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**SUBSTITUTE SENATE BILL 6442**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Saldaña, Wilson, C., Salomon, McCoy, Wellman, Stanford, Hasegawa, Kuderer, Pedersen, Nguyen, Frockt, and Das)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to the private detainment of individuals;  
2 amending RCW 72.68.040, 72.68.010, and 72.68.001; reenacting and  
3 amending RCW 72.09.050; adding a new section to chapter 72.68 RCW;  
4 adding a new chapter to Title 70 RCW; creating new sections;  
5 repealing RCW 72.68.012; and declaring an emergency.

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

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

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

20 (3) The legislature finds that people confined in for-profit  
21 prisons and detention facilities have experienced abuses and have

1 been confined in dangerous and unsanitary conditions. Safety risks  
2 and abuses in private prisons and detention facilities at the local,  
3 state, and federal level have been consistently and repeatedly  
4 documented. The United States department of justice office of the  
5 inspector general found in 2016 that privately operated prisons  
6 "incurred more safety and security incidents per capita than  
7 comparable BOP (federal bureau of prisons) institutions." The office  
8 of inspector general additionally found that privately operated  
9 prisons had "higher rates of inmate-on-inmate and inmate-on-staff  
10 assaults, as well as higher rates of staff uses of force."

11 (4) The legislature finds that private prison operators have cut  
12 costs by reducing essential security and health care staffing. The  
13 sentencing project, a national research and advocacy organization,  
14 found in 2012 that private prison staff earn an average of five  
15 thousand dollars less than staff at publicly run facilities and  
16 receive almost sixty hours less training. The office of inspector  
17 general also found that people confined in private facilities often  
18 failed to receive necessary medical care and that one private prison  
19 went without a full-time physician for eight months.

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

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

27 (7) Therefore, it is the intent of the legislature to prohibit  
28 the use of private prisons and detention facilities in Washington  
29 state.

## 30 **PART I**

### 31 **PRIVATE DETENTION FACILITIES**

32 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this  
33 section apply throughout this chapter unless the context clearly  
34 requires otherwise.

35 (1) "Detention facility" means any facility in which persons are  
36 incarcerated or otherwise involuntarily confined for purposes  
37 including prior to trial or sentencing, fulfilling the terms of a

1 sentence imposed by a court, or for other judicial or administrative  
2 processes or proceedings.

3 (2) "Private detention facility" means a detention facility that  
4 is operated by a private, nongovernmental entity and operating  
5 pursuant to a contract or agreement with a federal, state, or local  
6 governmental entity.

7 (3) "Operate" includes owning, leasing, managing, or controlling  
8 some or all of the functions of a detention facility, regardless of  
9 the underlying ownership of the facility or land upon which the  
10 facility is located.

11 NEW SECTION. **Sec. 102.** PROHIBITION ON PRIVATE INCARCERATION.

12 (1) Except as provided in subsections (2) and (3) of this section, no  
13 person, business, or state or local governmental entity shall operate  
14 a private detention facility within the state or utilize a contract  
15 with a private detention facility.

16 (2) A private detention facility that is operating pursuant to a  
17 valid contract with a governmental entity that was in effect prior to  
18 January 1, 2020, may remain in operation for the duration of that  
19 contract, not to include any extensions or modifications made to, or  
20 authorized by, that contract.

21 (3) In accordance with the legislative findings in section 1 of  
22 this act, this section does not apply if the involuntary confinement  
23 is at:

24 (a) A facility providing rehabilitative, counseling, treatment,  
25 mental health, educational, or medical services to juveniles who are  
26 subject to chapter 13.04 RCW;

27 (b) A facility operating pursuant to an agreement for a  
28 consortium of counties under RCW 13.04.035;

29 (c) A facility providing evaluation and treatment or forensic  
30 services to a person who has been civilly detained or is subject to  
31 an order of commitment by a court pursuant to chapter 10.77, 71.05,  
32 71.09, or 71.34 RCW;

33 (d) A facility licensed or required to be licensed pursuant to  
34 the following: Assisted living facilities under chapter 18.20 RCW;  
35 nursing homes under chapter 18.51 RCW; adult family homes under  
36 chapter 70.128 RCW; soldiers' homes under chapter 72.36 RCW;  
37 residential habilitation centers under chapter 71A.20 RCW; enhanced  
38 services facilities under chapter 70.97 RCW; or secure community  
39 transition facilities under chapter 71.09 RCW;

- 1 (e) A facility used for the quarantine or isolation of persons  
2 for public health reasons pursuant to RCW 43.20.050;  
3 (f) A facility used for work release under chapter 72.65 RCW; or  
4 (g) A facility owned and operated by federally recognized tribes  
5 and contracting with a government.

6 **PART II**

7 **STATE CONTRACTING WITH PRIVATE CORRECTIONAL ENTITIES**

8 NEW SECTION. **Sec. 201.** A new section is added to chapter 72.68  
9 RCW to read as follows:

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

14 (2) This section does not apply to:

15 (a) State work release centers, juvenile residential facilities,  
16 nonprofit community-based alternative juvenile detention facilities,  
17 or nonprofit community-based alternative adult detention facilities  
18 that provide separate care or special treatment, operated in whole or  
19 in part by for-profit contractors;

20 (b) Contracts for ancillary services including, but not limited  
21 to, medical services, educational services, repair and maintenance  
22 contracts, behavioral health services, or other services not directly  
23 related to the ownership, management, or operation of security  
24 services in a correctional facility; or

25 (c) Tribal entities.

26 **Sec. 202.** RCW 72.68.040 and 2012 c 117 s 500 are each amended to  
27 read as follows:

28 (1) The secretary may contract with the authorities of the  
29 federal government, or the authorities of any state of the United  
30 States, (~~(private companies in other states,)~~) or any county or city  
31 in this state providing for the detention in an institution or jail  
32 operated by such entity, for prisoners convicted of a felony in the  
33 courts of this state and sentenced to a term of imprisonment therefor  
34 in a state correctional institution for convicted felons under the  
35 jurisdiction of the department. (~~(After)~~) Except as provided in  
36 subsection (2) of this section, after the making of a contract under  
37 this section, prisoners sentenced to a term of imprisonment in a

1 state correctional institution for convicted felons may be conveyed  
2 by the superintendent or his or her assistants to the institution or  
3 jail named in the contract. The prisoners shall be delivered to the  
4 authorities of the institution or jail, there to be confined until  
5 their sentences have expired or they are otherwise discharged by law,  
6 paroled, or until they are returned to a state correctional  
7 institution for convicted felons for further confinement.

8 (2) A prisoner may not be conveyed to a private correctional  
9 entity except under the circumstances identified in RCW 72.68.010(2)  
10 or section 201(2) of this act.

11 **Sec. 203.** RCW 72.68.010 and 2000 c 62 s 2 are each amended to  
12 read as follows:

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

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

36 (i) The governor finds that an emergency exists as a result of a  
37 catastrophic incident;

1 (ii) As a result of the catastrophic incident, the population of  
2 a state correctional facility exceeds its reasonable, maximum  
3 capacity, resulting in safety and security concerns;

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

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

8 (v) 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. 204.** RCW 72.09.050 and 1999 c 309 s 1902 and 1999 c 309 s  
21 924 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. 205.** 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 **PART III**

#### 29 **CODIFICATION AND CONFORMING AMENDMENTS**

30 NEW SECTION. Sec. 301. REPEALER. RCW 72.68.012 (Transfer to  
31 private institutions—Intent—Authority) and 2000 c 62 s 1 are each  
32 repealed.

33 NEW SECTION. Sec. 302. LIBERAL CONSTRUCTION. This act shall be  
34 construed liberally for the accomplishment of the purposes thereof.

1        NEW SECTION.    **Sec. 303.**    EMERGENCY CLAUSE. Parts I and II of this  
2 act are necessary for the immediate preservation of the public peace,  
3 health, or safety, or support of the state government and its  
4 existing public institutions, and take effect immediately.

5        NEW SECTION.    **Sec. 304.**    SEVERABILITY. If any provision of this  
6 act or its application to any person or circumstance is held invalid,  
7 the remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 305.**    CODIFICATION. Part I of this act  
10 constitutes a new chapter in Title 70 RCW.

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