ENGROSSED SENATE
BILL NO. 271

BY: DICKERSON of the SENATE

and

MAXEY and STEIDLEY of the HOUSE

[PRISONS AND REFORMATORIES - AMENDING 57 O.S., SECTIONS 502 AND 561 - FACILITIES OPERATED BY PRIVATE CONTRACTORS - CODIFICATION -

EFFECTIVE DATE]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 57 O.S. 1981, Section 502, as last amended by Section 10, Chapter 303, O.S.L. 1989 (57 O.S. Supp. 1990, Section 502), is amended to read as follows:

Section 502. As used in this title, unless the context otherwise requires:

~~(a)~~ 1. "Board" means the State Board of Corrections;

~~(b)~~ 2. "Department" means the Department of Corrections;

~~(c)~~ 3. "Institutions" means the Oklahoma State Penitentiary located at McAlester, Oklahoma; the Oklahoma State Reformatory located at Granite, Oklahoma; the Lexington Assessment and Reception Center located at Lexington, Oklahoma; the Joseph Harp Correctional Center located at Lexington, Oklahoma; the Jackie Brannon Correctional Center located at McAlester, Oklahoma; the Howard C.

McLeod Correctional Center located at Farris, Oklahoma; the Mack H. Alford Correctional Center located at Stringtown, Oklahoma; the Ouachita Correctional Center located at Hodgens, Oklahoma; the Mabel Bassett Correctional Center located at Oklahoma City, Oklahoma; the R.B. "Dick" Conner Correctional Center located at Hominy, Oklahoma; the James Crabtree Correctional Center located at Helena, Oklahoma; the Jess Dunn Correctional Center located at Taft, Oklahoma; the John Lilley Correctional Center located at Boley, Oklahoma; the William S. Key Correctional Center located at Fort Supply, Oklahoma; the Dr. Eddie Walter Warrior Correctional Center located at Taft, Oklahoma; the Oklahoma City, Clara Waters and Kate Barnard Community Treatment Centers located at Oklahoma City, Oklahoma; the Tulsa Community Treatment Center located at Tulsa, Oklahoma; the Community Treatment Centers located at Lawton, Enid, Muskogee and McAlester; and other facilities under the jurisdiction and control of the Department of Corrections or hereafter established by the Department of Corrections;

~~(d)~~ 4. "Director" means the Director of the Department of Corrections;

~~(e)~~ 5. "House arrest" means a program whereby persons committed to the Department of Corrections are authorized to be away from a correctional facility and are placed by the Department in a community for the purpose of reintegration of the person into society, pursuant to the provisions of Section 510.2 of this title; and

~~(f)~~ 6. "Private prison contractor" means a nongovernmental entity or public trust which~~, pursuant to a contract with the Department of Corrections~~:

~~(1)~~ a. pursuant to a contract with the Department of Corrections, operates an institution within the Department; ~~or~~

~~(2)~~ b. pursuant to a contract with the Department of Corrections, provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum security level facility not owned by the Department but operated by the contractor; or

c. pursuant to a contract with another state, provides for the housing, care, and control of minimum or medium security level inmates of another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

SECTION 2. AMENDATORY 57 O.S. 1981, Section 561, as last amended by Section 27, Chapter 205, O.S.L. 1987 (57 O.S. Supp. 1990, Section 561), is amended to read as follows:

Section 561. A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, housing, alcoholism or drug treatment, mental health services, or nursing home care. Such services must meet standards prescribed and established by the Board of Corrections for implementing such a program, including but not limited to standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as provided in subsections C through J of this section.

B. The Department of Corrections is hereby authorized to provide for the operation of correctional institutions of the Department by private prison contractors. Such operation shall meet standards prescribed by the Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, and medical care. Such services shall be contracted for in accordance with the provisions of subsections C through J of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department or providing for the housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include a completed application form, a resume of the contractor's staff and capability, a completed performance evaluation form for past projects on which the contractor has provided private prison services, a list of past contracts with this state, and a list of contracts to provide similar services to other states or to the United States.

The file shall include the mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

D. If the Department intends to secure the services of a private prison contractor, all persons and firms included in the

file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;

2. Estimated time schedule for project;

3. Last date for submitting notice of interest in performing services to Director; and

4. Other pertinent data.

Private prison contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

E. The Department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors. Before the Department awards a contract to a private prison contractor, the plans shall be approved by the Board.

F. The Department shall review the files of the private prison contractors desiring consideration for the project, and shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;

2. Capacity of the contractor to accomplish the work in the required time; and

3. Past performance, from the performance evaluation form.

G. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the Department and submitted to the Board for the independent review of the entire process.

H. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project description. The Department shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract. The contract shall be sent to the Office of Public Affairs for approval or disapproval. If the Office of Public Affairs disapproves the contract or the Department and the selected contractor cannot reach an agreement, the Department may either renegotiate with the selected contractor or begin negotiations with the next-choice contractor. Should the Department be unable to negotiate a satisfactory contract with any of the three selected contractors, the Department shall select additional contractors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

I. Should there be an inadequate expression of interest in the project, the Director and the Board shall confer to add additional private prison contractors for consideration which are known to be appropriate for the project.

J. The Office of Public Affairs shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Office of Public Affairs may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor.

K. The Director of Public Affairs is authorized to lease real property and improvements thereon to a private prison contractor in

conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

L. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period of one (1) year, subject to renewal at the option of the State of Oklahoma for a cumulative period not to exceed fifty (50) years.

M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board of Corrections:

1. ~~that~~ <u>That</u> the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

2. ~~that~~ <u>That</u> the contractor can provide the necessary qualified personnel to implement the terms of the contract;

3. ~~that~~ <u>That</u> the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. ~~that~~ <u>That</u> the contractor has the ability to comply with applicable court orders and corrections standards; and

5. ~~that~~ <u>That</u>, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection R of this section.

N. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance to:

1. ~~indemnify~~ Indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and

2. ~~compensate~~ Compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

O. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to preventan act which would cause death or serious bodily injury to the personnel or to another person.

P. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

Q. The Director or his designee shall monitor the performance of the contractor.

R. Any contract between the Department and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

1. Requiring the contractor to provide said services in a facility which meets accreditation standards established by the American Corrections Association;

2. Requiring the contractor to receive accreditation for said facility from the American Corrections Association, within three (3) years of commencement of operations of the facility;

3. Requiring the contractor to obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; ~~and~~

4. Granting the Department the option at the beginning of each fiscal year to purchase or lease, at a predetermined price, any such facility; and

5. Allowing the contractor, notwithstanding any law to the contrary, to have access to the Department records of inmates assigned to the private contractor's facility.

S. Any inmate legally eligible for incarceration in a Department of Corrections facility shall, when processed through the Lexington Reception and Assessment Center and in the physical custody of the Department and classified as minimum security level, be legally eligible for incarceration in a private prison facility under contract with the Department pursuant to the provisions of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563.2 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A private prison contractor housing inmates of another state shall not:

1. Accept any inmate who is within six (6) months of release from incarceration; or

2. Discharge any such inmate from the facility operated by the contractor.

B. If an inmate incarcerated pursuant to a contract with another state is within six (6) months of release from incarceration, is to be released from custody, placed on probation, or paroled by another state, or if the sending state requests the return of the inmate, the private prison contractor shall send the inmate back to that state.

C. A private prison contractor housing inmates of another state shall not allow any such inmate to leave the premises of the facility, except to receive medical care not available at the facility or to return the inmate to the sending state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563.3 of Title 57, unless there is created a duplication in numbering, reads as follows:

An inmate confined in a private prison facility shall remain in the legal custody of the sending state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563.4 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A private prison contractor which does not have a contract with the Department of Corrections, but which houses inmates of another state shall:

1. Obtain from the Department of Corrections approval of the internal and perimeter security of the facility of the contractor. Such approval shall be given only if the Director of the Department of Corrections determines that the security is adequate to protect the public;

2. Show, to the satisfaction of the Department of Corrections, that adequate food, housing and medical care shall be available for inmates;

3. Furnish to the Department of Corrections a bond from a surety company chartered or authorized to do business in this state, cash bond, certificates of deposit, certificates of saving or U.S.

Treasury bond, or an assignment of negotiable stocks or bonds, in such amount as the Department of Corrections may deem necessary to secure payment for services rendered by the state or a political subdivision of the state, if an incident occurs which requires intervention by the state or a political subdivision of the state;

4. Agree to regular on-site inspections by the Director of the Department of Corrections or his designee;

5. Offer a level and quality of programs at least equal to those provided by state-operated facilities in this state that house similar types of inmates;

6. Comply with all federal and state constitutional standards and applicable court orders;

7. Maintain not more than an average daily population equal to the designed bed capacity of the facility;

8. Maintain qualifications and training of staff and management operations at least equal to that provided by state-operated facilities in this state that house similar types of inmates; and

9. Attain accreditation by the American Correctional Association within two (2) years of commencing operation of the facility.

B. The Department of Corrections shall promulgate and adopt guidelines for the implementation of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

A private prison contractor operating under a contract with another state shall not:

1. Calculate inmate release and parole eligibility dates;

2. Award good conduct time;

3. Approve inmates for work, medical or temporary furloughs or for preparole transfers; or

4. Classify inmates or place inmates in less restrictive custody than medium security level as established by the Department of Corrections standards of this state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563.6 of Title 57, unless there is created a duplication in numbering, reads as follows:

A private prison contractor operating under a contract with another state is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private prison contractor.

SECTION 8. This act shall become effective September 1, 1991.

Passed the Senate the 12th day of March, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives