

Chapter 72.68 RCW
TRANSFER, REMOVAL, TRANSPORTATION—DETENTION CONTRACTS

Sections

- 72.68.001 Definitions.
- 72.68.010 Transfer of incarcerated individuals.
- 72.68.015 Transfer of incarcerated individuals—Vocational or educational programs.
- 72.68.020 Transportation of prisoners.
- 72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill.
- 72.68.032 Transfer or removal of person in institution for mentally ill to other institution.
- 72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.
- 72.68.037 Transfer or removal of committed or confined persons—Record—Notice.
- 72.68.040 Contracts for detention of felons convicted in this state.
- 72.68.045 Transfer to out-of-state institution—Notice to victims.
- 72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.
- 72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.
- 72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.
- 72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.
- 72.68.080 Federal prisoners, or from other state or federally recognized tribe—Authority to receive.
- 72.68.090 Federal prisoners, or from other state or federally recognized tribe—Per diem rate for keep.
- 72.68.100 Federal prisoners, or from other state or federally recognized tribe—Space must be available.
- 72.68.110 Contracts with private correctional entities prohibited—Exceptions.

Correctional employees: RCW 9.94.050.

Placement of person convicted as an adult for a felony offense committed under the age of eighteen: RCW 72.01.410.

Western interstate corrections compact: Chapter 72.70 RCW.

RCW 72.68.001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of corrections.

(2) "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 the incarceration of persons.

(3) "Secretary" means the secretary of corrections. [2020 c 318 § 6; 1981 c 136 § 114.]

Findings—Intent—Construction—Effective date—2020 c 318: See notes following RCW 72.68.110.

Effective date—1981 c 136: See RCW 72.09.900.

RCW 72.68.010 Transfer of incarcerated individuals. (1)

Whenever in its judgment the best interests of the state or the welfare of any incarcerated individual confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the incarcerated individual is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer incarcerated individuals between in-state correctional facilities or to out-of-state governmental institutions if the secretary determines that transfer is in the best interest of the state or the incarcerated individual. The determination of what is in the best interest of the state or incarcerated individual may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the incarcerated individual. In determining whether the transfer will impose a hardship on the incarcerated individual, the secretary shall consider: (a) The location of the incarcerated individual's family and whether the incarcerated individual has maintained contact with members of his or her family; (b) whether, if the incarcerated individual has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the incarcerated individual is enrolled in a vocational or educational program that cannot reasonably be resumed or completed if the incarcerated individual is transferred to another correctional institution or returned to the state.

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

(i) The governor finds that an emergency exists such that the population of a state correctional facility exceeds its reasonable, maximum capacity, resulting in safety and security concerns;

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

(iii) The secretary determines that transfer is in the best interest of the state or the incarcerated individual; and

(iv) The contract with the out-of-state private correctional entity includes requirements for access to public records to the same extent as if the facility were operated by the department, incarcerated individual access to the office of the corrections ombuds, and inspections and visits without notice.

(b) Should any of these requirements in this subsection not be met, the contract with the private correctional entity shall be terminated.

(3) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05

RCW to effect the transfer of incarcerated individuals requesting transfer to foreign countries. [2021 c 200 § 7; 2020 c 318 § 4; 2000 c 62 § 2; 1983 c 255 § 10; 1979 c 141 § 282; 1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

Findings—Intent—Construction—Effective date—2020 c 318: See notes following RCW 72.68.110.

Effective date—2000 c 62: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 62 § 5.]

RCW 72.68.015 Transfer of incarcerated individuals—Vocational or educational programs. (1) In determining whether to transfer an incarcerated individual to a different facility in the state, the department shall consider whether the incarcerated individual is enrolled in a vocational or educational program, including those operated by approved outside providers, which cannot be continued at the receiving facility. The department shall work with the incarcerated individual's case manager, counselor, education navigator, or other appropriate person to attempt to meet the needs of the department and the incarcerated individual regarding transfer.

(2) Nothing in this section creates a vested right in programming, education, or other services. [2021 c 200 § 6.]

RCW 72.68.020 Transportation of prisoners. (1) The secretary shall transport prisoners under supervision:

(a) To and between state correctional facilities under the jurisdiction of the secretary;

(b) From a county, city, or municipal jail to an institution mentioned in (a) of this subsection and to a county, city, or municipal jail from an institution mentioned in (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1992 c 7 § 57; 1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

Correctional employees: RCW 9.94.050.

RCW 72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill. When, in the judgment of the secretary, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis, or treatment to any state institution or facility for the care of the mentally ill, the secretary, with the consent of the secretary of social and health services, is authorized to order and effect such move or transfer: PROVIDED, That the sentence of such person shall continue to run as if he or she remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he or she was

sentenced: PROVIDED, FURTHER, That the secretary and the indeterminate sentence review board shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [2012 c 117 § 499; 1981 c 136 § 115; 1972 ex.s. c 59 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

RCW 72.68.032 Transfer or removal of person in institution for mentally ill to other institution. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary of social and health services is authorized to order and effect such move or transfer. [1981 c 136 § 116; 1972 ex.s. c 59 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

RCW 72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: PROVIDED, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

RCW 72.68.037 Transfer or removal of committed or confined persons—Record—Notice. Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

RCW 72.68.040 Contracts for detention of felons convicted in this state. (1) The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States, or any county or city in this state providing for the detention in an institution or jail operated by such entity, for

prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. Except as provided in subsection (2) of this section, after the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his or her assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled, or until they are returned to a state correctional institution for convicted felons for further confinement.

(2) A prisoner may not be conveyed to a private correctional entity except under the circumstances identified in RCW 72.68.010(2) or 72.68.110(2). [2020 c 318 § 3; 2012 c 117 § 500; 2000 c 62 § 3; 1981 c 136 § 117; 1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

Findings—Intent—Construction—Effective date—2020 c 318: See notes following RCW 72.68.110.

Effective date—2000 c 62: See note following RCW 72.68.010.

Effective date—1981 c 136: See RCW 72.09.900.

RCW 72.68.045 Transfer to out-of-state institution—Notice to victims. (1) If the secretary transfers any offender to an institution in another state after March 22, 2000, the secretary shall, prior to the transfer, review the records of victims registered with the department. If any registered victim of the offender resides: (a) In the state to which the offender is to be transferred; or (b) in close proximity to the institution to which the offender is to be transferred, the secretary shall notify the victim prior to the transfer and consider the victim's concerns about the transfer.

(2) Any victim notified under subsection (1) of this section shall also be notified of the return of the offender to a facility in Washington, prior to the return.

(3) The secretary shall develop a written policy to define "close proximity" for purposes of this section. [2000 c 62 § 4.]

Effective date—2000 c 62: See note following RCW 72.68.010.

RCW 72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of

transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he or she receives from the superintendent. [2012 c 117 § 501; 1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

RCW 72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.

Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his or her assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him or her to the place directed in such order and hold him or her in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he or she is lawfully discharged from such custody. The superintendent or his or her assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he or she was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he or she was taken. [2012 c 117 § 502; 1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

RCW 72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.

Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his or her assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [2012 c 117 § 503; 1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

RCW 72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.

The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

RCW 72.68.080 Federal prisoners, or from other state or federally recognized tribe—Authority to receive.

All persons sentenced to prison by the authority of the United States or of any

state or territory of the United States or federally recognized tribe may be received by the department and imprisoned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [2022 c 254 § 4; 1983 c 255 § 11; 1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

Finding—2022 c 254: See note following RCW 72.09.015.

RCW 72.68.090 Federal prisoners, or from other state or federally recognized tribe—Per diem rate for keep. The secretary is authorized to enter into contracts with the proper officers or agencies of the United States, federally recognized tribes, and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [2022 c 254 § 5; 1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

Finding—2022 c 254: See note following RCW 72.09.015.

RCW 72.68.100 Federal prisoners, or from other state or federally recognized tribe—Space must be available. The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government, any federally recognized tribe, or any other state unless there is vacant space and unused facilities in state correctional facilities. [2022 c 254 § 6; 1992 c 7 § 58; 1979 c 141 § 289; 1967 ex.s. c 122 § 11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

Finding—2022 c 254: See note following RCW 72.09.015.

RCW 72.68.110 Contracts with private correctional entities prohibited—Exceptions. (1) Except as provided in subsection (2) of this section and RCW 72.68.010(2), the secretary is prohibited from utilizing a contract with a private correctional entity for the transfer or placement of offenders.

(2) This section does not apply to:

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

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

(c) Tribal entities. [2020 c 318 § 2.]

Findings—Intent—2020 c 318: "(1) The legislature finds that all people confined in prisons in Washington deserve basic health care,

nutrition, and safety. As held in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess "the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders."

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

(3) The legislature finds that people confined in for-profit prisons have experienced abuses and have been confined in dangerous and unsanitary conditions. Safety risks and abuses in private prisons at the local, state, and federal level have been consistently and repeatedly documented. The United States department of justice office of the inspector general found in 2016 that privately operated prisons "incurred more safety and security incidents per capita than comparable BOP (federal bureau of prisons) institutions." The office of inspector general additionally found that privately operated prisons had "higher rates of inmate-on-inmate and inmate-on-staff assaults, as well as higher rates of staff uses of force."

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

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

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

(7) Therefore, it is the intent of the legislature to prohibit the use of private prisons in Washington state." [2020 c 318 § 1.]

Construction—2020 c 318: "This act shall be construed liberally for the accomplishment of the purposes thereof." [2020 c 318 § 8.]

Effective date—2020 c 318: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 2, 2020]." [2020 c 318 § 9.]