

# HOUSE BILL REPORT

## E2SSB 5120

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to contracting with for-profit correctional facilities for the transfer or placement of offenders.

**Brief Description:** Contracting with for-profit correctional facilities for the transfer or placement of offenders.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Palumbo, Darneille, Mullet, Nguyen, Hunt, Saldaña, Liias, Carlyle, Frockt, Hasegawa and Kuderer).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 3/18/19, 3/26/19 [DPA].

#### **Brief Summary of Engrossed Second Substitute Bill (As Amended by Committee)**

- Removes the existing authority of the Department of Corrections (DOC) to transfer offenders to private institutions.
- Prohibits the DOC, local governments, and county sheriff's departments from utilizing a contract with a private correctional entity for the transfer or placement of offenders, with certain exceptions.
- Outlines circumstances applicable in the event that the Governor finds an emergency exists over facility capacity, in which the DOC is authorized to transfer offenders to an out-of-state private correctional entity.

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#### **HOUSE COMMITTEE ON PUBLIC SAFETY**

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Omeara Harrington (786-7136).

**Background:**

Adult criminal sentences of up to one year are served in jail facilities operated by local governments, and sentences of over one year are served in state prison facilities. The Department of Corrections (DOC) manages all state-operated adult prisons and supervises certain adult DOC offenders who live in the community. Juvenile sentences of 30 days or less are served in local juvenile detention facilities operated or maintained by local governments, and longer sentences are served in state-operated Juvenile Rehabilitation facilities.

The Secretary of the DOC is authorized to transfer offenders out of state to private or governmental institutions upon determining that the transfer is in the best interest of the state or the offender. In addition, if the Governor finds that an emergency exists in which the population of a state correctional facility exceeds its reasonable maximum capacity, the Governor may take certain measures to mitigate the emergency. Such measures include calling the Sentencing Guidelines Commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards, or calling the Clemency and Pardons Board into an emergency meeting for the purpose of making recommendations for the Governor's use of commutation and pardon powers.

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**Summary of Amended Bill:**

The general authority of the DOC to transfer offenders to private institutions is removed, and with certain exceptions, the DOC, city and county governments, and county sheriff's departments are prohibited from utilizing a contract with a private correctional entity for the transfer or placement of offenders. A "private correctional entity" includes any for-profit contractor or for-profit vendor who provides services relating to the ownership, management, or administration of security services of a correctional facility for the incarceration of persons in the custody of the DOC or any city government, county government, or county sheriff's department.

The prohibition on contracting with private correctional entities does not apply to specified categories, including:

- state work-release centers, juvenile residential facilities, nonprofit community-based alternative juvenile detention facilities, or nonprofit community-based alternative adult detention facilities that provide separate care or special treatment, operated in whole or in part by for-profit contractors;
- contracts for ancillary services, such as medical and educational services, repair and maintenance contracts, behavioral health services, or other services not directly related to the ownership, management, or operation of security services in a correctional entity; or
- tribal entities.

The DOC may transfer offenders to out-of-state private correctional entities when the Governor has found that an emergency exists in which the population of a state correctional facility exceeds its reasonable maximum capacity, resulting in safety and security concerns. To exercise this option, the Governor must have considered all other legal options to address capacity and the DOC must have determined that the transfer is in the best interest of the state or the offender.

**Amended Bill Compared to Engrossed Second Substitute Bill:**

The amended bill 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. A provision is added to the City and County Jails Act referencing the underlying prohibition in the bill on local governments utilizing a contract with private correctional entities. To align with the policies in the underlying bill, a reference to the Department of Children, Youth, and Families is removed and an existing statute is amended.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill makes a statement of value that the state is not going to use taxpayer money to house people in its care in private facilities. In the original form of the bill, no private or out-of-state facilities could be used, but it is occasionally necessary to send someone out of state. The bill now allows for public out-of-state transfers and alternative placement in emergencies. Also, there is no prohibition on contracting for outside placements, just a prohibition on utilizing those contracts except in certain circumstances. Juvenile facilities are excluded from the bill, as are tribal facilities.

(Opposed) None.

(Other) The DOC had concerns with the original bill but is satisfied with this version. In the event of serious overcrowding or loss of capacity due to a disaster, the DOC has to have the capability to respond accordingly. The DOC does not currently have agreements for transferring incarcerated individuals to private facilities out of state. There are, however, agreements in place with other state prisons under the interstate compact.

**Persons Testifying:** (In support) Senator Palumbo, prime sponsor.

(Other) Robert Herzog, Department of Corrections.

**Persons Signed In To Testify But Not Testifying:** None.