H-0579.2

HOUSE BILL 1470

State of Washington 68th Legislature 2023 Regular Session

By Representative Ortiz-Self

AN ACT Relating to private detention facilities; amending RCW 42.56.475, 70.395.010, 70.395.020, and 70.395.030; adding new sections to chapter 70.395 RCW; creating a new section; prescribing penalties; and providing effective dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 42.56.475 and 2022 c 272 s 1 are each amended to read as follows:

(1) The following information or records created or maintained by the department of corrections or a private detention facility is exempt from public inspection and copying under this chapter:

(a) Body scanner images from any system designed to detect and visualize contraband hidden in body cavities or beneath clothing, including backscatter X-ray, millimeter wave, and transmission X-ray systems;

(b) The following information and records created or maintained pursuant to the federal prison rape elimination act, 34 U.S.C. Sec. 30301 et seq., and its regulations:

(i) Risk assessments, risk indicators, and monitoring plans;

(ii) Reports of sexual abuse or sexual harassment, as defined under 28 C.F.R. 115.6;

(iii) Records of open prison rape elimination act investigations; and

(iv) The identities of individuals other than department of corrections or private detention facility staff, contractors, and volunteers, in closed prison rape elimination act investigation reports and related investigative materials; however, the identity of an accused individual is not exempt if the allegation is determined to have been substantiated; and

(c) Health information in records other than an incarcerated individual's or detained individual's medical, mental health, or dental files.

(2) The exemption of information or records described under subsection (1)(b) and (c) of this section does not apply to requests by the incarcerated individual or detained individual who is the subject of the information, a requestor with the written permission of the incarcerated individual or detained individual who is the subject of the information, or a personal representative of an incarcerated individual or detained individual who is the subject of the information. In response to such requests, the department of corrections or private detention facility may withhold information revealing the identity of other incarcerated or detained individuals.

(3) An agency or private detention facility refusing, in whole or in part, inspection of a public record containing information listed in subsection (1)(c) of this section may cite to subsection (1)(c) of this section, without further explanation, when providing the brief explanation required by RCW 42.56.210(3), and shall also identify the number of pages withheld, if any pages are withheld in their entirety.

(4) For purposes of this section:

(a) "Health information" means any information that identifies or can readily be associated with the identity of an incarcerated individual or detained individual and directly relates to the following: Medical, mental health, or dental diagnoses or conditions; medical, mental health, or dental services, treatments, or procedures, including requests for or complaints about such services, treatments, or procedures; transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than an incarcerated individual's or detained individual's preferred name, pronouns, and gender marker.

(b) The following information is not "health information" under this section: (i) Health care information subject to RCW 42.56.360(2) and chapter 70.02 RCW; and (ii) information related to injuries, other than injuries related to medical procedures or genital anatomy, contained in incident reports, infraction records, or use of force reports, prepared by department of corrections or private detention facility staff other than health care providers.

(c) "Incarcerated individual" has the same meaning as "inmate" under RCW 72.09.015 and includes currently or formerly incarcerated individuals.

(d) "Detained individual" means a person confined in a private detention facility.

(e) "Private detention facility" means a 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.

(5) A private detention facility operating pursuant to a contract with a state or local agency is subject to the requirements of this chapter.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70.395 RCW to read as follows:

(1) This section applies to contracts with effective dates on or after the effective date of this section.

(2) Private detention facilities must comply with the following minimum requirements:

(a) A detained person should have a safe, clean, and comfortable environment that allows a detained person to use the person's personal belongings to the extent possible;

(b) Living areas, including areas used for sleeping, recreation, dining, telecommunications, visitation, and bathrooms. Bathrooms must be cleaned and sanitized daily;

(c) A detained person, upon admission to a private detention facility, must be issued new clothing and new footwear for both indoor and outdoor use and for protection against cold and heat. Clothing issued must be regularly laundered and replaced at no cost once no longer hygienic or serviceable;

(d) A private detention facility must provide laundry facilities, equipment, handling, and processes for linen and laundered items that are clean and in good repair, adequate to meet the needs of detained

persons, and maintained according to the manufacturer's instructions. Laundry and linen must be handled, cleaned, and stored according to acceptable methods of infection control including preventing contamination from other sources. Separate areas for handling clean laundry and soiled laundry must be provided and laundry rooms and areas must be ventilated to the exterior;

(e) Basic personal hygiene items must be provided to a detained person regularly at no cost;

(f) A private detention facility shall provide a nutritious and balanced diet, including fresh fruits and vegetables, and shall recognize a detained person's need for a special diet. A private detention facility must follow proper food handling and hygiene practices. A private detention facility must provide at least three meals per day, at no cost, and at reasonable hours;

(g) Any food items in the commissary must be available at reasonable prices taking into account the income and financial circumstances of detained persons;

(h) Telecommunications services must be provided free of charge to detained persons and any communication, whether initiated or received through such a service, must be free of charge to the detained person initiating or receiving the communication. Each detained person must be eligible to use the telecommunications services described in this subsection (2)(h) for at least 60 minutes on each day of the person's detainment. Private detention facilities must not use the provision of telecommunications services or any other communication service to supplant in-person contact visits any detained person may be eligible to receive;

(i) In-person visitation must be available daily. Visitation rooms must allow for the presence of children and personal contact between visiting persons and detained persons may not be restricted. A detained person may receive reading and writing materials during visitation;

(j) Solitary confinement is prohibited;

(k) Televisions must be available and accessible to a detained person at no cost. The private detention facility shall make every effort to make television programming available in the language of the detained person;

(l) Handheld radios must be provided to a detained person at no cost;

(m) A detained person may invite persons to the private detention facility to provide legal education, know your rights presentations, and other similar programming;

(n) Computer and internet access must be available and accessible to a detained person at no cost;

(o) A law library must be available and accessible;

(p) Communication from the private detention facility to a detained person, either in writing or verbally, must be delivered in the primary language of the detained person;

(q) Sexual violence and harassment grievances must be responded to immediately by culturally competent professionals on-site and shared with the local health jurisdiction in the county where the private detention facility is located;

(r) Mental health evaluations should occur at intake and periodically, at least once a week. Culturally competent mental health therapy must be available and free;

(s) Safe indoor air quality must be maintained;

(t) The private detention facility must have both heating and air conditioning equipment that can be adjusted by room or area. Rooms used by a detained person must be able to maintain interior temperatures at a minimum of 65 degrees Fahrenheit year-round. Excessive odors and moisture must be prevented in the building;

(u) Requested medical care and attention must be provided without delay, including the provision of requested medical accommodations;

(v) Rooms used by a detained person for sleeping must have access to windows, natural light, and natural air circulation. Subject to safety limitations, sleeping rooms must include adjustable curtains, shades, blinds, or the equivalent installed at the windows for visual privacy and that are shatterproof, screened, or of the security type as determined by the private detention facility needs;

(w) A private detention facility must be equipped to respond to natural and human-made emergencies, including earthquakes, lahar threats, tsunami, and industrial accidents. A private detention facility must be earthquake resistant. A private detention facility shall develop emergency operation and continuity of operations plans and provide those plans to the local emergency management department. A private detention facility must stock all necessary personal protective equipment in case of disease outbreaks consistent with large numbers of people detained in close contact to one another; and

(x) A private detention facility must implement and maintain an infection control program that prevents the transmission of infections and communicable disease among detained persons, staff, and visitors.

(3) None of the standards in subsection (2) of this section may be limited or restricted for disciplinary purposes.

NEW SECTION. **Sec. 3.** A new section is added to chapter 70.395 RCW to read as follows:

(1) The department of health shall direct the local health jurisdiction in the county where the private detention facility is located to conduct routine, unannounced inspections of private detention facilities including, but not limited to, inspection of food service and food handling, sanitation and hygiene, and nutrition as provided in subsection (2) of this section. The local health jurisdiction shall conduct investigations of complaints received relating to any private detention facility located within its jurisdiction.

(2) The department of health shall coordinate with the local health jurisdiction in the county where the private detention facility is located to regularly review the list of food items provided to detained persons to ensure the specific nutrition and calorie needs of each detained person are met, including any needs related to medical requirements, food allergies, or religious dietary restrictions.

(3) The department of labor and industries shall conduct routine, unannounced inspections of workplace conditions at private detention facilities, including work undertaken by detained persons.

(4) The department of ecology shall routinely test water and air quality at private detention facilities both inside and outside of the facility.

(5) The office of the state auditor may undertake performance audits of private detention facilities.

(6) The office of the attorney general may undertake review of private detention facility practices and may investigate violations of this chapter on its own initiative and in response to complaints.

NEW SECTION. **Sec. 4.** A new section is added to chapter 70.395 RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, agencies responsible for oversight of private detention facilities in accordance with section 3 of this act may adopt those rules as may be necessary to effectuate the intent and purposes of this chapter, which include ensuring that detained persons are treated humanely and that private detention facilities maintain sanitary, hygienic, and safe conditions in the interest of public health, safety, and welfare.

NEW SECTION. **Sec. 5.** A new section is added to chapter 70.395 RCW to read as follows:

(1) A detained person aggrieved by a violation of this chapter has a right of action in superior court and may recover for each violation as follows:

(a) Against any person who negligently violates a provision of this chapter, $1,000, or actual damages, whichever is greater, for each violation;

(b) Against any person who intentionally or recklessly violates a provision of this chapter, $10,000, or actual damages, whichever is greater, for each violation;

(c) Reasonable attorneys' fees and costs if the detained person is the prevailing party; and

(d) Other relief, including an injunction, as the court may deem appropriate. Injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) For the purposes of this section, "person" means an owner, contractor, subcontractor, or employee of a private detention facility.

(4) The state and its agencies are not liable for a violation of this chapter.

NEW SECTION. **Sec. 6.** A new section is added to chapter 70.395 RCW to read as follows:

(1) Any person who fails to comply with this chapter may be subject to a civil penalty in an amount of not more than $1,000 per violation per day.

(2) Subject to the availability of amounts appropriated for this specific purpose, the secretary of the department of social and health services may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Each violation is a separate and distinct offense. The department of social and health services shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under this section must be deposited into the state general fund.

(4) If the civil penalty is not paid to the department of social and health services within 15 days after receipt of notice, the office of the attorney general may bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or in the county where the private detention facility is located. In all such actions, the procedure and rules of evidence are the same as in ordinary civil actions. All penalties recovered by the attorney general under this chapter must be paid into the Washington state attorney general humane detention account created in section 7 of this act.

(5) For the purposes of this section, "person" means an owner, contractor, subcontractor, or employee of a private detention facility.

(6) The state and its agencies are not liable for a violation of this chapter.

NEW SECTION. **Sec. 7.** A new section is added to chapter 70.395 RCW to read as follows:

The Washington state attorney general humane detention account is created in the custody of the state treasurer. All receipts from civil penalties under section 6 of this act must be deposited in the account. Only the attorney general or the attorney general's designee may authorize expenditures from the account. Moneys in the account must be used exclusively for the costs associated with the attorney general's enforcement of the provisions of this chapter governing the recovery of civil penalties. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 8. RCW 70.395.010 and 2021 c 30 s 1 are each amended to read as follows:

(1) The legislature finds that all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety. As held in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess "the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders." States have broad authority to enforce generally applicable health and safety laws against contractors operating private detention facilities within the state. The ninth circuit reinforced this authority in *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating "[p]rivate contractors do not stand on the same footing as the federal government, so states can impose many laws on federal contractors that they could not apply to the federal government itself."

(2) The legislature finds that profit motives lead private prisons and detention facilities to cut operational costs, including the provision of food, health care, and rehabilitative services, because their primary fiduciary duty is to maximize shareholder profits. This is in stark contrast to the interests of the state to ensure the health, safety, and welfare of Washingtonians, including all inmates and detainees within Washington's borders.

(3) The legislature finds that people confined in for-profit prisons and detention facilities have experienced abuses and have been confined in dangerous and unsanitary conditions. Safety risks and abuses in private prisons and detention facilities at the local, state, and federal level have been consistently and repeatedly documented. The United States department of justice office of the inspector general found in 2016 that privately operated prisons "incurred more safety and security incidents per capita than comparable BOP [federal bureau of prisons] institutions." The office of inspector general additionally found that privately operated prisons had ((~~"higher rates of inmate-on-inmate and inmate-on-staff assaults, as well as~~)) higher rates of staff uses of force and that people detained in private prisons submitted more safety and security related grievances, including those regarding the quality of food. ((~~"~~))

(4) The legislature finds that private prison operators have cut costs by reducing essential security and health care staffing. The sentencing project, a national research and advocacy organization, found in 2012 that private prison staff earn an average of five thousand dollars less than staff at publicly run facilities and

receive almost 60 hours less training. The office of inspector general also found that people confined in private facilities often failed to receive necessary medical care and that one private prison went without a full-time physician for eight months. People confined within private detention facilities are subjected to prolonged periods of confinement, inadequate nutrition, medical and mental health access issues, and arbitrary and improper visitation and communication restrictions. In 2018, the sentencing project, a national research and advocacy organization, found that private prisons offer lower quality services and have higher staff turnover rates compared to publicly operated facilities. The office of inspector general also found that people confined in private facilities often failed to receive necessary medical care.

(5) The legislature finds that private prisons and detention centers are less accountable for what happens inside those facilities than state-run facilities, as they are not subject to the freedom of information act under 5 U.S.C. Sec. 552 or the Washington public records act under chapter 42.56 RCW.

(6) The legislature finds that at least 22 other states have stopped confining people in private for-profit facilities.

(7) Therefore, it is the intent of the legislature to prohibit the use of private, for-profit prisons and detention facilities in the state, and to set minimum standards for the conditions of confinement within private detention facilities in the state and to require the inspection and review of those facilities by appropriate state or local agencies to ensure public health and safety.

Sec. 9. RCW 70.395.020 and 2021 c 30 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Basic personal hygiene items" means items used to promote or preserve a detained person's health and contribute to the prevention of disease or infection, including soap, toothbrush and toothpaste, shampoo and conditioner, lotion, nail clippers, comb, towels, and menstrual products.

(2) "Culturally competent" includes: Knowledge of a detained person's cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community outreach; and skills in adapting

services and treatment to a detained person's experiences and identifying cultural contexts for individuals.

(3) "Detained person" means a person confined in a private detention facility.

(4) "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.

((~~(2)~~)) (5) "Fresh fruits and vegetables" means any unprocessed fruits or vegetables, not including any processed, canned, frozen, or dehydrated fruits or vegetables, or any fruits or vegetables infected or infested with insects or other contaminants.

(6)(a) "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious injuries and illness, which may result from contact with chemical, radiological, physical, electrical, mechanical, or other hazards.

(b) Personal protective equipment may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests, and full body suits.

(7) "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.

(8) "Solitary confinement" means the confinement of a detained person alone in a cell or similarly confined holding or living space for 20 hours or more per day under circumstances other than a partial or facility wide lockdown.

(9) "Telecommunications services" means phone calls or other voice communication services, video communications, and email services.

Sec. 10. RCW 70.395.030 and 2021 c 30 s 3 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, no person, business, or state or local governmental entity shall operate a private detention facility within the state or utilize a contract with a private detention facility within the state. No state or local governmental entity shall utilize a contract

with a private detention facility outside of Washington state, except as provided in RCW 72.68.010(2).

(2) A private detention facility that is operating pursuant to a valid contract with a governmental entity that was in effect prior to January 1, 2021, may remain in operation for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

(3) In accordance with the legislative findings in RCW 70.395.010, this section does not apply if the involuntary confinement is at:

(a) ((~~A facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;~~

~~(b)~~)) A facility 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 pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law;

((~~(c)~~)) (b) A facility used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

((~~(d)~~)) (c) A facility used for work release under chapter 72.65 RCW, or similarly applicable federal law;

((~~(e)~~)) (d) A facility used for extraordinary medical placement;

((~~(f)~~)) (e) A facility used for residential substance use disorder treatment;

((~~(g)~~)) (f) A facility used to house persons pursuant to 18 U.S.C. Sec. 4013; or

((~~(h)~~)) (g) A facility owned and operated by federally recognized tribes and contracting with a government.

NEW SECTION. **Sec. 11.** (1) Sections 1 and 3 through 10 of this act take effect December 31, 2023.

(2) Section 2 of this act takes effect December 31, 2025.

NEW SECTION. **Sec. 12.** This act shall be construed liberally for the accomplishment of the purposes thereof.

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected.

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