

SENATE BILL REPORT

EHB 1090

As of March 11, 2021

Title: An act relating to private, for-profit detention facilities.

Brief Description: Concerning private, for-profit detention facilities.

Sponsors: Representatives Ortiz-Self, Fey, Fitzgibbon, Johnson, J., Ramos, Tharinger, Simmons, Ramel, Senn, Peterson, Gregerson, Ryu, Valdez, Callan, Kloba, Young, Hackney, Chopp, Lovick, Ormsby, Stonier, Frame, Santos, Macri, Orwall, Davis, Pollet and Harris-Talley.

Brief History: Passed House: 2/23/21, 76-21.

Committee Activity: Human Services, Reentry & Rehabilitation: 3/11/21.

Brief Summary of Bill

- Prohibits a person, business, or state or local government from operating or using contracts with private detention facilities, except as provided.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kelsey-anne Fung (786-7479)

Background: Pretrial detention and sentences of less than one year are served in locally operated jail facilities. Sentences of a year or more are served in state correctional facilities operated by the Washington State Department of Corrections (DOC). Juvenile sentences of 30 days or less are served in locally operated juvenile detention facilities, and longer sentences are served in Juvenile Rehabilitation facilities operated by the Department of Children, Youth, and Families.

Current law prohibits DOC from using a contract with a for-profit, private correctional entity for the transfer or placement of incarcerated individuals, except in certain emergency circumstances. If a capacity emergency exists at a state correctional facility, and other

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requirements are met, DOC may transfer incarcerated individuals to an out-of-state private correctional entity.

Legislation enacted in 2020, required the Department of Health (DOH) to evaluate current state and local authority and practices regarding inspection and enforcement of state and local requirements for private detention facilities. DOH was required to submit a final report with findings and recommendations to the Governor and appropriate committees of the Legislature by December 1, 2020.

Summary of Bill: A person, business, or state or local government entity is prohibited from operating, or using a contract with, a private detention facility within the state, except as provided. A state or local government entity is also prohibited from using a contract with a private detention facility outside of the state, except in emergency circumstances when DOC may transfer individuals to an out-of-state private correctional facility in accordance with state law.

The following types of facilities are exempt from the prohibition:

- a facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles;
- a facility providing evaluation and treatment or forensic services to persons civilly detained or committed;
- a facility used for quarantine or isolation of persons for public health reasons;
- a facility used for work release;
- a facility used for extraordinary medical placement;
- a facility used for residential substance use disorder treatment;
- a facility used to house persons held in the custody of the United States Marshals; and
- a facility owned and operated by federally recognized tribes and contracting with a government.

A private detention facility operating pursuant to a valid contract with a governmental entity in effect before January 1, 2021, may remain in operation for the duration of the contract, excluding any extensions or modifications made to or authorized by the contract.

A private detention facility is defined as a detention facility operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local government entity. Detention facility is defined as any facility where persons are incarcerated or otherwise involuntarily confined for purposes including pretrial or sentencing, fulfilling a court sentence, or for other judicial or administrative proceedings.

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: PRO: There is an inherent conflict of interest when a company is beholden to its shareholders and earning profits off of those incarcerated. This bill is about providing accountability and transparency, eliminating abuse, and ensuring access to health care services. It is morally unjust for companies to make profits off of those detained or incarcerated. For-profit detention facilities do not operate with transparency and maximize profits by cutting corners in the proper care of detainees. Detention services should only be borne by those with a duty to the public and perform a core public function. For-profit facilities that have a fiduciary duty to shareholders, not the public.

Private detention facilities have higher rates of violence, substandard care for persons with mental illness, hire fewer guards, provide less pay and training to staff, and lack accountability and transparency. Washington has broad authority to protect the welfare of its residents. The bill will put people over profits. Many persons detained at for-profit facilities are not local, but have been transferred here from outside of the state.

CON: The Northwest ICE Processing Center in Tacoma has operated for 20 years under both Democratic and Republican administrations. The private operator does not provide healthcare; it is provided by a government service. The operator does not control who is and is not allowed access to the facility, or who is detained at the facility or for how long; these decisions are made by the federal government. The facility operates under strict performance-based detention standards. The prohibition would force individuals detained at the facility to be transferred outside of the state, isolating them from family members.

Persons Testifying: PRO: Representative Lillian Ortiz-Self, Prime Sponsor; Kristina Walker, City of Tacoma; Alejandra Gonza, Global Rights Advocacy; Todd Hunt; Greta Treistman; Jonah Silverstein; Angelina Godoy, University of Washington Center for Human Rights; Michael Byun, Asian Counseling and Referral Service; Hannah Woerner, Columbia Legal Services; Beth Prevo, Faith Action Network/Immanuel Pres; Marc Stern, Correctional Physician, UW School of Public Health/ MD, MPH.

CON: Emanuel Barr, The GEO Group; Bruce Scott, The GEO Group; Alexandra Wilkes, Day 1 Alliance; K Corrow, Northwest ICE Processing Center; Heyward Pugh, GEO; Corey Desordi.

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