
ENGROSSED SUBSTITUTE SENATE BILL 6442

State of Washington

66th Legislature

2020 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Saldaña, Wilson, C., Salomon, McCoy, Wellman, Stanford, Hasegawa, Kuderer, Pedersen, Nguyen, Frockt, and Das)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to the private detainment of individuals;
2 amending RCW 72.68.040, 72.68.010, and 72.68.001; reenacting and
3 amending RCW 72.09.050; adding a new section to chapter 72.68 RCW;
4 creating new sections; repealing RCW 72.68.012; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. (1) The legislature
8 finds that all people confined in prisons in Washington deserve basic
9 health care, nutrition, and safety. As held in *United States v.*
10 *California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess "the
11 general authority to ensure the health and welfare of inmates and
12 detainees in facilities within its borders."

13 (2) The legislature finds that profit motives lead private
14 prisons to cut operational costs, including the provision of food,
15 health care, and rehabilitative services, because their primary
16 fiduciary duty is to maximize shareholder profits. The legislature
17 finds that this is in stark contrast to the interests of the state to
18 ensure the health, safety, and welfare of Washingtonians.

19 (3) The legislature finds that people confined in for-profit
20 prisons have experienced abuses and have been confined in dangerous
21 and unsanitary conditions. Safety risks and abuses in private prisons

1 at the local, state, and federal level have been consistently and
2 repeatedly documented. The United States department of justice office
3 of the inspector general found in 2016 that privately operated
4 prisons "incurred more safety and security incidents per capita than
5 comparable BOP (federal bureau of prisons) institutions." The office
6 of inspector general additionally found that privately operated
7 prisons had "higher rates of inmate-on-inmate and inmate-on-staff
8 assaults, as well as higher rates of staff uses of force."

9 (4) The legislature finds that private prison operators have cut
10 costs by reducing essential security and health care staffing. The
11 sentencing project, a national research and advocacy organization,
12 found in 2012 that private prison staff earn an average of five
13 thousand dollars less than staff at publicly run facilities and
14 receive almost sixty hours less training. The office of inspector
15 general also found that people confined in private facilities often
16 failed to receive necessary medical care and that one private prison
17 went without a full-time physician for eight months.

18 (5) The legislature finds that private prisons are less
19 accountable for what happens inside those facilities than state-run
20 facilities, as they are not subject to the freedom of information act
21 under 5 U.S.C. Sec. 552 or the Washington public records act under
22 chapter 42.56 RCW.

23 (6) The legislature finds that at least twenty-two other states
24 have stopped confining people in private for-profit facilities.

25 (7) Therefore, it is the intent of the legislature to prohibit
26 the use of private prisons in Washington state.

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.68
28 RCW to read as follows:

29 PROHIBITION ON PRIVATE INCARCERATION. (1) Except as provided in
30 subsection (2) of this section and RCW 72.68.010(2), the secretary is
31 prohibited from utilizing a contract with a private correctional
32 entity for the transfer or placement of offenders.

33 (2) This section does not apply to:

34 (a) State work release centers, juvenile residential facilities,
35 nonprofit community-based alternative juvenile detention facilities,
36 or nonprofit community-based alternative adult detention facilities
37 that provide separate care or special treatment, operated in whole or
38 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 **Sec. 3.** RCW 72.68.040 and 2012 c 117 s 500 are each amended to
8 read as follows:

9 (1) The secretary may contract with the authorities of the
10 federal government, or the authorities of any state of the United
11 States, (~~(private companies in other states,)~~) or any county or city
12 in this state providing for the detention in an institution or jail
13 operated by such entity, for prisoners convicted of a felony in the
14 courts of this state and sentenced to a term of imprisonment therefor
15 in a state correctional institution for convicted felons under the
16 jurisdiction of the department. (~~(After)~~) Except as provided in
17 subsection (2) of this section, after the making of a contract under
18 this section, prisoners sentenced to a term of imprisonment in a
19 state correctional institution for convicted felons may be conveyed
20 by the superintendent or his or her assistants to the institution or
21 jail named in the contract. The prisoners shall be delivered to the
22 authorities of the institution or jail, there to be confined until
23 their sentences have expired or they are otherwise discharged by law,
24 paroled, or until they are returned to a state correctional
25 institution for convicted felons for further confinement.

26 (2) A prisoner may not be conveyed to a private correctional
27 entity except under the circumstances identified in RCW 72.68.010(2)
28 or section 2(2) of this act.

29 **Sec. 4.** RCW 72.68.010 and 2000 c 62 s 2 are each amended to read
30 as follows:

31 (1) Whenever in its judgment the best interests of the state or
32 the welfare of any prisoner confined in any penal institution will be
33 better served by his or her transfer to another institution or to a
34 foreign country of which the prisoner is a citizen or national, the
35 secretary may effect such transfer consistent with applicable federal
36 laws and treaties. The secretary has the authority to transfer
37 offenders between in-state correctional facilities or to out-of-state
38 (~~(to private or)~~) governmental institutions if the secretary

1 determines that transfer is in the best interest of the state or the
2 offender. The determination of what is in the best interest of the
3 state or offender may include but is not limited to considerations of
4 overcrowding, emergency conditions, or hardship to the offender. In
5 determining whether the transfer will impose a hardship on the
6 offender, the secretary shall consider: (a) The location of the
7 offender's family and whether the offender has maintained contact
8 with members of his or her family; (b) whether, if the offender has
9 maintained contact, the contact will be significantly disrupted by
10 the transfer due to the family's inability to maintain the contact as
11 a result of the transfer; and (c) whether the offender is enrolled in
12 a vocational or educational program that cannot reasonably be resumed
13 if the offender is returned to the state.

14 (2)(a) The secretary has the authority to transfer offenders to
15 an out-of-state private correctional entity only if:

16 (i) The governor finds that an emergency exists as a result of a
17 catastrophic incident;

18 (ii) As a result of the catastrophic incident, the population of
19 a state correctional facility exceeds its reasonable, maximum
20 capacity, resulting in safety and security concerns;

21 (iii) The governor has considered all other legal options to
22 address capacity, including those pursuant to RCW 9.94A.870;

23 (iv) The secretary determines that transfer is in the best
24 interest of the state or the offender; and

25 (v) The contract with the out-of-state private correctional
26 entity includes requirements for access to public records to the same
27 extent as if the facility were operated by the department, inmate
28 access to the office of the corrections ombuds, and inspections and
29 visits without notice.

30 (b) Should any of these requirements in this subsection not be
31 met, the contract with the private correctional entity shall be
32 terminated.

33 (3) 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.

37 **Sec. 5.** RCW 72.09.050 and 1999 c 309 s 1902 and 1999 c 309 s 924
38 are each reenacted and amended to read as follows:

1 The secretary shall manage the department of corrections and
2 shall be responsible for the administration of adult correctional
3 programs, including but not limited to the operation of all state
4 correctional institutions or facilities used for the confinement of
5 convicted felons. In addition, the secretary shall have broad powers
6 to enter into agreements with any federal agency, or any other state,
7 or any Washington state agency or local government providing for the
8 operation of any correctional facility or program for persons
9 convicted of felonies or misdemeanors or for juvenile offenders. Such
10 agreements for counties with local law and justice councils shall be
11 required in the local law and justice plan pursuant to RCW 72.09.300.
12 The agreements may provide for joint operation or operation by the
13 department of corrections, alone, for by any of the other
14 governmental entities, alone. ~~((Beginning February 1, 1999, the
15 secretary may expend funds appropriated for the 1997-1999 biennium to
16 enter into agreements with any local government or private
17 organization in any other state, providing for the operation of any
18 correctional facility or program for persons convicted of felonies.
19 Between July 1, 1999, and June 30, 2001, the secretary may expend
20 funds appropriated for the 1999-01 biennium to enter into agreements
21 with any local government or private organization in any other state,
22 providing for the operation of any correctional facility or program
23 for persons convicted of felonies.))~~ The secretary may employ persons
24 to aid in performing the functions and duties of the department. The
25 secretary may delegate any of his or her functions or duties to
26 department employees, including the authority to certify and maintain
27 custody of records and documents on file with the department. The
28 secretary is authorized to promulgate standards for the department of
29 corrections within appropriation levels authorized by the
30 legislature.

31 Pursuant to the authority granted in chapter 34.05 RCW, the
32 secretary shall adopt rules providing for inmate restitution when
33 restitution is determined appropriate as a result of a disciplinary
34 action.

35 **Sec. 6.** RCW 72.68.001 and 1981 c 136 s 114 are each amended to
36 read as follows:

37 DEFINITIONS. ((As used in this chapter:)) The definitions in this
38 section apply throughout this chapter unless the context clearly
39 requires otherwise.

1 (1) "Department" means the department of corrections(~~(~~and~~)~~).

2 (2) "Private correctional entity" means a for-profit contractor
3 or for-profit vendor who provides services relating to the ownership,
4 management, or administration of security services of a correctional
5 facility for the incarceration of persons.

6 (3) "Secretary" means the secretary of corrections.

7 NEW SECTION. Sec. 7. REPEALER. RCW 72.68.012 (Transfer to
8 private institutions—Intent—Authority) and 2000 c 62 s 1 are each
9 repealed.

10 NEW SECTION. Sec. 8. LIBERAL CONSTRUCTION. This act shall be
11 construed liberally for the accomplishment of the purposes thereof.

12 NEW SECTION. Sec. 9. EMERGENCY CLAUSE. This act is necessary
13 for the immediate preservation of the public peace, health, or
14 safety, or support of the state government and its existing public
15 institutions, and takes effect immediately.

16 NEW SECTION. Sec. 10. SEVERABILITY. If any provision of this
17 act or its application to any person or circumstance is held invalid,
18 the remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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