

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1470

Chapter 419, Laws of 2023

68th Legislature
2023 Regular Session

PRIVATE DETENTION FACILITIES—VARIOUS PROVISIONS

EFFECTIVE DATE: May 11, 2023

Passed by the House April 21, 2023
Yeas 56 Nays 40

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 11, 2023
Yeas 29 Nays 20

DENNY HECK

President of the Senate

Approved May 11, 2023 9:46 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1470** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 11, 2023

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1470

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

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, for the duration of that contract, not to include
25 any extensions or modifications made to, or authorized by, that
26 contract.

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

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

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

38 (c) Telecommunications services must be provided free of charge
39 to detained persons and any communication, whether initiated or

1 received through such a service, must be free of charge to the
2 detained person initiating or receiving the communication. Each
3 detained person must be eligible to use these telecommunications
4 services for at least 60 minutes on each day of the person's
5 detention. Private detention facilities must not use the provision
6 of telecommunications services or any other communication service to
7 supplant in-person contact visits any detained person may be eligible
8 to receive;

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

14 (e) Solitary confinement is prohibited;

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

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

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

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

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

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

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

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

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

39 (o) Rooms used by a detained person for sleeping must have access
40 to windows, natural light, and natural air circulation. Subject to

1 safety limitations, sleeping rooms must include adjustable curtains,
2 shades, blinds, or the equivalent installed at the windows for visual
3 privacy and that are shatterproof, screened, or of the security type
4 as determined by the private detention facility needs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 general's enforcement of the provisions of this chapter governing the
2 recovery of civil penalties. The account is subject to allotment
3 procedures under chapter 43.88 RCW, but an appropriation is not
4 required for expenditures.

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

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

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

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

1 related grievances, including those regarding the quality of food.
2 (")

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

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

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

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

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

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

38 (1) "Basic personal hygiene items" means items used to promote or
39 preserve a detained person's health and contribute to the prevention

1 of disease or infection, including soap, toothbrush and toothpaste,
2 shampoo and conditioner, lotion, nail clippers, comb, towels, and
3 menstrual products.

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

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

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

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

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

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

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

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

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

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

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

6 (2) Providing evaluation and treatment or forensic services to a
7 person who has been civilly detained or is subject to an order of
8 commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or
9 71.34 RCW, or similarly applicable federal law, including facilities
10 regulated under chapters 70.41, 71.12, and 71.24 RCW;

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

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

16 (5) Used for extraordinary medical placement;

17 (6) Used for residential substance use disorder treatment; or

18 (7) Owned and operated by federally recognized tribes and
19 contracting with a government.

20 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately.

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

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

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

 Passed by the House April 21, 2023.
 Passed by the Senate April 11, 2023.
 Approved by the Governor May 11, 2023.

Filed in Office of Secretary of State May 11, 2023.

--- **END** ---