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**SUBSTITUTE SENATE BILL 5120**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Palumbo, Darneille, Mullet, Nguyen, Hunt, Saldaña, Lias, Carlyle, Frockt, Hasegawa, and Kuderer)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to contracting with for-profit correctional  
2 facilities for the transfer or placement of offenders; amending RCW  
3 72.68.010; reenacting and amending RCW 72.09.050; adding a new  
4 section to chapter 72.68 RCW; and repealing RCW 72.68.012.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 72.68  
7 RCW to read as follows:

8 (1) Except as provided in subsections (2) and (3) of this  
9 section, the state, any county government, city government, or county  
10 sheriff's department, is prohibited from entering into a contract  
11 with a for-profit contractor or for-profit vendor for the provision  
12 of services relating to the operation of a correctional facility or  
13 the incarceration of persons in the custody of the department of  
14 corrections, the department of children, youth, and families, or a  
15 county sheriff.

16 (2) This section does not apply to:

17 (a) State work release centers, juvenile residential facilities,  
18 nonprofit community-based alternative juvenile detention facilities,  
19 or nonprofit community-based alternative adult detention facilities  
20 that provide separate care or special treatment, operated in whole or  
21 in part by for-profit contractors;

1 (b) Contracts for ancillary services including, but not limited  
2 to, medical services, educational services, repair and maintenance  
3 contracts, behavioral health services, or other services not directly  
4 related to the ownership, management, or operation of security  
5 services in a correctional facility; or

6 (c) Tribal entities.

7 (3) The state may enter into a contract with a for-profit  
8 contractor or for-profit vendor only if the governor has declared a  
9 state of emergency, the emergency has created safety and security  
10 concerns due to capacity and structural issues, and there is a need  
11 to change the physical location of persons experiencing  
12 incarceration.

13 **Sec. 2.** RCW 72.09.050 and 1999 c 309 s 1902 and 1999 c 309 s 924  
14 are each reenacted and amended to read as follows:

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

1 department employees, including the authority to certify and maintain  
2 custody of records and documents on file with the department. The  
3 secretary is authorized to promulgate standards for the department of  
4 corrections within appropriation levels authorized by the  
5 legislature.

6 Pursuant to the authority granted in chapter 34.05 RCW, the  
7 secretary shall adopt rules providing for inmate restitution when  
8 restitution is determined appropriate as a result of a disciplinary  
9 action.

10 **Sec. 3.** RCW 72.68.010 and 2000 c 62 s 2 are each amended to read  
11 as follows:

12 (1) Whenever in its judgment the best interests of the state or  
13 the welfare of any prisoner confined in any penal institution will be  
14 better served by his or her transfer to another institution or to a  
15 foreign country of which the prisoner is a citizen or national, the  
16 secretary may effect such transfer consistent with applicable federal  
17 laws and treaties. The secretary has the authority to transfer  
18 offenders between in-state correctional facilities, or to out-of-  
19 state (~~to private or~~) governmental institutions, if the secretary  
20 determines that transfer is in the best interest of the state or the  
21 offender. The determination of what is in the best interest of the  
22 state or offender may include but is not limited to considerations of  
23 overcrowding, emergency conditions, or hardship to the offender. In  
24 determining whether the transfer will impose a hardship on the  
25 offender, the secretary shall consider: (a) The location of the  
26 offender's family and whether the offender has maintained contact  
27 with members of his or her family; (b) whether, if the offender has  
28 maintained contact, the contact will be significantly disrupted by  
29 the transfer due to the family's inability to maintain the contact as  
30 a result of the transfer; and (c) whether the offender is enrolled in  
31 a vocational or educational program that cannot reasonably be resumed  
32 if the offender is returned to the state.

33 (2) If directed by the governor, the secretary shall, in carrying  
34 out this section and RCW 43.06.350, adopt rules under chapter 34.05  
35 RCW to effect the transfer of prisoners requesting transfer to  
36 foreign countries.

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

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