

SENATE BILL REPORT

2SHB 1470

As of March 28, 2023

Title: An act relating to private detention facilities.

Brief Description: Concerning private detention facilities.

Sponsors: House Committee on 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).

Brief History: Passed House: 2/28/23, 58-39.

Committee Activity: Human Services: 3/13/23, 3/21/23 [DPA-WM, DNP].

Ways & Means: 3/30/23.

Brief Summary of Amended Bill

- Requires the Department of Health (DOH) to adopt rules and standards providing sanitary, hygienic, and safe living conditions for individuals detained at private detention facilities.
- Requires DOH and the Department of Labor and Industries to conduct routine, unannounced inspections of private detention facilities.
- Specifies operating conditions for private detention facilities and access to services for detained individuals.
- Creates a private right of action and civil penalties, and authorizes the Office of the Attorney General to enforce violations and recover civil penalties.
- Subjects private detention facilities operating under contract with a state or local agency to the Public Records Act.

SENATE COMMITTEE ON HUMAN SERVICES

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.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame and Nguyen.

Minority Report: Do not pass.
Signed by Senators Boehnke, Ranking Member; Warnick and Wilson, J..

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Monica Fontaine (786-7341)

Background: Private Detention Facilities. Correctional and detention facilities are used to detain persons for a variety of purposes, including pretrial detention and sentencing. These facilities are typically owned and operated by local governments, the Department of Corrections (DOC), and the Department of Children, Youth, and Families. Private businesses may contract with federal, state, and local governments to provide detention services or ancillary services provided inside correctional and detention facilities. However, DOC is prohibited from utilizing contracts with any for-profit private correctional entity for the transfer or placement of prisoners, unless an emergency exception applies, in which case 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 includes detaining individuals for immigration-related proceedings.

A private detention facility is 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. In 2021, the Legislature prohibited a person, business, or state or local governmental entity from operating a private detention facility, or contracting with a private detention facility, with some exceptions. The legislation exempted circumstances where DOC transfers prisoners to an out-of-state private correctional facility and certain types of facilities authorized under state and federal law. It also allowed a private detention facility operating under a valid contract with a governmental entity that was in effect prior to January 1, 2021, to remain in operation for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

Public Records Act Exemption. In 2022, the Legislature exempted certain records related to currently and formerly incarcerated individuals at DOC from the Public Records Act (PRA). These include:

- body scanner images;
- health information in records other than an incarcerated individuals' medical, mental health, or dental files; and
- records or information created or maintained pursuant to the federal Prison Rape Elimination Act (PREA) that are risk assessments, risk indicators, monitoring plans,

reports of sexual abuse or sexual harassment, records of open PREA investigations, or the identities of persons in closed PREA investigation reports and related materials except for that of DOC staff, contractors, volunteers, and accused individuals in cases where the allegation is substantiated.

The exemptions related to health information and records created or maintained pursuant to the PREA do not apply to a public records request made by the incarcerated individual who is the subject of the information, or someone who has written permission from that individual. When disclosing such records or information, DOC may withhold information revealing the identity of other incarcerated individuals contained in the record.

State Inspections. Many kinds of facilities in the state are subject to inspection by a state agency in order to be licensed. The Department of Social and Health Services conducts unannounced inspections of enhanced service facilities, adult family homes, assisted living facilities, and nursing homes. The Department of Health (DOH) conducts unannounced inspections of hospitals, including acute care hospitals, psychiatric hospitals, and chemical dependency hospitals. DOH also inspects transient accommodations and migrant farmworker housing facilities.

Summary of Amended Bill: Public Records Act Exemption. A private detention facility operating pursuant to a contract with a state or local agency is subject to the PRA. The PRA exemption for certain records of individuals incarcerated at DOC also applies to records of individuals detained in private detention facilities, meaning disclosure is prohibited.

Living Conditions. DOH must adopt rules to ensure private detention facilities have measurable standards for providing sanitary, hygienic, and safe conditions for detained persons. DOH rules must include:

- having a safe, clean, and comfortable environment that allows a detained person to use their personal belongings to the extent possible;
- regularly cleaned and sanitized living areas, including sleeping, recreation, dining, telecommunications, visitation, and bathroom areas;
- clean, adequate, and maintained laundry facilities, equipment, handling, and processes that provide for infection control and ventilation;
- provision of basic personal hygiene items at no cost;
- provision of nutritious and balanced diets, including special diets, at least three times a day at no cost, using proper food handling and hygiene practices;
- maintaining safe indoor air quality;
- heating and air conditioning equipment that can be adjusted by room or area, within a certain temperature range, and prevention of excessive odors or moisture; and
- implementation and maintenance of an infectious disease control program.

The Office of the Attorney General (AGO) may enforce violations of these rules on its own initiative or in response to complaints or violations.

Health and Workplace Inspections. DOH and the Department of Labor and Industries (L&I) must conduct routine, unannounced inspections of private detention facilities. DOH must inspect food service and handling, sanitation and hygiene, and nutrition, investigate complaints, test bathing and drinking water and air quality every six months, and post inspection results on its website and in conspicuous places in English and in languages spoken by detainees. DOH may delegate food safety inspections to the local health jurisdiction where the private detention facility is located. DOH must adopt rules to ensure private detention facilities allow regular inspections and compliance.

L&I must inspect workplace conditions at private detention facilities, including work undertaken by detained persons. AGO is authorized to enforce violations of these rules on its own initiative or in response to complaints or violations.

Operation Standards. Private detention facilities operating pursuant to a contract or agreement with a federal, state, or local government must comply with specified requirements. These requirements do not apply to a private detention facility operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract. These requirements include:

- issuing new clothing and footwear upon admission of the detained individual;
- reasonable prices for food items in the commissary;
- providing telecommunication services free of charge to detained persons, with at least 60 minutes of use for each day of detainment;
- daily availability of in-person visitation, with unrestricted personal contact;
- prohibition on solitary confinement;
- access to televisions, handheld radios, and computers and internet at no cost, and access to a law library;
- requiring facility communications to a detained person to be in the primary language of the detained person;
- immediately responding to sexual violence and harassment grievances by on-site culturally competent professionals and reporting to local law enforcement;
- allowing detained persons to invite persons to provide legal education and other programming at the facility;
- providing mental health evaluations at intake and at least once a week with free culturally competent mental health therapy;
- providing requested medical care and medical accommodations without delay;
- requiring sleeping rooms to have access to windows, natural light, and natural air circulation with other specifications for visual privacy and security; and
- equipment to respond to natural and human-made emergencies with emergency operation plans and stocked necessary personal protective equipment.

The AGO may enforce violations of these requirements on its own initiative or in response to complaints or violations.

Private Right of Action. A detained person has a right of action in superior court to recover monetary damages for violations. For negligent violations, the detained person can recover \$1,000 or actual damages. For intentional or reckless violations, the detained person can recover \$10,000 or actual damages. Reasonable attorneys' fees and costs may be awarded if the detained person is the prevailing party. The court may also grant injunctive relief. The private right of action has a three year statute of limitations, and is only available against an owner, operator, contractor, subcontractor, or employee of the private detention facility.

Civil Penalties. A civil penalty of up to \$1,000 per violation per day may be imposed. Subject to appropriations, the secretary of DOH may adopt by rule a penalty matrix with procedures for assessing civil penalties. Each violation is a separate and distinct offense, and moneys collected from civil penalties must be deposited into the state general fund. If the civil penalty is not paid to DOH within 15 days, the AGO may recover the penalty in superior court. Penalties recovered by the AGO must be deposited into the Washington State Attorney General Humane Detention Account. Penalties may only be imposed against an owner, operator, contractor, or employee of the private detention facility.

Humane Detention Account. The Washington State Attorney General Humane Detention Account is created in the custody of the state treasurer. All civil penalties recovered by the AGO must be deposited into the account, and moneys in the account must only be used for costs associated with enforcement and recovery of civil penalties.

Exemption. Requirements related to health and sanitation rules and inspections, operational standards, civil penalties, and private right of action do not apply to facilities that are:

- providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles;
- providing evaluation and treatment or forensic services for individuals subject to civil commitment;
- used for quarantine or isolation for public health reasons;
- used for work release, extraordinary medical placement, or residential substance use disorder treatment; or
- owned and operated by federally recognized tribes and contracting with a government.

Other. There is a severability clause in the bill. This act must be construed liberally to accomplish its purpose.

EFFECT OF HUMAN SERVICES COMMITTEE AMENDMENT(S):

- Aligns contract language with other statutes 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 requirements related to health and sanitation rules and inspections, operational standards, civil penalties, and private right of action.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Second Substitute House Bill (Human Services): *The committee recommended a different version of the bill than what was heard.* PRO: Private, for-profit detention facilities should not be able to profit off of the most vulnerable populations in the state. It is unclear what will happen to the bill from 2021 that prohibited private detention facilities, so it is imperative to set health and safety standards that are comparable to other facilities. While there is only one private detention facility in the state, the bill will set standards and requirements for new facilities to follow if they want to do business with the state. State and local agencies should have the right to conduct unannounced inspections and ensure basic public health and safety standards are met. The bill creates baseline standards like clean air, clean clothing, and nutritious food, and the state has a duty to intervene to provide oversight, accountability, and transparency when there are abuses of basic health. Further, when the abuses are documented, the state needs to have enforcement authority to take action.

There have been multiple incidents of hunger strikes, denial or delayed medical care, freezing sleeping temperatures, denied dietary restriction requests, high costs of phone calls, use of tear gas, punitive use of solitary confinement, and lack of protocols to prevent the spread of COVID. These poor physical conditions negatively affect the well-being of detainees and their immigration cases.

OTHER: The bill closes a gap in authority by clarifying the role of DOH and ensuring safe living conditions for the most vulnerable Washington residents. Some technical changes are needed to make sure the definitions are consistent throughout the bill and also make sure there are not unintended consequences for facilities that are already regulated by other state agencies. When doing rulemaking, DOH will look to other rules and standards for other facilities and harmonize them. Implementation of this bill will require state funds.

Persons Testifying (Human Services): PRO: Representative Lillian Ortiz-Self, Prime Sponsor; Manuel Abrego, La Resistencia; Maru Mora Villalpando, La Resistencia; Kristina Walker, Deputy Mayor, City of Tacoma; Karina Perez-Gonzalez, Northwest Immigrant Rights Project; Paul Benz, WA Partners for Social Change; Hannah Woerner, Columbia Legal Services.

OTHER: Meghan Kelly-Stallings, Office of the Governor; Lauren Jenks, Washington State Department of Health.

Persons Signed In To Testify But Not Testifying (Human Services): No one.