detained individual's medical, mental health, or
11 dental files.

12 (2) The exemption of information or records described under
13 subsection (1)(b) and (c) of this section does not apply to requests
14 by the incarcerated individual or detained individual who is the
15 subject of the information, a requestor with the written permission
16 of the incarcerated individual or detained individual who is the
17 subject of the information, or a personal representative of an
18 incarcerated individual or detained individual who is the subject of
19 the information. In response to such requests, the department of
20 corrections or private detention facility may withhold information
21 revealing the identity of other incarcerated or detained individuals.

22 (3) An agency refusing, in whole or in part, inspection of a
23 public record containing information listed in subsection (1)(c) of
24 this section may cite to subsection (1)(c) of this section, without
25 further explanation, when providing the brief explanation required by
26 RCW 42.56.210(3), and shall also identify the number of pages
27 withheld, if any pages are withheld in their entirety.

28 (4) For purposes of this section:

29 (a) "Health information" means any information that identifies or
30 can readily be associated with the identity of an incarcerated
31 individual or detained individual and directly relates to the
32 following: Medical, mental health, or dental diagnoses or conditions;
33 medical, mental health, or dental services, treatments, or
34 procedures, including requests for or complaints about such services,
35 treatments, or procedures; transgender, intersex, nonbinary, or
36 gender nonconforming status; sexual orientation; genital anatomy; or
37 gender-affirming care or accommodations other than an incarcerated
38 individual's or detained individual's preferred name, pronouns, and
39 gender marker.

1 (b) The following information is not "health information" under
2 this section: (i) Health care information subject to RCW 42.56.360(2)
3 and chapter 70.02 RCW; and (ii) information related to injuries,
4 other than injuries related to medical procedures or genital anatomy,
5 contained in incident reports, infraction records, or use of force
6 reports, prepared by department of corrections or private detention
7 facility staff other than health care providers.

8 (c) "Incarcerated individual" has the same meaning as "inmate"
9 under RCW 72.09.015 and includes currently or formerly incarcerated
10 individuals.

11 (d) "Detained individual" means a person confined in a private
12 detention facility.

13 (e) "Private detention facility" has the same meaning as in RCW
14 70.395.020.

15 (5) A private detention facility operating pursuant to a contract
16 with a state or local agency is subject to the requirements of this
17 chapter.

18 NEW SECTION. Sec. 2. A new section is added to chapter 70.395
19 RCW to read as follows:

20 (1) The department of health shall adopt rules as may be
21 necessary to effectuate the intent and purposes of this section in
22 order to ensure private detention facilities comply with measurable
23 standards providing sanitary, hygienic, and safe conditions for
24 detained persons. The department of health rules shall include that:

25 (a) A detained person should have a safe, clean, and comfortable
26 environment that allows a detained person to use the person's
27 personal belongings to the extent possible;

28 (b) Living areas, including areas used for sleeping, recreation,
29 dining, telecommunications, visitation, and bathrooms, must be
30 cleaned and sanitized regularly;

31 (c) A private detention facility must provide laundry facilities,
32 equipment, handling, and processes for linen and laundered items that
33 are clean and in good repair, adequate to meet the needs of detained
34 persons, and maintained according to the manufacturer's instructions.
35 Laundry and linen must be handled, cleaned, and stored according to
36 acceptable methods of infection control including preventing
37 contamination from other sources. Separate areas for handling clean
38 laundry and soiled laundry must be provided and laundry rooms and
39 areas must be ventilated to the exterior;

1 (d) Basic personal hygiene items must be provided to a detained
2 person regularly at no cost;

3 (e) A private detention facility shall provide a nutritious and
4 balanced diet, including fresh fruits and vegetables, and shall
5 recognize a detained person's need for a special diet. A private
6 detention facility must follow proper food handling and hygiene
7 practices. A private detention facility must provide at least three
8 meals per day, at no cost, and at reasonable hours;

9 (f) Safe indoor air quality must be maintained;

10 (g) The private detention facility must have both heating and air
11 conditioning equipment that can be adjusted by room or area. Rooms
12 used by a detained person must be able to maintain interior
13 temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit
14 year-round. Excessive odors and moisture must be prevented in the
15 building; and

16 (h) A private detention facility must implement and maintain an
17 infection control program that prevents the transmission of
18 infections and communicable disease among detained persons, staff,
19 and visitors.

20 (2) The office of the attorney general may enforce violations of
21 this section on its own initiative or in response to complaints or
22 violations.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.395
24 RCW to read as follows:

25 (1) The department of health shall:

26 (a) Conduct routine, unannounced inspections of private detention
27 facilities including, but not limited to, inspection of food service
28 and food handling, sanitation and hygiene, and nutrition as provided
29 in (c) of this subsection;

30 (b) Conduct investigations of complaints received relating to any
31 private detention facility located within the state;

32 (c) Regularly review the list of food items provided to detained
33 persons to ensure the specific nutrition and calorie needs of each
34 detained person are met, including any needs related to medical
35 requirements, food allergies, or religious dietary restrictions;

36 (d) Test water used for drinking and bathing and air quality
37 every six months at private detention facilities both inside and
38 outside of the facility; and

1 (e) Post inspection results on its website and in a conspicuous
2 place viewable by detained persons and visitors to private detention
3 facilities. Results should be posted in English and in languages
4 spoken by detainees, to the extent practicable.

5 (2) The department of health may delegate food safety inspections
6 to the local health jurisdiction, where the local health jurisdiction
7 is in the county where the private detention facility is located, to
8 conduct inspections pursuant to regulations.

9 (3) The department of health shall adopt rules as may be
10 necessary to effectuate the intent and purposes of this section in
11 order to ensure private detention facilities allow regular
12 inspections and comply with measurable standards providing sanitary,
13 hygienic, and safe conditions for detained persons.

14 (4) The department of labor and industries shall conduct routine,
15 unannounced inspections of workplace conditions at private detention
16 facilities, including work undertaken by detained persons.

17 (5) The office of the attorney general may enforce violations of
18 this section on its own initiative or in response to complaints or
19 violations.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.395
21 RCW to read as follows:

22 (1) This section does not apply to private detention facilities
23 operating pursuant to a valid contract that was in effect prior to
24 January 1, 2023.

25 (2) A private detention facility operating pursuant to a contract
26 or agreement with a federal, state, or local government shall comply
27 with the following:

28 (a) A detained person, upon admission to a private detention
29 facility, must be issued new clothing and new footwear for both
30 indoor and outdoor use and for protection against cold and heat.
31 Clothing issued must be regularly laundered and replaced at no cost
32 once no longer hygienic or serviceable;

33 (b) Any food items in the commissary must be available at
34 reasonable prices taking into account the income and financial
35 circumstances of detained persons;

36 (c) Telecommunications services must be provided free of charge
37 to detained persons and any communication, whether initiated or
38 received through such a service, must be free of charge to the
39 detained person initiating or receiving the communication. Each

1 detained person must be eligible to use these telecommunications
2 services for at least 60 minutes on each day of the person's
3 detention. Private detention facilities must not use the provision
4 of telecommunications services or any other communication service to
5 supplant in-person contact visits any detained person may be eligible
6 to receive;

7 (d) In-person visitation must be available daily. Visitation
8 rooms must allow for the presence of children and personal contact
9 between visiting persons and detained persons may not be restricted.
10 A detained person may receive reading and writing materials during
11 visitation;

12 (e) Solitary confinement is prohibited;

13 (f) Televisions must be available and accessible to a detained
14 person at no cost. The private detention facility shall make every
15 effort to make television programming available in the language of
16 the detained person;

17 (g) Handheld radios must be provided to a detained person at no
18 cost;

19 (h) A detained person may invite persons to the private detention
20 facility to provide legal education, know your rights presentations,
21 and other similar programming;

22 (i) Computer and internet access must be available and accessible
23 to a detained person at no cost;

24 (j) A law library must be available and accessible;

25 (k) Communication from the private detention facility to a
26 detained person, either in writing or verbally, must be delivered in
27 the primary language of the detained person;

28 (l) Sexual violence and harassment grievances must be responded
29 to immediately by culturally competent professionals on-site and
30 reported to local law enforcement in the county where the private
31 detention facility is located;

32 (m) Mental health evaluations should occur at intake and
33 periodically, at least once a week. Culturally competent mental
34 health therapy must be available and free;

35 (n) Requested medical care and attention must be provided without
36 delay, including the provision of requested medical accommodations;

37 (o) Rooms used by a detained person for sleeping must have access
38 to windows, natural light, and natural air circulation. Subject to
39 safety limitations, sleeping rooms must include adjustable curtains,
40 shades, blinds, or the equivalent installed at the windows for visual

1 privacy and that are shatterproof, screened, or of the security type
2 as determined by the private detention facility needs; and

3 (p) A private detention facility must be equipped to respond to
4 natural and human-made emergencies, including earthquakes, lahar
5 threats, tsunami, and industrial accidents. A private detention
6 facility must be earthquake resistant. A private detention facility
7 shall develop emergency operation and continuity of operations plans
8 and provide those plans to the local emergency management department.
9 A private detention facility must stock all necessary personal
10 protective equipment in case of disease outbreaks consistent with
11 large numbers of people detained in close contact to one another.

12 (3) The office of the attorney general may enforce violations of
13 this section on its own initiative or in response to complaints or
14 violations.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.395
16 RCW to read as follows:

17 (1) A detained person aggrieved by a violation of this chapter
18 has a right of action in superior court and may recover for each
19 violation as follows:

20 (a) Against any person who negligently violates a provision of
21 this chapter, \$1,000, or actual damages, whichever is greater, for
22 each violation;

23 (b) Against any person who intentionally or recklessly violates a
24 provision of this chapter, \$10,000, or actual damages, whichever is
25 greater, for each violation;

26 (c) Reasonable attorneys' fees and costs if the detained person
27 is the prevailing party; and

28 (d) Other relief, including an injunction, as the court may deem
29 appropriate. Injunctive relief may be issued without bond in the
30 discretion of the court, notwithstanding any other requirement
31 imposed by statute.

32 (2) Any action under this chapter is barred unless the action is
33 commenced within three years after the cause of action accrues.

34 (3) For the purposes of this section, "person" means an owner,
35 operator, contractor, subcontractor, or employee of a private
36 detention facility.

37 (4) The state and its agencies are not liable for a violation of
38 this chapter.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.395
2 RCW to read as follows:

3 (1) Any person who fails to comply with this chapter may be
4 subject to a civil penalty in an amount of not more than \$1,000 per
5 violation per day.

6 (2) Subject to the availability of amounts appropriated for this
7 specific purpose, the secretary of the department of health may adopt
8 by rule a penalty matrix that establishes procedures for civil
9 penalties assessed under this chapter.

10 (3) Each violation is a separate and distinct offense. The
11 department of health shall impose the civil penalty in accordance
12 with chapter 34.05 RCW. Moneys collected under this section must be
13 deposited into the state general fund.

14 (4) If the civil penalty is not paid to the department of health
15 within 15 days after receipt of notice, the office of the attorney
16 general may bring an action to recover the penalty in the name of the
17 state of Washington in the superior court of Thurston county or in
18 the county where the private detention facility is located. In all
19 such actions, the procedure and rules of evidence are the same as in
20 ordinary civil actions. All penalties recovered by the attorney
21 general under this chapter must be paid into the Washington state
22 attorney general humane detention account created in section 7 of
23 this act.

24 (5) For the purposes of this section, "person" means an owner,
25 operator, contractor, subcontractor, or employee of a private
26 detention facility.

27 (6) The state and its agencies are not liable for a violation of
28 this chapter.

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.395
30 RCW to read as follows:

31 The Washington state attorney general humane detention account is
32 created in the custody of the state treasurer. All receipts from
33 civil penalties under section 6 of this act must be deposited in the
34 account. Only the attorney general or the attorney general's designee
35 may authorize expenditures from the account. Moneys in the account
36 must be used exclusively for the costs associated with the attorney
37 general's enforcement of the provisions of this chapter governing the
38 recovery of civil penalties. The account is subject to allotment

1 procedures under chapter 43.88 RCW, but an appropriation is not
2 required for expenditures.

3 **Sec. 8.** RCW 70.395.010 and 2021 c 30 s 1 are each amended to
4 read as follows:

5 (1) The legislature finds that all people confined in prisons and
6 detention facilities in Washington deserve basic health care,
7 nutrition, and safety. As held in *United States v. California*, 921
8 F.3d 865, 886 (9th Cir. 2019), states possess "the general authority
9 to ensure the health and welfare of inmates and detainees in
10 facilities within its borders." States have broad authority to
11 enforce generally applicable health and safety laws against
12 contractors operating private detention facilities within the state.
13 The ninth circuit reinforced this authority in *Geo Group, Inc. v.*
14 *Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating "[p]rivate
15 contractors do not stand on the same footing as the federal
16 government, so states can impose many laws on federal contractors
17 that they could not apply to the federal government itself."

18 (2) The legislature finds that profit motives lead private
19 prisons and detention facilities to cut operational costs, including
20 the provision of food, health care, and rehabilitative services,
21 because their primary fiduciary duty is to maximize shareholder
22 profits. This is in stark contrast to the interests of the state to
23 ensure the health, safety, and welfare of Washingtonians, including
24 all inmates and detainees within Washington's borders.

25 (3) The legislature finds that people confined in for-profit
26 prisons and detention facilities have experienced abuses and have
27 been confined in dangerous and unsanitary conditions. Safety risks
28 and abuses in private prisons and detention facilities at the local,
29 state, and federal level have been consistently and repeatedly
30 documented. The United States department of justice office of the
31 inspector general found in 2016 that privately operated prisons
32 "incurred more safety and security incidents per capita than
33 comparable BOP [federal bureau of prisons] institutions." The office
34 of inspector general additionally found that privately operated
35 prisons had (~~"higher rates of inmate-on-inmate and inmate-on-staff~~
36 ~~assaults, as well as~~) higher rates of staff uses of force and that
37 people detained in private prisons submitted more safety and security
38 related grievances, including those regarding the quality of food.
39 (")

1 (4) The legislature finds that private prison operators have cut
2 costs by reducing essential security and health care staffing. The
3 sentencing project, a national research and advocacy organization,
4 found in 2012 that private prison staff earn an average of five
5 thousand dollars less than staff at publicly run facilities and
6 receive almost 60 hours less training. The office of inspector
7 general also found that people confined in private facilities often
8 failed to receive necessary medical care and that one private prison
9 went without a full-time physician for eight months. People confined
10 within private detention facilities are subjected to prolonged
11 periods of confinement, inadequate nutrition, medical and mental
12 health access issues, and arbitrary and improper visitation and
13 communication restrictions. In 2018, the sentencing project, a
14 national research and advocacy organization, found that private
15 prisons offer lower quality services and have higher staff turnover
16 rates compared to publicly operated facilities. The office of
17 inspector general also found that people confined in private
18 facilities often failed to receive necessary medical care.

19 (5) The legislature finds that private prisons and detention
20 centers are less accountable for what happens inside those facilities
21 than state-run facilities, as they are not subject to the freedom of
22 information act under 5 U.S.C. Sec. 552 or the Washington public
23 records act under chapter 42.56 RCW.

24 (6) The legislature finds that at least 22 other states have
25 stopped confining people in private for-profit facilities.

26 (7) Therefore, it is the intent of the legislature to prohibit
27 the use of private, for-profit prisons and detention facilities in
28 the state, and to set minimum standards for the conditions of
29 confinement within private detention facilities in the state and to
30 require the inspection and review of those facilities by appropriate
31 state or local agencies to ensure public health and safety.

32 **Sec. 9.** RCW 70.395.020 and 2021 c 30 s 2 are each amended to
33 read as follows:

34 The definitions in this section apply throughout this chapter
35 unless the context clearly requires otherwise.

36 (1) "Basic personal hygiene items" means items used to promote or
37 preserve a detained person's health and contribute to the prevention
38 of disease or infection, including soap, toothbrush and toothpaste,

1 shampoo and conditioner, lotion, nail clippers, comb, towels, and
2 menstrual products.

3 (2) "Culturally competent" includes: Knowledge of a detained
4 person's cultural histories and contexts, as well as family norms and
5 values in different cultures; knowledge and skills in accessing
6 community resources and community outreach; and skills in adapting
7 services and treatment to a detained person's experiences and
8 identifying cultural contexts for individuals.

9 (3) "Detained person" means a person confined in a private
10 detention facility.

11 (4) "Detention facility" means any facility in which persons are
12 incarcerated or otherwise involuntarily confined for purposes
13 including prior to trial or sentencing, fulfilling the terms of a
14 sentence imposed by a court, or for other judicial or administrative
15 processes or proceedings.

16 ~~((+2))~~ (5) "Fresh fruits and vegetables" means any unprocessed
17 fruits or vegetables, not including any processed, canned, frozen, or
18 dehydrated fruits or vegetables, or any fruits or vegetables infected
19 or infested with insects or other contaminants.

20 (6) (a) "Personal protective equipment" means equipment worn to
21 minimize exposure to hazards that cause serious injuries and illness,
22 which may result from contact with chemical, radiological, physical,
23 electrical, mechanical, or other hazards.

24 (b) Personal protective equipment may include items such as
25 gloves, safety glasses and shoes, earplugs or muffs, hard hats,
26 respirators, or coveralls, vests, and full body suits.

27 (7) "Private detention facility" means a detention facility that
28 is operated by a private, nongovernmental for-profit entity and
29 operating pursuant to a contract or agreement with a federal, state,
30 or local governmental entity.

31 (8) "Solitary confinement" means the confinement of a detained
32 person alone in a cell or similarly confined holding or living space
33 for 20 hours or more per day under circumstances other than a partial
34 or facility wide lockdown.

35 (9) "Telecommunications services" means phone calls or other
36 voice communication services, video communications, and email
37 services.

38 NEW SECTION. Sec. 10. This act is necessary for the immediate
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

3 NEW SECTION. **Sec. 11.** This act shall be construed liberally for
4 the accomplishment of the purposes thereof.

5 NEW SECTION. **Sec. 12.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 13.** If specific funding for the purposes of
10 this act, referencing this act by bill or chapter number, is not
11 provided by June 30, 2023, in the omnibus appropriations act, this
12 act is null and void.

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