

# HOUSE BILL REPORT

## E2SHB 1232

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**As Passed House:**

March 7, 2025

**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, Fey, Reed, Ramel, Leavitt, Mena, Macri, Callan, Farivar, Gregerson, Simmons, Peterson, Wylie, Ormsby, Fosse and Hill).

**Brief History:**

**Committee Activity:**

Community Safety: 2/4/25, 2/11/25 [DPS];

Appropriations: 2/19/25, 2/25/25 [DP2S(w/o sub CS)].

**Floor Activity:**

Passed House: 3/7/25, 56-38.

**Brief Summary of Engrossed Second Substitute Bill**

- Expands the definition of private detention facility to include certain non-profit detention facilities.
- 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.

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**HOUSE COMMITTEE ON COMMUNITY SAFETY**

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*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:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Obras.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Graham, Ranking Minority Member; Burnett.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Griffey, Assistant Ranking Minority Member.

**Staff:** Corey Patton (786-7388).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety. Signed by 18 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Springer, Street, Thai and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Burnett, Caldier, Corry, Dye, Keaton, Manjarrez, Marshall and Rude.

**Staff:** Emily Stephens (786-7157).

### **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 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.

"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.

In 2023 the state enacted House Bill (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.

*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 Engrossed Second Substitute Bill:**

### Regulation of Private Detention Facilities.

The definition of "private detention facility" is expanded to include any detention facility that is operated by a private, nongovernmental entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity, regardless of whether the facility is for-profit.

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 expanded to require the DOH to adopt rules for the provision of:

- ready access and equipment to accommodate detained persons with physical and mental disabilities;
- adequate lighting in all areas;
- 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 million.

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 provision exempting certain juvenile facilities from regulation is modified to instead exempt facilities that provide counseling, treatment, mental health, educational, or medical services to juveniles pursuant to specified licensing by the Department of Children, Youth, and Families.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Community Safety):**

(In support) The state has a right to protect the general safety, health, and welfare of people within its borders. Currently, detainees in private detention facilities are being held for extended periods without being convicted of a crime or having the chance for a fair hearing, and they are experiencing unjust violations of their fundamental rights. People are missing scheduled surgeries and failing to receive needed medical care, there is a lack of cleanliness and hygiene in living units, and sexual assaults have been reported. The state has been working for several years on regulating detention centers operated by private companies. Whether a detention facility is public or private, it should be required to maintain basic humane standards for things like food, ventilation, medical care, and safeguarding against abuse. This bill clarifies operational standards for any private detention facility in the state and brings those standards into alignment with existing Department of Health (DOH) rules. There is an exemption for certain facilities that operate pursuant to a license issued by the Department of Children, Youth, and Families because those facilities are already inspected on a regular basis.

Every day in the life of a mixed-status family involves the possibility of coming home to find that someone has been detained. Family members are being held involuntarily and are vulnerable. Ethical responsibility does not end at the prison gate. The Stanford Prison Experiment serves as a reminder of the dangers that happen behind locked doors. Secrecy is only for people who have something to hide. Any detention facility in the state should be subject to inspection by state agencies and held accountable. This bill strengthens existing laws so that the DOH can get through the door to inspect facilities and enforce basic standards.

(Opposed) None.



(Other) There is a non-profit private detention facility for juveniles in the state that hopes to continue its ongoing partnership with several counties if this bill is enacted.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The Northwest ICE Processing Center (Center) is the source of serious human rights concerns. They bar agencies conducting oversight from entry. Individuals at the Center resort to hunger strikes, and solitary confinement is used. This bill protects the most vulnerable people in society. No private, for-profit contractor should be allowed to deny people the basic dignity of life. This bill will ensure state and federal laws are being upheld. This bill creates guardrails for for-profit entities.

(Opposed) None.

**Persons Testifying (Community Safety):** (In support) Representative Lillian Ortiz-Self, prime sponsor; Leslie Cushman, Latino Civic Alliance; Liliana Chumpitasi, La Resistencia; Tim Warden-Hertz, Northwest Immigrant Rights Project; Antonio Ginatta, Columbia Legal Services; Breck Lebegue MD MPH; Isela Bonilla, Student; Michelle Carrillo, Student; and Ashley Ramirez, UW Tacoma Student.

(Other) Scott Hutsell, Lincoln County Commissioner and Chairman Martin Hall Consortium Board.

**Persons Testifying (Appropriations):** Jean Hill, Washington State Catholic Conference; Kristin Ang, Faith Action Network; and Kristina Walker, Councilmember, City of Tacoma.

**Persons Signed In To Testify But Not Testifying (Community Safety):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.