
SENATE BILL 6579

State of Washington 53rd Legislature 1994 Regular Session

By Senators L. Smith, Cantu, Hochstatter and McDonald

Read first time 01/31/94. Referred to Committee on Law & Justice.

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; and providing an effective date.

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 (5) Currently there are correctional facilities to house the
4 criminal population that have been built but remain empty due to budget
5 constraints.

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

9 NEW SECTION. **Sec. 2.** Unless the context clearly requires
10 otherwise, the definitions in this section apply throughout this
11 chapter.

12 (1) "Correctional facility, program, or service" means a facility,
13 program, or service, that is operated or provided by a nongovernmental
14 agency that:

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

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

24 (c) Provides supervision and surveillance of offenders, juvenile
25 offenders, and detainees as required.

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

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

30 (4) "Nongovernmental agency" means a person or organization other
31 than a unit of government or agency thereof and includes private profit
32 organizations.

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 5.** (1) Every contract for services entered into
35 pursuant to this chapter shall provide guidelines for the operation of

1 the nongovernmental correctional facility or program and minimum
2 standards for the services provided, including:

3 (a) Requirements for strict accountability procedures and practices
4 for the conduct and supervision of offenders, juvenile offenders, and
5 detainees including requirements for twenty-four hour supervision of
6 offenders, juvenile offenders, and detainees in residential programs;

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

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

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

17 (3) The guidelines and standards required by this section shall be
18 developed pursuant to section 11 of this act.

19 (4) No contract for the purchase of materials, equipment, supplies,
20 or services may be entered into pursuant to sections 2 through 13 of
21 this act by an elected or appointed correction official until after
22 bids have been submitted to the executive in charge of a state, county,
23 or local corrections department. Bid specifications shall be in
24 writing and shall be filed with the proper state, county, or local
25 corrections department for public inspection. An advertisement shall
26 be published in a newspaper in the proper area stating the time and
27 place where bids will be opened, the time after which bids will not be
28 received, the materials, equipment, supplies, or services to be
29 purchased, and that the specifications may be seen at the office of the
30 proper state, county, or local corrections department. The
31 advertisement shall be published at least once at least ten days prior
32 to the last date upon which bids will be received.

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

1 (6) For advertisement and formal sealed bidding to be dispensed
2 with as to purchases between two thousand five hundred and twenty-five
3 thousand dollars, the state, county, or local corrections department
4 must use the uniform process to award contracts as provided in RCW
5 39.04.190.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 6.** (1) Subject to subsection (2) of this
37 section, following the determination that a person is a juvenile
38 offender, or the determination of an adult offender's conviction of, or

1 his or her plea of guilty, to a misdemeanor or to a felony, the
2 sentencing court may order that the juvenile or adult offender
3 participate in a correctional program during all or a part of his or
4 her sentence provided that the court is authorized by law to place the
5 juvenile offender or adult offender in such a correctional program.

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

9 (a) The correctional program is operated by a nongovernmental
10 agency that has entered into a contract as authorized in section 5 or
11 10 of this act; and

12 (b) Funding for the placement is available.

13 (3) Prior to the placement of an offender or juvenile offender in
14 a nongovernmental correctional program, the sentencing judge shall
15 notify or cause to be notified the law enforcement agencies of affected
16 units of local government concerning the identity of the offender to be
17 placed.

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

30 (5) Where supervision is the responsibility of the courts in the
31 state, the courts may, in accordance with state procurement law,
32 contract under this chapter with nongovernmental agencies to provide
33 supervision services.

34 NEW SECTION. **Sec. 7.** The chief law enforcement officer or
35 officials of the state, county, or judicial district shall have general
36 supervisory authority over all offenders, juvenile offenders, and
37 detainees placed in a correctional facility, program, or service under

1 this chapter in accordance with their existing statutory
2 responsibilities for the offenders, juvenile offenders, and detainees.

3 NEW SECTION. **Sec. 8.** (1) Subject to subsection (2) of this
4 section, the responsible state agency may place an offender, juvenile
5 offender, or detainee in a correctional facility, program, or service
6 under this chapter.

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

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

11 (b) Funding for the placement is available.

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

17 NEW SECTION. **Sec. 9.** The secretary of social and health services
18 and the secretary of corrections shall determine if any correctional
19 facility that currently exists but is not in operation because of
20 budgetary constraints could be operated within available funds by
21 contracting with a nongovernmental agency. A contract with a
22 nongovernmental agency for the operation of such a facility must be in
23 compliance with the provisions of this chapter.

24 NEW SECTION. **Sec. 10.** Subject to legislative appropriation, the
25 state may, in accordance with state procurement law, contract under
26 this chapter with nongovernmental agencies to operate correctional
27 facilities and programs to provide correctional services for offenders,
28 juvenile offenders, and detainees, notwithstanding the provisions of
29 RCW 41.06.380.

30 NEW SECTION. **Sec. 11.** (1) The state shall:

31 (a) Establish minimum facility standards for correctional
32 facilities operated by a nongovernmental agency receiving funds under
33 this chapter;

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

1 (c) Prescribe accounting and reporting standards for all
2 nongovernmental agencies operating correctional facilities or providing
3 correctional programs or services under this chapter;

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

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

10 (2) The nongovernmental correctional facility, program, and service
11 standards developed by the state shall take into consideration the
12 standards of the American correctional association and other
13 appropriate professional accreditation organizations. A
14 nongovernmental correctional facility, program, or service shall not be
15 approved unless it complies with the most recent standards established
16 by the American correctional association which are appropriate for the
17 specific type of facility, program, or service. Nothing in this
18 chapter is intended to revoke more stringent state standards.

19 NEW SECTION. **Sec. 12.** An offender, juvenile offender, or detainee
20 is deemed guilty of escape from official detention and shall be
21 punished as provided by law if, without proper authorization, he or
22 she:

23 (1) Fails to remain within the extended limits of his or her
24 confinement, or to return within the time prescribed to a
25 nongovernmental correctional facility to which he or she was assigned
26 or transferred; or

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

32 NEW SECTION. **Sec. 13.** Either the state department of corrections
33 or the department of social and health services, or both shall submit
34 an annual report to the legislature describing the number of
35 nongovernmental correctional facilities, programs, and services that
36 have been established pursuant to this chapter. The report shall list
37 the number of offenders, juvenile offenders, and detainees assigned to

1 those facilities, programs, or services, and the extent to which
2 offenders, juvenile offenders, and detainees have received and
3 benefited from services related to their rehabilitation, and the rate
4 of success as compared to offenders, juvenile offenders, and detainees
5 in government operated correctional facilities, programs, or services.

6 **Sec. 14.** RCW 13.06.030 and 1983 c 191 s 3 are each amended to read
7 as follows:

8 (1) The department of social and health services shall adopt rules
9 prescribing minimum standards for the operation of consolidated
10 juvenile services programs for juvenile offenders and such other rules
11 as may be necessary for the administration of the provisions of this
12 chapter. Consolidated juvenile services is a mechanism through which
13 the department of social and health services supports local county
14 comprehensive program plans in providing services to offender groups.
15 Standards shall be sufficiently flexible to support current programs
16 which have demonstrated effectiveness and efficiency, to foster
17 development of innovative and improved services for juvenile offenders,
18 to permit direct contracting with private vendors, and to encourage
19 community support for and assistance to local programs. The secretary
20 of social and health services shall seek advice from appropriate
21 juvenile justice system participants in developing standards and
22 procedures for the operation of consolidated juvenile services programs
23 and the distribution of funds under this chapter.

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

29 **Sec. 15.** RCW 72.01.050 and 1992 c 7 s 51 are each amended to read
30 as follows:

31 (1) The secretary of social and health services shall have full
32 power to manage and govern the following public institutions: The
33 western state hospital, the eastern state hospital, the northern state
34 hospital, the state training school, the state school for girls,
35 Lakeland Village, the Rainier school, and such other institutions as
36 authorized by law, subject only to the limitations contained in laws
37 relating to the management of such institutions.

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

5 (3) If any state correctional facility is fully or partially
6 destroyed by natural causes or otherwise, the secretary of corrections
7 may, with the approval of the governor, provide for the establishment
8 and operation of additional residential correctional facilities to
9 place those inmates displaced by such destruction. However, such
10 additional facilities may not be established if there are existing
11 residential correctional facilities to which all of the displaced
12 inmates can be appropriately placed. The establishment and operation
13 of any additional facility shall be on a temporary basis, and the
14 facility may not be operated beyond July 1 of the year following the
15 year in which it was partially or fully destroyed.

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

21 NEW SECTION. Sec. 16. Sections 2 through 13 of this act shall
22 constitute a new chapter in Title 72 RCW.

23 NEW SECTION. Sec. 17. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. Sec. 18. This act shall take effect June 30, 1994.

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