ENROLLED SENATE
BILL NO. 824

By: Leftwich of the Senate

and

Roan and Nance of the House

An Act relating to corrections; amending 57 O.S. 2001, Sections 563.2, as last amended by Section 1, Chapter 552, O.S.L. 2004, and 563.3 (57 O.S. Supp. 2004, Section 563.2), which relate to private prison facilities; requiring private prison facilities to have certain emergency plans and mutual aid agreements; requiring certain facilities to provide support under certain circumstances; deleting certain limitation to report to the Department of Corrections; requiring notification of any incident; requiring access to certain space for certain purpose; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 563.2, as last amended by Section 1, Chapter 552, O.S.L. 2004 (57 O.S. Supp. 2004, Section 563.2), is amended to read as follows:

Section 563.2 A. Except as provided for in subsection B of this section, 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 in this section, who are in the custody of the United States or another state, who do not have histories of escape from medium or maximum security level correctional facilities for adults, who do not have histories 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, or who are under arrest or detained for federal felony or misdemeanor violations, or detained for a violation of immigration laws, within a facility owned or operated by the private prison contractor. Provided, incarceration for misdemeanors shall be allowed only pursuant to subsection E of this section. Such private prison contractor may perform other functions related to such responsibilities.

B. A private prison contractor operating a facility on January 1, 2004, at twenty-five percent (25%) or less capacity may contract

with the federal government or another state to provide for housing, care and control of minimum or medium security level inmates provided the facility would be allowed to house the same type of inmates if contracting with this state.

C. 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.

D. 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 by the Council on Law Enforcement Education and Training. The Council on Law Enforcement Education and Training may charge a reasonable fee for its cost of evaluating firearms training for private prison personnel. Private prison 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~~ means 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. All private prisons operating in this state shall prepare a written emergency plan and mutual aid agreement between the private prison facility and state and local law enforcement agencies, including the Department of Corrections and the Department of Public Safety. 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 Corrections, 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~~ The Department of Corrections shall designate facilities

operated by the Department to provide support in the event of a riot, escape or other serious emergency. Personnel from the facility ~~immediately~~ shall inform the Department of Corrections, pursuant to Department policy, 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~~ incident. The Department of Corrections is directed to respond on behalf of ~~inmates~~ public safety of this state. The private prison contractor shall provide the Department of Corrections access to the facility and secure facility space to establish a command post, including provisions for telephone and fax access. 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.

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.

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.

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 F of this section.

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 the 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 such project or employees of the private prison contractor and for any injuries occurring to the 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.

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 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.

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.

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.

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 such inmates nor shall this state be liable for any injuries to the inmates.

SECTION 2. AMENDATORY 57 O.S. 2001, Section 563.3, is amended to read as follows:

Section 563.3 A. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates or inmates of another state, within two (2) months of commencing operations and thereafter as required by the Department of Corrections, shall:

1. Obtain from the Department of Corrections approval of all emergency response plans and the internal and perimeter security of the facility of the private prison contractor. All emergency plans for the private prison facility shall be approved by the Department of Corrections annually on July 1 and within thirty (30) days of any subsequent change or modification to any plan. Such approval shall be given only if the Director of the Department of Corrections determines that the security ~~is~~ and emergency response plan are 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, that the facility will have the necessary qualified personnel to operate the facility, that the financial condition of the private prison contractor is such that the facility can be operated adequately, and that the facility has the ability to comply with applicable court orders and American Correctional Association standards;

3. Furnish to the Department of Corrections satisfactory proof that the private prison contractor has obtained insurance or is self-insured, in such a manner and in such an amount as the Director of the Department of Corrections, after consulting with the Risk Management Administration, may deem necessary and adequate to reimburse this state or a political subdivision of this state, for expenses arising from any incident which occurs at said prison or which requires intervention by this state or a political subdivision of this state. Such insurance, in addition, shall be in an amount sufficient to indemnify this state and its officers and employees, for any liability or other loss, including property damage, judgments, costs, attorneys fees or other expenses arising from the operation of the facility, and such facility shall in any event and regardless of the amount of insurance available indemnify and hold harmless this state and its officers and employees, for any and all acts of prison inmates, and/or all officers, employees and stockholders of such private prison contractor for any liability arising out of acts of said inmates, officers, employees and stockholders of such private prison contractor in relation to the operation of the facility. The insurance required by this paragraph shall not provide coverage for more than one facility. If the private prison contractor owns or operates more than one facility, separate insurance coverage shall be obtained or provided for each facility;

4. 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

5. ~~A~~ Require and obtain a felony record search of fingerprints of ~~the~~ every employee or prospective employee of the private prison contractor ~~shall be required~~. The search shall be based on fingerprints and shall be conducted either by the Federal Bureau of Investigation or the Oklahoma State Bureau of Investigation. If the search is conducted by the Oklahoma State Bureau of Investigation, the Bureau shall require ~~that said~~ the person to pay a search fee not to exceed Fifty Dollars ($50.00) or the cost of the search, whichever is the lesser amount. The fees shall be deposited in the OSBI Revolving Fund. The private prison contractor is hereby authorized to reimburse employees for the cost of the search. The Oklahoma State Bureau of Investigation may contact the Federal Bureau of Investigation as regards the information requested, to obtain any felony convictions of the person involved. The record required by this paragraph shall include the name of the person, whether or not said person has been convicted of any felony offense, a list of any felony convictions, and the dates of such convictions. The search records of each employee shall be maintained by the contractor for as long as the employee works for the contractor. The records shall be subject to inspection by the Department of Corrections.

B. A private prison contractor which does not have a contract with the Department of Corrections, but which houses federal inmates or inmates of another state shall attain accreditation by the American Correctional Association within three (3) years of commencing operation of the facility and thereafter shall maintain such accreditation.

C. The Department of Corrections shall monitor the performance of the private prison contractor and the continued compliance of the private prison contractor with the provisions of subsections A and B of this section. If at any time after commencing operations, a private prison contractor, that is subject to the provisions of subsection A of this section, fails to comply with any of said provisions, the Director of the Department of Corrections may order the facility to cease operations. If a private prison contractor fails to attain or maintain the accreditation required by subsection B of this section, the Director of the Department of Corrections shall order the facility to cease operations. This order may be enforced by injunction issued by a district court of this state.

D. The Department of Corrections may charge the private prison contractor a reasonable fee for monitoring compliance with the provisions of paragraphs 1 and 2 of subsection A of this section. The fee shall not exceed the cost incurred in performing the monitoring.

E. The Department of Corrections shall promulgate and adopt rules for the implementation of this section.

F. All fees collected by the Department of Corrections pursuant to this section shall be deposited with the State Treasurer to the credit of the Department of Corrections Revolving Fund.

SECTION 3. This act shall become effective July 1, 2005.

SECTION 4. 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 Senate the 26th day of May, 2005.

_____
Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2005.

_____
Presiding Officer of the House
of Representatives