

SENATE BILL REPORT

E2SHB 1232

As of March 23, 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: Passed House: 3/7/25, 56-38.

Committee Activity: Human Services: 3/24/25.

Brief Summary of Bill

- Expands the definition of a private detention facility.
- Modifies operational standards and other requirements for certain private detention facilities.
- Allows the Department of Health to conduct inspections of private detention facilities and take enforcement action against noncompliant facilities in certain circumstances.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Kelsey-anne Fung (786-7479)

Background: Correctional and Detention Facilities. Correctional and detention facilities are used to detain individuals for a variety of purposes, including pretrial detention and sentencing. A detention facility is 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.

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.

Private Detention Facilities. 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.

Legislation passed in 2023 set forth requirements for private detention facilities, including operational standards and living conditions for detained individuals, inspections by the Department of Health (DOH) and the Department of Labor and Industries (L&I), private rights of action and civil penalties for violations, and exemptions for certain types of facilities.

Operational Standards. DOH must adopt rules to ensure private detention facilities have measurable standards for providing sanitary, hygienic, and safe conditions for detained persons. These rules must address specified topics including clean living areas and laundry facilities; dietary requirements and proper food handling; safe indoor air quality, heating, and air conditioning; and infectious disease control.

Private detention facilities operating pursuant to a contract or agreement with a federal, state, or local government with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates before January 1, 2023, must comply with additional specified requirements, including:

- issuing new clothing and footwear at intake;
- reasonable prices for commissary food items;
- providing at least 60 minutes of free telecommunication services per day;
- daily 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 be in the detained person's primary language;
- immediate response and reporting of sexual violence and harassment;
- allowing outside speakers and presenters;
- providing mental health evaluations and free culturally competent mental health therapy;
- providing medical care without delay;
- access to windows, natural light, and natural air circulation in sleeping rooms; and
- emergency response and equipment.

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 must adopt rules and inspect food service and handling, sanitation and hygiene, and nutrition, investigate complaints, and test water and air quality. Inspection results must be posted on DOH's website and in conspicuous places at the facility in English and in languages spoken by detainees. DOH may delegate food

safety inspections to the local health jurisdiction where the facility is located. L&I must inspect workplace conditions at private detention facilities, including work undertaken by detained persons. AGO may enforce violations found in inspections.

Private Right of Action. A detained person has a right of action to recover monetary damages for violations. A detained person can recover \$1,000 or actual damages for negligent violations, and \$10,000 or actual damages for intentional or reckless violations. Reasonable attorneys' fees and costs may be awarded if the detained person prevails. 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 against an owner, operator, contractor, or employee of the private detention facility. DOH may adopt by rule a penalty matrix with procedures for assessing civil penalties. Moneys collected from civil penalties must be deposited into the state general fund. AGO may recover an unpaid penalty in superior court, which must be deposited into the Washington State Attorney General Humane Detention Account.

Exemptions. Certain facilities are exempted, 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 or extraordinary medical placement;
- used for residential substance use disorder treatment; or
- owned and operated by federally recognized tribes and contracting with a government.

Summary of Bill: Private Detention Facilities. The definition of private detention facility is expanded to include any detention facility that is operated by a private, nongovernmental entity, regardless of for-profit status, and operating pursuant to a contract or agreement with federal, state, or local governmental entity.

Operational Standards. In addition to current law, DOH must adopt rules requiring a private detention facility to provide:

- ready access and equipment to accommodate detained persons with physical and mental disabilities;
- adequate lighting in all areas;
- adequate supply of hot and cold running water meeting applicable standards, with devices to prevent backflow, and specified water temperatures;
- 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 for private detention facilities operating pursuant to a contract or agreement with a federal, state, or local government with effective dates on or after January 1, 2023, or facilities that extend or modify contracts with effective dates before January 1, 2023, are removed from current law. Instead, these facilities must:

- comply with DOH food service rules;
- designate an individual responsible for 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. DOH may at any time inspect a private detention facility to determine whether it has failed or refused to comply with statutory requirements, standards or rules, or other applicable state or federal requirements. As resources allow, DOH must make 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.

If DOH conducts an inspection and finds that the private detention facility has failed or refused to comply with applicable state law or regulations, DOH may take corrective actions in certain circumstances. When the private detention facility has previously been subject to an enforcement action or has been given a previous statement of deficiency for

the same or similar type of violation of the same statute or rule, or has failed to correct noncompliance by an agreed or established date, DOH may:

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

Proceeds from these civil fines may only be used by DOH to provide training or technical assistance to private detention facilities. DOH must adopt in rules specific fine amounts in relation to the severity of noncompliance. The private detention facility has the right to appeal civil fines.

Exemptions. The exemption for certain juvenile facilities is changed 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: 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.