
SUBSTITUTE HOUSE BILL 2576

State of Washington

66th Legislature

2020 Regular Session

By House Public Safety (originally sponsored by Representatives Ortiz-Self, Gregerson, Doglio, Pettigrew, Santos, Peterson, Lekanoff, Ryu, Pollet, Valdez, Thai, Macri, Fitzgibbon, Dolan, Davis, J. Johnson, Walen, Frame, Ormsby, and Riccelli)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to private detention facilities; amending RCW
2 72.68.010 and 72.68.040; adding a new chapter to Title 70 RCW;
3 creating a new section; repealing RCW 72.68.012; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. (1) The legislature
7 finds that all people confined in prisons and detention facilities in
8 Washington deserve basic health care, nutrition, and safety. As held
9 in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019),
10 states possess "the general authority to ensure the health and
11 welfare of inmates and detainees in facilities within its borders."

12 (2) The legislature finds that profit motives lead private
13 prisons and detention facilities to cut operational costs, including
14 the provision of food, health care, and rehabilitative services,
15 because their primary fiduciary duty is to maximize shareholder
16 profits. This is in stark contrast to the interests of the state to
17 ensure the health, safety, and welfare of Washingtonians.

18 (3) The legislature finds that people confined in for-profit
19 prisons and detention facilities have experienced abuses and have
20 been confined in dangerous and unsanitary conditions. Safety risks
21 and abuses in private prisons and detention facilities at the local,

1 state, and federal level have been consistently and repeatedly
2 documented. The United States department of justice office of the
3 inspector general found in 2016 that privately operated prisons
4 "incurred more safety and security incidents per capita than
5 comparable BOP [federal bureau of prisons] institutions." The office
6 of inspector general additionally found that privately operated
7 prisons had "higher rates of inmate-on-inmate and inmate-on-staff
8 assaults, as well as higher rates of staff uses of force."

9 (4) The legislature finds that private prison operators have cut
10 costs by reducing essential security and health care staffing. The
11 sentencing project, a national research and advocacy organization,
12 found in 2012 that private prison staff earn an average of five
13 thousand dollars less than staff at publicly run facilities and
14 receive almost sixty hours less training. The office of inspector
15 general also found that people confined in private facilities often
16 failed to receive necessary medical care and that one private prison
17 went without a full-time physician for eight months.

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

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

25 (7) Therefore, it is the intent of the legislature to prohibit
26 the use of private prisons and detention facilities in the state.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
28 section apply throughout this chapter unless the context clearly
29 requires otherwise.

30 (1) "Detention facility" means any facility in which persons are
31 incarcerated or otherwise involuntarily confined for purposes
32 including prior to trial or sentencing, fulfilling the terms of a
33 sentence imposed by a court, or for other judicial or administrative
34 processes or proceedings.

35 (2) "Private detention facility" means a detention facility that
36 is operated by a private, nongovernmental entity and operating
37 pursuant to a contract or agreement with a federal, state, or local
38 governmental entity.

1 (3) "Operate" includes owning, leasing, managing, or controlling
2 some or all of the functions of a detention facility, regardless of
3 the underlying ownership of the facility or land upon which the
4 facility is located.

5 NEW SECTION. **Sec. 3.** PROHIBITION ON PRIVATE INCARCERATION. (1)
6 Except as provided in subsections (2) and (3) of this section, no
7 person, business, or state or local governmental entity shall operate
8 a private detention facility within the state or utilize a contract
9 with a private detention facility.

10 (2) A private detention facility that is operating pursuant to a
11 valid contract with a governmental entity that was in effect prior to
12 January 1, 2020, may remain in operation for the duration of that
13 contract, not to include any extensions or modifications made to, or
14 authorized by, that contract.

15 (3) In accordance with the legislative findings in section 1 of
16 this act, this section does not apply if the involuntary confinement
17 is at:

18 (a) A facility providing rehabilitative, counseling, treatment,
19 mental health, educational, or medical services to juveniles who are
20 subject to chapter 13.04 RCW;

21 (b) A facility operating pursuant to an agreement for a
22 consortium of counties under RCW 13.04.035;

23 (c) A facility providing evaluation and treatment or forensic
24 services to a person who has been civilly detained or is subject to
25 an order of commitment by a court pursuant to chapter 10.77, 71.05,
26 71.09, or 71.34 RCW;

27 (d) A facility licensed or required to be licensed pursuant to
28 the following: Assisted living facilities under chapter 18.20 RCW;
29 nursing homes under chapter 18.51 RCW; adult family homes under
30 chapter 70.128 RCW; soldiers' homes under chapter 72.36 RCW;
31 residential habilitation centers under chapter 71A.20 RCW; enhanced
32 services facilities under chapter 70.97 RCW; or secure community
33 transition facilities under chapter 71.09 RCW;

34 (e) A facility used for the quarantine or isolation of persons
35 for public health reasons pursuant to RCW 43.20.050;

36 (f) A facility used for work release under chapter 72.65 RCW; or

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

1 **Sec. 4.** RCW 72.68.010 and 2000 c 62 s 2 are each amended to read
2 as follows:

3 (1) Whenever in its judgment the best interests of the state or
4 the welfare of any prisoner confined in any penal institution will be
5 better served by his or her transfer to another institution or to a
6 foreign country of which the prisoner is a citizen or national, the
7 secretary may effect such transfer consistent with applicable federal
8 laws and treaties. The secretary has the authority to transfer
9 offenders to out-of-state (~~(to private or)~~) governmental institutions
10 if the secretary determines that transfer is in the best interest of
11 the state or the offender. The determination of what is in the best
12 interest of the state or offender may include but is not limited to
13 considerations of overcrowding, emergency conditions, or hardship to
14 the offender. In determining whether the transfer will impose a
15 hardship on the offender, the secretary shall consider: (a) The
16 location of the offender's family and whether the offender has
17 maintained contact with members of his or her family; (b) whether, if
18 the offender has maintained contact, the contact will be
19 significantly disrupted by the transfer due to the family's inability
20 to maintain the contact as a result of the transfer; and (c) whether
21 the offender is enrolled in a vocational or educational program that
22 cannot reasonably be resumed if the offender is returned to the
23 state.

24 (2) The secretary has the authority to transfer offenders to an
25 out-of-state private correctional entity only if: The governor finds
26 that an emergency exists such that the population of a state
27 correctional facility exceeds its reasonable maximum capacity,
28 resulting in safety concerns; the governor has considered all other
29 legal options to address capacity including those pursuant to RCW
30 9.94A.870; the secretary determines that transfer is in the best
31 interest of the state or offender; and the contract with the out-of-
32 state private correctional entity includes requirements for access to
33 public records to the same extent as if the facility was operated by
34 the department, inmate access to the office of the corrections
35 ombuds, and inspections and visits without notice. Should any of
36 these requirements not be met the contract will be terminated.

37 (3) If directed by the governor, the secretary shall, in carrying
38 out this section and RCW 43.06.350, adopt rules under chapter 34.05
39 RCW to effect the transfer of prisoners requesting transfer to
40 foreign countries.

1 **Sec. 5.** RCW 72.68.040 and 2012 c 117 s 500 are each amended to
2 read as follows:

3 The secretary may contract with the authorities of the federal
4 government, or the authorities of any state of the United States,
5 (~~(private companies in other states,)~~) or any county or city in this
6 state providing for the detention in an institution or jail operated
7 by such entity, for prisoners convicted of a felony in the courts of
8 this state and sentenced to a term of imprisonment therefor in a
9 state correctional institution for convicted felons under the
10 jurisdiction of the department. After the making of a contract under
11 this section, prisoners sentenced to a term of imprisonment in a
12 state correctional institution for convicted felons may be conveyed
13 by the superintendent or his or her assistants to the institution or
14 jail named in the contract. The prisoners shall be delivered to the
15 authorities of the institution or jail, there to be confined until
16 their sentences have expired or they are otherwise discharged by law,
17 paroled, or until they are returned to a state correctional
18 institution for convicted felons for further confinement.

19 NEW SECTION. **Sec. 6.** REPEALER. RCW 72.68.012 (Transfer to
20 private institutions—Intent—Authority) and 2000 c 62 s 1 are each
21 repealed.

22 NEW SECTION. **Sec. 7.** LIBERAL CONSTRUCTION. This act shall be
23 construed liberally for the accomplishment of the purposes thereof.

24 NEW SECTION. **Sec. 8.** EMERGENCY CLAUSE. This act is necessary
25 for the immediate preservation of the public peace, health, or
26 safety, or support of the state government and its existing public
27 institutions, and takes effect immediately.

28 NEW SECTION. **Sec. 9.** SEVERABILITY. If any provision of this act
29 or its application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 10.** CODIFICATION. Sections 1 through 3 of
33 this act constitute a new chapter in Title 70 RCW.

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