

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 3083

By: Fields of the House

and

Dickerson and Muegge of
the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to prisons and reformatories; amending 57 O.S. 1991, Section 510, as last amended by Section 1, Chapter 351, O.S.L. 1997 (57 O.S. Supp. 1997, Section 510), which relates to penal institutions; modifying time period and completion date for training certain individuals; amending Section 78, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 561.1), which relates to private prison contractors; modifying purchasing options; and providing an effective date.

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 510, as last amended by Section 1, Chapter 351, O.S.L. 1997 (57 O.S. Supp. 1997, Section 510), is amended to read as follows:

Section 510. A. The Director shall have the following specific powers and duties relating to the penal institutions:

1. To appoint, subject to the approval of the State Board of Corrections, a warden or superintendent for each penal institution, who shall qualify for the position by character, personality, ability, training, and successful administrative experience in the correctional field; and if he is not the incumbent warden or superintendent of a penal institution, he shall have a college degree with a major in the behavioral sciences. As used in this section, "major in the behavioral sciences" means a major in psychology, sociology, criminology,

education, corrections, human relations, guidance and counseling, administration, criminal justice administration, or penology;

2. To fix the duties of the wardens and superintendents and to appoint and fix the duties and compensation of such other personnel for each institution as may be necessary for the proper operation thereof. However, correctional officers and guards hired after November 1, 1995, shall be subject to the following qualifications:

- a. the minimum age for service shall be twenty-one (21) years of age and the maximum age for service shall be seventy (70) years of age. However, the Director shall have the authority to establish the maximum age for correctional officers entering service, and
- b. possession of a minimum of thirty (30) semester hours from an accredited college or university, or possession of a high school diploma acquired from an accredited high school or GED equivalent testing program and graduation from a training course conducted by or approved by the Department and certified by the Council on Law Enforcement Education and Training either prior to employment or during the first six (6) months of employment, and
- c. be a resident of this state during employment, and
- d. be of good moral character, and
- e. before going on duty alone, satisfactory completion of an adequate training program for correctional officers and guards, as prescribed and approved by the State Board of Corrections, and
- f. satisfactory completion of minimum testing or professional evaluation through the Merit System of Personnel Administration to determine the fitness of the individual to serve in the position written evaluations shall be submitted to the Department of Corrections, and
- g. satisfactory completion of a physical in keeping with the conditions of his job description on an

annual basis and along the guidelines as established by the Department of Corrections;

3. To designate as peace officers qualified personnel in any Department of Corrections job classifications. The Director shall designate as peace officers correctional officers who are employed in K-9 units, certified emergency response teams, transportation positions, chief of security positions, or whose work location is at Griffin Memorial Hospital or University Hospital. The peace officer authority of employees designated as peace officers shall be limited to: maintaining custody of prisoners; preventing attempted escapes; pursuing, recapturing and incarcerating escapees and parole or probation violators and arresting such escapees, parole or probation violators, serving warrants, and performing any duties specifically required for their job descriptions. Such powers and duties of peace officers may be exercised for the purpose of maintaining custody, security, and control of any prisoner being transported outside this state as authorized by the Uniform Criminal Extradition Act. To become qualified for designation as peace officers, employees shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training within twelve (12) months of employment or within twelve (12) months of assignment to one of the positions designated above or, in the case of employees designated as peace officers on or before July 1, 1997, by July 1, ~~1998~~ 1999, and shall not be subject to Section 3311 of Title 70 of the Oklahoma Statutes;

4. To maintain such industries, factories, plants, shops, farms, and other enterprises and operations, hereinafter referred to as prison industries, at each institution as the State Board of Corrections deems necessary or appropriate to employ the prisoners or teach them skills, or to sustain the institution; and as provided for by policies established by the State Board of Corrections, to allow compensation for the work of the prisoners, and to provide for apportionment of their wages, the amounts thus allowed to be kept in accounts by the Board for the prisoners and

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given to them upon their discharge from the institution, or upon their order paid to their families or dependents or used for the personal needs of the prisoners. Any industry which employs prisoners shall be deemed a "State Prison Industry" if the prisoners are paid from state funds including the proceeds of goods sold as authorized by Section 123f of Title 74 of the Oklahoma Statutes. Any industry in which wages of prisoners are paid by a nongovernmental person, group, or corporation, except those industries employing prisoners in work-release centers under the authority of the Department of Corrections shall be deemed a "Private Prison Industry";

5. To assign residences at each institution to institutional personnel and their families;

6. To provide for the education, training, vocational education, rehabilitation, and recreation of prisoners;

7. To regulate the operation of canteens for prisoners;

8. To prescribe rules for the conduct, management, and operation of each institution, including rules for the demeanor of prisoners and punishment of recalcitrant prisoners or the treatment of incorrigible prisoners;

9. To transfer prisoners from one institution to another;

10. To transfer to a state hospital for the mentally ill for care and treatment, any prisoner who appears to be mentally ill. Said prisoner shall be returned to the institution when the superintendent of the hospital certifies that the prisoner has been restored to mental health;

11. To maintain courses of training and instruction for employees at each institution;

12. To maintain a program of research and statistics;

13. To provide for the periodic audit, at least once annually, of all funds and accounts of each institution and the funds of each prisoner;

14. To provide, subject to rules and regulations established by the State Board of Corrections, for the utilization of prison labor for any agency of the state, city, town, or subdivision of this state, upon the duly authorized request for such labor by

said agency. Said labor shall not be used to reduce employees or replace regular maintenance or operations of the agency. The labor shall be used solely for public or state purposes. Any such prison labor shall not be used for private use or purpose. Insofar as it is practicable, all such prison labor shall be of such a nature and designed to assist and aid in the rehabilitation of inmates performing the labor;

15. To provide clerical services for, and keep and preserve the files and records of, the Pardon and Parole Board; make investigations and inquiries as to prisoners at the institutions who are to be, or who might be, considered for parole or other clemency; assist prisoners who are to be, or who might be, considered for parole or discharge in obtaining suitable employment in the event of parole or discharge; report to the Pardon and Parole Board, for recommendation to the Governor, violations of terms and conditions of paroles; upon request of the Governor, make investigations and inquiries as to persons who are to be, or who might be, considered for reprieves or leaves of absence; report to the Pardon and Parole Board, for recommendation to the Governor, whether a parolee is entitled to a pardon, when the terms and conditions of his parole have been completed; make presentence investigations for, and make reports thereof to, trial judges in criminal cases before sentences are pronounced; supervise persons undergoing suspended sentences, or who are on probation or parole; and develop and operate, subject to the policies and guidelines of the Board, work-release centers, community treatment facilities or prerelease programs at appropriate sites throughout this state; and

16. To conduct continual planning and research and periodically evaluate the effectiveness of the various correctional programs instituted by the Department; manage the designing, building, and maintaining of all the capital improvements of the Department; establish and maintain current and efficient business, bookkeeping, and accounting practices and procedures for the operations of all institutions and facilities, and for the Department's fiscal affairs; conduct initial

orientation and continuing in-service training for the Department employees; provide public information services; inspect and examine the condition and management of state penal and correctional institutions; investigate complaints concerning the management of prisons or alleged mistreatment of inmates thereof; and hear and investigate complaints as to misfeasance or nonfeasance of employees of the Department.

B. When an employee of the Department of Corrections has been charged with a violation of the rules of the Department or with a felony pursuant to the provisions of a state or federal statute, the Director may, in his discretion, suspend the charged employee, in accordance with the Oklahoma Personnel Act and/or the Merit System of Personnel Administration Rules, pending the hearing and final determination of the charges. Notice of suspension shall be given by the Director, in accordance with the provisions of the Oklahoma Personnel Act. If after completion of the investigation of the charges, it is determined that such charges are without merit or are not sustained before the Oklahoma Merit Protection Commission or in a court of law, the employee shall be reinstated and shall be entitled to receive all lost pay and benefits.

This subsection shall in no way deprive an employee of the right of appeal according to the Oklahoma Personnel Act, Section 840-6.5 of Title 74 of the Oklahoma Statutes.

SECTION 2. AMENDATORY Section 78, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1997, Section 561.1), is amended to read as follows:

Section 561.1 A. Prior to entering into a contract with any private prison contractor for construction or operation, or both, of a correctional facility, the Oklahoma Department of Corrections shall establish a process for requesting proposals from such contractors. The Department of Corrections shall develop criteria for the process by which a contractor for the construction or operation, or both, of a private prison is to be awarded a contract. The criteria shall be subject to approval by the Board of Corrections. The criteria for selection of a site for a proposed facility to be constructed or operated, or both, by a

private contractor shall include, but shall not be limited to, the availability of medical services, support services, transportation services and the availability of potential employees who would be qualified to perform required functions at a state correctional facility.

B. Any contract between the Department of Corrections 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 provisions, 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;

4. Granting the Department the option at the beginning of each fiscal year pursuant to an agreement, to purchase any such facility, with or without inventory or other personal property, at a predetermined price, which shall be negotiated and included in a schedule or a formula to be contained in the original agreement. ~~Such agreements relating to a~~ This option shall apply to correctional ~~facility~~ facilities, the construction of which was financed, in whole or in part, or is to be financed, in whole or in part, by obligations issued from ~~a local~~ any governmental entity the repayment of which is to be made in whole or in part from rentals from the State of Oklahoma or the Department of Corrections~~7~~. Under these circumstances as described, the agreement shall be submitted to the Oklahoma Bond Oversight Commissions as provided in subsection I of this section.

C. A contractor proposing to enter a contract with the Department of Corrections for construction or operation, or both, of a correctional facility pursuant to this section must demonstrate:

1. The qualifications and the operations and management experience to carry out the terms of the contract; and
2. The ability to comply with the standards of the American Correctional Association and with specific court orders.

D. In addition to meeting the requirements specified in the requests for proposals, a proposal for the construction and operation of a correctional facility must:

1. Provide for regular, on-site monitoring by the Department of Corrections;
2. Acknowledge that payment by the state is subject to the availability of appropriations;
3. Provide for payment of a maximum amount per fiscal year;
4. Demonstrate a cost benefit to the State of Oklahoma when compared to the level and quality of programs provided by state operated facilities that have similar types of inmates at an operational cost not more than the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities. The Department of Corrections shall be responsible for determining the cost/benefit of the proposal;
5. Permit the state to terminate the contract for cause;
6. Contain a per diem operational cost per inmate for ~~the~~ initial year of operations;
7. Subject to appropriations, provide that cost adjustments may be made only once each fiscal year, to take effect at the beginning of the next fiscal year using as the maximum percentage increase, if any, an increase not to exceed the previous year's Consumer Price Index for All Urban Consumers (CPI-U) as prepared by the United States Bureau of Labor Statistics;
8. Have an initial contract term of not more than one (1) year, with an option to renew for additional periods not to exceed twenty (20) years;

9. If the proposal includes construction of a facility, contain a performance bond approved by the Department that is adequate and appropriate for the proposed contract;

10. Provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;

11. Provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor;

12. Provide for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor and to protect the state from actions by a third party against the private vendor, its officer, guards, employees, and agents as a result of the contract;

13. Provide plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor; and

14. Contain comprehensive standards for conditions of confinement.

E. As of the end of each fiscal year, the Department of Corrections shall determine the average daily cost per inmate for the operational costs at each major category of correctional facility. There shall be a separate computation of the average daily rate for maximum security, medium security, minimum security and work center facilities. The Department of Corrections shall present the daily rate computations to the Board of Corrections. The Board of Corrections, after appropriate review and analysis, shall adopt as a final action of the Board, at its regularly scheduled meeting in the month of August, an average daily rate per inmate by facility category for the immediately preceding fiscal year.

F. If no proposals conform to the established criteria, the Department shall prepare an additional request for proposals. The Department of Corrections shall evaluate the proposals within

thirty (30) days of receipt from the prospective contractor. The Department of Corrections shall specifically determine whether a proposal meets the requirements of paragraph 4 of subsection D of this section by comparing the daily rate for housing and care of inmates pursuant to any proposed contract with a private contractor to the daily rate for housing and care of inmates at the comparable type of facility operated by the Department of Corrections using the information provided pursuant to paragraph 6 of subsection D of this section. The Department shall evaluate proposals taking into account any direct or indirect costs that would continue to be paid by the Department of Corrections including, but not limited to, transportation, records management, discipline, general administration, management of inmate trust funds, and major medical coverage. Such costs shall be added to the proposed per diem of the private vendor when comparing the total per diem costs of the state operating facilities.

G. If the Department of Corrections proposes to enter into a contract for the construction or the operation, or both, of a private prison, the Department shall compare both the capital costs and the operating costs for the facility to the imputed capital costs and the projected operating costs of a comparable facility constructed and operated by the Department of Corrections.

H. The Department of Corrections shall deliver to the Board of Corrections the top three qualified prospective private prison contractors identified pursuant to this section and pursuant to Section 561 of ~~Title 57 of the Oklahoma Statutes~~ this title together with the information reviewed and analyzed by the Department of Corrections during analysis of the proposals as required by this section. The Board of Corrections shall evaluate the information provided and shall make a final decision selecting the contractor within fifteen (15) days of receipt of the information.

I. Any contract subject to the provisions of this section entered into by the Board of Corrections shall be subject to the approval of the Legislative and Executive Bond Oversight

Commissions in the same manner as provided by law for the review of issuance of obligations by State Governmental Entities as prescribed by Section 695.8 of Title 62 of the Oklahoma Statutes.

J. Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commissions, and prior to the date as of which the proposed contract is executed by the Board of Corrections, the Attorney General and the Director of the Department of Central Services shall review the proposed final version of the contract. The Attorney General and the Director of the Department of Central Services shall have a period of fifteen (15) days from receipt of the proposed final version of the contract to approve the contract and execute the document. If either the Attorney General or the Director of the Department of Central Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Corrections. The Department of Corrections shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Central Services shall have an additional fifteen-day period to approve the proposed contract and to execute the document. Failure of the Attorney General or the Director of the Department of Central Services, respectively, to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signature by the Attorney General and the Department of Central Services. The contract shall contain a statement to be executed by the Attorney General and the Director of the Department of Central Services that each one of them, respectively, has reviewed the proposed contract for compliance with the provisions of this section and Section ~~77~~ 561 of this ~~act~~ title, and all other applicable provisions of law and that the contract conforms with those requirements. Neither the private prison contractor nor the State Board of Corrections shall execute the contract until the document has been executed by the Attorney General and the Director of the Department of Central Services as required by this

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subsection unless the approval of the respective official has been made as a result of failure to take action within the fifteen-day period prescribed by this subsection.

SECTION 3. This act shall become effective November 1, 1998.

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