

SENATE BILL REPORT

SB 6442

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, February 6, 2020

Title: An act relating to private detention facilities.

Brief Description: Concerning private detention facilities. **[Revised for 1st Substitute:**
Concerning the private detainment of individuals.]

Sponsors: Senators Saldaña, Wilson, C., Salomon, McCoy, Wellman, Stanford, Hasegawa, Kuderer, Pedersen, Nguyen, Frockt and Das.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/29/20, 2/06/20 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Prohibits the operation of a private detention facility in the state by any person, business, or state or local governmental entity, subject to certain exceptions.
- Prohibits the Department of Corrections (DOC) from contracting with a private correctional entity for transferring or placing an offender, subject to certain exceptions.
- Specifies the circumstances required to permit DOC to transfer an offender to an out-of-state private correctional entity.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 6442 be substituted therefor, and the substitute bill do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senators O'Ban and Zeiger.

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: Kelsey-anne Fung (786-7479)

Background: The secretary of DOC is authorized to transfer offenders out of state to private or governmental institutions when determining the transfer is in the best interest of the state or the offender. If the Governor finds an emergency exists in which the population of a state correctional facility exceeds its reasonable maximum capacity, the Governor may take certain measures to mitigate the emergency. Such measures include calling the Sentencing Guidelines Commission into an emergency meeting to evaluate the standard ranges and other standards, or calling the Clemency and Pardons Board into an emergency meeting to make recommendations for the Governor's use of commutation and pardon powers.

Summary of Bill (First Substitute): No person, business, or state or local governmental entity may operate a private detention facility within the state, or use a contract with a private detention facility. A private detention facility operating under a valid government contract that was in effect prior to January 1, 2020, may remain in operation for the duration of that contract, excluding any extensions or modifications made to or authorized by that contract.

Specified facilities are exempt from the prohibition on private detention facilities, including assisted living facilities, nursing homes, adult family homes, soldiers' homes, residential habilitation centers, enhanced services facilities, work release facilities, and secure community transition facilities. A "detention facility" is defined as 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.

The secretary of DOC is prohibited from using a contract with a private correctional entity for transferring or placing offenders. A private correctional entity means 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 incarcerating persons. This prohibition does not apply to state work release centers, juvenile residential facilities, nonprofit community-based juvenile or adult detention facilities, contracts for ancillary services, or tribal entities.

DOC may transfer an offender to an out-of-state private correctional entity only if:

- the Governor finds an emergency exists from a catastrophic incident that results in capacity concerns;
- the Governor has considered all other legal options;
- the secretary of DOC determines that transfer is in the best interest of the state and the offender; and
- the contract with the out-of-state private correctional entity allows the same public records access as DOC facilities, access to the Office of the Corrections Ombuds, and inspections and visits without notice.

A severability clause is included. The provisions must be construed liberally.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Replaces legislative findings and intent.
- Exempts any juvenile detention facility operating under an agreement for a consortium of counties, enhanced services facilities, work release facilities, and facilities providing treatment to committed sexually violent predators.
- Prohibits DOC from contracting with a private correctional entity for the transfer or placement of an offender, subject to certain exceptions.
- Allows DOC to transfer an offender to out-of-state private correctional entities if:
 - the Governor finds that an emergency exists from a catastrophic incident that results in capacity concerns;
 - the Governor has consider all other legal options;
 - the secretary of DOC determines that transfer is in the best interest of the state and the offender; and
 - the contract with the out-of-state private correctional entity allows the same public records access as DOC facilities, access to the Office of the Corrections Ombuds, and inspections and visits without notice.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Incarceration is a government function, and the public expects transparency and accountability, not privatization. Private prisons have been shown to have higher recidivism and assault rates, and lower quality of care and respect for employees. Privately operated detention facilities are less sanitary and more violent than publicly run prisons because private prisons hire fewer guards and medical staff to cut down on operational costs and maximize profits. Private prisons cut costs at the expense of people's health and safety. The population of incarcerated individuals at private prisons has increased, enriching the private prison profit model. Profiting from private incarceration is against Washington State's values as it is an inherently government function that should not be outsourced.

For-profit detention facilities place value on profits over quality of care and services by focusing on operational efficiencies. This results in substandard or delayed health and mental health services and increased risks to the welfare of those inside. Private prisons are staffed by non-union workers and generate profit by understaffing facilities, paying low wages and not providing adequate employee benefits, and not providing sufficient training. This creates an unsafe situation for staff and incarcerated individuals without public oversight.

Private detention facilities distort and undermine the purpose of incarceration, which should be to provide rehabilitation rather than cost savings. This results in less counseling, job training, education, exercise time, and food quality. It creates an incentive to lobby for

longer sentences and more prisoners to generate prison. For the state, it creates a lack of transparency, accountability, and responsibility by outsourcing a government function.

OTHER: There are concerns that the bill does not exempt Martin Hall or state work release facilities. Martin Hall is a privately run juvenile detention center in eastern Washington that is funded by nine counties. DOC contracts with private vendors to operate 8 out of the 12 work release facilities. DOC would like language that allows DOC to enter into contingency contracts preemptively in the event of a disaster.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Miranda White, citizen; Isabel Gates, citizen; Gabe Galanda, HUY; Michael Byun, Asian Counsel and Referral Service; Valeriana Chikoti-Bandua, Washington Coalition of Sexual Assault Programs; Ilyas Abukar, Washington State Labor; Mahilet Mesfin, Radical Justice from the Amazon Auditorium; Iris Monica Ann Silan, Radical Justice from the Amazon Auditorium; Hannah Woerner, Columbia Legal Services; Megan Ybarra, University of Washington; Stanley Shikuma, Japanese American Citizens League, Seattle Chapter; Keith Blocker, City of Tacoma; Orlando Cano, One America; Milo Hensley, Advocates for Detained Voices.

OTHER: Juliana Roe, Washington State Association of Counties; Scott Hutsell, Lincoln County Commissioner; Melena Thompson, Department of Corrections.

Persons Signed In To Testify But Not Testifying: No one.