

HOUSE BILL REPORT

HB 2576

As Reported by House Committee On:
Public Safety

Title: An act relating to private detention facilities.

Brief Description: Concerning private detention facilities.

Sponsors: Representatives Ortiz-Self, Gregerson, Doglio, Pettigrew, Santos, Peterson, Lekanoff, Ryu, Pollet, Valdez, Thai, Macri, Fitzgibbon, Dolan, Davis, J. Johnson, Walen, Frame, Ormsby and Riccelli.

Brief History:

Committee Activity:

Public Safety: 2/3/20, 2/6/20 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham and Griffey.

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.

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.

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. State law expressly authorizes the DOC to transfer inmates to out-of-state private institutions upon determining that the transfer is in the best interest of the state or the inmate. 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 Substitute Bill:

Definitions. "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 entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.

"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.

Restrictions on Private Detention Facilities. A person, business, or state or local governmental entity is prohibited from operating a private detention facility within the state, or utilizing a contract with a private detention facility.

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.

The bill does not apply if the involuntary confinement is at:

- a facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to a juvenile subject to the Basic Juvenile Court Act;
- a juvenile detention facility operating under an agreement for a consortium of counties authorized in state law;
- a facility providing services to a person who has been detained or civilly committed for involuntary mental health treatment or forensic evaluation;

- a facility licensed or required to be licensed as an assisted living facility, nursing home, adult family home, soldiers' home, residential habilitation center, enhanced services facility, or secure community transition facility;
- a work release facility;
- a facility used for the quarantine or isolation of persons for public health reasons; or
- a facility owned and operated by federally recognized tribes and contracting with a government.

Department of Corrections. The authority for the DOC to transfer inmates to out-of-state private correctional institutions is limited to emergency situations. The DOC may transfer inmates 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 and security concerns; the Governor has considered all other legal options to address capacity; the DOC determines that transfer is in the best interest of the state or the offender; and the contract with the entity includes requirements for access to public records to the same extent as if the facility was operated by the DOC, 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.

Substitute Bill Compared to Original Bill:

The legislative findings and intent are replaced. A person, business, or state or local governmental entity is prohibited from utilizing a contract with a private detention facility (rather than prohibiting a person, business, or state or local governmental entity from entering into agreements with any local or state government or private organization in any other state providing for the operating of a detention facility). Existing contracts between private detention facilities and governmental entities remain in operation for the duration of those contracts, rather than in effect for the duration of those contracts.

The current authority for the DOC to transfer inmates to out-of-state private correctional institutions is repealed. However, language is added providing that the DOC may transfer inmates to an out-of-state private correctional entity in certain emergency situations.

The exemption for contracts for exclusively providing specified ancillary services is removed. Language is added providing that the bill does not apply to the following additional entities:

- any juvenile detention facility operating under an agreement for a consortium of counties authorized in state law;
- any facility providing evaluation and treatment or forensic services to a person who has been civilly detained as a sexually violent predator or is subject to an order of commitment as a sexually violent predator;
- any facility licensed as an enhanced services facility; and
- any facility used for work release.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) It is wrong to profit from the misfortune of others. Similar to foster programs and services for the mentally ill, the government should not outsource detention to private companies. There is an inherent injustice in making money off of those who are incarcerated. A private company has no interest in providing services or treatment. To the contrary, its interest is in maximizing profits for shareholders. Those interests cannot be reconciled.

The state has the constitutional authority to pass this legislation in order to protect people from the serious harms caused by private detention facilities. The state has broad police powers under the Tenth Amendment of the United States Constitution to enact laws to protect the health and welfare of all people within its boundaries. Federal law does not preempt the bill. The bill does not prevent the federal government from detaining anyone. The bill does not discriminate against the federal government because it applies to all operators and institutions equally.

The harm associated with private detention facilities is well-documented. Private detention centers have higher rates of assault, higher recidivism rates, and provide lower quality care. Their staff are less trained and poorly paid. Private detention centers are known to cut costs at the expense of the health and safety of inmates and staff. Many suffer long-term, lasting trauma and other negative effects. This is contrary to democratic values. It violates human rights.

Public facilities are accountable to the public, but private facilities are accountable only to their shareholders. Many are shrouded in secrecy. So much of what the state and stakeholders care about in these institutions (including, for example, medication, mental health treatment, interpreters, programming, and training) are effectively provided only in public facilities. The state should preemptively ban the use of private facilities to preserve the efforts to advance rehabilitation and reentry.

Private facilities do not provide culturally specific and informed services. In particular, indigenous persons are overrepresented in the prison population, and they have the highest recidivism rate and highest suicide rate. Private facilities do not honor the indigenous way of life or indigenous faiths.

Vulnerable persons face serious abuses in private facilities. Transgender persons in particular experience harassment, sexual assault, medical neglect, and even death. Private facilities are unwilling or unable to prevent these abuses. There are particular guidelines for federal immigration facilities, but the private contractors do not follow them.

Undocumented persons live in constant fear of the Northwest Detention Center and other private detention centers. It plagues their minds and those of their children. Private

detention facilities are not monitored by the federal government. There is virtually no oversight, yet the abuses that take place in them are well-known. This disproportionately affects people of color. These facilities are founded in oppression. Identity should not be a crime. The Legislature has the power to address this in Washington.

The Legislature should ban private prisons, and if an exemption for the DOC is necessary, it should be the most restrictive exemption possible. The DOC used to frequently transfer inmates to out-of-state facilities. This was dangerous for inmates and disruptive to their reentry programming and planning. The state is again facing an overcrowding problem. Overcrowding is not an emergency, rather it is predictable outcome of current sentencing policies. Unless something changes, it will get worse. Transferring inmates out of state is not the answer. Building more prisons is not the answer. Long sentences and lack of parole are the primary drivers of overcrowding. The state needs to examine the real problems.

(Opposed) None.

(Other) The bill should be amended to address technical concerns raised by the DOC. There should be express exemptions for work release facilities. In addition, the language should be modified to allow DOC to enter into contracts with out-of-state facilities before an emergency occurs, so it can be exercised at a later time. The exemption for emergency situations should not be limited to catastrophic incidents.

The bill should be amended to clearly exclude Martin Hall, a juvenile detention facility in Spokane County. Small counties cannot afford to build their own facilities, and Martin Hall was built after a consortium of counties came together. While it utilizes a private operator, it is publicly owned and is monitored by a public board made up of county commissioners.

Persons Testifying: (In support) Representative Ortiz-Self, prime sponsor; Hannah Woerner, Columbia Legal Services; Vlad Gutman-Britten, Washington State Labor Council; Megan Ybarra, University of Washington; Nancy Canales-Montiel, Associated Students of Central Washington University; Samantha Cruz Mendoza, Associated Students of Washington State University; Michael Byun, Asian Counseling and Referral Services; Carol Estes, Prison Voice; David Lord, Disability Rights Washington; Winona Steven, Huy; Marilyn Covarrubias, Justice for Daniel; Tobi Hill-Meyer, Gender Justice League; and Emma Morse, Sara Wu, Anusha Nasruai, Naomi Weld, Josie Hunt, Abraham Wu, Vida Wang, Emily Walker, Ella Strange, and Rosa Carballo, Radical Justice from the Amazon Auditorium.

(Other) Melena Thompson, Department of Corrections; Jim Potts, Rural Counties; and Juliana Roe, Washington Association of Counties.

Persons Signed In To Testify But Not Testifying: None.