ENGROSSED HOUSE
BILL NO. 1138

By: Hilliard of the House

and

Stipe of the Senate

(prisons and reformatories - amending 57 O.S., Sections 561, 561.1 and 563.2 - incarceration at facilities other than the Department of Corrections - private prison contractors - codification - effective date - emergency)

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 561, as last amended by Section 77, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1998, 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, nursing home care, or halfway house placement. Such services must meet standards prescribed and established by the State 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 required by this section.

B. Subject to the requirements of this section and Section ~~78~~ 561.1 of this ~~act~~ title, the Department of Corrections is hereby authorized to provide for the construction or operation or both construction and operation of correctional institutions of the Department of Corrections 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, transportation, and medical care. Such services shall be contracted for in accordance with the provisions of Section ~~78~~ 561.1 of this ~~act~~ title and the provisions of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department of Corrections 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:

1. A completed application form;

2. A resume of the contractor's staff and capability;

3. A completed performance evaluation form for past projects on which the contractor has provided private prison services;

4. A list of past contracts with this state;

5. A list of contracts to provide similar services to other states or to the United States; and

6. The mailing address of each private prison contractor.

Any person or firm ~~wishing to be~~ desiring to contract with the state as a private prison contractor may request at any time to be included in the comprehensive file~~, and~~. A private prison

contractor who has previously contracted with this state or any other state and whose contract was terminated for cause shall be ineligible to be included on the list of private prison contractors, unless the private prison contractor provides sufficient documentation demonstrating any performance deficiencies have been corrected to the satisfaction of the Department. The private prison contractor 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 the 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 State Board of Corrections.

F. The Department shall review the files of the private prison contractors desiring consideration for the project. After performing the analysis required by Section ~~78~~ 561.1 of this ~~act~~ title, the Department 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; and

4. Contracting history with the state or another state.

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

H. 1. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

2. The Department shall execute the contract with the selected contractor, which contract shall include a fair and reasonable fee.

3. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract.

I. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor. ~~Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commissions, and prior~~ Prior to the date as of which the proposed contract is executed by the State 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 Director of 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 ~~78~~ 561.1 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 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.

J. The Director of Central Services 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~~ one-year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

K. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year.

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

1. That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

2. That the contractor can provide the necessary qualified personnel to implement the terms of the contract;

3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. That the contractor has the ability to comply with applicable court orders and corrections standards; and

5. That, 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 B of Section ~~78~~ 561.1 of this ~~act~~ title.

M. Prisoners to be assigned to the private prison facility shall be representative of the total prison population in a security level or class, except as contracted otherwise.

N. 1. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the State Board of Corrections 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.

~~N.~~ 2. To comply with the provisions of this subsection, the contractor shall obtain:

a. Workers' Compensation Insurance or sufficient proof of self-coverage approved by the state Workers' Compensation Board with a coverage limit of One Million Dollars ($1,000,000.00) for each accident or disease per employee, with an annual aggregate of Five Million Dollars ($5,000,000.00),

b. Comprehensive General Liability Coverage, Medical and Dental Malpractice/Professional Liability Coverage for all professional health providers, attorneys, counselors, psychologists and social workers in an amount not less than One Million Dollars ($1,000,000.00) for each occurrence with an annual aggregate of Four Million Dollars ($4,000,000.00) with a total umbrella liability of Six Million Dollars ($6,000,000.00),

c. Civil Rights Violation Liability Insurance for all claims brought by any person based in whole or part on any violations of the United States or Oklahoma Constitutions, federal or state laws, including 42 U.S.C. 1983 actions or tort-based equivalents. Such insurance coverage shall include an unlimited defense coverage for attorney fees, costs and related expenses,

d. a products/completed operation coverage policy with an annual aggregate amount of One Million Dollars ($1,000,000.00),

e. automobile and other motorized vehicle liability insurance in an amount not less than One Million Dollars ($1,000,000.00) per accident, claim or occurrence,

f. business interruption insurance in the amount of Seven Million Dollars ($7,000,000.00) to cover any break in contracting service by the private prison contractor,

g. fire insurance, with uniform Standard Extended Coverage Endorsement including damage, destruction hazard insurance, vandalism, and malicious mischief, riot, and

h. insurrection insurance coverage in an amount equal to the replacement value of the facility.

3. Where applicable, all insurance policies required under this section shall name the state, or sending state if other than this state, as an additional insured or loss payee which shall be entitled to all notices under the insurance policies. All such policies shall contain the following provision: "The coverage provided herein shall not be cancelled, reduced or allowed to lapse unless and until the state has received at least thirty (30) days' notice and exercised its option to advance or pay the premium to continue the coverage for such time as will protect the safety of the public". Such advancement shall constitute a claim by the state against the private prison contractor as a secured creditor with the highest priority of any other creditor.

4. The private prison contractor shall notify the state prior to the anniversary date of each policy required in this subsection of any changes of insurance providers, rates or changes or reduction of any coverage or amounts of coverage. Nothing in this subsection shall prevent the private prison contractor from providing additional coverage amounts or additional insurance at their sole expense.

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 prevent an act which would cause death or serious bodily injury to the personnel or to another person.

~~O.~~ 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.

~~P.~~ Q. All private prison contractors shall have an emergency plan that includes a management process for escapes, riots, or other serious disturbances or correctional emergencies, including acts of nature, which involve the destruction of property or pose imminent threat of harm to any person or the public safety. The emergency plan shall be filed with the Department of Corrections, the sheriff of the county in which the private prison facility is located, the chief law enforcement officer of the municipality, if the private prison facility is located within the boundaries of a municipality, and the Cabinet Secretary of Safety and Security. The Department of Corrections may respond on behalf of inmates of this state as directed by the Cabinet Secretary of Safety and Security. 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.

R. The Director or ~~his~~ designee shall monitor the performance of the ~~contractor~~ private prison contractor/operator and enforce the terms and provisions of the contract. The Department of Corrections may contract for the provision of liquidated damages in such amounts as to assure the performance of the contract terms. Any penalties assessed may be appealed to the Director or designee in an administrative law proceeding. Any penalties assessed shall be not less than Fifty Dollars ($50.00) per day per violation and not to exceed Three Hundred Dollars ($300.00) per day per violation until each violation is remedied to the

satisfaction of the Department. Continued or repeated violations of the contract provisions shall be grounds for termination of the contract.

SECTION 2. AMENDATORY Section 78, Chapter 133, O.S.L. 1997 (57 O.S. Supp. 1998, 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 State 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 the following 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~~ Correctional 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 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~~ This option shall apply to ~~a~~ correctional ~~facility~~ facilities, the construction of which was financed, in whole or in majority part, or is to be financed, in whole or in majority 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~~,~~. Under these circumstances as described, the option 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~~ each year of operations which shall include, but not be limited to, costs for medical expenses as per the request for proposal published by the Department for the contracting process, all inmate transportation to and from the facility for any reason, and such other costs as may be agreed to between the parties or required by the request for proposal including any additional services to be provided by the private prison contractor;

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~~ amount not to exceed the previous year's increase in the 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 coverage 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 coverage 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~~ officers, 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 State Board of

Corrections. The State 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 State 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 State 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 State 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 State 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 Director of 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 Director of 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 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. 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, 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.

D. All private prison contractors shall have an emergency plan that includes a management process for escapes, riots, or other serious disturbances or correctional emergencies, including acts of nature, which involve the destruction of property or pose imminent threat or harm to any person or the public safety. The emergency plan shall be filed with the Department of Corrections, the sheriff of the county in which the private prison facility is located, the chief law enforcement officer of the municipality if the private prison facility is located within the boundaries of a municipality and the Cabinet Secretary of Safety and Security. 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.~~ E. 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.~~ F. 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.~~ G. 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~~ H of this section, or to return or be transferred to another state as provided by the provisions of subsection E of this section.

~~G.~~ H. 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.~~ I. 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.~~ J. 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.~~ K. 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.~~ L. 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 561a of Title 57, unless there is created a duplication in numbering, reads as follows:

No inmates will be incarcerated in a private correctional facility until state-operated facilities are filled to operational capacity.

SECTION 5. This act shall become effective July 1, 1999.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 22nd day of February, 1999.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

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President of the Senate