An Act

ENROLLED SENATE
BILL NO. 116

By: Barrington and Jech of the Senate

and

Echols and Fisher of the House

An Act relating to prisons and reformatories; amending 57 O.S. 2011, Sections 563.2 and 563.3, which relate to private prison facilities; making certain private prison facility requirements inapplicable to contractors that house federal inmates; and declaring an emergency.

SUBJECT: Applicability of private prison requirements to facilities housing federal inmates

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

SECTION 1. AMENDATORY 57 O.S. 2011, 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 inmates, as provided in this section, who are in the custody of the United States or another state, except for inmates who have histories of escape from medium or maximum security level correctional facilities for adults, who have a felony conviction for rioting, who are sentenced to terms of incarceration for conviction of a sex-related offense, or who are incarcerated with a sentence of death, within a facility owned or operated by the private prison

contractor. Private prison contractors shall not provide for the housing, care and control of detainees designated as enemy combatants by the federal government, or who are under federal, state or local investigation, charge, or conviction for crimes of international terrorism or conspiracy to commit international terrorism or acts of hostile aggression against the United States or allies of the United States. 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 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. 1. 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.

2. 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~~

a. 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" means to prevent an incarcerated individual from crossing the secure perimeter of the facility~~;~~, or

~~2. To~~

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

3. 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.

4. 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.

5. 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.

6. 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 shall inform the Department of Corrections, pursuant to Department policy, if there is any incident. The Department of Corrections is directed to respond on behalf of 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. If an inmate is to be released or discharged from incarceration, is released or discharged by any court order, is to be placed on probation, is paroled, or if the federal government or sending state requests transfer or the return of the inmate, the private prison contractor immediately shall transfer or return the inmate to the sending state which has legal authority over the sentence or, in the case of federal inmates, to the closest federal prison or to the federal authority of the state in which federal custody over the inmate originated.

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

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

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

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

3. The public works project has been authorized by 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.

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

J. 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.

K. Prior to contracting for the housing of any federal inmate or inmate from another state, the private prison contractor shall give the Department of Corrections first right to contract for placement of inmates under the custody of the Department of Corrections in the available capacity of the private prison facility.

L. Prior to housing maximum security inmates in the custody of the United States or another state, the private prison contractor shall receive authorization from the Department of Corrections to house maximum security inmates at the facility. Authorization granted by the Department of Corrections shall be based on facility design and physical plant security requirements consistent with standards established by the American Correctional Association or the physical plant security requirements of the Department at Department-operated maximum security facilities. Upon request by a private prison contractor for all or a part of a facility to be granted authorization to house maximum security inmates, the Department shall complete an assessment within thirty (30) days. The assessment shall either result in authorization being granted to the private prison contractor or shall provide detailed requirements that shall be met by the facility in order for authorization to be granted.

M. At least ten (10) business days prior to the transfer of inmates who are in the custody of the United States or another state to a private prison facility operating in the State of Oklahoma, the private prison contractor shall provide the Department of Corrections with the following information:

1. The number of inmates to be transferred;

2. The name of each inmate to be transferred;

3. The date of transfer of the inmate;

4. The security level of each inmate to be transferred, as determined by the sentencing state;

5. The facility to which the inmate shall be transferred; and

6. The criminal history and institutional behavioral record for each inmate.

The information provided pursuant to this subsection shall not be public record until the transfer of the inmate is complete. The records shall thereafter be made public only to the extent required by state law.

N. The Department of Corrections shall have thirty (30) days after receipt of the information required in accordance with subsection M of this section to determine whether an inmate transferred to a private prison facility is compliant with the conditions of subsection A or B of this section. If the Department determines that an inmate housed at a private prison facility is not compliant with the conditions provided for in subsection A or B of this section, the Department shall notify the private prison contractor. Notification by the Department shall include the name of the inmate and reason why the inmate does not qualify to be housed at the facility to which the inmate has been transferred or housed within the State of Oklahoma. The private prison contractor shall either provide supplemental information verifying compliance with subsection A or B of this section, or shall transfer the inmate out of the State of Oklahoma within thirty (30) days of receiving said notification from the Department. Failure of the Department to review the inmate information provided pursuant to subsection M of this section shall not prevent the transfer of inmates into the State of Oklahoma for housing at a private prison facility.

O. The provisions of subsection A, paragraphs 1, 2, 3, 4 and 6 of subsection D, paragraphs 2, 3, 5 and 6 of subsection M and subsection N of this section shall not apply to a private prison contractor that has a direct contract with the Federal Bureau of Prisons of the United States Department of Justice for a facility that houses federal inmates and is monitored on-site by federal agency staff.

SECTION 2. AMENDATORY 57 O.S. 2011, Section 563.3, is amended to read as follows:

Section 563.3 A. All private prison contractors and vendors operating in Oklahoma shall provide construction plans to the Department of Corrections for approval prior to commencement of

construction of any new physical plant or addition to existing facilities. Approval shall be based on applicable American Correctional Association construction standards. Any private prison contractor or vendor that fails to comply with the requirements of this subsection shall be penalized according to the provisions of subsection E of this section.

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, 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 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, attorney 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. Ensure every employee or prospective employee of the private prison contractor has submitted through the Department of Corrections a national criminal history records check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The private prison contractor is hereby authorized to reimburse employees for the cost of the search. 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 from national criminal history records checks shall be maintained by the Department of Corrections. The Department of Corrections shall not disseminate any national criminal history records information to a private entity.

C. 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.

D. 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 this section and Section 563.2 of this title. If at any time after commencing operations, a private prison contractor, that is subject to the provisions of subsection B 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 C of this section, the Director of the Department of Corrections shall order the facility to take corrective action pursuant to the Department of Corrections monitoring plan and, if corrective action is not pursued with due diligence, shall order the facility to cease operations. This order may be enforced by injunction issued by a district court of this state.

E. If the requirements provided for in this section are not followed, the Director may recommend that the State Board of Corrections assess the private prison contractor at least one-half (1/2) the per diem rate up to but not to exceed the full per diem rate paid by the jurisdiction or jurisdictions to the private prison contractor for the period of time a violation of subsection A of this section continues and is not corrected with due diligence or when the Department of Corrections has identified other physical plant security deficiencies based on American Correctional Association standards and such deficiencies continue and are not corrected with due diligence. The penalty provided for in this subsection shall not preclude the Director from ordering the facility to cease operations.

F. The Department of Corrections may charge the private prison contractor a reasonable fee for any services provided by the Department staff to include, but not limited to, the costs of monitoring compliance with the provisions of paragraphs 1 and 2 of subsection B of this section. The fee shall not exceed the cost incurred in performing the monitoring.

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

H. 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.

I. The provisions of subsections B through H of this section shall not apply to a private prison contractor that has a direct contract with the Federal Bureau of Prisons of the United States Department of Justice for a facility that houses federal inmates and is monitored on-site by federal agency staff.

SECTION 3. 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 29th day of April, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 30th
day of April, 20 15, at 2:25 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 6th
day of May, 20 15, at 9:41 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 6th
day of May, 20 15, at 5:23 o'clock P. M.
By: Chi Benge