

3 Senate Bill No. 824

4 SENATE BILL NO. 824 - By: LEFTWICH of the Senate and ROAN of the
5 House.

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

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

18 SECTION 1. AMENDATORY 57 O.S. 2001, Section 563.2, as
19 last amended by Section 1, Chapter 552, O.S.L. 2004 (57 O.S. Supp.
20 2004, Section 563.2), is amended to read as follows:

21 Section 563.2 A. Except as provided for in subsection B of
22 this section, a private prison contractor may contract with the
23 federal government or another state to provide for housing, care and
24 control of minimum or medium security level inmates, as provided in
25 this section, who are in the custody of the United States or another
26 state, who do not have histories of escape from medium or maximum
27 security level correctional facilities for adults, who do not have
28 histories of rioting, and who are sentenced to terms of
29 incarceration for conviction of a felony, other than a felony that

1 would be a capital offense if committed in this state or a sex-
2 related offense, or who are sentenced to federal or state facilities
3 for conviction of a misdemeanor, other than a sex-related offense,
4 or who are under arrest or detained for federal felony or
5 misdemeanor violations, or detained for a violation of immigration
6 laws, within a facility owned or operated by the private prison
7 contractor. Provided, incarceration for misdemeanors shall be
8 allowed only pursuant to subsection E of this section. Such private
9 prison contractor may perform other functions related to such
10 responsibilities.

11 B. A private prison contractor operating a facility on January
12 1, 2004, at twenty-five percent (25%) or less capacity may contract
13 with the federal government or another state to provide for housing,
14 care and control of minimum or medium security level inmates
15 provided the facility would be allowed to house the same type of
16 inmates if contracting with this state.

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

21 D. A private prison contractor shall not employ any personnel
22 convicted of a felony if the person has been incarcerated in the
23 private prison facility for which an application for employment is

1 being considered; provided, a private prison contractor may employ
2 personnel convicted of drug-related felonies who have been
3 rehabilitated for programs for drug or other substance abuse
4 rehabilitation for inmates of the facility.

5 Any personnel of a facility owned or operated by a private
6 prison contractor, except any person convicted of a felony offense,
7 shall be authorized to carry and use firearms while in the
8 performance of their official duties only in the manner provided in
9 this subsection and only after completing training approved by the
10 Council on Law Enforcement Education and Training. The Council on
11 Law Enforcement Education and Training may charge a reasonable fee
12 for its cost of evaluating firearms training for private prison
13 personnel. Private prison personnel shall only be authorized to use
14 firearms for the following purposes:

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

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

22 The Department of Corrections is authorized to provide training
23 to personnel of the private prison contractor, pursuant to contract.

1 The Department of Corrections shall charge a reasonable fee for the
2 training, not to exceed the cost of such training. The provisions
3 of this subsection shall not be construed to confer peace officer
4 status upon any employee of the private prison contractor or to
5 authorize the use of firearms, except as provided in this
6 subsection. All private prisons operating in this state shall
7 prepare a written emergency plan and mutual aid agreement between
8 the private prison facility and state and local law enforcement
9 agencies, including the Department of Corrections and the Department
10 of Public Safety. If an inmate escapes from the facility, or in the
11 event of any riot or other serious disturbance, personnel from the
12 facility immediately shall inform the Department of Corrections, the
13 Department of Public Safety, the county sheriff and, if the facility
14 is located within the boundaries of a municipality, the police
15 department of the municipality. ~~If fifty percent (50%) or more of~~
16 ~~the population of the facility are inmates from this state, the~~
17 ~~personnel~~ The Department of Corrections shall designate facilities
18 operated by the Department to provide support in the event of a
19 riot, escape or other serious emergency. Personnel from the
20 facility ~~immediately~~ shall inform the Department of Corrections,
21 pursuant to Department policy, if there is any ~~riot or other serious~~
22 ~~disturbance, whether or not involving any inmates from this state,~~
23 ~~or if an inmate from this state escapes~~ incident. The Department of

1 Corrections is directed to respond on behalf of ~~inmates~~ public
2 safety of this state. The private prison contractor shall provide
3 the Department of Corrections access to the facility and secure
4 facility space to establish a command post, including provisions for
5 telephone and fax access. Any emergency response provided by any
6 state or local law enforcement agency shall be at the sole expense
7 of the private prison contractor/operator. Each responding agency
8 shall submit a written invoice detailing costs incurred which shall
9 be paid within thirty (30) days of receipt by the private prison
10 contractor/operator.

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

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

18 2. Any maximum security level inmate.

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

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

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

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

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

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

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

7 4. The private prison contractor has procured and has in force
8 and effect a policy of liability insurance which will provide
9 coverage in an amount determined by the Department of Corrections
10 for any loss resulting from the acts or omissions of inmates
11 participating in such project or employees of the private prison
12 contractor and for any injuries occurring to the inmates or
13 employees; and

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

18 I. A private prison contractor housing federal inmates or
19 inmates of another state shall be responsible for the reimbursement
20 of all reasonable costs and expenses incurred by this state or a
21 political subdivision of this state for legal actions brought in
22 this state by or on behalf of any federal inmate or inmate of
23 another state while incarcerated in the facility, including court

1 costs, sheriff mileage fees, witness fees, district attorney
2 expenses, expenses of the office of Attorney General, indigent or
3 public defender fees and costs, judicial expenses, court reporter
4 expenses and any other costs, fees, or expenses associated with the
5 proceedings or actions.

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

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

19 L. The State of Oklahoma shall not assume jurisdiction or
20 custody of any federal inmate or inmate from another state housed in
21 a facility owned or operated by a private prison contractor. Such
22 inmates from another state shall at all times be subject to the
23 jurisdiction of that state and federal inmates shall at all times be

1 subject to federal jurisdiction. This state shall not be liable for
2 loss resulting from the acts of such inmates nor shall this state be
3 liable for any injuries to the inmates.

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

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

11 1. Obtain from the Department of Corrections approval of all
12 emergency response plans and the internal and perimeter security of
13 the facility of the private prison contractor. All emergency plans
14 for the private prison facility shall be approved by the Department
15 of Corrections annually on July 1 and within thirty (30) days of any
16 subsequent change or modification to the plans. Such approval shall
17 be given only if the Director of the Department of Corrections
18 determines that the security ~~is~~ and emergency response plan are
19 adequate to protect the public;

20 2. Show, to the satisfaction of the Department of Corrections,
21 that adequate food, housing and medical care shall be available for
22 inmates, that the facility will have the necessary qualified
23 personnel to operate the facility, that the financial condition of

1 the private prison contractor is such that the facility can be
2 operated adequately, and that the facility has the ability to comply
3 with applicable court orders and American Correctional Association
4 standards;

5 3. Furnish to the Department of Corrections satisfactory proof
6 that the private prison contractor has obtained insurance or is
7 self-insured, in such a manner and in such an amount as the Director
8 of the Department of Corrections, after consulting with the Risk
9 Management Administration, may deem necessary and adequate to
10 reimburse this state or a political subdivision of this state, for
11 expenses arising from any incident which occurs at said prison or
12 which requires intervention by this state or a political subdivision
13 of this state. Such insurance, in addition, shall be in an amount
14 sufficient to indemnify this state and its officers and employees,
15 for any liability or other loss, including property damage,
16 judgments, costs, attorneys fees or other expenses arising from the
17 operation of the facility, and such facility shall in any event and
18 regardless of the amount of insurance available indemnify and hold
19 harmless this state and its officers and employees, for any and all
20 acts of prison inmates, and/or all officers, employees and
21 stockholders of such private prison contractor for any liability
22 arising out of acts of said inmates, officers, employees and
23 stockholders of such private prison contractor in relation to the

1 operation of the facility. The insurance required by this paragraph
2 shall not provide coverage for more than one facility. If the
3 private prison contractor owns or operates more than one facility,
4 separate insurance coverage shall be obtained or provided for each
5 facility;

6 4. Obtain written authorization from the governing board of any
7 municipality in which the facility is to be located, or if the
8 facility is not to be located within a municipality, written
9 authorization from the board of county commissioners of the county
10 in which the facility is to be located; and

11 5. A Require and obtain a felony record search of fingerprints
12 of ~~the~~ every employee or prospective employee of the private prison
13 contractor ~~shall be required~~. The search shall be based on
14 fingerprints and shall be conducted either by the Federal Bureau of
15 Investigation or the Oklahoma State Bureau of Investigation. If the
16 search is conducted by the Oklahoma State Bureau of Investigation,
17 the Bureau shall require ~~that said~~ the person to pay a search fee
18 not to exceed Fifty Dollars (\$50.00) or the cost of the search,
19 whichever is the lesser amount. The fees shall be deposited in the
20 OSBI Revolving Fund. The private prison contractor is hereby
21 authorized to reimburse employees for the cost of the search. The
22 Oklahoma State Bureau of Investigation may contact the Federal
23 Bureau of Investigation as regards the information requested, to

1 obtain any felony convictions of the person involved. The record
2 required by this paragraph shall include the name of the person,
3 whether or not said person has been convicted of any felony offense,
4 a list of any felony convictions, and the dates of such convictions.
5 The search records of each employee shall be maintained by the
6 contractor for as long as the employee works for the contractor.
7 The records shall be subject to inspection by the Department of
8 Corrections.

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

15 C. The Department of Corrections shall monitor the performance
16 of the private prison contractor and the continued compliance of the
17 private prison contractor with the provisions of subsections A and B
18 of this section. If at any time after commencing operations, a
19 private prison contractor, that is subject to the provisions of
20 subsection A of this section, fails to comply with any of said
21 provisions, the Director of the Department of Corrections may order
22 the facility to cease operations. If a private prison contractor
23 fails to attain or maintain the accreditation required by subsection

1 B of this section, the Director of the Department of Corrections
2 shall order the facility to cease operations. This order may be
3 enforced by injunction issued by a district court of this state.

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

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

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

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

15 SECTION 4. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

19 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY AND HOMELAND
20 SECURITY, dated 2-21-05 - DO PASS, As Coauthored.