



Ohio Legislative Service Commission 122nd House Bill Analysis

Sub. H.B. 293** This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

122nd General Assembly
(As Reported by S. Judiciary)

Reps. Gerberry, Lucas, Ford, Garcia, Batchelder, Lewis, Vesper, Sawyer, Logan, Ogg, Colonna, Verich, Mason

Sens. Hagan, J. Johnson, Latell, Blessing

- Limits the operation of correctional facilities that house out-of-state prisoners in Ohio and provides comprehensive criteria for the establishment and operation in Ohio of privately operated correctional facilities that house out-of-state prisoners.
- Expands the definition of "detention" that applies to the offenses of "escape" and "possession of a deadly weapon while under detention" to include confinement in a public or private facility for custody of persons charged with or convicted of crime, or alleged or found to be a delinquent child or unruly child, in Ohio or another state or under the laws of the United States.
- Also expands the definition of "detention" to specify hospitalization, institutionalization, or confinement in a private facility that is ordered by a court for a defendant in proceedings related to the defendant's competence to stand trial or to the defendant's plea of not guilty by reason of insanity.
- Expands the definition of "detention facility" that applies to numerous provisions of law to include confinement in any public or private facility used for the confinement of persons charged with or convicted of a crime in Ohio or another state or under federal law, or alleged or found to be a delinquent child or unruly child in Ohio or another state or under federal law.
- Declares an emergency.

CONTENT AND OPERATION

Establishment and operation of correctional facilities that house out-of-state prisoners

Existing law

Existing section 9.06 of the Revised Code authorizes the Department of Rehabilitation and Correction (DRC), and counties and municipal corporations to the extent authorized by other specified provisions of existing law (i.e., secs. 307.93, 341.35, 753.03, and 753.15), to contract for the private operation and management of a correctional facility. No out-of-state prisoner may be housed in any facility that is the subject of a contract entered into under this provision. The section contains numerous criteria governing the contract and the operation and management of the facility (see COMMENT).

However, existing law does not specifically regulate or govern the operation of facilities in this state that are operated by private contractors pursuant to an agreement with a government entity and that house out-of-state prisoners.

Operation of the bill

Generally. The bill limits the operation of correctional facilities to house out-of-state prisoners in Ohio and establishes comprehensive criteria for the establishment and operation in Ohio of privately operated correctional facilities that house

out-of-state prisoners. The bill specifies that, subject to the provisions described below in "***Preexisting contracts***," the only entities other than the state of Ohio that are authorized to operate a correctional facility to house "out-of-state prisoners" (see "***Definitions***," below) in Ohio are a "local public entity" (see "***Definitions***," below) that operates a correctional facility pursuant to the bill's provisions described below or a "private contractor" (see "***Definitions***," below) that operates a correctional facility pursuant to those provisions under a contract with a local public entity. Additionally, it specifies that, subject to the provisions described below in "***Preexisting contracts***," a private contractor may operate a correctional facility in Ohio for the housing of out-of-state prisoners only if the private contractor enters into a contract with a local public entity that is for the management and operation of the facility and that comports with the provisions described below in "***Contract between local public entity and private contractor***" and if the local public entity, in accordance with the provisions described below in "***Contract between local public entity and out-of-state jurisdiction***," has entered into a contract with each "out-of-state jurisdiction" (see "***Definitions***," below) that provides the out-of-state prisoners. Subject to the provisions described below in "***Preexisting contracts***," a private contractor that operates a correctional facility in Ohio for out-of-state prisoners cannot enter into a contract with any out-of-state jurisdiction for the housing in Ohio of out-of-state prisoners. (Sec. 9.07(B).)

Contract between local public entity and out-of-state jurisdiction. Except as provided in this paragraph, on and after the bill's effective date, a local public entity cannot enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in Ohio. A local public entity may enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in Ohio only if all of the following conditions are satisfied prior to entering into the contract: (1) the "governing authority of the local public entity" (see "***Definitions***," below) in which the facility is or will be located, after a duly held public hearing, authorizes the location and operation of the facility, and (2) the local public entity and the out-of-state jurisdiction with which the local public entity intends to contract jointly submit to DRC a statement that certifies the facility's intended use, intended prisoner population, and custody level, and DRC reviews and comments upon the plans for the design or renovation of the facility regarding their suitability for the intended prisoner population specified in the submitted statement. (Sec. 9.07(C)(1).)

If a local public entity enters into a contract as described in the preceding paragraph to house out-of-state prisoners in a correctional facility in Ohio, in addition to any other provisions it contains, the contract must include whichever of the following provisions is applicable: (1) if a private contractor will operate the facility in question pursuant to a contract entered into in accordance with the provisions described below in "***Contract between local public entity and private contractor***," a requirement that, if the facility is closed or ceases to operate for any reason and if the conversion plan set forth in the contract between the local public entity and the private contractor is not complied with, the out-of-state jurisdiction will be responsible for housing and transporting the prisoners in the facility when it is closed or ceases to operate and for the cost of so housing and transporting those prisoners, or (2) if a private contractor will not operate the facility in question pursuant to a contract entered into in accordance with those provisions, a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan described in clause (2) of the preceding sentence must include, but is not limited to, provisions that specify whether the local public entity or the out-of-state jurisdiction will be responsible for housing and transporting the prisoners in the facility when it is closed or ceases to operate and for the cost of so housing and transporting those prisoners. (Sec. 9.07(C)(2).)

Contract between local public entity and private contractor. If a local public entity enters into a contract with a private contractor for the management and operation of a correctional facility in Ohio to house out-of-state prisoners, the contract, at a minimum, must include all of the following provisions (sec. 9.07(D)):

- (1) A requirement that the private contractor seek and obtain accreditation from the American Correctional Association for the facility within two years after accepting the first out-of-state prisoner at the facility and that it maintain that accreditation for the term of the contract;
- (2) A requirement that the private contractor comply with all applicable federal, Ohio, and local laws, rules, or regulations, including, but not limited to, all sanitation, food service, safety, and health regulations;
- (3) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with laws, rules, and regulations of the type described above in paragraph (2) to DRC's Director or the Director's designee and to the governing authority of the local public entity in which the facility is located;
- (4) A requirement that the private contractor report to the local law enforcement agencies with jurisdiction over the place at which the facility is located, for investigation, all criminal offenses or delinquent acts that are committed in or on the grounds of, or otherwise in connection with, the facility and report to DRC all escapes from or disturbances at the facility;
- (5) A requirement that the private contractor provide a written report to DRC's Director or the Director's designee and to the governing authority of the local public entity in which the facility is located of all unusual incidents occurring at the facility. The private contractor must report the incidents in accordance with the incident reporting rules that, at the time of the incident, are applicable to state correctional facilities for similar incidents occurring at state correctional facilities.

(6) A requirement that the private contractor provide internal and perimeter security to protect the public, staff members of the facility, and prisoners in the facility;

(7) A requirement that the facility be staffed at all times with a staffing pattern that is adequate to ensure supervision of inmates and maintenance of security within the facility and to provide for appropriate programs, transportation, security, and other operational needs. In determining security needs for the facility, the private contractor and the contract requirements shall fully take into account all relevant factors, including, but not limited to, the proximity of the facility to neighborhoods and schools.

(8) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in existing section 9.06(D) regarding contractors who operate and manage a facility under that section (see paragraph (5) of the **COMMENT**), and that the private contractor indemnify, defend, and hold harmless the state, its officers, agents, and employees, and any local public entity in the state with jurisdiction over the place at which the correctional facility is located or that owns the correctional facility in the manner described in existing section 9.06(D) regarding contractors who operate and manage a facility under that section (see paragraph (6) of the **COMMENT**).

(9) A requirement that the private contractor develop a security classification schedule for prisoners housed in the facility, classify in accordance with the schedule each prisoner housed in the facility, and house all prisoners in the facility in accordance with their classification under this provision;

(10) A requirement that the private contractor will not accept for housing, and will not house, in the facility any out-of-state prisoner in relation to whom either of the following applies: (a) the private entity has not obtained from the out-of-state jurisdiction that imposed the sentence or sanction under which the prisoner will be confined in Ohio a copy of the institutional record of the prisoner while previously confined in that out-of-state jurisdiction or a statement that the prisoner previously has not been confined in that out-of-state jurisdiction, and a copy of all medical records pertaining to that prisoner that are in the possession of the out-of-state jurisdiction, or (b) the prisoner, while confined in any out-of-state jurisdiction, has a record of institutional violence involving the use of a "deadly weapon" (see "**Definitions**," below), a record of a pattern of committing acts of an assaultive nature against inmates or guards of, or visitors to, the place of the confinement, a record indicating a pattern of violence, or a record of escape or attempted escape from secure custody.

(11) A requirement that the private contractor, prior to housing any out-of-state prisoner in the facility, enter into a written agreement with DRC that sets forth a plan and procedure that will be used to coordinate law enforcement activities of state law enforcement agencies and of local law enforcement agencies with jurisdiction over the place at which the facility is located in response to any riot, rebellion, escape, insurrection, or other emergency occurring inside or outside the facility;

(12) A requirement that the private contractor cooperate with the Correctional Institution Inspection Committee in the Committee's performance of its duties under existing section 103.73, as modified by the bill (see "**Correctional Institution Inspection Committee duties and functions**," below) and provide the Committee, its subcommittees, and its staff members, in performing those duties, with access to the facility as described in that section;

(13) A requirement that the private contractor permit any peace officer who serves a law enforcement agency with jurisdiction over the place at which the facility is located to enter into the facility to investigate any criminal offense or delinquent act that allegedly has been committed in or on the grounds of, or otherwise in connection with, the facility;

(14) A requirement that the private contractor will not employ any person at the facility until after the private contractor has requested the Bureau of Criminal Identification and Investigation of the Attorney General's office to conduct a criminal records check of the person and not employ any person at the facility if the records check or other information possessed by the contractor indicates that the person previously has engaged in malfeasance.

(15) A requirement that the private contractor will not accept for housing, and will not house, in the facility any out-of-state prisoner unless the private contractor and the out-of-state jurisdiction that imposed the sentence for which the prisoner is to be confined agree that, if the out-of-state prisoner is confined in the facility in Ohio, commits a criminal offense while confined in the facility, is convicted of or pleads guilty to that offense, and is sentenced to a term of confinement for that offense but is not sentenced to death for that offense, the out-of-state jurisdiction will accept the prisoner pursuant to the existing Interstate Correction Compact (sec. 5120.50) for service of that term of confinement and for any period of time remaining under the sentence for which the prisoner was confined in the facility in Ohio, the out-of-state jurisdiction will confine the prisoner pursuant to the Compact for that term and that remaining period of time, and the private contractor will transport the prisoner to the out-of-state jurisdiction for service of that term and that remaining period of time. If any such prisoner is convicted and sentenced for a crime committed within Ohio, that prisoner first shall be returned to the out-of-state jurisdiction or its private contractor for completion of the out-of-state sentence. If the out-of-state prisoner is confined in a DRC-operated facility, the private contractor will be responsible for reimbursing DRC at the per diem cost of confinement for the duration of such incarceration to be deposited in DRC's prisoner programs fund.

(16) A requirement that the private contractor, prior to housing any out-of-state prisoner in the facility, enter into an agreement with the local public entity that sets forth a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan must include, but is not limited to, provisions that specify whether the private contractor, the local public entity, or the out-of-state jurisdictions that imposed the sentences for which the out-of-state prisoners are confined in the facility will be responsible for housing and transporting the prisoners in the facility when it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(17) A schedule of fines that the local public entity must impose upon the private contractor if the private contractor fails to perform its contractual duties, and a requirement that, if the private contractor fails to perform its contractual duties, the local public entity must impose a fine on the private contractor from the schedule of fines and, in addition to the fine, may exercise any other rights that it has under the contract. The provisions described in the next paragraph apply regarding such a fine.

Imposition and use of fines. If a private contractor that enters into a contract under the bill with a local public entity for the operation of a correctional facility that houses out-of-state prisoners fails to perform its contractual duties, the local public entity must impose upon the private contractor a fine from the schedule of fines included in the contract, as described above, and may exercise any other rights it has under the contract. A fine imposed under this provision must be paid to the local public entity that enters into the contract, and the local public entity must deposit the money so paid into its treasury to the credit of the fund used to pay for community policing. If a fine is imposed under this provision, the local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine. (Sec. 9.07(F)(2).)

Carrying of firearms by private correctional officer or another employee of the private contractor. A private correctional officer or other designated employee of a private contractor that enters into a contract under the bill with a local public entity for the operation of a correctional facility that houses out-of-state prisoners may carry and use firearms in the course of the officer's or employee's employment only if the officer or employee is certified as having satisfactorily completed an approved training program, as described in existing section 109.78(A), designed to qualify persons for positions as special policemen, security guards, or persons otherwise privately employed in a police capacity (sec. 9.07(E)).

Escapes from and disturbances at the facility. Upon notification by the private contractor of an escape from, or of a disturbance at, the correctional facility that is the subject of a contract entered into between a local public entity and a private contractor under the bill, DRC and state and local law enforcement agencies must use all reasonable means to recapture persons who escaped from the facility or quell any disturbance at the facility, in accordance with the plan and procedure for coordination of law enforcement activities that the private contractor and DRC enter into, as described above in paragraph (11) of "***Contract between local public entity and private contractor.***" Any cost incurred by Ohio or an Ohio political subdivision relating to the apprehension of a person who escaped from the facility, to the quelling of a disturbance at the facility, or to the investigation or prosecution as described in the second succeeding paragraph of any offense relating to the escape or disturbance is chargeable to and must be borne by the private contractor. The contractor also must reimburse Ohio or its political subdivisions for all reasonable costs incurred relating to the temporary detention of a person who escaped from the facility, following the person's recapture. (Sec. 9.07(F)(1).)

Criminal offenses and delinquent acts committed in the facility. Any act or omission that would be a criminal offense or delinquent act if committed at a state correctional institution or at a jail, workhouse, prison, or other correctional facility operated by Ohio or any Ohio political subdivision or group of political subdivisions is a criminal offense or delinquent act if committed by or with regard to any out-of-state prisoner who is housed at any correctional facility operated by a private contractor pursuant to a contract entered into under the bill. If any Ohio political subdivision experiences any cost in the investigation or prosecution of an offense committed by an out-of-state prisoner housed in a correctional facility operated by a private contractor pursuant to a contract entered into under the bill, the private contractor must reimburse the political subdivision for the costs so experienced. (Sec. 9.07(G).)

Return of out-of-state prisoner to sending jurisdiction. Upon the completion of an out-of-state prisoner's term of detention at a correctional facility operated by a private contractor pursuant to a contract entered into under the bill, the operator of the facility must transport the prisoner to the out-of-state jurisdiction that imposed the sentence for which the prisoner was confined before it releases the prisoner from its custody. The bill prohibits a private contractor that operates and manages a correctional facility in Ohio pursuant to a contract entered into under the bill from failing to comply with this requirement and specifies that a violation of the prohibition is a misdemeanor of the first degree. (Sec. 9.07(H).)

Preexisting contracts. The bill specifies that, except as specified in the next paragraph, its requirements and limitations do not apply to any contract entered into prior to its effective date between an out-of-state jurisdiction and a local public entity or between an out-of-state jurisdiction and a private contractor until the occurrence of the earlier of the following: (1) the expiration of the term of the contract that is in effect on the bill's effective date, or (2) the expiration of two years after the bill's effective date. Upon the occurrence of the earlier of those two events in relation to a contract entered into

prior to the bill's effective date between an out-of-state jurisdiction and a local public entity or between an out-of-state jurisdiction and a private contractor, the bill's requirements and limitations apply to the contract. (Sec. 9.07(I)(1).)

The bill also specifies that, if a contract has been entered into prior to its effective date between an out-of-state jurisdiction and a local public entity or between an out-of-state jurisdiction and a private contractor for the housing of out-of-state prisoners in Ohio, if the contract contains one or more provisions that specify the number of prisoners who will be housed in, or beds that will be provided or contained in, the correctional facilities covered by the agreement, and if prisoners are housed in, or beds are provided or contained in, the facility in excess of the number specified in the contract, the contract is void as a matter of public policy. Thereafter, the bill's requirements and limitations apply, and no out-of-state prisoner can be housed in the facility unless those requirements and limitations are complied with and satisfied. (Sec. 9.07(I)(2).)

Correctional Institution Inspection Committee duties and functions. The bill extends the existing duties and functions of the Correctional Institution Inspection Committee (the CIIC) that currently apply regarding state correctional institutions and local correctional institutions so that the duties *also apply in relation to private correctional facilities*. Under the bill, the extended duties and functions provide, in addition to the CIIC's existing duties and functions, as follows (sec. 103.73):

(1) Subject to the provisions described below in paragraph (5), the CIIC must establish and maintain a continuing program of inspection of each "private correctional facility" (the bill defines a private correctional facility for purposes of these provisions as a correctional facility in Ohio that houses out-of-state prisoners and that is operated by a private contractor under a contract with a local public entity under the bill).

(2) Subject to the provisions described below in paragraph (5), the CIIC and each of its members, for the purpose of making an inspection required or authorized by law, has access to any private correctional facility, or to any part of the facility, and is not required to give advance notice of, or make prior arrangements before conducting, an inspection.

(3) The CIIC must prepare a report for submission to the succeeding General Assembly of the findings it makes in its inspections and must submit the report to the succeeding General Assembly within 15 days after commencement of that General Assembly's first regular session.

(4) Subject to the provisions described below in paragraph (5), the CIIC must make an inspection of each private correctional facility each biennium; the inspection must include attendance at one general meal period and one rehabilitative or educational program.

(5) An inspection of a private correctional facility is subject to and must be conducted in accordance with all of the following: (a) it cannot be conducted unless the CIIC Chairperson grants prior approval for the inspection, which grant must specify whether the inspection is to be conducted by a subcommittee appointed under existing section 103.74 or is to be conducted other than by a subcommittee appointed under that section, (b) it cannot be conducted unless at least one member appointed to the CIIC and at least one staff member are present or, if it is to be conducted by a subcommittee, at least two members appointed to the CIIC are present for the inspection, (c) unless the CIIC Chairperson determines that it must be conducted outside of normal business hours for any reason, including emergency circumstances or a justifiable cause that perpetuates the mission of the committee, and the Chairperson specifies in the grant of prior approval for the inspection that the Chairperson has so determined, it must be conducted only during normal business hours (if the Chairperson determines that it must be conducted outside of normal business hours and the Chairperson specifies in the grant of prior approval for the inspection that the Chairperson has so determined, it may be conducted outside of normal business hours), (d) if it is to be conducted by a subcommittee, no CIIC staff member may be present on the inspection unless the CIIC Chairperson, in the grant of prior approval for the inspection, specifically authorizes staff members to be present on the inspection, and (e) if it is to be conducted other than by a subcommittee, CIIC staff members may be present on the inspection regardless of whether the grant of prior approval contains a specific authorization for staff members to be present on the inspection.

Definitions. The bill defines the following terms for use in its provisions as described above (sec. 9.07(A) and 103.73(D)):

(1) "Deadly weapon" has the same meaning as in the existing Weapons Control Law (sec. 2923.11, not in the bill).

(2) "Governing authority of a local public entity" means whichever of the following is applicable: (a) for a county, the board of county commissioners of the county, (b) for a municipal corporation, the legislative authority of the municipal corporation, or (c) for a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations, all boards of county commissioners and legislative authorities of all of the counties and municipal corporations that joined to form a local public entity for purposes of the bill.

(3) "Local public entity" means a county, a municipal corporation, a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations.

(4) "Out-of-state jurisdiction" means the United States, any state other than Ohio, and any political subdivision or other

jurisdiction located in a state other than Ohio.

(5) "Out-of-state prisoner" means a person who is convicted of a crime in a state other than Ohio or under federal law or who is found under the laws of a state other than Ohio or federal law to be a delinquent child or the substantially equivalent designation.

(6) "Private contractor" means a person who enters into a contract under the bill with a local public entity to operate and manage a correctional facility in Ohio for out-of-state prisoners.

Expansion of definition of "detention"

Existing law

"Detention" is defined in existing law, for purposes of Chapter 2921. of the Revised Code, as arrest; confinement in any vehicle subsequent to an arrest; confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be a delinquent child or unruly child; hospitalization, institutionalization, or confinement in any facility that is ordered pursuant to the law governing the determination of a defendant's competence to stand trial and the disposition of a defendant found incompetent to stand trial or the law governing a defendant who enters a plea of not guilty by reason of insanity or who is found not guilty by reason of insanity; confinement in any vehicle for transportation to or from any such facility; detention for extradition or deportation; supervision by any employee of any such facility that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; or supervision by a DRC employee of a person on any type of release from a state correctional institution. For a person confined in a county jail who participates in a county jail industry program, "detention" includes time spent at an assigned work site and going to and from the work site. (Sec. 2921.01(E).)

The definition of "detention" is relevant to the offense of escape. A person commits the offense of escape when the person, knowing that the person is under detention or being reckless in that regard, purposely breaks or attempts to break the detention, or purposely fails to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent commitment (sec. 2921.34(A)(1), not in the bill). It also is relevant to the offense of possession of a deadly weapon while under detention; that offense prohibits a person under detention at a detention facility from possessing a deadly weapon (sec. 2923.131, not in the bill).

Operation of the bill

The bill retains all of the existing provisions of the definition of "detention" and expands some of those provisions. It expands the provisions of the definition dealing with confinement in facilities for the custody of persons charged with or convicted of crime or alleged or found to be a delinquent child to read as follows: "confinement in any *public or private* facility for custody of persons charged with or convicted of crime *in this state or another state or under the laws of the United States* or alleged or found to be a delinquent child or unruly child *in this state or another state or under the laws of the United States*." It also expands the provisions of the definition dealing with hospitalization, institutionalization, or confinement in a facility of persons in cases involving persons alleged to be or found to be incompetent to stand trial or not guilty by reason of insanity to include such hospitalization, institutionalization, or confinement in any *public or private* facility. It does not change any other parts of the definition. (Sec. 2921.01(E).)

Expansion of definition of "detention facility"

Existing law

"Detention facility" is defined in existing law, for purposes of Chapter 2921., as any place used for the confinement of a person charged with or convicted of any crime or alleged or found to be a delinquent child or unruly child (sec. 2921.01(F)). The definition of "detention facility" is relevant to many Revised Code provisions, none of which are in the bill, including the offenses of aiding escape or resistance to lawful authority (sec. 2921.35), illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution (sec. 2921.36(A)(1) and (C)), illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution (sec. 2921.36(A)(2) and (C)), illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution (sec. 2921.36(A)(3) and (C)), illegal conveyance of cash onto the grounds of a detention facility (sec. 2921.36(D)), dereliction of duty (sec. 2921.44), aggravated riot (sec. 2917.02), and possession of a deadly weapon while under detention (sec. 2923.131).

Operation of the bill

The bill expands the definition of "detention facility" so that it means any *public or private* place used for the confinement of a person charged with or convicted of any crime *in this state or another state or under the laws of the United States* or alleged or found to be a delinquent child or unruly child *in this state or another state or under the laws of the United*

States (sec. 2921.01(F)). Related to this expansion, the bill modifies an existing provision that pertains to the taking of testimony in a criminal proceeding of a person who is imprisoned in a workhouse, juvenile detention facility, jail, or state correctional institution in Ohio, or who is in the custody of the Department of Youth Services so that the provision applies regarding persons imprisoned in a "detention facility," as defined under the bill, or state correctional institution within Ohio, or who is in the custody of the Department of Youth Services (sec. 2945.47).

COMMENT

Existing section 9.06 contains the following criteria governing a contract entered into under its authority for the private operation and management in Ohio of a corrections facility for Ohio prisoners and governing the operation and management of a facility pursuant to the contract:

(1) Before the contract is entered into, the contractor (the person who enters into the contract to operate and manage the facility) must convincingly demonstrate to the public entity (i.e., DRC, a county or municipality, or a combination of counties and municipalities that has jurisdiction over a facility that will be the subject of the contract) that it can operate the facility and provide specified services and realize at least a 5% savings over the projected cost to the public entity of providing these same services to operate the subject facility.

(2) The contract must include all of the following requirements: (a) the contractor must retain accreditation from the American Correctional Association throughout the contract term, (b) the contractor must obtain accreditation of the facility within a specified time frame and maintain the accreditation for the duration of the contract term (for noncompliance with the provisions specified in this clause, the contractor is in violation of the contract, and the public entity may revoke the contract), (c) the contractor must comply with all DRC rules that apply to the operation and management of correctional facilities, including the Minimum Standards for Jails in Ohio and policies regarding the use of force and of deadly force, although the public entity may require more stringent standards, and must comply with any applicable federal, state, and local laws, rules, or regulations, including sanitation, food service, safety, and health regulations, (d) the contractor must send copies of reports of inspections completed by the appropriate authorities regarding compliance with rules and regulations to specified state or local officials, (e) the contractor must report for investigation all crimes in connection with the facility to the public entity, to all local law enforcement agencies having jurisdiction at the facility, and, for crime committed at a state correctional institution, to the State Highway Patrol, (f) the contractor must provide a written report to specified state or local officials of all unusual incidents at the facility, (g) the contractor must maintain proper control of inmates' personal funds pursuant to specified criteria and make available to the public entity records pertaining to these funds, (h) the contractor must prepare and distribute annual budget income and expenditure statements and funding source financial reports to specified state or local officials, (i) the public entity must appoint and supervise a full-time contract monitor, and the contractor must provide suitable office space for the monitor and allow the monitor unrestricted access to all parts of the facility and all non-financial records of the facility, (j) if the facility is a state facility, the contractor must allow designated DRC staff members access to the facility in accordance with DRC rules, (k) the contractor must provide internal and perimeter security to protect the public, staff members, and inmates, (l) if the facility is a state facility, the contractor must impose discipline on inmates housed in the facility only in accordance with DRC rules, (m) the facility must be staffed at all times with a staffing pattern approved by the public entity that is adequate to ensure supervision of inmates and maintenance of security within the facility, and to provide for programs, transportation, security, and other operational needs (in determining security needs, the contractor must consider, among other things, the proximity of the facility to neighborhoods and schools), and (n) if the contract is with a local public entity, the contractor must provide specified services and programs, consistent with the Minimum Standards for Jails.

(3) The contract also must include all of the following statements and authorizations: (a) a clear statement that no immunity from liability granted to the state, and no immunity from liability granted to political subdivisions under the existing Political Subdivision Sovereign Immunity Law, extends to the contractor or any of its employees, (b) a statement that all documents and records relevant to the facility must be maintained in the same manner required for, and subject to the same laws, rules, and regulations as apply to, the records of the public entity, (c) authorization for the public entity to impose a fine on the contractor from a schedule of fines included in the contract for the contractor's failure to perform its contractual duties, or to cancel the contract, as the public entity considers appropriate (if a fine is imposed, the public entity may reduce the payment owed to the contractor pursuant to any invoice in the amount of the imposed fine), (d) a statement that all services provided or goods produced at the facility are subject to the same regulations, and the same distribution limitations, as apply to goods and services produced at other correctional institutions, and (e) authorization for DRC to establish one or more prison industries at the facility.

(4) The contract cannot require, authorize, or imply a delegation of the authority or responsibility of the public entity to a contractor for any of the following: (a) developing or implementing procedures for calculating inmate release and parole eligibility dates and recommending the granting or denying of parole, although the contractor may submit written reports prepared in the ordinary course of business, (b) developing or implementing procedures for calculating and awarding good time, approving the type of work inmates may perform and the wage or good time, if any, that may be given to inmates

engaging in such work, and granting, denying, or revoking good time, (c) classifying an inmate or placing an inmate in a more or a less restrictive custody than the custody ordered by the public entity, or (d) approving inmates for work release.

(5) The contractor must provide an adequate policy of insurance, specifically including, but not limited to, insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments; the policy must provide that the state, including all state agencies, and all political subdivisions of the state with jurisdiction over the facility or in which a facility is located are named as insured, and that the state and its political subdivisions must be sent any notice of cancellation; and the contractor may not self-insure.

(6) The contractor must indemnify, defend, and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility, from all of the following: (a) any claims or losses for services rendered by the contractor or person performing or supplying services in connection with the performance of the contract, (b) any failure of the contractor or its officers or employees to adhere to the laws, rules, regulations, or terms agreed to in the contract, (c) any Constitutional, federal, state, or civil rights claim brought against the state related to the facility operated and managed by the contractor, (d) any claims, losses, demands, or causes of action arising out of the contractor's activities in Ohio, and (e) any attorney's fees or court costs arising from any Habeas Corpus actions or other inmate suits that may arise from any event that occurred at the facility or was a result of such an event, or arise over the conditions, management, or operation of the facility.

(7) Private correctional officers of the contractor may carry and use firearms in the course of their employment only after being certified as satisfactorily completing an approved training program designed to qualify persons for positions as special policemen, security guards, or persons otherwise privately employed in a police capacity as described in existing section 109.78(A).

(8) Upon notification by the contractor of an escape from, or of a disturbance at, a facility operated pursuant to the contract, DRC and state and local law enforcement agencies must use all reasonable means to recapture escapees or quell any disturbance; and cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility are chargeable to and borne by the contractor; and the contractor also must reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture.

(9) Any offense that would be a crime if committed at a state correctional institution or jail, workhouse, prison, or other correctional facility is a crime if committed by or with regard to inmates at facilities operated pursuant to the contract.

(10) The contractor must pay any inmate workers at the facility at the rate approved by the public entity, but inmates working at the facility are not considered employees of the contractor.

HISTORY

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Justice 06-04-97 p. 986

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Reported, S. Judiciary --- ---

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