

Chapter 70.395 RCW
PRIVATE DETENTION FACILITIES

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RCW 70.395.010 Findings—Intent. (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 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. [2023 c 419 § 8; 2021 c 30 § 1.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.020 Definitions. 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.

(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. [2023 c 419 § 9; 2021 c 30 § 2.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.030 Prohibition on private incarceration. (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) 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) A facility used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(e) A facility used for extraordinary medical placement;

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

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

(h) A facility owned and operated by federally recognized tribes and contracting with a government. [2021 c 30 § 3.]

RCW 70.395.040 Standards for sanitation, hygiene, and safety—

Enforcement. (1) The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons. The department of health rules shall include that:

(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, must be cleaned and sanitized regularly;

(c) 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;

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

(e) 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;

(f) Safe indoor air quality must be maintained;

(g) 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 between 65 degrees Fahrenheit and 78 degrees Fahrenheit year-round. Excessive odors and moisture must be prevented in the building; and

(h) 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.

(2) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2023 c 419 § 2.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.050 Inspections—Delegation—Rules—Enforcement. (1)

The department of health shall:

(a) 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 (c) of this subsection;

(b) Conduct investigations of complaints received relating to any private detention facility located within the state;

(c) 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;

(d) Test water used for drinking and bathing and air quality every six months at private detention facilities both inside and outside of the facility; and

(e) Post inspection results on its website and in a conspicuous place viewable by detained persons and visitors to private detention facilities. Results should be posted in English and in languages spoken by detainees, to the extent practicable.

(2) The department of health may delegate food safety inspections to the local health jurisdiction, where the local health jurisdiction is in the county where the private detention facility is located, to conduct inspections pursuant to regulations.

(3) The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities allow regular inspections and comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.

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

(5) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2023 c 419 § 3.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.060 Requirements. (1) This section does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

(2) A private detention facility operating pursuant to a contract or agreement with a federal, state, or local government shall comply with the following:

(a) 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;

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

(c) 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 these telecommunications services for at least 60 minutes on each day of the person's detention. 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;

(d) 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;

(e) Solitary confinement is prohibited;

(f) 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;

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

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

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

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

(k) 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;

(l) Sexual violence and harassment grievances must be responded to immediately by culturally competent professionals on-site and reported to local law enforcement in the county where the private detention facility is located;

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

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

(o) 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; and

(p) 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.

(3) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2023 c 419 § 4.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.070 Violations—Rights of action. (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, operator, contractor, subcontractor, or employee of a private detention facility.

(4) The state and its agencies are not liable for a violation of this chapter. [2023 c 419 § 5.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.080 Violations—Civil penalties. (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 health 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 health 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 health 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 RCW 70.395.090.

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

(6) The state and its agencies are not liable for a violation of this chapter. [2023 c 419 § 6.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.090 Attorney general humane detention account. The Washington state attorney general humane detention account is created in the custody of the state treasurer. All receipts from civil penalties under RCW 70.395.080 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. [2023 c 419 § 7.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.100 Facilities excluded. RCW 70.395.040 through 70.395.080 do not apply to a facility that is:

(1) Providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;

(2) 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, including facilities regulated under chapters 70.41, 71.12, and 71.24 RCW;

(3) Used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

(4) Used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(5) Used for extraordinary medical placement;

(6) Used for residential substance use disorder treatment; or

(7) Owned and operated by federally recognized tribes and contracting with a government. [2023 c 419 § 10.]

Effective date—Construction—2023 c 419: See notes following RCW 42.56.475.

RCW 70.395.900 Construction—2021 c 30. Chapter 30, Laws of 2021 shall be construed liberally for the accomplishment of the purposes thereof. [2021 c 30 § 4.]

RCW 70.395.901 Effective date—2021 c 30. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2021]. [2021 c 30 § 5.]