

# SENATE BILL REPORT

## SB 5120

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As of February 28, 2019

**Title:** An act relating to contracting with private correctional facilities for the transfer or placement of offenders.

**Brief Description:** Contracting with private correctional facilities for the transfer or placement of offenders. [**Revised for 1st Substitute:** Contracting with for-profit correctional facilities for the transfer or placement of offenders.]

**Sponsors:** Senators Palumbo, Darneille, Mullet, Nguyen, Hunt, Saldaña, Lias, Carlyle, Frockt, Hasegawa and Kuderer.

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/24/19, 2/07/19 [DPS-WM, w/oRec].

Ways & Means: 2/26/19.

**Brief Summary of First Substitute Bill**

- Prohibits the state, any county government, city government, or county sheriff's department from contracting with a private entity for the operation of a correctional facility or the incarceration of persons in the custody of the Department of Corrections (DOC), the Department of Children, Youth, and Families (DCYF), or a county sheriff.
- Exempts state work release centers or juvenile residential facilities that provide separate care or special treatment, operated in whole or in part by private contractors, or contracts for ancillary services.

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**SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION**

**Majority Report:** That Substitute Senate Bill No. 5120 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Cleveland and Wilson, C..

**Minority Report:** That it be referred without recommendation.

Signed by Senators Walsh, Ranking Member; O'Ban and Zeiger.

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*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.*

**Staff:** Keri Waterland (786-7490)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Travis Sugarman (786-7446)

**Background:** Under existing statute, the secretary of the department of corrections DOC has the authority to transfer offenders out-of-state to private or governmental institutions.

**Summary of Bill (First Substitute):** The state, any county or city governments, or county sheriff's department may not enter into a contract with a private contractor or vendor for the operation of correctional facility or for the incarceration of persons in the custody of DOC, DCYF, or a county sheriff. Work release and certain services or programs are exempt.

The secretary of DOC has the authority to transfer offenders between in-state correctional facilities, or out-of-state governmental institutions.

### **EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Proposed Substitute):**

- Clarifies the legislature's intent to only allow utilization of private prisons in narrow and emergent circumstances.
- Requires the governor to consider other legal options to address capacity including the use of RCW 9.94A.870, which relates to emergencies due to inmate population exceeding correctional facility capacity.
- Defines "private correctional entity" as a for-profit contractor or for-profit vendor who provides services relating to the ownership, management, or administration of security services of a correctional facility for the incarceration of persons in the custody of the department, the department of children, youth, and families, or a county sheriff.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):** Clarifies that the state, counties, cities, and sheriff departments may not contract with a for profit vendor or contractor for the provision of services relating to the operation of a correctional facility, as opposed to a private vendor or contractor.

Clarifies that the act does not apply to:

- state work release centers, juvenile residential facilities, or community based alternative juvenile and adult detention facilities that provide separate care or special treatment, operated in whole or in part by private contractors;
- contracts for ancillary services including, but not limited to, medical services, educational services, repair and maintenance contracts, behavioral health services, or other services not directly related to the ownership, management, or operation of security services in a correctional facility; and
- tribal entities.

Clarifies that the state may enter into a contract with a for-profit contractor or vendor only if the governor has declared a state of emergency, and that emergency has created safety and security concerns in capacity and structure resulting in the need to change the physical location of persons experiencing incarceration.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation):** *The committee recommended a different version of the bill than what was heard.* PRO: State workers are the best people to do this work, and housing offenders in this state is what is best for offenders and their families. This bill takes a stand against private prisons. Our tax dollars should not be going to the for profit prisons. Private prisons have a poor history of food and treatment. Studies of violence in private prisons versus public prisons show that private prisons are more violent. Private prisons are about making a profit and about locking people up. Sending people out of state is not a good idea either, but it is better if it is not to a private prison.

CON: We have no interest in building another prison, but many facilities are at or exceeding capacity and funding. Since 1988 we have maintained contracts, but we do not contract with private prisons currently. This bill creates a safety risk to staff and offenders. If natural disaster occurs, we need places to send people.

OTHER: No objection to the bill itself, but we believe that there can be more specificity in the language as to what is and what is not prohibited. We want to make sure that we know exactly what those rules are.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Senator Guy Palumbo, Prime Sponsor; Brenda Weist, Teamsters Local 117.

CON: Rob Herzog, DOC.

OTHER: James McMahan, Washington Association Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: DOC may be opposed at this time, but we are working with them to get to yes.

CON: We have concerns with the current version of the bill and have been working with the sponsor to come up with language that we believe will resolve the issues. We still need the

ability to have a contingency contract in place with a private contractor in the event of extreme overcrowding, infrastructure failure, or natural disaster.

OTHER: We do not have any concerns with the goals of the bill, but do need additional clarity about what is allowed or prohibited with regards to what local jails are allowed and not allowed to do.

**Persons Testifying (Ways & Means):** PRO: Senator Guy Palumbo, Prime Sponsor.

CON: Rob Herzog, DOC.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.