

ESSB 6442 - H COMM AMD

By Committee on Public Safety

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

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

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

15 (3) The legislature finds that people confined in for-profit
16 prisons have experienced abuses and have been confined in dangerous
17 and unsanitary conditions. Safety risks and abuses in private prisons
18 at the local, state, and federal level have been consistently and
19 repeatedly documented. The United States department of justice office
20 of the inspector general found in 2016 that privately operated
21 prisons "incurred more safety and security incidents per capita than
22 comparable BOP (federal bureau of prisons) institutions." The office
23 of inspector general additionally found that privately operated
24 prisons had "higher rates of inmate-on-inmate and inmate-on-staff
25 assaults, as well as higher rates of staff uses of force."

26 (4) The legislature finds that private prison operators have cut
27 costs by reducing essential security and health care staffing. The
28 sentencing project, a national research and advocacy organization,
29 found in 2012 that private prison staff earn an average of five
30 thousand dollars less than staff at publicly run facilities and
31 receive almost sixty hours less training. The office of inspector

1 general also found that people confined in private facilities often
2 failed to receive necessary medical care and that one private prison
3 went without a full-time physician for eight months.

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

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

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

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

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

19 (2) This section does not apply to:

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

25 (b) Contracts for ancillary services including, but not limited
26 to, medical services, educational services, repair and maintenance
27 contracts, behavioral health services, or other services not directly
28 related to the ownership, management, or operation of security
29 services in a correctional facility; or

30 (c) Tribal entities.

31 **Sec. 3.** RCW 72.68.040 and 2012 c 117 s 500 are each amended to
32 read as follows:

33 (1) The secretary may contract with the authorities of the
34 federal government, or the authorities of any state of the United
35 States, (~~(private companies in other states,)~~) or any county or city
36 in this state providing for the detention in an institution or jail
37 operated by such entity, for prisoners convicted of a felony in the
38 courts of this state and sentenced to a term of imprisonment therefor

1 in a state correctional institution for convicted felons under the
2 jurisdiction of the department. (~~After~~) Except as provided in
3 subsection (2) of this section, after the making of a contract under
4 this section, prisoners sentenced to a term of imprisonment in a
5 state correctional institution for convicted felons may be conveyed
6 by the superintendent or his or her assistants to the institution or
7 jail named in the contract. The prisoners shall be delivered to the
8 authorities of the institution or jail, there to be confined until
9 their sentences have expired or they are otherwise discharged by law,
10 paroled, or until they are returned to a state correctional
11 institution for convicted felons for further confinement.

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

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

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

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

1 (i) The governor finds that an emergency exists such that the
2 population of a state correctional facility exceeds its reasonable,
3 maximum capacity, resulting in safety and security concerns;

4 (ii) The governor has considered all other legal options to
5 address capacity, including those pursuant to RCW 9.94A.870;

6 (iii) The secretary determines that transfer is in the best
7 interest of the state or the offender; and

8 (iv) The contract with the out-of-state private correctional
9 entity includes requirements for access to public records to the same
10 extent as if the facility were operated by the department, inmate
11 access to the office of the corrections ombuds, and inspections and
12 visits without notice.

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

16 (3) If directed by the governor, the secretary shall, in carrying
17 out this section and RCW 43.06.350, adopt rules under chapter 34.05
18 RCW to effect the transfer of prisoners requesting transfer to
19 foreign countries.

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

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

1 ~~Between July 1, 1999, and June 30, 2001, the secretary may expend~~
2 ~~funds appropriated for the 1999-01 biennium to enter into agreements~~
3 ~~with any local government or private organization in any other state,~~
4 ~~providing for the operation of any correctional facility or program~~
5 ~~for persons convicted of felonies.))~~ The secretary may employ persons
6 to aid in performing the functions and duties of the department. The
7 secretary may delegate any of his or her functions or duties to
8 department employees, including the authority to certify and maintain
9 custody of records and documents on file with the department. The
10 secretary is authorized to promulgate standards for the department of
11 corrections within appropriation levels authorized by the
12 legislature.

13 Pursuant to the authority granted in chapter 34.05 RCW, the
14 secretary shall adopt rules providing for inmate restitution when
15 restitution is determined appropriate as a result of a disciplinary
16 action.

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

19 DEFINITIONS. ((As used in this chapter:)) The definitions in this
20 section apply throughout this chapter unless the context clearly
21 requires otherwise.

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

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

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

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

31 NEW SECTION. **Sec. 8.** LIBERAL CONSTRUCTION. This act shall be
32 construed liberally for the accomplishment of the purposes thereof.

33 NEW SECTION. **Sec. 9.** EMERGENCY CLAUSE. This act is necessary
34 for the immediate preservation of the public peace, health, or
35 safety, or support of the state government and its existing public
36 institutions, and takes effect immediately.

1 NEW SECTION. **Sec. 10.** SEVERABILITY. If any provision of this
2 act or its application to any person or circumstance is held invalid,
3 the remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

5 Correct the title.

EFFECT: Removes the requirement that a catastrophic incident must have caused the emergency and capacity issues at the state correctional facility in order for the Department of Corrections to transfer offenders to a private correctional entity, thereby providing that such transfers may occur in emergency situations meeting the other requirements of the underlying bill.

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