
HOUSE BILL 1786

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Padden, Ballasiotes, Long, Edmondson, Mastin, Miller, Brough, Horn, Fuhrman, Chandler, Foreman, Carlson, Tate, Cooke and Forner

Read first time 02/08/93. Referred to Committee on Corrections.

1 AN ACT Relating to private corrections facilities; amending RCW
2 13.06.030 and 72.01.050; adding a new chapter to Title 72 RCW; creating
3 a new section; providing an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) There is overcrowding in many correctional facilities and
7 programs operated by state and local governments that puts a strain on
8 the budgets of state and local governments.

9 (2) This overcrowding and corresponding budget strain is likely to
10 become more acute during the next several years due to increases in (a)
11 convictions for crimes involving violence and controlled substances,
12 especially by juveniles; (b) the terms of confinement for repeat
13 offenders of property crimes under the sentencing reform act; and (c)
14 the number of repeat offenders under laws prohibiting driving while
15 intoxicated.

16 (3) Public safety and budget constraints require innovative
17 approaches to alleviate these problems.

18 (4) In many cases, the private sector has the willingness and the
19 capability to provide correctional services to state and local

1 governments at a substantial savings over what these governments are
2 currently spending in providing these services.

3 Therefore, it is the intent of the legislature to allow a unit of
4 government to contract with the private sector to perform services
5 currently performed by a corrections agency.

6 NEW SECTION. **Sec. 2.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

9 (1) "Correctional facility, program, or service" means a facility,
10 program, or service, that is operated or provided by a nongovernmental
11 agency that:

12 (a) May provide residential and nonresidential accommodations and
13 services for offenders, juvenile offenders, and detainees;

14 (b) Provides programs and services to aid offenders, juvenile
15 offenders, and detainees in obtaining and holding regular employment,
16 in enrolling in and maintaining academic courses, in participating in
17 vocational training programs, in utilizing the resources of the
18 community in meeting their personal and family needs, and in
19 participating in whatever specialized treatment programs exist within
20 the community; and

21 (c) Provides supervision and surveillance of offenders, juvenile
22 offenders, and detainees as required.

23 (2) "Detainee" means an adult or juvenile who is held in a
24 correctional or detention facility pending trial or adjudication.

25 (3) "Juvenile offender" means a juvenile who has been adjudicated
26 an offender or a child in need of supervision, by the juvenile court.

27 (4) "Nongovernmental agency" means a person or organization other
28 than a unit of government or agency thereof and includes private profit
29 organizations.

30 (5) "Offender" means an adult who has entered a plea of guilty or
31 has been convicted of a felony or misdemeanor.

32 (6) "Releasing entity" means the entity having responsibility for
33 setting dates for releasing adult or juvenile offenders from state
34 institutions prior to the completion of their sentence.

35 (7) "Unit of local government" means a county, city, or town and
36 includes the sheriff and the sheriff's department.

1 NEW SECTION. **Sec. 3.** (1) A unit of local government may utilize
2 nongovernmental correctional facilities programs and services
3 established pursuant to this chapter necessary to serve its own needs
4 and those of its courts and its agencies and may enter into contracts
5 or agreements with nongovernmental agencies for the placement or
6 supervision of offenders, juvenile offenders, and detainees in
7 nongovernmental correctional facilities, programs, or services,
8 notwithstanding the provisions of RCW 41.06.380.

9 (2) Units of local government shall establish procedures for
10 screening offenders, juvenile offenders, or detainees who are to be
11 placed in nongovernmental correctional facilities, programs, or
12 services pursuant to this chapter. Specific screening procedures to be
13 used for a particular facility, program, or service shall be included
14 in the contract.

15 (3) The unit of local government shall review, inspect, and
16 evaluate all correctional facilities, programs, and services that are
17 operated or provided by nongovernmental agencies within the county or
18 unit of local government and that provide accommodations or services to
19 offenders, juvenile offenders, and detainees referred only by the local
20 government, its agencies, or its local courts.

21 (4) All correctional facilities, programs, and services operated or
22 provided by nongovernmental agencies shall conform to the guidelines
23 established pursuant to section 5 of this act.

24 NEW SECTION. **Sec. 4.** The secretary of social and health services
25 and the secretary of corrections, as appropriate, shall regularly
26 review, monitor, inspect, and evaluate all adult and juvenile
27 correctional facilities, programs, and services operating within the
28 state that are operated or provided by nongovernmental agencies except
29 correctional facilities, programs, or services that provide services or
30 accommodations only to offenders, juvenile offenders, or detainees
31 referred by units of local government.

32 NEW SECTION. **Sec. 5.** (1) Every contract for services entered into
33 pursuant to this chapter shall provide guidelines for the operation of
34 the nongovernmental correctional facility or program and minimum
35 standards for the services provided, including:

36 (a) Requirements for strict accountability procedures and practices
37 for the conduct and supervision of offenders, juvenile offenders, and

1 detainees including requirements for twenty-four hour supervision of
2 offenders, juvenile offenders, and detainees in residential programs;

3 (b) Guidelines for periodic and unscheduled tests to determine the
4 use of drugs by offenders, juvenile offenders, and detainees; and

5 (c) Standards regarding health, sanitation, and fire safety.

6 (2) Prior to entering into contracts with a nongovernmental agency,
7 the secretary of social and health services if it is a juvenile
8 correction facility, or the secretary of corrections if it is an adult
9 correction facility shall submit the contract and proposed guidelines
10 for the use of a facility, program, or service to the governing body of
11 an affected unit of local government for its review and
12 recommendations.

13 (3) The guidelines and standards required by this section shall be
14 developed pursuant to section 10 of this act.

15 (4) No contract for the purchase of materials, equipment, supplies,
16 or services may be entered into pursuant to sections 2 through 12 of
17 this act by an elected or appointed correction official until after
18 bids have been submitted to the executive in charge of a state, county,
19 or local corrections department. Bid specifications shall be in
20 writing and shall be filed with the proper state, county, or local
21 corrections department for public inspection. An advertisement shall
22 be published in a newspaper in the proper area stating the time and
23 place where bids will be opened, the time after which bids will not be
24 received, the materials, equipment, supplies, or services to be
25 purchased, and that the specifications may be seen at the office of the
26 proper state, county, or local corrections department. The
27 advertisement shall be published at least once at least ten days prior
28 to the last date upon which bids will be received.

29 (5) The bids shall be in writing and filed with the proper
30 corrections department. The bids shall be opened and read in public at
31 the time and place named in the advertisement. Immediately after the
32 award is made, the bid quotations shall be recorded and open to public
33 inspection and shall be available by telephone inquiry. Any or all
34 bids may be rejected for good cause.

35 (6) For advertisement and formal sealed bidding to be dispensed
36 with as to purchases between two thousand five hundred and twenty-five
37 thousand dollars, the state, county, or local corrections department
38 must use the uniform process to award contracts as provided in RCW
39 39.04.190.

1 (7) This section does not apply to performance-based contracts, as
2 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
3 RCW.

4 (8) An entity contracting for the purchase of materials, equipment,
5 supplies, or services pursuant to this chapter may submit its own cost
6 proposal bid capturing all attributable costs, and subject to the same
7 terms and conditions that apply to the nongovernmental proposals.

8 (9) The contract shall be awarded to the lowest responsible and
9 responsive public or private bidder who demonstrates an ability to
10 provide the same quality and quantity of materials, equipment,
11 supplies, or services at a lower cost.

12 (10) A public or private contractor that fails to provide the
13 service as specified shall be either financially penalized or replaced
14 by another contractor, or both.

15 (11) A contract for the purchase of materials, equipment, supplies,
16 or services shall be sought in sufficient time to award a new contract
17 commencing at the expiration of the previous contract. New contract
18 bids shall be sought regardless of whether the incumbent contractor is
19 a private company or public entity.

20 (12)(a) A public entity contracting out for the purchase of
21 materials, equipment, supplies, or services shall attempt to avoid
22 accepting "low-ball" bids, or bids that are below the contractors
23 actual cost yet seek to make up the cost from other public services so
24 that the cost to the public entity is the same as or higher than other
25 non "low-ball" bids. In order to avoid "low-ball" bids, the public
26 entity shall require that bids by both public and private bidders be
27 submitted at the same time and under the same terms.

28 (b) The evaluation of bid proposals shall not be done by a person
29 who was involved in any way in the preparation of a bid by a public
30 bidder.

31 NEW SECTION. **Sec. 6.** (1) Subject to subsection (2) of this
32 section, following the determination that a person is a juvenile
33 offender, or the determination of an adult offender's conviction of, or
34 his or her plea of guilty, to a misdemeanor or to a felony, the
35 sentencing court may order that the juvenile or adult offender
36 participate in a correctional program during all or a part of his or
37 her sentence provided that the court is authorized by law to place the
38 juvenile offender or adult offender in such a correctional program.

1 (2) Placement of an offender or juvenile offender in a
2 nongovernmental correctional program under this section shall be
3 ordered by the court only if:

4 (a) The correctional program is operated by a nongovernmental
5 agency that has entered into a contract as authorized in section 5 or
6 9 of this act; and

7 (b) Funding for the placement is available.

8 (3) Prior to the placement of an offender or juvenile offender in
9 a nongovernmental correctional program, the sentencing judge shall
10 notify or cause to be notified the law enforcement agencies of affected
11 units of local government concerning the identity of the offender to be
12 placed.

13 (4) The law enforcement agency for the jurisdiction shall be
14 responsible for recommendations to the judge for the utilization of a
15 nongovernmental correctional program that has been approved for use.
16 Nothing in this chapter is intended to change the existing authority of
17 the law enforcement agency. If the law enforcement agency presently
18 has the authority to prepare presentence reports or make disposition
19 recommendations, they should continue to have the authority. If other
20 governmental or nongovernmental employees have the authority, they
21 should continue to exercise it. The recommendations shall take into
22 account the potential risk resulting from the placement of the offender
23 into the nongovernmental correctional program, as well as the aptitude,
24 attitude, and social and occupational skills of the offender.

25 (5) Where supervision is the responsibility of the courts in the
26 state, the courts may, in accordance with state procurement law,
27 contract under this chapter with nongovernmental agencies to provide
28 supervision services.

29 NEW SECTION. **Sec. 7.** The chief law enforcement officer or
30 officials of the state, county, or judicial district shall have general
31 supervisory authority over all offenders, juvenile offenders, and
32 detainees placed in a correctional facility, program, or service under
33 this chapter in accordance with their existing statutory
34 responsibilities for the offenders, juvenile offenders, and detainees.

35 NEW SECTION. **Sec. 8.** (1) Subject to subsection (2) of this
36 section, the responsible state agency may place an offender, juvenile

1 offender, or detainee in a correctional facility, program, or service
2 under this chapter.

3 (2) A placement under this section may be made only if:

4 (a) The correctional facility, program, or service is operated
5 under a contract with the state to provide residential care of
6 offenders, juvenile offenders, or detainees; and

7 (b) Funding for the placement is available.

8 (3) Prior to the placement of an individual in a nongovernmental
9 residential facility, the state agency having responsibility for the
10 offender, juvenile offender, or detainee shall notify or cause to be
11 notified the law enforcement agencies of affected units of local
12 government concerning the identity of the transferal to be placed.

13 NEW SECTION. **Sec. 9.** Subject to legislative appropriation, the
14 state may, in accordance with state procurement law, contract under
15 this chapter with nongovernmental agencies to operate correctional
16 facilities and programs to provide correctional services for offenders,
17 juvenile offenders, and detainees, notwithstanding the provisions of
18 RCW 41.06.380.

19 NEW SECTION. **Sec. 10.** (1) The state shall:

20 (a) Establish minimum facility standards for correctional
21 facilities operated by a nongovernmental agency receiving funds under
22 this chapter;

23 (b) Establish minimum standards for programs and services provided
24 by a nongovernmental agency receiving funds under this chapter;

25 (c) Prescribe accounting and reporting standards for all
26 nongovernmental agencies operating correctional facilities or providing
27 correctional programs or services under this chapter;

28 (d) Establish a per diem rate to be paid program providers
29 operating correctional facilities under this chapter which shall not
30 exceed the daily cost of providing the same programs or services at a
31 state penitentiary or juvenile institution; and

32 (e) Adopt rules reasonably necessary to carry out the provisions of
33 this chapter.

34 (2) The nongovernmental correctional facility, program, and service
35 standards developed by the state shall take into consideration the
36 standards of the American correctional association and other
37 appropriate professional accreditation organizations. A

1 nongovernmental correctional facility, program, or service shall not be
2 approved unless it complies with the most recent standards established
3 by the American correctional association which are appropriate for the
4 specific type of facility, program, or service. Nothing in this
5 chapter is intended to revoke more stringent state standards.

6 NEW SECTION. **Sec. 11.** An offender, juvenile offender, or detainee
7 is deemed guilty of escape from official detention and shall be
8 punished as provided by law if, without proper authorization, he or
9 she:

10 (1) Fails to remain within the extended limits of his or her
11 confinement, or to return within the time prescribed to a
12 nongovernmental correctional facility to which he or she was assigned
13 or transferred; or

14 (2) Being a participant in a program established under the
15 provisions of this chapter, he or she leaves his or her place of
16 employment or fails or neglects to return to a nongovernmental
17 correctional facility within the time prescribed or when specifically
18 ordered to do so.

19 NEW SECTION. **Sec. 12.** Either the state department of corrections
20 or the department of social and health services, or both shall submit
21 an annual report to the legislature describing the number of
22 nongovernmental correctional facilities, programs, and services that
23 have been established pursuant to this chapter. The report shall list
24 the number of offenders, juvenile offenders, and detainees assigned to
25 those facilities, programs, or services, and the extent to which
26 offenders, juvenile offenders, and detainees have received and
27 benefited from services related to their rehabilitation, and the rate
28 of success as compared to offenders, juvenile offenders, and detainees
29 in government operated correctional facilities, programs, or services.

30 **Sec. 13.** RCW 13.06.030 and 1983 c 191 s 3 are each amended to read
31 as follows:

32 (1) The department of social and health services shall adopt rules
33 prescribing minimum standards for the operation of consolidated
34 juvenile services programs for juvenile offenders and such other rules
35 as may be necessary for the administration of the provisions of this
36 chapter. Consolidated juvenile services is a mechanism through which

1 the department of social and health services supports local county
2 comprehensive program plans in providing services to offender groups.
3 Standards shall be sufficiently flexible to support current programs
4 which have demonstrated effectiveness and efficiency, to foster
5 development of innovative and improved services for juvenile offenders,
6 to permit direct contracting with private vendors, and to encourage
7 community support for and assistance to local programs. The secretary
8 of social and health services shall seek advice from appropriate
9 juvenile justice system participants in developing standards and
10 procedures for the operation of consolidated juvenile services programs
11 and the distribution of funds under this chapter.

12 (2) The secretary of social and health services shall assist all
13 state, county, and local governments that have responsibility for the
14 care and supervision of juvenile offenders in placing the juvenile
15 offenders in correctional facilities and programs set up under chapter
16 72.-- RCW (sections 2 through 12 of this act).

17 **Sec. 14.** RCW 72.01.050 and 1992 c 7 s 51 are each amended to read
18 as follows:

19 (1) The secretary of social and health services shall have full
20 power to manage and govern the following public institutions: The
21 western state hospital, the eastern state hospital, the northern state
22 hospital, the state training school, the state school for girls,
23 Lakeland Village, the Rainier school, and such other institutions as
24 authorized by law, subject only to the limitations contained in laws
25 relating to the management of such institutions.

26 (2) The secretary of corrections shall have full power to manage,
27 govern, and name all state correctional facilities, subject only to the
28 limitations contained in laws relating to the management of such
29 institutions.

30 (3) If any state correctional facility is fully or partially
31 destroyed by natural causes or otherwise, the secretary of corrections
32 may, with the approval of the governor, provide for the establishment
33 and operation of additional residential correctional facilities to
34 place those inmates displaced by such destruction. However, such
35 additional facilities may not be established if there are existing
36 residential correctional facilities to which all of the displaced
37 inmates can be appropriately placed. The establishment and operation
38 of any additional facility shall be on a temporary basis, and the

1 facility may not be operated beyond July 1 of the year following the
2 year in which it was partially or fully destroyed.

3 (4) The secretary of social and health services shall assist all
4 state, county, and local governments that have responsibility for the
5 care and supervision of adult offenders in placing the adult offenders
6 in correctional facilities and programs set up under chapter 72.-- RCW
7 (sections 2 through 12 of this act).

8 NEW SECTION. Sec. 15. Sections 2 through 12 of this act shall
9 constitute a new chapter in Title 72 RCW.

10 NEW SECTION. Sec. 16. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. Sec. 17. This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and shall take
17 effect June 30, 1993.

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