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**SUBSTITUTE HOUSE BILL 2576**

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**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)

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

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

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS. (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."

(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.

(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 inmate-on-inmate and inmate-on-staff assaults, as well as higher rates of staff uses of force."

(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 sixty 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.

(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 twenty-two 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 prisons and detention facilities in the state.

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

(1) "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.

(2) "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.

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

NEW SECTION. **Sec.**  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.

(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, 2020, 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 section 1 of this act, 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 chapter 13.04 RCW;

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

(c) 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;

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

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

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

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

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

(1) Whenever in its judgment the best interests of the state or 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 effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer offenders to out-of-state ((~~to private or~~)) governmental institutions if the secretary determines that 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. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed if the offender is returned to the state.

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

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

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

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

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

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

NEW SECTION. **Sec.**  EMERGENCY CLAUSE. 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.

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

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

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