



Date: December 14, 2023

To: Members of the Governor's Interagency Council on Health Disparities

Subject: Implementing State Health and Safety Standards for Private Detention Facilities in Washington

Background

Washington state law, [RCW 70.395.020](#), defines “detention facility” and “private detention facility” as follows.

- “‘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.”
- “‘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.”

The only facility in Washington that currently falls within this definition of “private detention facility” is the Northwest Detention Center (NWDC) in Tacoma, Washington (also called the Northwest ICE Processing Center). The GEO Group, Inc. (GEO) has operated the NWDC since 2005, through a contract with the U.S. Immigration and Customs Enforcement (ICE). City of Tacoma describes the NWDC as “...the fourth-largest immigration detention center in the country. People are held at the facility while undergoing immigration proceedings, potentially facing deportation.”¹ The NWDC has capacity to hold up to 1,575 immigrants who have been detained.² In 2015, GEO’s contract with ICE was renewed through 2025.

Since at least 2017, the Governor’s Interagency Council on Health Disparities (Council) has heard from members of the public about health and safety concerns at the NWDC. Concerns included a lack of access to appropriate healthcare services, problems with food quality and safety, overcrowding, and potentially unsafe water and indoor air quality. Members of the public have also inquired whether there are state or local agencies with authority to conduct inspections of indoor air quality and other conditions at the NWDC.

In September 2018, Council Chair Benjamin Danielson wrote a letter to Governor Jay Inslee (attached – in English only), urging the Governor to direct state staff resources toward investigating jurisdictional issues related to the NWDC, including a

¹ https://www.cityoftacoma.org/government/city_departments/City_Managers_Office/northwest_detention_center_f_a_qs

² https://www.cityoftacoma.org/government/city_departments/City_Managers_Office/northwest_detention_center_f_a_qs

comprehensive analysis of where the state, city, and county may have authority to enforce standards for detainee and employee health and safety. Additionally, Chair Danielson implored Governor Inslee to visit individuals detained at NWDC to see conditions firsthand.

In October 2018, the Council sent a letter to the U.S. Deputy Inspector General (attached – in English only), urging for an unannounced inspection of the NWDC as well as assessment of how local and state health and safety standards apply to GEO's management of the NWDC. The letter stated, "The Health Disparities Council recognizes that immigrants, particularly those seeking asylum, have already experienced significant stress and trauma, which is only compounded when they are detained. We want to ensure that all individuals detained in our state have access to healthy and safe environments and appropriate and timely healthcare services." It is unclear whether the U.S. Deputy Inspector General has conducted an inspection at the NWDC.

In 2021, the Washington state legislature adopted a new law (Chapter 30, Laws of 2021 / [EHB 1090](#)), banning private for-profit prisons in Washington.³ The law allowed existing contracts to continue, however it prohibits extensions or modifications (e.g., renewal) of the contract. EHB 1090 states, "The legislature finds that all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety... 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... The legislature finds that private prisons and detention centers are less accountable for what happens inside those facilities than state-run facilities..."⁴

When EHB 1090 passed in 2021, "at least 22 other states [had] stopped confining people in private for-profit facilities,"⁵ however "Washington [was] only the third—following Illinois and California—to include immigration facilities as part of [a] ban."⁶ Earlier in 2021, President Biden's Administration issued an Executive Order to phase out the U.S. Department of Justice's contracts with private prison companies, however the order excluded ICE detention centers.^{7,8}

In May 2023, the Ninth Circuit Court of Appeals ruled in *Geo Group, Inc. v. Newsom* that California's ban on private detention facilities (Assembly Bill 32 adopted in 2019) was "unconstitutional as applied to private detention contracts for U.S. Immigration and Customs Enforcement and other federal agencies, though the ban remains in place for

³ EHB 1090: "...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."

<https://app.leg.wa.gov/bills/summary/BillNumber=1090&Year=2021&Initiative=false>

⁴ <https://app.leg.wa.gov/bills/summary/BillNumber=1090&Year=2021&Initiative=false>

⁵ <https://app.leg.wa.gov/bills/summary/BillNumber=1090&Year=2021&Initiative=false>

⁶ <https://apnews.com/article/legislature-prisons-washington-legislation-immigration-ceda36fec7dfc3a56c8fe8f7a66d3d76>

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>

⁸ <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>

private prisons in [California].”⁹ Since Washington is also in the 9th Circuit’s jurisdiction, this ruling also applies to Washington state and therefore EHB 1090 would likely be held unconstitutional. Governor Inslee and Washington Attorney General Bob Ferguson submitted a court filing in June 2023 stating that “as long as the 9th Circuit decision stands, and as long as the [NWDC] is operated under a contract with federal [ICE], ‘they will not enforce’ the [Washington] state law that seeks to shut down the prison.”¹⁰

Also in 2023, the Washington state legislature passed a law (Chapter 419, Laws of 2023 / [2SHB 1470](#)) that, among other requirements, gives the Washington State Department of Health the following authority and responsibilities:

- Adopt rules governing private detention facilities’ operations related to sanitary, hygienic, and safe conditions;
- Adopt rules related to the inspection of food services and handling, sanitation and hygiene, nutrition and food, complaints, and testing of water and air; and
- Ability to create penalties for non-compliance, including a penalty of up to \$1,000 per violation per day.

The legislature gave additional responsibilities and authority for implementation and enforcement to the State Attorney General’s Office, Department of Labor and Industries, and local health jurisdictions (i.e., local public health).

Summary

At today’s meeting, Council members will receive a briefing from staff of the Washington State Department of Health (Department) on the [Department’s implementation](#) of Chapter 419, Laws of 2023 ([2SHB 1470](#)). Department staff will share information on the Department’s responsibilities under the new law, plans for rulemaking and other implementation, opportunities for public participation, and some anticipated challenges.

Recommended Council Action

This informational briefing does not involve formal Council action. The information received today may be used to inform the Council’s future efforts.

To request this document in an alternate format or a different language, please contact us at 360-236-4110 or by email at healthequity@sboh.wa.gov. TTY users can dial 711.

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⁹ <https://news.yahoo.com/california-tried-failed-ban-profit-120044167.html>

¹⁰ <https://www.seattletimes.com/seattle-news/politics/northwest-ice-detention-center-to-remain-open-after-wa-law-deemed-unenforceable/#skip-4>



STATE OF WASHINGTON
GOVERNOR'S INTERAGENCY COUNCIL ON HEALTH DISPARITIES

Washington State Board of Health

PO Box 47990 • Olympia, Washington 98504-7990

September 20, 2018

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Inslee:

As Chair of the Governor's Interagency Council on Health Disparities (Council), though not speaking on behalf of any of the individual agencies that serve on the Council, I am writing to thank you for your ongoing leadership on immigration issues here in Washington State and to urge you to direct staff resources toward investigating jurisdictional issues related to the Northwest Detention Center (NWDC). I also implore you to visit individuals detained at the NWDC who are experiencing health issues so you can hear their stories directly and see firsthand the conditions at the center.

Over the past couple of years, the Council has heard from members of the public about health and safety concerns at the NWDC. Concerns include lack of access to appropriate healthcare services, problems with food quality and safety, overcrowding, and potentially unsafe water and indoor air quality. Most recently, a large fire at the Simon Metals scrapyard on Monday September 16 led to unhealthy air quality throughout Tacoma and to the Port of Tacoma suspending operations for the morning. The Simon Metals scrapyard is adjacent to the NWDC and the Council received information from the public that individuals detained at the center were experiencing respiratory symptoms. Nonetheless, a [KUOW article](#) indicated that an ICE spokesperson wrote in a one sentence email to KUOW that "there are no impacts".

The members of the public also inquired whether there were any state or local agencies with authority to conduct an immediate inspection of the indoor air quality at the NWDC as a result of the fire. Federal, state, and local jurisdictional authority over the NWDC is complex and there is confusion and misinformation about whether the center is subject to state and local standards and if so, who has the authority to enforce those standards. While I have asked the agencies that serve on the Council to look into whether they have any jurisdiction over the NWDC, a more comprehensive analysis is needed, and again, I respectfully ask you to direct staff resources into investigating where the state, city, and

county may have authority to protect detainee and employee health and safety. Included in this investigation should be an analysis of whether the NWDC has the proper authority to operate in Washington State. US Code ([8 USC 1103](#) Section A Subsection 11) related to immigration, seems to imply that the federal government would have needed to enter into a cooperative agreement with the state or City of Tacoma to establish the NWDC and we are not aware if any such cooperative agreement exists.

In closing, I refer you to the [letter](#) that we received from the Northwest Detention Center Resistance that provides examples of instances in which individuals detained at the center did not receive timely or appropriate healthcare services.

Thank you for your attention to this matter, and again, for your ongoing support to make Washington State a welcoming place for all diverse communities, including immigrants and refugees.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Danielson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Benjamin Danielson, Chair
Governor's Interagency Council on Health Disparities



STATE OF WASHINGTON
GOVERNOR'S INTERAGENCY COUNCIL ON HEALTH DISPARITIES

Washington State Board of Health

PO Box 47990 • Olympia, Washington 98504-7990

October 11, 2018

John V. Kelly

Deputy Inspector General/Senior Official Performing the Duties of the Inspector General
Office of Inspector General/MAIL STOP 0305

Department of Homeland Security

245 Murray Lane SW

Washington, DC 20528-0305

Dear Deputy Inspector General Kelly:

On behalf of the Governor's Interagency Council on Health Disparities (Health Disparities Council), I am writing to respectfully urge you to conduct an unannounced inspection of the Northwest Detention Center (NWDC) in Tacoma, Washington. Specifically, we ask that your inspection explore whether the GEO Group's management of the NWDC is in compliance with U.S. Immigration and Customs Enforcement (ICE) *2011 Performance-Based National Detention Standards*, particularly those standards related to the health and safety of those detained at the center.

Over the past couple of years, the Health Disparities Council has heard from members of an advocacy organization called the NWDC Resistance about health and safety concerns at the NWDC. Ongoing concerns have included lack of access to timely and appropriate healthcare services, problems with food quality and safety, overcrowding, and potentially unsafe water and indoor air quality. Recent concerns have included respiratory symptoms associated with a large fire at a metal scrapyard adjacent to the NWDC, two varicella outbreaks, and a hunger strike on the part of one individual who believes he and others are not receiving appropriate medical care. Just yesterday, an article was published in the Seattle Weekly titled, "[Incarcerated and Infirm: How Northwest Detention Center is Failing Sick Inmates](#)", which details inadequate medical care faced by immigrants at the facility.

Federal, state, and local jurisdictional authority over the NWDC is complex and there is confusion and misinformation about whether the center is subject to state and local health and safety standards, and if so, who has the authority to enforce those standards. We ask that your investigation into the NWDC include an assessment of local and state health and safety standards that apply to the GEO Group's management of the center as well as

whether the NWDC has the proper authority to operate in Washington State. US Code ([8 USC 1103](#) Section A Subsection 11) related to immigration, seems to imply that ICE would have needed to enter into an Intergovernmental Service Agreement (IGSA) with the City of Tacoma to establish and operate the NWDC and we are not aware if an IGSA exists.

We have seen the recent news coverage regarding your visit to the Adelanto ICE Processing Center in California and your subsequent [Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California](#). Due to the comments we have received from members of local advocacy organizations, we are concerned that findings related to medical care that is not timely nor adequate at the Adelanto facility may also apply at the NWDC. In addition, we are concerned about the findings in your OIG-18-67 report, [ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvement](#), and therefore request that the OIG lead the unannounced inspection at the NWDC.

The Health Disparities Council recognizes that immigrants, particularly those seeking asylum, have already experienced significant stress and trauma, which is only compounded when they are detained. We want to ensure that all individuals detained in our state have access to healthy and safe environments and appropriate and timely healthcare services. We thank you for your leadership in ensuring that ICE facilities are in compliance with applicable standards.

Sincerely,



Benjamin Danielson, Chair
Governor’s Interagency Council on Health Disparities

cc: Casey Katims, Director, Federal & Inter-State Affairs, Washington DC Office
Jason McGill, Senior Health Policy Advisor, Governor’s Policy Office
RaShelle Davis, Senior Human Rights Policy Advisor, Governor’s Policy Office