

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR ENGROSSED HOUSE
BILL HB1053

By: Beutler of the House

and

Wilkerson of the Senate

COMMITTEE SUBSTITUTE

[prisons and reformatories - amending 57 O.S.,

Section 563.2 - private prison facilities -

effective date]

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 563.2, as last amended by Section 1, Chapter 149, O.S.L. 1998 (57 O.S. Supp. 1998, Section 563.2), is amended to read as follows:

Section 563.2 A. A private prison contractor may contract with the federal government or another state to provide for housing, care and control of minimum or medium security level inmates, as provided by subsection H of this section, who are in the custody of the United States or another state, who do not have histories of escape ~~or riot~~ from medium or maximum security level correctional facilities for adults, who do not have a history of rioting, and who are sentenced to terms of incarceration for conviction of a felony, other than a felony that would be a capital offense if committed in this state or a sex-related offense, or who are sentenced to federal or state facilities for conviction of a misdemeanor, other than a sex-related offense, within a facility owned or operated by the private prison contractor. Provided, incarceration for misdemeanors shall be allowed only pursuant to subsection D of this section.

Such private prison contractor may perform other functions related to said responsibilities.

B. Any offense which would be a crime if committed within a state correctional institution of this state shall be a crime if committed in a facility owned or operated by a private prison contractor.

C. A private prison contractor shall not employ any personnel convicted of a felony if the person has been incarcerated in the private prison facility for which an application for employment is being considered; provided, a private prison contractor may employ personnel convicted of drug-related felonies who have been rehabilitated for programs for drug or other substance abuse rehabilitation for inmates of the facility.

Any personnel of a facility owned or operated by a private prison contractor, except any person convicted of a felony offense, shall be authorized to carry and use firearms while in the performance of their official duties only in the manner provided in this subsection and only after completing training approved or provided by the Department of Corrections. Such personnel shall only be authorized to use firearms for the following purposes:

1. To prevent escape from the facility or from custody while being transported to or from the facility. As used in this paragraph, "to prevent escape from the facility" shall mean to prevent an incarcerated individual from crossing the secure perimeter of the facility; or

2. To prevent an act which would cause death or serious bodily injury to any person.

The Department of Corrections is authorized to provide training to personnel of the private prison contractor, pursuant to contract. The Department of Corrections shall charge a reasonable fee for the training, not to exceed the cost of such training. The provisions of this subsection shall not be construed to confer peace officer

status upon any employee of the private prison contractor or to authorize the use of firearms, except as provided in this subsection. If an inmate escapes from the facility, or in the event of any riot or other serious disturbance, personnel from the facility immediately shall inform the Department of Public Safety, the county sheriff and, if the facility is located within the boundaries of a municipality, the police department of the municipality. If fifty percent (50%) or more of the population of the facility are inmates from this state, the personnel from the facility immediately shall inform the Department of Corrections if there is any riot or other serious disturbance, whether or not involving any inmates from this state, or if an inmate from this state escapes. The Department of Corrections is directed to respond on behalf of inmates of this state. Any emergency response provided by any state or local law enforcement agency shall be at the sole expense of the private prison contractor/operator. Each responding agency shall submit a written invoice detailing costs incurred which shall be paid within thirty (30) days of receipt by the private prison contractor/operator.

D. A private prison contractor housing federal inmates or inmates of another state shall not accept:

1. Any inmate who would be incarcerated in the facility for conviction of a misdemeanor, unless such incarceration in the facility is consistent with American Correctional Association requirements relating to the incarceration of inmates convicted of more serious offenses; or

2. Any maximum security level inmate.

E. If an inmate is to be released or discharged from incarceration, is released or discharged by any court order, is to be placed on probation, is paroled, or if the federal government or sending state requests transfer or the return of the inmate, the private prison contractor immediately shall transfer or return the

inmate to the sending state which has legal authority over the sentence or, in the case of federal inmates, to the closest federal prison or to the federal authority of the state in which federal custody over the inmate originated.

F. A private prison contractor housing federal inmates from jurisdictions other than Oklahoma, or inmates sentenced pursuant to the legal authority of another state, shall not allow any such inmate to leave the premises of the facility, except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to work as provided in subsection G of this section, or to return or be transferred to another state as provided by the provisions of subsection E of this section.

G. A private prison contractor may allow minimum security inmate labor to be used in public works projects provided all of the following conditions are satisfied:

1. The public works project must be in and for the county where the private prison is located or a county adjacent to the county where the private prison is located, or in and for a municipality in the county where the private prison is located or an adjacent county;

2. The private prison contractor has developed security procedures which will ensure the safety of the public and the Department of Corrections has approved such procedures;

3. The public works project has been authorized by Department of Corrections and the county or municipal authorities where the public works project is located;

4. The private prison contractor has procured and has in force and effect a policy of liability insurance which will provide coverage in an amount determined by the Department of Corrections for any loss resulting from the acts or omissions of inmates participating in said project or employees of the private prison

contractor and for any injuries occurring to said inmates or employees; and

5. The use of federal inmates for public works projects will be in strict compliance with the provisions of Section 4002 of Title 18 of the United States Code and any other applicable provisions of federal law.

H. A private prison contractor housing federal inmates or inmates of another state shall be responsible for the reimbursement of all reasonable costs and expenses incurred by this state or a political subdivision of this state for legal actions brought in this state by or on behalf of any federal inmate or inmate of another state while incarcerated in the facility, including court costs, sheriff's mileage fees, witness fees, district attorney expenses, expenses of the office of Attorney General, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees, or expenses associated with the proceedings or actions.

I. As used in this section, unless federal custody status is specified, security level restrictions shall refer to the security levels applicable to inmates in institutions within the Department of Corrections, as determined by policy of the Department of Corrections, unless the Department of Corrections approves more restrictive levels of security as prescribed by the private prison contractor. Private prison contractors housing federal inmates or inmates of another state shall be bound by such security level classifications.

J. A private prison contractor shall not house inmates from this state with federal inmates or inmates from another state, unless segregated or otherwise housed in such a manner as to satisfy the Director of the Department of Corrections.

K. The State of Oklahoma shall not assume jurisdiction or custody of any federal inmate or inmate from another state housed in

a facility owned or operated by a private prison contractor. Such inmates from another state shall at all times be subject to the jurisdiction of that state and federal inmates shall at all times be subject to federal jurisdiction. This state shall not be liable for loss resulting from the acts of said inmates nor shall this state be liable for any injuries to said inmates.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 510, as last amended by Section 1, Chapter 351, O.S.L. 1997 (57 O.S. Supp. 1998, 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~~ the person is not the incumbent warden or superintendent of a penal institution, ~~he~~ the person 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~~ the 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, in the case of employees designated as peace officers on or before July 1, 1997, by July 1, 1998, 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 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; and

17. To provide certain services to persons who have discharged their sentences from the state custody and have volunteered to receive additional services. The Director may designate services and staff to address needs of persons discharged from state custody. The Director shall promulgate rules concerning such services.

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~~ the Director's 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 3. This act shall become effective November 1, 1999.