

SENATE BILL REPORT

SB 5005

As Reported by Senate Committee On:
Human Services, January 29, 2025

Title: An act relating to transparency, public safety, and independent oversight of the city, county, and regional jail system in Washington state.

Brief Description: Concerning transparency, public safety, and independent oversight of the city, county, and regional jail system in Washington state. **[Revised for 1st Substitute:** Concerning the city, county, and regional jail system in Washington state.]

Sponsors: Senators Saldaña, Frame, Hasegawa, Liias, Lovelett, Nobles, Orwall, Salomon, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Human Services: 1/21/25, 1/29/25 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Creates the Washington Jail Council within the Office of the Governor to be responsible for monitoring jails, investigating and receiving complaints, and administering an annual jail survey, among other duties.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5005 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Frame, Vice Chair; Orwall.

Minority Report: Do not pass.

Signed by Senators Christian, Ranking Member; Warnick.

Staff: Kelsey-anne Fung (786-7479)

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.

Background: Local Jail Standards. Cities and counties are authorized to acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities at any place within the county designated by the county or municipal legislative authority. Local governments that own or operate adult correctional facilities must adopt operation standards for those facilities. These standards must be the minimums necessary to meet federal and state constitutional requirements relating to the health, safety, and welfare of confined persons and staff, as well as state and federal statutory requirements, and to provide for the public's health, safety, and welfare.

A city or county primarily responsible for the operation of a jail may create a department of corrections to be in charge of the jail and persons confined in the jail. If a city or county does not create a department of corrections, the chief law enforcement officer of the city or county is in charge of the jail and persons confined in the jail.

Local governments may also execute interlocal contracts for jail services between other cities and counties that give one local government the responsibility for the operation of the jail and include the applicable charges for maintaining custody of the persons confined in the jail. Further, local governments may create and operate regional jails governed by representatives from multiple jurisdictions.

Corrections Standards Board. In 1977, the Legislature passed the City and County Jails Act which created the Washington State Jail Commission. The Jail Commission was charged with promulgating mandatory and advisory jail standards, inspecting jails for compliance, and distributing state bond funds for local jail construction. The Jail Commission also drafted minimum physical plant and custodial care standards that the Legislature approved in 1979.

In 1981, the Legislature created the Washington State Corrections Standards Board (CSB) as a board within the Jail Commission. CSB had authority to recommend advisory prison standards. The 1981 legislation also required CSB to assume the functions of the Jail Commission on July 1, 1983. The statute included a sunset date for the CSB for July 1, 1987.

CSB was composed of nine voting members appointed by the Governor and five nonvoting members representing the Legislature and the Department of Corrections (DOC). CSB had ten staff that included prison and jail inspectors. CSB inspectors conducted annual jail inspections to monitor and enforce compliance with standards. Noncompliant jails were given time to correct deficiencies or risk closure. CSB also set physical plant standards for jails, including standards for square footage per incarcerated individual for general population dormitories, to respond to capacity and overcrowding issues. State funding was provided through the local jail construction program for new construction or remodeling of local jails to meet and implement the physical plant standards.

In addition to inspections, CSB operated two statewide jail data systems: the Jail Population

Accounting System, and Convicted Felony Reporting. These systems provided information for monitoring jail crowding and general population trends, planning, forecasting future jail felony populations, and addressing legislative and policy issues.

In 1986, the Legislative Budget Committee conducted a sunset review and recommended that CSB be terminated and its various functions be transferred to other agencies. The following legislative session, the Legislature passed HB 738 which:

- terminated the CSB;
- transferred the juvenile confinement compliance function to the Department of Social and Health Services;
- transferred the jail population data collection function and local jail construction funding program to the Office of Financial Management;
- eliminated state mandated operating standards for local jails and required local governments to adopt their own jail operating standards; and
- required DOC to adopt operating standards for its prison facilities.

Unexpected Fatality Reports. Legislation passed in 2021 requires a city or county department of corrections or chief law enforcement officer responsible for the operation of a jail to conduct an unexpected fatality review in any case where the death of an individual confined in the jail is unexpected. An unexpected fatality review team must be convened with individuals with appropriate expertise who have no previous involvement in the case. A report must be issued within 120 days following the fatality, unless an extension has been granted. The Department of Health must create a public website where all reports shall be posted and maintained.

Jail Standards Task Force. The Joint Legislative Task Force on Jail Standards (Task Force) was established through a budget proviso in the 2021-23 operating budget. The Task Force was charged with reviewing the adequacy of standards used by jails, current data on jails in the state, how jails compared with jails in other states, and revenue sources and funding for jails in other states, among other issues.

The Task Force was also charged with making recommendations on:

- statewide minimum jail standards, oversight, and other policy changes to ensure jail conditions meet state and federal constitutional and statutory standards, and include adequate safety and welfare safeguards for incarcerated persons and staff; and
- restoration of a statewide authority to set mandatory minimum jail standards and conduct inspections of jails for compliance and enforcement of those standards.

The 18-member Task Force was staffed by the Attorney General's Office and held 13 meetings between August 2022 and October 2023. The Task Force submitted its final report on December 1, 2023.

Summary of Bill (First Substitute): Subject to appropriations, the Washington Jail Council (Council) is created within the Office of the Governor to promote jail transparency;

support safe and humane conditions for jail employees and incarcerated individuals; encourage reform towards a more rehabilitative and therapeutic jail system; and reduce the exposure of jails to litigation.

The Washington Jail Council Members. The Council must be composed of seven members appointed by the Governor:

- a current or former jail administrator;
- a current or former medical provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last ten years;
- a current or former behavioral health service provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last ten years;
- two persons with lived experience being incarcerated in a Washington jail;
- a licensed attorney with a background in investigating or advocating matters related to enhancing jail practices or conditions in the state and has not been employed by a state or correctional or law enforcement agency in the last ten years; and
- a current or former jail employee.

The initial appointed members shall have staggered terms. Successors to the initial members shall be appointed for five-year terms, unless a successor is filling a vacancy. Members are eligible for reappointment. A member may only be removed by the Governor for neglect of duty, misconduct, or the inability to perform duties after being given a written statement of the charges and an opportunity to be heard at a public hearing. The Council shall select a chair and vice chair from among its members. Members of the Council must receive compensation in accordance with state law and be reimbursed for for travel expenses.

The Washington Jail Council Director. Subject to appropriations, the Governor shall appoint a full-time director from a list of at least three nominees submitted by the Council. If the Governor declines to select anyone from the list, the Governor may request additional candidates or suggest candidates to the Council for consideration. The director must hold office for five-year terms and may only be removed by the Governor for neglect of duty, misconduct, or the inability to perform duties. Subject to appropriations, the director shall employ staff.

The Washington Jail Council Duties. The Council must meet at least quarterly to make recommendations, receive reports from the director, and transact business properly brought before the Council. The Council or its staff must:

- establish priorities for the use of limited resources available to the Council;
- maintain a website, mailing address, toll-free telephone number, and a collect telephone number for the receipt of complaints and inquiries and sharing of information;
- collect, analyze, and report information relating to the operation and conditions of jails;

- develop and administer a survey of jails at least annually;
- monitor jails for compliance with their own jail policies, standards, rules, or procedures, and whether those policies comply with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, and welfare of incarcerated individuals and staff;
- write and publish reports that must include nonidentifiable case studies or other information necessary to support any findings and any written response from a jail administrator or their designee to such reports;
- serve as a member of all unexpected fatality review teams;
- investigate and report on specific and systemic issues relating to jails including issues and trends identified through monitoring, complaints, fatality reviews, and the jail survey;
- provide technical assistance and consultation;
- share information with jail administrators or their designees regarding individual complaints or concerns within the discretion of the director or their designee and with the consent of the complainant;
- provide public comment and testimony, write and issue reports and recommendations, share information, and make recommendations for statutory changes;
- adopt rules, policies, and procedures; and
- submit an annual report to the Governor and Legislature with a statement of actions taken by the Council for the prior year and any recommendations for necessary or desirable statutory changes.

Any investigations conducted by the Council should not interfere with or impede an ongoing criminal investigation being conducted by a law enforcement agency.

Access to Facilities. The director and their designees shall have reasonable access to all areas of the jail accessible to or used by incarcerated individuals. Access may be subject to reasonable security and background investigation requirements of the jail, provided that such access must not be unreasonably withheld. Denial of access to individuals with lived experience, including conviction or incarceration histories, who do not present active security concerns, shall be deemed unreasonable. Any initial background investigation must be completed within 48 hours, and any subsequent investigation of the same person must be performed promptly and must not result in a delay of more than two hours.

The jails must also provide the director or their designee:

- reasonable opportunity to survey or interview privately and confidentially any incarcerated individual, jail employee, or other person by mail, telephone, and in person;
- the ability to make audio and visual recordings of areas accessible to or used by incarcerated individuals, provided that the visual recordings do not depict location or angles of security cameras; and
- the right to access, inspect, and copy information, records, or documents in the

possession or control of jail administrators or their agents that the Council considers necessary to carry out its purpose or support its recommendations.

If there is a written demand from the director or their designee for access to information, records, or documents, the jail must provide the information within 20 business days of the demand. If the information pertains to a death, threats of bodily harm, or the denial of necessary medical treatment, the information must be provided within five days, unless the Council consents to an extension of time. Upon notice and request by the Council, a state or local government agency or entity that has records that are relevant to a complaint or investigation conducted by the Council must provide the Council with access to such records.

A jail administrator or their designee must provide a written response to a monitoring report issued by the Council within one month of receiving the report.

Health Oversight Agency and Confidentiality. The Council is a health oversight agency so that federal law does not preclude jails, health care providers, or others from providing information requested by the Council, or require these entities to seek or obtain consent from incarcerated individuals before providing information to the Council. When information and records are provided to the Council, it is subject to all state and federal laws governing confidentiality and disclosure to the same extent as the entity responding to the request from the Council.

The Council must maintain the confidentiality of all matters under investigation, complaints, and the identities of complainants, informants, or witnesses except to the extent that disclosures are necessary to carry out the Council's duties or recommendations. Such information shall be exempt from public disclosure under the Public Records Act.

The Council or its staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding regarding the exercise of official duties. All related memoranda, work product, notes, and case files of the Council are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence.

Nothing shall prevent the Council from publishing a report or database, or reporting the results of an investigation, which maintains the confidentiality of identities of incarcerated individuals. Information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, law enforcement, or criminal prosecution, provided that nothing shall be deemed to reduce or modify the contractual, statutory, or due process rights of any jail employee with respect to any proceeding related to employee discipline, employee licensing or certification, or criminal prosecution. The director must contact the jail employee and the bargaining unit representative before reporting the results of an investigation that reveals information warranting possible sanctions or corrective action about a jail employee.

Civil Immunity. No civil action may be brought against any Council employee for good faith performance of responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against a jail employee, subcontractor, volunteer, incarcerated individual, or family member or representation of an incarcerated individual for any communication made, or information given or disclosed, to aid the Council in carrying out its responsibilities. All individuals, legal entities, and government agencies are immune from civil liability for providing information to the Council in good faith.

Unexpected Fatality Reports. When an unexpected fatality review team is convened for an unexpected death of an individual confined in a jail, the team must include the director of the Council or their designee.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

- Creates the Washington Jail Council, instead of the Jail Oversight Board, within the Governor's Office and makes conforming changes.
- Alters duties by replacing the uniform jail report system with an annual jail survey and clarifies that the Council will monitor jails for compliance with the jail's own policies and standards and whether those policies comply with applicable federal, state, or local law.
- Removes advisory councils.
- Removes the requirement for the Council to monitor jails every three years and publish reports within two months of a visit.
- Specifies that any Council investigation should not interfere with or impede an ongoing criminal investigation being conducted by a law enforcement agency.
- Modifies access provisions to require records from the jail within a certain time frame, unless the Council consents to an extension, and requires a state or local government agency or entity with relevant information to provide the Council with access to such records.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The CSB did great work and improved conditions for workers, incarcerated people, and facilities when the state had jail

standards. Since the CSB was eliminated, there is a patchwork of different kinds of jails in counties with different kinds of services and a horrific number of deaths and injuries in facilities. Washington State is ranked the fourth highest in the nation for jail deaths. This bill takes some of the task force recommendations that had unanimous or near unanimous support and tries to establish the oversight.

The task force involved many stakeholders, and it was learned as part of the task force that oversight is essential to jail operations and should be considered part of the basic public safety program. States across the country have jail oversight, and no other similar institution in Washington is free from oversight. Oversight is also fiscally smart as the cost of oversight is small compared to the costs in human lives and judgments paid.

Recent jail death investigations showed that mental health crises are going unrecognized and unattended for weeks in jails, and are being improperly handled. The Eighth Amendment protects individuals from cruel and unusual punishment. Many jails are violating this civil right, and the state is morally and legally obligated to have oversight of jails. Without oversight, the state is complicit in jail injuries and deaths. This bill will help jails treat people better and ensure independent investigations when things go wrong.

There is no external oversight entity for individuals and families to turn to for help if the jail provides poor treatment or services. Systemic failure in accountability and transparency threatens lives and well-being of incarcerated individuals. The status quo cannot be maintained where constitutional rights vanish behind jail walls. Cities and counties sometimes contract with tribes for jail services, and while the tribes have sovereign rights to operate their justice systems independently, this autonomy creates a complex legal framework when housing nontribal individuals in the jail.

This bill gives the state its best change of staying ahead of change and thinking ahead. The board should not be viewed as only seeking to critique and condemn jails but a helpful hand to streamline policy changes and provide redress for grievances by funneling valid concerns to a qualified brain trust.

This bill does not impose mandates on jails besides transparency. Jails must share data and open their doors to professional auditors. Any standards would be advisory. The goal is to identify and provide opportunities, not mandate change. This bill does not impose costs on jails. There is no reason why jails should receive funding for simply being transparent. People are dying in jails and millions are being paid out to settle lawsuits. It is far cheaper to improve jails than paying judgments.

CON: Washington's previous jail standards were part of a grand bargain where the state paid for the construction of jails and in exchange, the state had jail standards. When the bonds were paid off, the jail standards went away. Since 1987, every jail has had to have its own operating jail standards. There should be jail standards on facility maintenance, inmate housing and classification, mental health and medical treatment standards, and jail staffing

standards. Jails were not funded or built to be therapeutic environments but they should be.

There are concerns about the far reaching and potentially overly burdensome requirements related to the authority given to the board for a system already stressed and understaffed. There are concerns about the potential conflict for requests for information that may exist in federal law. There should be statewide standards that all jails can meet, but since each jail has a variety of standards, it is practically difficult for a board to oversee when they are not judging something based on statewide metrics.

OTHER: There are a dozen cities that operate jails in the state. The feedback has not been to objecting to oversight but questions about the standard to be measured against. Without a clear statewide standard that jails will be expected to adhere to, there are questions about what the oversight is looking for. There is a cost associated with local and state jurisdictions to do this work and comply.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Jeanelle Reanier-Briggs; Ethan Frenchman, Columbia Legal Services; Celyna Ly; David Lara; Jordan Landry; Hailey Ockinga, Beyond These Walls.

CON: Brad Banks, Washington State Association of Counties (WSAC); James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.