

**2SHB 1470** - S COMM AMD

By Committee on Human Services

**ADOPTED 04/11/2023**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 42.56.475 and 2022 c 272 s 1 are each amended to  
4 read as follows:

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

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

12 (b) The following information and records created or maintained  
13 pursuant to the federal prison rape elimination act, 34 U.S.C. Sec.  
14 30301 et seq., and its regulations:

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

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

18 (iii) Records of open prison rape elimination act investigations;  
19 and

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

26 (c) Health information in records other than an incarcerated  
27 individual's or detained individual's medical, mental health, or  
28 dental files.

29 (2) The exemption of information or records described under  
30 subsection (1)(b) and (c) of this section does not apply to requests  
31 by the incarcerated individual or detained individual who is the  
32 subject of the information, a requestor with the written permission

1 of the incarcerated individual or detained individual who is the  
2 subject of the information, or a personal representative of an  
3 incarcerated individual or detained individual who is the subject of  
4 the information. In response to such requests, the department of  
5 corrections or private detention facility may withhold information  
6 revealing the identity of other incarcerated or detained individuals.

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

13 (4) For purposes of this section:

14 (a) "Health information" means any information that identifies or  
15 can readily be associated with the identity of an incarcerated  
16 individual or detained individual and directly relates to the  
17 following: Medical, mental health, or dental diagnoses or conditions;  
18 medical, mental health, or dental services, treatments, or  
19 procedures, including requests for or complaints about such services,  
20 treatments, or procedures; transgender, intersex, nonbinary, or  
21 gender nonconforming status; sexual orientation; genital anatomy; or  
22 gender-affirming care or accommodations other than an incarcerated  
23 individual's or detained individual's preferred name, pronouns, and  
24 gender marker.

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

32 (c) "Incarcerated individual" has the same meaning as "inmate"  
33 under RCW 72.09.015 and includes currently or formerly incarcerated  
34 individuals.

35 (d) "Detained individual" means a person confined in a private  
36 detention facility.

37 (e) "Private detention facility" has the same meaning as in RCW  
38 70.395.020.

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

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

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

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

14       (b) Living areas, including areas used for sleeping, recreation,  
15 dining, telecommunications, visitation, and bathrooms, must be  
16 cleaned and sanitized regularly;

17       (c) A private detention facility must provide laundry facilities,  
18 equipment, handling, and processes for linen and laundered items that  
19 are clean and in good repair, adequate to meet the needs of detained  
20 persons, and maintained according to the manufacturer's instructions.  
21 Laundry and linen must be handled, cleaned, and stored according to  
22 acceptable methods of infection control including preventing  
23 contamination from other sources. Separate areas for handling clean  
24 laundry and soiled laundry must be provided and laundry rooms and  
25 areas must be ventilated to the exterior;

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

28       (e) A private detention facility shall provide a nutritious and  
29 balanced diet, including fresh fruits and vegetables, and shall  
30 recognize a detained person's need for a special diet. A private  
31 detention facility must follow proper food handling and hygiene  
32 practices. A private detention facility must provide at least three  
33 meals per day, at no cost, and at reasonable hours;

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

35       (g) The private detention facility must have both heating and air  
36 conditioning equipment that can be adjusted by room or area. Rooms  
37 used by a detained person must be able to maintain interior  
38 temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit

1 year-round. Excessive odors and moisture must be prevented in the  
2 building; and

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

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

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

12 (1) The department of health shall:

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

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

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

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

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

30 (2) The department of health may delegate food safety inspections  
31 to the local health jurisdiction, where the local health jurisdiction  
32 is in the county where the private detention facility is located, to  
33 conduct inspections pursuant to regulations.

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

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

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

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

9 (1) This section does not apply to private detention facilities  
10 operating pursuant to a valid contract that was in effect prior to  
11 January 1, 2023, for the duration of that contract, not to include  
12 any extensions or modifications made to, or authorized by, that  
13 contract.

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

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

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

25 (c) Telecommunications services must be provided free of charge  
26 to detained persons and any communication, whether initiated or  
27 received through such a service, must be free of charge to the  
28 detained person initiating or receiving the communication. Each  
29 detained person must be eligible to use these telecommunications  
30 services for at least 60 minutes on each day of the person's  
31 detainment. Private detention facilities must not use the provision  
32 of telecommunications services or any other communication service to  
33 supplant in-person contact visits any detained person may be eligible  
34 to receive;

35 (d) In-person visitation must be available daily. Visitation  
36 rooms must allow for the presence of children and personal contact  
37 between visiting persons and detained persons may not be restricted.  
38 A detained person may receive reading and writing materials during  
39 visitation;

- 1 (e) Solitary confinement is prohibited;
- 2 (f) Televisions must be available and accessible to a detained  
3 person at no cost. The private detention facility shall make every  
4 effort to make television programming available in the language of  
5 the detained person;
- 6 (g) Handheld radios must be provided to a detained person at no  
7 cost;
- 8 (h) A detained person may invite persons to the private detention  
9 facility to provide legal education, know your rights presentations,  
10 and other similar programming;
- 11 (i) Computer and internet access must be available and accessible  
12 to a detained person at no cost;
- 13 (j) A law library must be available and accessible;
- 14 (k) Communication from the private detention facility to a  
15 detained person, either in writing or verbally, must be delivered in  
16 the primary language of the detained person;
- 17 (l) Sexual violence and harassment grievances must be responded  
18 to immediately by culturally competent professionals on-site and  
19 reported to local law enforcement in the county where the private  
20 detention facility is located;
- 21 (m) Mental health evaluations should occur at intake and  
22 periodically, at least once a week. Culturally competent mental  
23 health therapy must be available and free;
- 24 (n) Requested medical care and attention must be provided without  
25 delay, including the provision of requested medical accommodations;
- 26 (o) Rooms used by a detained person for sleeping must have access  
27 to windows, natural light, and natural air circulation. Subject to  
28 safety limitations, sleeping rooms must include adjustable curtains,  
29 shades, blinds, or the equivalent installed at the windows for visual  
30 privacy and that are shatterproof, screened, or of the security type  
31 as determined by the private detention facility needs; and
- 32 (p) A private detention facility must be equipped to respond to  
33 natural and human-made emergencies, including earthquakes, lahar  
34 threats, tsunami, and industrial accidents. A private detention  
35 facility must be earthquake resistant. A private detention facility  
36 shall develop emergency operation and continuity of operations plans  
37 and provide those plans to the local emergency management department.  
38 A private detention facility must stock all necessary personal  
39 protective equipment in case of disease outbreaks consistent with  
40 large numbers of people detained in close contact to one another.

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

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

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

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

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

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

17 (d) Other relief, including an injunction, as the court may deem  
18 appropriate. Injunctive relief may be issued without bond in the  
19 discretion of the court, notwithstanding any other requirement  
20 imposed by statute.

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

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

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

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

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

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

37 (3) Each violation is a separate and distinct offense. The  
38 department of health shall impose the civil penalty in accordance

1 with chapter 34.05 RCW. Moneys collected under this section must be  
2 deposited into the state general fund.

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

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

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

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

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

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

32 (1) The legislature finds that all people confined in prisons and  
33 detention facilities in Washington deserve basic health care,  
34 nutrition, and safety. As held in *United States v. California*, 921  
35 F.3d 865, 886 (9th Cir. 2019), states possess "the general authority  
36 to ensure the health and welfare of inmates and detainees in  
37 facilities within its borders." States have broad authority to  
38 enforce generally applicable health and safety laws against



1 contractors operating private detention facilities within the state.  
2 The ninth circuit reinforced this authority in *Geo Group, Inc. v.*  
3 *Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating "[p]rivate  
4 contractors do not stand on the same footing as the federal  
5 government, so states can impose many laws on federal contractors  
6 that they could not apply to the federal government itself."

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

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

28 (")

29 (4) The legislature finds that private prison operators have cut  
30 costs by reducing essential security and health care staffing. The  
31 sentencing project, a national research and advocacy organization,  
32 found in 2012 that private prison staff earn an average of five  
33 thousand dollars less than staff at publicly run facilities and  
34 receive almost 60 hours less training. The office of inspector  
35 general also found that people confined in private facilities often  
36 failed to receive necessary medical care and that one private prison  
37 went without a full-time physician for eight months. People confined  
38 within private detention facilities are subjected to prolonged  
39 periods of confinement, inadequate nutrition, medical and mental  
40 health access issues, and arbitrary and improper visitation and

1 communication restrictions. In 2018, the sentencing project, a  
2 national research and advocacy organization, found that private  
3 prisons offer lower quality services and have higher staff turnover  
4 rates compared to publicly operated facilities. The office of  
5 inspector general also found that people confined in private  
6 facilities often failed to receive necessary medical care.

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

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

14 (7) Therefore, it is the intent of the legislature to prohibit  
15 the use of private, for-profit prisons and detention facilities in  
16 the state, and to set minimum standards for the conditions of  
17 confinement within private detention facilities in the state and to  
18 require the inspection and review of those facilities by appropriate  
19 state or local agencies to ensure public health and safety.

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

22 The definitions in this section apply throughout this chapter  
23 unless the context clearly requires otherwise.

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

29 (2) "Culturally competent" includes: Knowledge of a detained  
30 person's cultural histories and contexts, as well as family norms and  
31 values in different cultures; knowledge and skills in accessing  
32 community resources and community outreach; and skills in adapting  
33 services and treatment to a detained person's experiences and  
34 identifying cultural contexts for individuals.

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

37 (4) "Detention facility" means any facility in which persons are  
38 incarcerated or otherwise involuntarily confined for purposes  
39 including prior to trial or sentencing, fulfilling the terms of a

1 sentence imposed by a court, or for other judicial or administrative  
2 processes or proceedings.

3 ~~((2))~~ (5) "Fresh fruits and vegetables" means any unprocessed  
4 fruits or vegetables, not including any processed, canned, frozen, or  
5 dehydrated fruits or vegetables, or any fruits or vegetables infected  
6 or infested with insects or other contaminants.

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

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

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

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

22 (9) "Telecommunications services" means phone calls or other  
23 voice communication services, video communications, and email  
24 services.

25 NEW SECTION. **Sec. 10.** Sections 2 through 6 of this act do not  
26 apply to a facility that is:

27 (1) Providing rehabilitative, counseling, treatment, mental  
28 health, educational, or medical services to juveniles who are subject  
29 to Title 13 RCW, or similarly applicable federal law;

30 (2) Providing evaluation and treatment or forensic services to a  
31 person who has been civilly detained or is subject to an order of  
32 commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or  
33 71.34 RCW, or similarly applicable federal law, including facilities  
34 regulated under chapters 70.41, 71.12, and 71.24 RCW;

35 (3) Used for the quarantine or isolation of persons for public  
36 health reasons pursuant to RCW 43.20.050, or similarly applicable  
37 federal law;

38 (4) Used for work release under chapter 72.65 RCW, or similarly  
39 applicable federal law;

- 1 (5) Used for extraordinary medical placement;  
2 (6) Used for residential substance use disorder treatment; or  
3 (7) Owned and operated by federally recognized tribes and  
4 contracting with a government.

5 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of  
7 the state government and its existing public institutions, and takes  
8 effect immediately.

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

11 NEW SECTION. **Sec. 13.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 14.** If specific funding for the purposes of  
16 this act, referencing this act by bill or chapter number, is not  
17 provided by June 30, 2023, in the omnibus appropriations act, this  
18 act is null and void."

**2SHB 1470** - S COMM AMD  
By Committee on Human Services

**ADOPTED 04/11/2023**

19 On page 1, line 1 of the title, after "facilities;" strike the  
20 remainder of the title and insert "amending RCW 42.56.475,  
21 70.395.010, and 70.395.020; adding new sections to chapter 70.395  
22 RCW; creating new sections; prescribing penalties; and declaring an  
23 emergency."

EFFECT: Aligns contract language with other statutes in this  
chapter that exempt facilities operating pursuant to a valid  
contract, for the duration of that contract, not to include any  
extensions or modifications made to, or authorized by, that contract.  
Exempts certain facilities from health and sanitation rules and

inspections, operational standards, civil penalties, and private right of action sections in the bill.

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