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HOUSE BILL 1090

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State of Washington

67th Legislature

2021 Regular Session

By Representatives Ortiz-Self and Fey

Prefiled 01/05/21.

1 AN ACT Relating to private, for-profit detention facilities;  
2 adding a new chapter to Title 70 RCW; creating a new section; and  
3 declaring an emergency.

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

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

11 (2) The legislature finds that profit motives lead private  
12 prisons and detention facilities to cut operational costs, including  
13 the provision of food, health care, and rehabilitative services,  
14 because their primary fiduciary duty is to maximize shareholder  
15 profits. This is in stark contrast to the interests of the state to  
16 ensure the health, safety, and welfare of Washingtonians, including  
17 all inmates and detainees within Washington's borders.

18 (3) The legislature finds that people confined in for-profit  
19 prisons and detention facilities have experienced abuses and have  
20 been confined in dangerous and unsanitary conditions. Safety risks  
21 and abuses in private prisons and detention facilities at the local,

1 state, and federal level have been consistently and repeatedly  
2 documented. The United States department of justice office of the  
3 inspector general found in 2016 that privately operated prisons  
4 "incurred more safety and security incidents per capita than  
5 comparable BOP [federal bureau of prisons] institutions." The office  
6 of inspector general additionally found that privately operated  
7 prisons had "higher rates of inmate-on-inmate and inmate-on-staff  
8 assaults, as well as higher rates of staff uses of force."

9 (4) The legislature finds that private prison operators have cut  
10 costs by reducing essential security and health care staffing. The  
11 sentencing project, a national research and advocacy organization,  
12 found in 2012 that private prison staff earn an average of five  
13 thousand dollars less than staff at publicly run facilities and  
14 receive almost 60 hours less training. The office of inspector  
15 general also found that people confined in private facilities often  
16 failed to receive necessary medical care and that one private prison  
17 went without a full-time physician for eight months.

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

23 (6) The legislature finds that at least 22 other states have  
24 stopped confining people in private for-profit facilities.

25 (7) Therefore, it is the intent of the legislature to prohibit  
26 the use of private, for-profit prisons and detention facilities in  
27 the state.

28 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
29 section apply throughout this chapter unless the context clearly  
30 requires otherwise.

31 (1) "Detention facility" means any facility in which persons are  
32 incarcerated or otherwise involuntarily confined for purposes  
33 including prior to trial or sentencing, fulfilling the terms of a  
34 sentence imposed by a court, or for other judicial or administrative  
35 processes or proceedings.

36 (2) "Private detention facility" means a detention facility that  
37 is operated by a private, nongovernmental for-profit entity and  
38 operating pursuant to a contract or agreement with a federal, state,  
39 or local governmental entity.

1        NEW SECTION.    **Sec. 3.**    PROHIBITION ON PRIVATE INCARCERATION. (1)

2    Except as provided in subsections (2) and (3) of this section, no  
3    person, business, or state or local governmental entity shall operate  
4    a private detention facility within the state or utilize a contract  
5    with a private detention facility within the state. No state or local  
6    governmental entity shall utilize a contract with a private detention  
7    facility outside of Washington state, except as provided in RCW  
8    72.68.010(2).

9        (2) A private detention facility that is operating pursuant to a  
10    valid contract with a governmental entity that was in effect prior to  
11    January 1, 2021, may remain in operation for the duration of that  
12    contract, not to include any extensions or modifications made to, or  
13    authorized by, that contract.

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

17        (a) A facility providing rehabilitative, counseling, treatment,  
18    mental health, educational, or medical services to juveniles who are  
19    subject to chapter 13.04 RCW, or similarly applicable federal law;

20        (b) A facility providing evaluation and treatment or forensic  
21    services to a person who has been civilly detained or is subject to  
22    an order of commitment by a court pursuant to chapter 10.77, 71.05,  
23    71.09, or 71.34 RCW, or similarly applicable federal law;

24        (c) A facility used for the quarantine or isolation of persons  
25    for public health reasons pursuant to RCW 43.20.050, or similarly  
26    applicable federal law;

27        (d) A facility used for work release under chapter 72.65 RCW, or  
28    similarly applicable federal law;

29        (e) A facility used for extraordinary medical placement;

30        (f) A facility used for residential substance use disorder  
31    treatment;

32        (g) A facility used to house persons pursuant to 18 U.S.C. Sec.  
33    4013; or

34        (h) A facility owned and operated by federally recognized tribes  
35    and contracting with a government.

36        NEW SECTION.    **Sec. 4.**    LIBERAL CONSTRUCTION. This act shall be

37    construed liberally for the accomplishment of the purposes thereof.

1        NEW SECTION.    **Sec. 5.**    EMERGENCY CLAUSE. This act is necessary  
2 for the immediate preservation of the public peace, health, or  
3 safety, or support of the state government and its existing public  
4 institutions, and takes effect immediately.

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

9        NEW SECTION.    **Sec. 7.**    CODIFICATION. Sections 1 through 3 of this  
10 act constitute a new chapter in Title 70 RCW.

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