

FINAL BILL REPORT

E2SHB 1232

C 235 L 25
Synopsis as Enacted

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).

House Committee on Community Safety
House Committee on Appropriations
Senate Committee on Human Services
Senate Committee on Ways & Means

Background:

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.

Under state law, private detention facilities are subject to certain statutory provisions related to the operational standards for such facilities, inspections of such facilities, and private rights of action and civil penalties for violations, unless specifically exempted. A "private detention facility" is a detention facility that is operated by a private, nongovernmental, for-profit entity 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,

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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.

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.

Summary:

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

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.

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 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.

Votes on Final Passage:

House	56	38	
Senate	30	19	(Senate amended)
House			(House refused to concur/asked Senate to recede)
Senate	29	19	(Senate receded)

Effective: May 12, 2025