
HOUSE BILL 1470

State of Washington

68th Legislature

2023 Regular Session

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 01/20/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to private detention facilities; amending RCW
2 42.56.475, 70.395.010, 70.395.020, and 70.395.030; adding new
3 sections to chapter 70.395 RCW; creating a new section; prescribing
4 penalties; and providing effective dates.

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

29 (4) For purposes of this section:

30 (a) "Health information" means any information that identifies or
31 can readily be associated with the identity of an incarcerated
32 individual or detained individual and directly relates to the
33 following: Medical, mental health, or dental diagnoses or conditions;
34 medical, mental health, or dental services, treatments, or
35 procedures, including requests for or complaints about such services,
36 treatments, or procedures; transgender, intersex, nonbinary, or
37 gender nonconforming status; sexual orientation; genital anatomy; or
38 gender-affirming care or accommodations other than an incarcerated
39 individual's or detained individual's preferred name, pronouns, and
40 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" means a detention facility that
14 is operated by a private, nongovernmental entity and operating
15 pursuant to a contract or agreement with a federal, state, or local
16 governmental entity.

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

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

22 (1) This section applies to contracts with effective dates on or
23 after the effective date of this section.

24 (2) Private detention facilities must comply with the following
25 minimum requirements:

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

29 (b) Living areas, including areas used for sleeping, recreation,
30 dining, telecommunications, visitation, and bathrooms. Bathrooms must
31 be cleaned and sanitized daily;

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

37 (d) A private detention facility must provide laundry facilities,
38 equipment, handling, and processes for linen and laundered items that
39 are clean and in good repair, adequate to meet the needs of detained

1 persons, and maintained according to the manufacturer's instructions.
2 Laundry and linen must be handled, cleaned, and stored according to
3 acceptable methods of infection control including preventing
4 contamination from other sources. Separate areas for handling clean
5 laundry and soiled laundry must be provided and laundry rooms and
6 areas must be ventilated to the exterior;

7 (e) Basic personal hygiene items must be provided to a detained
8 person regularly at no cost;

9 (f) A private detention facility shall provide a nutritious and
10 balanced diet, including fresh fruits and vegetables, and shall
11 recognize a detained person's need for a special diet. A private
12 detention facility must follow proper food handling and hygiene
13 practices. A private detention facility must provide at least three
14 meals per day, at no cost, and at reasonable hours;

15 (g) Any food items in the commissary must be available at
16 reasonable prices taking into account the income and financial
17 circumstances of detained persons;

18 (h) Telecommunications services must be provided free of charge
19 to detained persons and any communication, whether initiated or
20 received through such a service, must be free of charge to the
21 detained person initiating or receiving the communication. Each
22 detained person must be eligible to use the telecommunications
23 services described in this subsection (2)(h) for at least 60 minutes
24 on each day of the person's detainment. Private detention facilities
25 must not use the provision of telecommunications services or any
26 other communication service to supplant in-person contact visits any
27 detained person may be eligible to receive;

28 (i) In-person visitation must be available daily. Visitation
29 rooms must allow for the presence of children and personal contact
30 between visiting persons and detained persons may not be restricted.
31 A detained person may receive reading and writing materials during
32 visitation;

33 (j) Solitary confinement is prohibited;

34 (k) Televisions must be available and accessible to a detained
35 person at no cost. The private detention facility shall make every
36 effort to make television programming available in the language of
37 the detained person;

38 (l) Handheld radios must be provided to a detained person at no
39 cost;

1 (m) A detained person may invite persons to the private detention
2 facility to provide legal education, know your rights presentations,
3 and other similar programming;

4 (n) Computer and internet access must be available and accessible
5 to a detained person at no cost;

6 (o) A law library must be available and accessible;

7 (p) Communication from the private detention facility to a
8 detained person, either in writing or verbally, must be delivered in
9 the primary language of the detained person;

10 (q) Sexual violence and harassment grievances must be responded
11 to immediately by culturally competent professionals on-site and
12 shared with the local health jurisdiction in the county where the
13 private detention facility is located;

14 (r) Mental health evaluations should occur at intake and
15 periodically, at least once a week. Culturally competent mental
16 health therapy must be available and free;

17 (s) Safe indoor air quality must be maintained;

18 (t) The private detention facility must have both heating and air
19 conditioning equipment that can be adjusted by room or area. Rooms
20 used by a detained person must be able to maintain interior
21 temperatures at a minimum of 65 degrees Fahrenheit year-round.
22 Excessive odors and moisture must be prevented in the building;

23 (u) Requested medical care and attention must be provided without
24 delay, including the provision of requested medical accommodations;

25 (v) Rooms used by a detained person for sleeping must have access
26 to windows, natural light, and natural air circulation. Subject to
27 safety limitations, sleeping rooms must include adjustable curtains,
28 shades, blinds, or the equivalent installed at the windows for visual
29 privacy and that are shatterproof, screened, or of the security type
30 as determined by the private detention facility needs;

31 (w) A private detention facility must be equipped to respond to
32 natural and human-made emergencies, including earthquakes, lahar
33 threats, tsunami, and industrial accidents. A private detention
34 facility must be earthquake resistant. A private detention facility
35 shall develop emergency operation and continuity of operations plans
36 and provide those plans to the local emergency management department.
37 A private detention facility must stock all necessary personal
38 protective equipment in case of disease outbreaks consistent with
39 large numbers of people detained in close contact to one another; and

1 (x) A private detention facility must implement and maintain an
2 infection control program that prevents the transmission of
3 infections and communicable disease among detained persons, staff,
4 and visitors.

5 (3) None of the standards in subsection (2) of this section may
6 be limited or restricted for disciplinary purposes.

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

9 (1) The department of health shall direct the local health
10 jurisdiction in the county where the private detention facility is
11 located to conduct routine, unannounced inspections of private
12 detention facilities including, but not limited to, inspection of
13 food service and food handling, sanitation and hygiene, and nutrition
14 as provided in subsection (2) of this section. The local health
15 jurisdiction shall conduct investigations of complaints received
16 relating to any private detention facility located within its
17 jurisdiction.

18 (2) The department of health shall coordinate with the local
19 health jurisdiction in the county where the private detention
20 facility is located to regularly review the list of food items
21 provided to detained persons to ensure the specific nutrition and
22 calorie needs of each detained person are met, including any needs
23 related to medical requirements, food allergies, or religious dietary
24 restrictions.

25 (3) The department of labor and industries shall conduct routine,
26 unannounced inspections of workplace conditions at private detention
27 facilities, including work undertaken by detained persons.

28 (4) The department of ecology shall routinely test water and air
29 quality at private detention facilities both inside and outside of
30 the facility.

31 (5) The office of the state auditor may undertake performance
32 audits of private detention facilities.

33 (6) The office of the attorney general may undertake review of
34 private detention facility practices and may investigate violations
35 of this chapter on its own initiative and in response to complaints.

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

1 Subject to the availability of amounts appropriated for this
2 specific purpose, agencies responsible for oversight of private
3 detention facilities in accordance with section 3 of this act may
4 adopt those rules as may be necessary to effectuate the intent and
5 purposes of this chapter, which include ensuring that detained
6 persons are treated humanely and that private detention facilities
7 maintain sanitary, hygienic, and safe conditions in the interest of
8 public health, safety, and welfare.

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

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

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

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

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

22 (d) Other relief, including an injunction, as the court may deem
23 appropriate. Injunctive relief may be issued without bond in the
24 discretion of the court, notwithstanding any other requirement
25 imposed by statute.

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

28 (3) For the purposes of this section, "person" means an owner,
29 contractor, subcontractor, or employee of a private detention
30 facility.

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

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

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

1 (2) Subject to the availability of amounts appropriated for this
2 specific purpose, the secretary of the department of social and
3 health services may adopt by rule a penalty matrix that establishes
4 procedures for civil penalties assessed under this chapter.

5 (3) Each violation is a separate and distinct offense. The
6 department of social and health services shall impose the civil
7 penalty in accordance with chapter 34.05 RCW. Moneys collected under
8 this section must be deposited into the state general fund.

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

19 (5) For the purposes of this section, "person" means an owner,
20 contractor, subcontractor, or employee of a private detention
21 facility.

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

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

26 The Washington state attorney general humane detention account is
27 created in the custody of the state treasurer. All receipts from
28 civil penalties under section 6 of this act must be deposited in the
29 account. Only the attorney general or the attorney general's designee
30 may authorize expenditures from the account. Moneys in the account
31 must be used exclusively for the costs associated with the attorney
32 general's enforcement of the provisions of this chapter governing the
33 recovery of civil penalties. The account is subject to allotment
34 procedures under chapter 43.88 RCW, but an appropriation is not
35 required for expenditures.

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

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

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

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

36 (4) The legislature finds that private prison operators have cut
37 costs by reducing essential security and health care staffing. The
38 sentencing project, a national research and advocacy organization,
39 found in 2012 that private prison staff earn an average of five
40 thousand dollars less than staff at publicly run facilities and

1 receive almost 60 hours less training. The office of inspector
2 general also found that people confined in private facilities often
3 failed to receive necessary medical care and that one private prison
4 went without a full-time physician for eight months. People confined
5 within private detention facilities are subjected to prolonged
6 periods of confinement, inadequate nutrition, medical and mental
7 health access issues, and arbitrary and improper visitation and
8 communication restrictions. In 2018, the sentencing project, a
9 national research and advocacy organization, found that private
10 prisons offer lower quality services and have higher staff turnover
11 rates compared to publicly operated facilities. The office of
12 inspector general also found that people confined in private
13 facilities often failed to receive necessary medical care.

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

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

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

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

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) "Basic personal hygiene items" means items used to promote or
32 preserve a detained person's health and contribute to the prevention
33 of disease or infection, including soap, toothbrush and toothpaste,
34 shampoo and conditioner, lotion, nail clippers, comb, towels, and
35 menstrual products.

36 (2) "Culturally competent" includes: Knowledge of a detained
37 person's cultural histories and contexts, as well as family norms and
38 values in different cultures; knowledge and skills in accessing
39 community resources and community outreach; and skills in adapting

1 services and treatment to a detained person's experiences and
2 identifying cultural contexts for individuals.

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

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

10 ~~((2))~~ (5) "Fresh fruits and vegetables" means any unprocessed
11 fruits or vegetables, not including any processed, canned, frozen, or
12 dehydrated fruits or vegetables, or any fruits or vegetables infected
13 or infested with insects or other contaminants.

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

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

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

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

29 (9) "Telecommunications services" means phone calls or other
30 voice communication services, video communications, and email
31 services.

32 **Sec. 10.** RCW 70.395.030 and 2021 c 30 s 3 are each amended to
33 read as follows:

34 (1) Except as provided in subsections (2) and (3) of this
35 section, no person, business, or state or local governmental entity
36 shall operate a private detention facility within the state or
37 utilize a contract with a private detention facility within the
38 state. No state or local governmental entity shall utilize a contract

1 with a private detention facility outside of Washington state, except
2 as provided in RCW 72.68.010(2).

3 (2) A private detention facility that is operating pursuant to a
4 valid contract with a governmental entity that was in effect prior to
5 January 1, 2021, may remain in operation for the duration of that
6 contract, not to include any extensions or modifications made to, or
7 authorized by, that contract.

8 (3) In accordance with the legislative findings in RCW
9 70.395.010, this section does not apply if the involuntary
10 confinement is at:

11 ~~((a)) ((A facility providing rehabilitative, counseling, treatment,
12 mental health, educational, or medical services to juveniles who are
13 subject to Title 13 RCW, or similarly applicable federal law;~~

14 ~~((b))~~) A facility providing evaluation and treatment or forensic
15 services to a person who has been civilly detained or is subject to
16 an order of commitment by a court pursuant to chapter 10.77, 71.05,
17 71.09, or 71.34 RCW, or similarly applicable federal law;

18 ~~((c))~~) (b) A facility used for the quarantine or isolation of
19 persons for public health reasons pursuant to RCW 43.20.050, or
20 similarly applicable federal law;

21 ~~((d))~~) (c) A facility used for work release under chapter 72.65
22 RCW, or similarly applicable federal law;

23 ~~((e))~~) (d) A facility used for extraordinary medical placement;

24 ~~((f))~~) (e) A facility used for residential substance use
25 disorder treatment;

26 ~~((g))~~) (f) A facility used to house persons pursuant to 18
27 U.S.C. Sec. 4013; or

28 ~~((h))~~) (g) A facility owned and operated by federally recognized
29 tribes and contracting with a government.

30 NEW SECTION. **Sec. 11.** (1) Sections 1 and 3 through 10 of this
31 act take effect December 31, 2023.

32 (2) Section 2 of this act takes effect December 31, 2025.

33 NEW SECTION. **Sec. 12.** This act shall be construed liberally for
34 the accomplishment of the purposes thereof.

35 NEW SECTION. **Sec. 13.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---