
Community Safety Committee

HB 1232

Brief Description: Concerning private detention facilities.

Sponsors: Representatives Ortiz-Self, Fey, Reed, Ramel, Leavitt, Mena, Macri, Callan, Farivar, Gregerson, Simmons, Peterson, Wylie, Ormsby, Fosse and Hill.

Brief Summary of Bill

- Modifies certain regulations related to operational standards for private detention facilities, inspections of such facilities, civil penalties for violations involving such facilities, and exemptions for certain types of facilities.
- Authorizes the Department of Health to inspect private detention facilities at any time for compliance with applicable state or federal law, and take enforcement action against noncompliant facilities.

Hearing Date: 2/4/25

Staff: Corey Patton (786-7388).

Background:

Correctional and Detention Facilities.

Correctional and detention facilities are used to detain persons for a variety of purposes, including pretrial detention and sentencing. "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.

Pretrial detention and sentences up to one year are carried out by locally and publicly operated

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jail facilities, while sentences over one year are served in state prison facilities operated and managed by the Department of Corrections. Juvenile sentences of 30 days or less are served in locally operated juvenile detention facilities, while longer sentences are served in juvenile rehabilitation facilities operated and managed by the Department of Children, Youth, and Families.

Regulation of Private Detention Facilities.

In 2023 the state enacted HB 1470, which included provisions related to:

- operational standards for private detention facilities;
- inspections of such facilities;
- private rights of action and civil penalties for violations involving such facilities; and
- exempting certain types of facilities from regulations.

"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.

Operational Standards.

The Department of Health (DOH) is required to adopt rules governing private detention facilities' operations related to sanitary, hygienic, and safe conditions. The rules must address specific topics including, for example, sanitation standards, dietary requirements, and environmental conditions.

Private detention facilities with contracts with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates prior to January 1, 2023, must comply with additional requirements addressing:

- issuance of clothing and footwear;
- price of food items in the commissary;
- free telecommunications services for 60 minutes daily;
- in-person visitation allowing children and personal contact;
- prohibition on solitary confinement;
- provision of telephones and handheld radios at no cost;
- invitations to outside speakers and presenters;
- provision of computer and internet;
- availability of a law library;
- communication in each detained individual's primary language;
- reporting of sexual violence and harassment grievances;
- provision of mental health evaluations and free culturally competent mental health therapy;
- prompt medical care;
- natural light and windows in sleeping rooms; and
- emergency response.

The Office of the Attorney General (AGO) is authorized to enforce violations of these rules and

requirements.

Inspections by State and Local Agencies.

The DOH is required to adopt rules related to the inspection of food services and handling, sanitation and hygiene, nutrition, complaints, food provided, and testing of water and air. The DOH must post inspection results on its website and at private detention facilities in conspicuous places. The DOH may delegate food safety inspections to local health jurisdictions. The Department of Labor and Industries is required to conduct inspections for workplace conditions and work undertaken by detained persons. The AGO is authorized to enforce violations found in the agencies' inspections.

Private Rights of Action and Civil Penalties.

A detained person has a right of action against the owner, operator, contractor, subcontractor, or employee of a private detention facility for certain violations of state law. A negligent violation permits recovery of \$1,000 or actual damages, while an intentional or reckless violation permits recovery of \$10,000 or actual damages. 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.

The DOH may create penalties for failure to comply with certain regulations of private detention facilities. Penalties may only be imposed against the owner, operator, contractor, subcontractor, or employee of a private detention facility. If the DOH collects the penalty, it must be deposited into the State General Fund. The AGO is authorized to pursue recovery of unpaid penalties in superior court. Any recovery by the AGO must be deposited into the Washington State Attorney General Humane Detention Account.

Exemptions.

Certain facilities are exempted from the aforementioned regulations, including facilities:

- providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles;
- providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court;
- used for the quarantine or isolation of persons for public health reasons;
- used for work release;
- used for extraordinary medical placement;
- used for residential substance use disorder treatment; or
- owned and operated by federally recognized tribes and contracting with a government.

Preliminary Injunction of Enforcement.

In 2024 the United States District Court for the Western District of Washington granted, in part, a preliminary injunction to enjoin the state and its agencies from enforcing certain provisions of HB 1470 against the GEO Group, operator of the Northwest ICE Processing Center. The preliminary injunction specifically enjoins enforcement of the statutory provisions related to operational standards adopted in rules by the DOH, inspections, and private rights of action and

civil penalties. However, the preliminary injunction does not enjoin enforcement of the operational standards applicable to private detention facilities with contracts with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates prior to January 1, 2023.

Summary of Bill:

Regulation of Private Detention Facilities.

Statutory provisions related to the regulation of private detention facilities are modified, including provisions related to:

- operational standards for private detention facilities;
- inspections of such facilities;
- civil penalties for violations involving such facilities; and
- exempting certain types of facilities from regulations.

Operational Standards.

The requirement for the Department of Health (DOH) to adopt rules governing private detention facilities' operations related to sanitary, hygienic, and safe conditions is modified. The rules must require private detention facilities to provide:

- a safe and clean environment for detained persons, staff, and visitors;
- ready access and equipment to accommodate detained persons with physical and mental disabilities;
- adequate lighting in all areas;
- natural or mechanical ventilation sufficient to remove odors, smoke, excessive heat, and condensation from all habitable rooms;
- a heating system operated and maintained to sustain a comfortable, healthful temperature in all habitable rooms;
- an adequate supply of hot and cold running water under pressure meeting specified standards, with devices to prevent backflow into the potable water supply system, and water temperature not exceeding 120 degrees Fahrenheit automatically regulated at all plumbing fixtures used by detained persons;
- written policies, procedures, and schedules for maintenance and housekeeping functions;
- specified housekeeping and service facilities on each floor, and
- equipment and facilities to collect and dispose of all sewage, garbage, refuse, and liquid waste in a safe and sanitary manner.

The additional requirements imposed on private detention facilities with contracts with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates prior to January 1, 2023, are modified. Such facilities must:

- comply with the DOH's rules related to food service and workers;
- designate an individual with specific responsibilities related to managing and supervising food services 24 hours per day;
- substitute foods, when necessary, of comparable nutrient value and record changes on the menu;

- allow sufficient time for detained persons to consume meals;
- ensure staff from dietary and food services are present in the facility during all meal times;
- keep policies and procedures pertaining to food storage, preparation, and cleaning food service equipment and work areas in the food service area for easy reference by dietary staff at all times;
- provide a readily available telephone for detained persons to make and receive confidential calls, and make a free telephone or equivalent communication device readily accessible on each floor occupied by a detained person for emergency use;
- provide a visiting area allowing privacy for detained persons and visitors;
- develop and implement written policies and procedures consistent with assuring the rights of detained persons, protecting against abuse and neglect, and reporting suspected incidents, and post those policies and procedures in a prominent place for detained persons at the facility to read;
- employ sufficient, qualified staff to provide adequate services to detained persons, maintain the facility free of safety hazards, and implement fire and disaster plans;
- provide and document orientation and appropriate training for all staff on specific topics; and
- establish and implement an effective facility-wide infection control program that includes specified policies, review processes, and procedures.

Inspections of Private Detention Facilities by State and Local Agencies.

The DOH is authorized to inspect a private detention facility at any time to determine whether it has failed or refused to comply with applicable state or federal law regulating such facilities. As resources allow, the DOH must make private detention facility inspection statements of deficiencies, plans of correction, notice of acceptance of plans of correction, enforcement actions, and notices of resolution available to the public on the internet.

Civil Penalties.

If the DOH conducts an inspection of a private detention facility and finds that the private detention facility has failed or refused to comply with applicable state statutes or regulations, the DOH may take corrective actions under specified circumstances. When the private detention facility has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or has failed to correct noncompliance with a statute or rule by an agreed or established date, the DOH the may:

- impose reasonable conditions on the private detention facility, which may include correction within a specified amount of time, training, or hiring a consultant approved by the DOH if the private detention facility cannot demonstrate that it has access to sufficient internal expertise; or
- assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000.

Proceeds from such fines may only be used by the DOH to provide training or technical assistance to private detention facilities. The DOH must adopt in rules specific fine amounts in

relation to the severity of the noncompliance. The private detention facility has the right to appeal such fines.

Exemptions.

The statutory exemption for facilities that provide rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles is eliminated. Such facilities that constitute a private detention facility are subject to applicable operational standards, inspections, and private rights of action and civil penalties.

Appropriation: None.

Fiscal Note: Requested on January 28, 2025.

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