
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5120

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Palumbo, Darneille, Mullet, Nguyen, Hunt, Saldaña, Lias, Carlyle, Frockt, Hasegawa, and Kuderer)

READ FIRST TIME 03/01/19.

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 and 72.68.001; reenacting and amending RCW 72.09.050;
4 adding a new section to chapter 72.68 RCW; creating a new section;
5 and repealing RCW 72.68.012.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the type of
8 institution an individual is incarcerated in can have a direct impact
9 on rates of recidivism. The legislature further finds that
10 incarcerating persons in private correctional entities, which have
11 business models dependent on rates of incarceration, may increase the
12 likelihood of those persons recidivating. The legislature resolves
13 that public safety and financial and humanitarian interests are
14 furthered by decreased rates of recidivism. The legislature intends
15 to eliminate the utilization of private correctional entities by
16 Washington state and to allow utilization of private correctional
17 entities in only the most narrow and rare circumstances, in cases of
18 emergency and when security and safety demand.

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

1 (1) Except as provided in subsection (2) of this section and RCW
2 72.68.010(2), the secretary, any county government, city government,
3 or county sheriff's department, is prohibited from utilizing a
4 contract with a private correctional entity.

5 (2) This section does not apply to:

6 (a) State work release centers, juvenile residential facilities,
7 nonprofit community-based alternative juvenile detention facilities,
8 or nonprofit community-based alternative adult detention facilities
9 that provide separate care or special treatment, operated in whole or
10 in part by for-profit contractors;

11 (b) Contracts for ancillary services including, but not limited
12 to, medical services, educational services, repair and maintenance
13 contracts, behavioral health services, or other services not directly
14 related to the ownership, management, or operation of security
15 services in a correctional facility; or

16 (c) Tribal entities.

17 **Sec. 3.** RCW 72.09.050 and 1999 c 309 s 1902 and 1999 c 309 s 924
18 are each reenacted and amended to read as follows:

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

1 ~~providing for the operation of any correctional facility or program~~
2 ~~for persons convicted of felonies.))~~ The secretary may employ persons
3 to aid in performing the functions and duties of the department. The
4 secretary may delegate any of his or her functions or duties to
5 department employees, including the authority to certify and maintain
6 custody of records and documents on file with the department. The
7 secretary is authorized to promulgate standards for the department of
8 corrections within appropriation levels authorized by the
9 legislature.

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

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

16 (1) Whenever in its judgment the best interests of the state or
17 the welfare of any prisoner confined in any penal institution will be
18 better served by his or her transfer to another institution or to a
19 foreign country of which the prisoner is a citizen or national, the
20 secretary may effect such transfer consistent with applicable federal
21 laws and treaties. The secretary has the authority to transfer
22 offenders between in-state correctional facilities, or to out-of-
23 state ((to private or)) governmental institutions, if the secretary
24 determines that transfer is in the best interest of the state or the
25 offender.

26 (2) The secretary has the authority to transfer offenders to an
27 out-of-state private correctional entity only if the governor finds
28 that an emergency exists such that the population of a state
29 correctional facility exceeds its reasonable, maximum capacity
30 resulting in safety and security concerns, the governor has
31 considered all other legal options to address capacity including
32 those pursuant to RCW 9.94A.870, and the secretary determines that
33 transfer is in the best interest of the state or the offender.

34 (3) The determination of what is in the best interest of the
35 state or offender may include but is not limited to considerations of
36 overcrowding, emergency conditions, or hardship to the offender. In
37 determining whether the transfer will impose a hardship on the
38 offender, the secretary shall consider: (a) The location of the
39 offender's family and whether the offender has maintained contact

1 with members of his or her family; (b) whether, if the offender has
2 maintained contact, the contact will be significantly disrupted by
3 the transfer due to the family's inability to maintain the contact as
4 a result of the transfer; and (c) whether the offender is enrolled in
5 a vocational or educational program that cannot reasonably be resumed
6 if the offender is returned to the state.

7 ~~((2))~~ (4) If directed by the governor, the secretary shall, in
8 carrying out this section and RCW 43.06.350, adopt rules under
9 chapter 34.05 RCW to effect the transfer of prisoners requesting
10 transfer to foreign countries.

11 **Sec. 5.** RCW 72.68.001 and 1981 c 136 s 114 are each amended to
12 read as follows:

13 ~~((As used in this chapter:))~~ The definitions in this section
14 apply throughout this chapter unless the context clearly requires
15 otherwise.

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

17 (2) "Private correctional entity" means a for-profit contractor
18 or for-profit vendor who provides services relating to the ownership,
19 management, or administration of security services of a correctional
20 facility for the incarceration of persons in the custody of the
21 department, the department of children, youth, and families, any
22 county government, city government, or county sheriff's department.

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

24 NEW SECTION. **Sec. 6.** RCW 72.68.012 (Transfer to private
25 institutions—Intent—Authority) and 2000 c 62 s 1 are each repealed.

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