

# HOUSE BILL REPORT

## HB 2963

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### As Reported By House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to agreements for the operation of correctional facilities and programs in any other state.

**Brief Description:** Authorizing agreements for the operation of correctional facilities and programs in any other state.

**Sponsors:** Representatives Ballasiotes, O'Brien and B. Chandler; by request of Department of Corrections.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/2/00, 2/4/00 [DP].

#### Brief Summary of Bill

- Adds a provision to clarify the Department of Corrections (DOC) authority to transfer offenders out-of-state to private or governmental institutions if the department determines that the transfer is in the best interest of the state or the offender.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine and Koster.

**Minority Report:** Do not pass. Signed by 1 member: Representative Kagi.

**Staff:** Yvonne Walker (786-7841).

### Background:

Since March of 1999, the Department of Corrections has transferred approximately 284 offenders from six facilities statewide to the Crowley County Correctional

Facility, a private, 1,200 bed medium security facility located near Pueblo, Colorado. Although, this is a temporary move until the Stafford Creek Corrections Center in Grays Harbor is completed in mid-2000, this was done in order to accommodate the increase in the offender population that the state could not accommodate. Other alternatives such as a review of other in-state bed space in county jails and federal detention facilities were explored however, those agencies are experiencing similar population growth, and were unable to provide housing for state prisoners.

Beginning back on February 1, 1999, the secretary of the Department of Corrections was authorized to expend funds appropriated for the 1997-1999 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary was also authorized to expend funds appropriated for the 1999-01 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or programs for persons convicted of felonies.

The secretary of the Department of Corrections has the power to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders.

In addition, whenever the judgment is in the best interest of the state or when the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may transfer the inmate consistent with applicable federal laws and treaties.

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**Summary of Bill:**

The secretary of the Department of Corrections is authorized to transfer offenders out-of-state to private or governmental institutions, if the secretary determines that the transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include, but is not limited to, considerations of overcrowding, emergency conditions, or hardship to the offender.

The secretary may also contract with the authorities of the federal government, the authorities of any state of the United States, private companies in other states, or any county or city in Washington providing for the detention of inmates in an institution or jail.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The language in this bill is very similar to the language in last year's budget bill and is an attempt to clarify the department's authority to place offenders in out-of-state facilities due to prison overcrowding in Washington.

This bill is also a response to a recent court case. The Washington State Supreme Court has consolidated three personal restraint petitions that were filed by inmates that had been transferred to Colorado. Since that time, approximately 150 more personal restraint petitions were filed by inmates. Their argument is that the legislative authority allowing for the out-of-state transfer and contract was contained in last year's budget bill in which the amendment was outside of the scope and title of the bill. As a result, this would have been a violation of the Washington State Constitution Article 1, Section 3.

The DOC however, believes they had already had the authority to transfer inmates to other states pursuant to the Washington statute entitled "Transfer, Removal, Transportation Detention Contracts." This bill clarifies the law so that there is no ambiguity and no argument that the budget bill was an attempt to add a substantial grant of power of authority to the DOC.

**Testimony Against:** Although the bill reports to be a codification of past actions, it is not. It is true that the budget gave the DOC funding to rent beds out-of-state however, it did not give the secretary of the DOC the authority to contract with private institutions running prisons for profit. Funding was suppose to be only temporary due to the current overcrowding of prison beds in state.

The Legislature should refuse to ratify the DOC's actions and reject this bill. The subject of private prisons is extremely controversial. In fact, many organizations have opposed sending inmates to private prisons because it is thought that the danger of privatization is that financial incentives may reward inhumanity. In addition, the result of sending inmates out-of-state, often leads to hardships for many families and denies many inmates the right to counsel.

It is not in the state's best interest to abandoned its control of its inmates.

**Testified:** (In support) Jim Thatcher, Department of Corrections; and Marty Wyckoff, Department of Corrections.

(Opposed) Sherry Appleton, Washington Defender Association.