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**Community Safety, Justice, & Reentry  
Committee**

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**HB 1470**

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

**Sponsors:** Representatives Ortiz-Self, Chopp, Simmons, Santos, Ryu, Orwall, Chapman, Gregerson, Doglio, Peterson, Ramel, Macri, Ormsby, Berg, Leavitt, Bateman, Morgan and Fey.

**Brief Summary of Bill**

- Creates a private right of action and civil penalties for violations of laws related to private detention facilities.
- Specifies conditions for the operations of private detention facilities.
- Requires state and local agencies to inspect private detention facilities for compliance with food, workplace conditions, water and air quality, and performance audits.
- Makes private detention facilities subject to the Public Records Act.

**Hearing Date:** 2/7/23

**Staff:** Martha Wehling (786-7067).

**Background:**

Correctional and Detention Facilities.

Correctional and detention facilities are used to detain persons for a variety of purposes, including pretrial detention and sentencing. Pretrial detention and sentences of up to one year are carried out by locally and publicly operated jail facilities. Sentences of over one year are

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served in state prison facilities operated and managed by the Department of Corrections (DOC). Juvenile sentences of 30 days or less are served in locally operated juvenile detention facilities, and longer sentences are served in Juvenile Rehabilitation facilities operated and managed by the Department of Children, Youth, and Families.

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

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

#### Prohibition on Private Detention Facilities.

Until 2021 private businesses had the ability to contract with federal, state, and local governments to provide detention services or ancillary services provided inside detention facilities. In 2021 the state enacted legislation prohibiting any person, business, state, or local government entity from operating a private detention facility, or utilizing a contract with a private detention facility. A private detention facility that is operating pursuant to a valid contract with a governmental entity that was in effect prior to January 1, 2021, may remain in operation for the duration of that contract. The facility may not extend or modify an existing contract. No new private detention facilities are permitted within the state, and no state or local governmental entity may enter into a contract with a private detention facility outside the state.

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

The restriction on contracting does not apply to certain types of facilities authorized under state law and any similarly applicable federal law, including:

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

#### Public Records Act.

The Public Records Act applies to all state and local agencies, including the Department of

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

### **Summary of Bill:**

#### Conditions for Private Detention Facility Operations.

Private detention facilities with contracts with effective dates on or after January 1, 2026, must provide minimum living conditions and standards. These conditions address use of personal belongings, living areas, clothing, laundry, personal hygiene items, food availability and quality, telecommunications services, visitation, television accessibility, radio, computer and internet access, presentations from outside speakers, law library access, indoor air quality, room temperature, availability of medical care, room lighting, natural disaster preparedness, and an infection control program. In addition, solitary confinement is prohibited, communication to a detained person must be in the person's primary language, sexual violence grievances must be responded to immediately and shared with local health jurisdictions, mental health evaluations must be conducted weekly, and culturally and competent mental health therapy must be free. A private detention facility may not limit or restrict the living conditions for disciplinary purposes.

Definitions providing specifications for the conditions are added. These include definitions for basic personal hygiene items, culturally competent, fresh fruits and vegetables, personal protective equipment, solitary confinement, and telecommunications services.

Juvenile facilities providing rehabilitative, counseling, treatment, mental health, educational, or medical services are removed from the exemption prohibiting future contracts.

#### Inspection by State and Local Agencies.

Five state agencies are directed to inspect private detention facilities. The Department of Health is required to inspect food services and handling, sanitation and hygiene, and nutrition. The Department of Labor and Industries is required to conduct workplace conditions and work undertaken by detained persons. The Department of Ecology is required to test water and air quality inside and outside the private detention facilities. The Office of the State Auditor has the option to undertake performance audits. The Office of the Attorney General has the option to investigate violations.

Local health jurisdictions are required to review food provided to detained persons to ensure nutrition, calorie, medical, food allergy, and religious dietary restrictions are met. Local health jurisdictions are also required to conduct inspections in coordination with the Department of

Health and investigate complaints.

Private Right of Action and Civil Penalties.

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

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

Public Records Act Application to Private Detention Facilities.

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

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill contains multiple effective dates. Please refer to the bill.