

# HOUSE BILL REPORT

## EHB 1090

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### As Passed Legislature

**Title:** An act relating to private, for-profit detention facilities.

**Brief Description:** Concerning private, for-profit detention facilities.

**Sponsors:** Representatives Ortiz-Self, Fey, Fitzgibbon, Johnson, J., Ramos, Tharinger, Simmons, Ramel, Senn, Peterson, Gregerson, Ryu, Valdez, Callan, Kloba, Young, Hackney, Chopp, Lovick, Ormsby, Stonier, Frame, Santos, Macri, Orwall, Davis, Pollet and Harris-Talley.

### Brief History:

#### Committee Activity:

Public Safety: 1/21/21, 1/28/21 [DP].

#### Floor Activity:

Passed House: 2/23/21, 76-21.

Passed Senate: 3/30/21, 28-21.

Passed Legislature.

### Brief Summary of Engrossed Bill

- Prohibits persons, businesses, and state and local governments from operating private detention facilities or from utilizing contracts with private detention facilities, with some exceptions.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 10 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert, 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 part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Without recommendation. Signed by 1 member: Representative Mosbrucker, Ranking Minority Member.

**Staff:** Kelly Leonard (786-7147).

**Background:**

Correctional and detention facilities are used to detain persons for a variety of purposes, including pretrial detention and sentencing. Pretrial detention and sentences of up to one year are carried out by locally and publicly operated jail facilities. Sentences of over one year are served in state prison facilities operated and managed by the Department of Corrections (DOC). Juvenile sentences of 30 days or less are served in locally operated juvenile detention facilities, and longer sentences are served in Juvenile Rehabilitation facilities operated and managed by the Department of Children, Youth, and Families.

Private businesses may contract with federal, state, and local governments to provide detention services or ancillary services provided inside detention facilities. However, state law prohibits the DOC from utilizing a contract with a for-profit private correctional entity for the transfer or placement of offenders, unless an emergency exception applies, in which case the DOC may transfer prisoners to an out-of-state private correctional entity meeting certain requirements. In the federal context, the federal government may enter into contracts for detention services, which may include detaining persons pursuant to immigration-related proceedings.

**Summary of Engrossed Bill:**

"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. "Private detention facility" means a detention facility that is operated by a private, nongovernmental, for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.

A person, business, or state or local governmental entity is prohibited from operating a private detention facility, or utilizing a contract with a private detention facility, except where the DOC is authorized to transfer prisoners to an out-of-state private correctional facility under current law. The restrictions also do not apply to certain types of facilities authorized under state law and any similarly applicable federal law, including:

- a facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles;
- a facility providing services to a person who has been detained or civilly committed for involuntary mental health treatment or forensic evaluation;
- a facility used for the quarantine or isolation of persons for public health reasons;
- a facility used for work release;

- a facility used for extraordinary medical placement;
- a facility used for residential substance use disorder treatment;
- a facility used for the housing, care, and security of persons held in the custody of United States Marshals; and
- a facility owned and operated by a federally recognized tribe and contracting with the government.

A private detention facility that is operating pursuant to a valid contract with a governmental entity that was in effect prior to January 1, 2021, may remain in operation for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) Persons in detention facilities still have basic rights to health, nutrition, and safety, yet private, for-profit detention centers are known to cut costs at the expense of detainees. When a vulnerable population is stripped of power and put in the hands of an entity whose only goal is to make money, there are going to be abuses. Businesses should not be able to make profits on incarceration. Private, for-profit detention facilities place shareholder profits above all other priorities.

These facilities are not accountable to the public. Government officials and advocates have sought information from private detention facilities, through the Freedom of Information Act, but have been turned down on the basis of trade secrets.

Prisons and detention facilities can be monotonous, dehumanizing, and toxic places. If the state wants prisoners and detainees to come out of facilities as better people, then it must provide programming, medical care, and other services. Private facilities are often used so the state can avoid addressing the problems creating a need for incarceration. The state should shift its focus to long-term solutions. This is ultimately a government responsibility.

This is not a problem for one political party or one president. This has been an ongoing problem for a long time. The state has the authority and obligation to protect persons within its borders from human rights violations, even in the context of immigration enforcement. The government can address immigration enforcement without the use of private, for-profit detention facilities.

(Opposed) None.

**Persons Testifying:** Representative Ortiz-Self, prime sponsor; Catherine Ushka, City of Tacoma; Carol Estes, Prison Voice; and Nelly Prieto, Service Employees International Union 775.

**Persons Signed In To Testify But Not Testifying:** Gretchen Wing; Alex Hur, OneAmerica; Karen Taylor; Mina Barahimi Martin, American Civil Liberties Union of Washington; Rosario Lopez, La Resistencia; Hannah Woerner, Columbia Legal Services; Michael Byun, Asian Counseling and Referral Service; Angelina Snodgrass Godoy, University of Washington Center for Human Rights; Todd Hunt; Gregory Cannon; and Alicia Busch.