

Chapter 70.395 RCW
PRIVATE DETENTION FACILITIES

Sections

70.395.010	Findings—Intent.
70.395.020	Definitions.
70.395.030	Prohibition on private incarceration.
70.395.040	Standards for sanitation, hygiene, and safety— Enforcement.
70.395.050	Inspections—Delegation—Rules—Enforcement.
70.395.055	Inspections—Findings of noncompliance—Penalties.
70.395.058	Inspections—Publishing results.
70.395.060	Requirements.
70.395.070	Violations—Rights of action.
70.395.080	Violations—Civil penalties.
70.395.090	Attorney general humane detention account.
70.395.100	Facilities excluded.
70.395.900	Construction—2021 c 30.
70.395.901	Effective date—2021 c 30.

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 s 8; 2021 c 30 s 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) "Abuse" means an act by any individual which injures, exploits, or in any way jeopardizes a detained person's health, welfare, or safety, including, but not limited to:

(a) Physically damaging or potentially damaging nonaccidental acts;

(b) Emotionally damaging verbal behavior and harassment or other actions which may result in emotional or behavioral problems; and

(c) Sexual abuse, exploitation, and mistreatment through inappropriate touching, inappropriate remarks, or encouraging participation in pornography or prostitution.

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

(3) "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.

(4) "Dietitian" means an individual certified under chapter 18.138 RCW.

(5) "Neglect" means conduct which results in deprivation of care necessary to maintain a detained person's minimum physical and mental health including, but not limited to:

(a) Physical and material deprivation;

(b) Lack of medical care;

(c) Inadequate food, clothing or cleanliness;

(d) Refusal to acknowledge, hear, or consider a detained person's concerns;

(e) Lack of social interaction and physical activity;

(f) Lack of personal care; and

(g) Lack of supervision appropriate for the detained person's level of functioning.

(6) "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. [2025 c 235 s 1; 2023 c 419 s 9; 2021 c 30 s 2.]

Effective date—2025 c 235: "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 [May 12, 2025]." [2025 c 235 s 8.]

Construction—2025 c 235: "This act shall be construed liberally to effectuate its purposes." [2025 c 235 s 10.]

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 s 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;

(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; and

(i) A private detention facility must provide:

- (i) Ready access and equipment to accommodate detained persons with physical and mental disabilities;
 - (ii) Adequate lighting in all areas;
 - (iii) An adequate supply of hot and cold running water under pressure meeting the standards in chapters 246-290 and 246-291 WAC, 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;
 - (iv) Written policies, procedures, and schedules for maintenance and housekeeping functions;
 - (v) Housekeeping and service facilities on each floor, including:
 - (A) One or more service sinks, designed for filling and emptying mop buckets;
 - (B) Housekeeping closets that are equipped with shelving, ventilated to the out-of-doors, and kept locked; and
 - (C) A utility service area designed and equipped for washing, disinfecting, storing, and housing medical and nursing supplies and equipment; and
 - (vi) Equipment and facilities to collect and dispose of all sewage, garbage, refuse, and liquid waste in a safe and sanitary manner.
- (2) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2025 c 235 s 2; 2023 c 419 s 2.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

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 may at any time inspect a private detention facility to determine whether it has failed or refused to comply with the requirements of this chapter, the standards or rules adopted under this chapter, or other applicable state or federal statutes or rules regulating such facilities.
- (2) 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.

(3) 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.

(4) 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.

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

(6) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2025 c 235 s 3; 2023 c 419 s 3.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

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

RCW 70.395.055 Inspections—Findings of noncompliance—Penalties.

In any case in which the department of health 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 department of health may take one or more of the following actions:

(1) When the department of health determines 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 a date established or agreed to by the department of health, the department of health 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 department of health if the private detention facility cannot demonstrate that it has access to sufficient internal expertise.

(2) (a) In accordance with the authority under RCW 43.70.095, the department of health may assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a private detention facility if 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 a date established or agreed to by the department of health.

(b) Proceeds from these fines may only be used by the department of health to provide training or technical assistance to private detention facilities.

(c) The department of health shall adopt in rules specific fine amounts in relation to the severity of the noncompliance.

(d) If a private detention facility is aggrieved by the department of health's action of assessing civil fines, the private detention facility has the right to appeal under RCW 43.70.095. [2025 c 235 s 4.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

RCW 70.395.058 Inspections—Publishing results. As resources allow, the department of health shall 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. [2025 c 235 s 5.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

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) The private detention facility shall:

(i) Comply with food service rules under chapters 246-215 and 246-217 WAC;

(ii) Designate an individual responsible for managing and supervising food services 24 hours per day, including:

(A) Incorporating ongoing recommendations of a dietitian;

(B) Serving at least three meals a day at regular intervals with 15 or fewer hours between the evening meal and breakfast, unless the facility provides a nutritious snack between the evening meal and breakfast;

(C) Providing well-balanced meals and nourishments that meet the current recommendations published in recommended dietary allowances by the national research council, 10th edition, 1989, adjusted for the detained person's age, sex, and activities unless contraindicated;

(D) Making nourishing snacks available as needed for detained persons, and posted as part of the menu;

(E) Preparing and serving therapeutic diets according to written medical orders;

(F) Preparing and serving meals under the supervision of food service staff;

(G) Maintaining a current diet manual, approved in writing by the dietitian and medical staff, for use in planning and preparing therapeutic diets; and

(H) Ensuring all menus: Are written at least one week in advance; indicate the date, day of week, month, and year; include all foods and snacks served that contribute to nutritional requirements; provide a variety of foods; are approved in writing by the dietitian; are posted

in a location easily accessible to detained persons at the facility; and are retained for one year;

(iii) Substitute foods, when necessary, of comparable nutrient value and record changes on the menu;

(iv) Allow sufficient time for detained persons to consume meals;

(v) Ensure staff from dietary and food services are present in the facility during all meal times; and

(vi) 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;

(b) The private detention facility shall provide a readily available telephone for detained persons to make and receive confidential calls, and make a nonpay telephone or equivalent communication device readily accessible on each floor occupied by a detained person for emergency use;

(c) The private detention facility shall provide a visiting area allowing privacy for detained persons and visitors;

(d) The private detention facility shall develop and implement the 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;

(e) The private detention facility shall employ sufficient, qualified staff to:

(i) Provide adequate services to detained persons;

(ii) Maintain the facility free of safety hazards; and

(iii) Implement fire and disaster plans;

(f) The private detention facility shall provide and document orientation and appropriate training for all staff, including:

(i) Organization of the facility;

(ii) Physical layout of facility, including buildings, departments, exits, and services;

(iii) Fire and disaster plans, including monthly drills;

(iv) Infection control;

(v) Specific duties and responsibilities;

(vi) Policies, procedures, and equipment necessary to perform duties;

(vii) Policies related to the rights of detained persons and protecting against abuse and neglect;

(viii) Managing the behavior of detained persons; and

(ix) Appropriate training for expected duties; and

(g) The private detention facility shall establish and implement an effective facility-wide infection control program including, at a minimum, the following:

(i) Written policies and procedures describing:

(A) Types of surveillance used to monitor rates of infections originating at the facility;

(B) Systems to collect and analyze data; and

(C) Activities to prevent and control infections;

(ii) A review process to determine if staff and detained person infections originated at the facility;

(iii) A procedure for reviewing and approving infection control aspects of policies and procedures used in each area of the facility;

(iv) A procedure to monitor the physical environment of the facility for situations which may contribute to the spread of infectious diseases; and

(v) Provisions for:

(A) Providing consultation regarding care practices, equipment, and supplies which may influence the risk of infection;

(B) Providing consultation regarding appropriate procedures and products for cleaning, disinfecting, and sterilizing;

(C) Providing infection control information for orientation and in-service education for staff providing direct care;

(D) Making recommendations, consistent with federal, state, and local laws and rules, for methods of safe and sanitary disposal of sewage, solid and liquid wastes, and infectious wastes, including safe management of sharps;

(E) Identifying specific precautions to prevent transmission of infections; and

(F) Coordinating employee activities to control exposure and transmission of infections to or from employees and others performing services.

(3) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations. [2025 c 235 s 6; 2023 c 419 s 4.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

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 s 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 s 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 s 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 private detention facility that is:

(1) Providing counseling, treatment, mental health, educational, or medical services to juveniles under chapter 74.15 RCW;

(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. [2025 c 235 s 7; 2023 c 419 s 10.]

Effective date—Construction—2025 c 235: See notes following RCW 70.395.020.

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 s 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 s 5.]