

**E2SSB 5120** - H COMM AMD  
By Committee on Public Safety

**NOT CONSIDERED 12/23/2019**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the type of  
4 institution an individual is incarcerated in can have a direct impact  
5 on rates of recidivism. The legislature further finds that  
6 incarcerating persons in private correctional entities, which have  
7 business models dependent on rates of incarceration, may increase the  
8 likelihood of those persons recidivating. The legislature resolves  
9 that public safety and financial and humanitarian interests are  
10 furthered by decreased rates of recidivism. The legislature intends  
11 to eliminate the utilization of private correctional entities by  
12 Washington state and to allow utilization of private correctional  
13 entities in only the most narrow and rare circumstances, in cases of  
14 emergency and when security and safety demand.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.68  
16 RCW to read as follows:

17 (1) Except as provided in subsection (2) of this section and RCW  
18 72.68.010(2), the secretary, any county government, city government,  
19 or county sheriff's department, is prohibited from utilizing a  
20 contract with a private correctional entity for the transfer or  
21 placement of offenders.

22 (2) This section does not apply to:

23 (a) State work release centers, juvenile residential facilities,  
24 nonprofit community-based alternative juvenile detention facilities,  
25 or nonprofit community-based alternative adult detention facilities  
26 that provide separate care or special treatment, operated in whole or  
27 in part by for-profit contractors;

28 (b) Contracts for ancillary services including, but not limited  
29 to, medical services, educational services, repair and maintenance  
30 contracts, behavioral health services, or other services not directly

1 related to the ownership, management, or operation of security  
2 services in a correctional facility; or

3 (c) Tribal entities.

4 **Sec. 3.** RCW 72.09.050 and 1999 c 309 s 1902 and 1999 c 309 s 924  
5 are each reenacted and amended to read as follows:

6 The secretary shall manage the department of corrections and  
7 shall be responsible for the administration of adult correctional  
8 programs, including but not limited to the operation of all state  
9 correctional institutions or facilities used for the confinement of  
10 convicted felons. In addition, the secretary shall have broad powers  
11 to enter into agreements with any federal agency, or any other state,  
12 or any Washington state agency or local government providing for the  
13 operation of any correctional facility or program for persons  
14 convicted of felonies or misdemeanors or for juvenile offenders. Such  
15 agreements for counties with local law and justice councils shall be  
16 required in the local law and justice plan pursuant to RCW 72.09.300.  
17 The agreements may provide for joint operation or operation by the  
18 department of corrections, alone, for by any of the other  
19 governmental entities, alone. ~~((Beginning February 1, 1999, the  
20 secretary may expend funds appropriated for the 1997-1999 biennium to  
21 enter into agreements with any local government or private  
22 organization in any other state, providing for the operation of any  
23 correctional facility or program for persons convicted of felonies.  
24 Between July 1, 1999, and June 30, 2001, the secretary may expend  
25 funds appropriated for the 1999-01 biennium to enter into agreements  
26 with any local government or private organization in any other state,  
27 providing for the operation of any correctional facility or program  
28 for persons convicted of felonies.))~~ The secretary may employ persons  
29 to aid in performing the functions and duties of the department. The  
30 secretary may delegate any of his or her functions or duties to  
31 department employees, including the authority to certify and maintain  
32 custody of records and documents on file with the department. The  
33 secretary is authorized to promulgate standards for the department of  
34 corrections within appropriation levels authorized by the  
35 legislature.

36 Pursuant to the authority granted in chapter 34.05 RCW, the  
37 secretary shall adopt rules providing for inmate restitution when  
38 restitution is determined appropriate as a result of a disciplinary  
39 action.

1       **Sec. 4.** RCW 72.68.040 and 2012 c 117 s 500 are each amended to  
2 read as follows:

3       (1) The secretary may contract with the authorities of the  
4 federal government, or the authorities of any state of the United  
5 States, private companies in other states, or any county or city in  
6 this state providing for the detention in an institution or jail  
7 operated by such entity, for prisoners convicted of a felony in the  
8 courts of this state and sentenced to a term of imprisonment therefor  
9 in a state correctional institution for convicted felons under the  
10 jurisdiction of the department. Except as provided in subsection (2)  
11 of this section, after the making of a contract under this section,  
12 prisoners sentenced to a term of imprisonment in a state correctional  
13 institution for convicted felons may be conveyed by the  
14 superintendent or his or her assistants to the institution or jail  
15 named in the contract. The prisoners shall be delivered to the  
16 authorities of the institution or jail, there to be confined until  
17 their sentences have expired or they are otherwise discharged by law,  
18 paroled, or until they are returned to a state correctional  
19 institution for convicted felons for further confinement.

20       (2) A prisoner may not be conveyed to a private correctional  
21 entity except under the circumstances identified in RCW 72.68.010(2)  
22 or section 2(2) of this act.

23       **Sec. 5.** RCW 72.68.010 and 2000 c 62 s 2 are each amended to read  
24 as follows:

25       (1) Whenever in its judgment the best interests of the state or  
26 the welfare of any prisoner confined in any penal institution will be  
27 better served by his or her transfer to another institution or to a  
28 foreign country of which the prisoner is a citizen or national, the  
29 secretary may effect such transfer consistent with applicable federal  
30 laws and treaties. The secretary has the authority to transfer  
31 offenders between in-state correctional facilities, or to out-of-  
32 state (~~to private or~~) governmental institutions, if the secretary  
33 determines that transfer is in the best interest of the state or the  
34 offender.

35       (2) The secretary has the authority to transfer offenders to an  
36 out-of-state private correctional entity only if the governor finds  
37 that an emergency exists such that the population of a state  
38 correctional facility exceeds its reasonable, maximum capacity  
39 resulting in safety and security concerns, the governor has

1 considered all other legal options to address capacity including  
2 those pursuant to RCW 9.94A.870, and the secretary determines that  
3 transfer is in the best interest of the state or the offender.

4 (3) The determination of what is in the best interest of the  
5 state or offender may include but is not limited to considerations of  
6 overcrowding, emergency conditions, or hardship to the offender. In  
7 determining whether the transfer will impose a hardship on the  
8 offender, the secretary shall consider: (a) The location of the  
9 offender's family and whether the offender has maintained contact  
10 with members of his or her family; (b) whether, if the offender has  
11 maintained contact, the contact will be significantly disrupted by  
12 the transfer due to the family's inability to maintain the contact as  
13 a result of the transfer; and (c) whether the offender is enrolled in  
14 a vocational or educational program that cannot reasonably be resumed  
15 if the offender is returned to the state.

16 ~~((+2))~~ (4) If directed by the governor, the secretary shall, in  
17 carrying out this section and RCW 43.06.350, adopt rules under  
18 chapter 34.05 RCW to effect the transfer of prisoners requesting  
19 transfer to foreign countries.

20 **Sec. 6.** RCW 72.68.001 and 1981 c 136 s 114 are each amended to  
21 read as follows:

22 ~~((As used in this chapter:))~~ The definitions in this section  
23 apply throughout this chapter unless the context clearly requires  
24 otherwise.

25 (1) "Department" means the department of corrections ~~((; and))~~.

26 (2) "Private correctional entity" means a for-profit contractor  
27 or for-profit vendor who provides services relating to the ownership,  
28 management, or administration of security services of a correctional  
29 facility for the incarceration of persons in the custody of the  
30 department, any county government, city government, or county  
31 sheriff's department.

32 (3) "Secretary" means the secretary of corrections.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.48  
34 RCW to read as follows:

35 A governing unit may not utilize a contract with a private  
36 correctional entity for the transfer or placement of offenders except  
37 as provided in section 2(2) of this act. For purposes of this

1 section, "private correctional entity" has the same meaning as in RCW  
2 72.68.001.

3 NEW SECTION. **Sec. 8.** RCW 72.68.012 (Transfer to private  
4 institutions—Intent—Authority) and 2000 c 62 s 1 are each repealed."

5 Correct the title.

EFFECT: Specifies that the prohibition on utilizing a contract with a private correctional entity pertains to utilizing a contract for the transfer or placement of offenders.

Adds a cross-reference to the prohibition on utilizing a contract with private correctional entities in the City and County Jails Act.

Removes a reference to the Department of Children, Youth, and Families and amends an existing statute to align with the policies in the underlying bill.

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