

**PRIVATE CORRECTIONAL FACILITIES ACT**

**Summary**

This Act would allow any unit of government to contract with the private sector to perform services currently performed by a corrections agency. The Act would require that the state establish minimum standards for contracting units of government and private sector contractors, and make the contracting unit of government responsible for establishing guidelines and ensuring that standards are met by the private contractor.

**Model Legislation**

{Title, enacting clause, etc.}

**Section 1. {Title.}** This Act may be cited as the Private Correctional Facilities Act.

**Section 2. {Definitions.}** As used in this Act:

(A) "American Correctional Association (ACA) standards" means those standards at the time of implementation of this Act, or, if amended, the amended ACA standards, which are approved by the state.

(B) "Contracting government entity" means the state or a local government which has entered into a contract with a contractor pursuant to this Act.

(C) "Contractor" or "private contractor" means a person who has entered into a contract with the state or a local government pursuant to Section 3 of this Act.

(D) "Deadly force" means force that is likely to cause death or serious bodily injury.

(E) "Facility" means a jail, prison, or other incarceration facility constructed or operated pursuant to a contract under Section 3 of this Act.

(F) "Five state elected officials" means the governor, secretary of state, state auditor, state treasurer, and superintendent of public instruction.

(G) "Inmate" means an adult serving a felony sentence in the state penitentiary, the state women's correctional facility, any penitentiary honor farm or camp, or any correctional facility operated pursuant to a contract under Section 3 of this Act.

(H) "Institution" includes the state penitentiary, state penitentiary farms and camps, state women's correctional facilities, state hospitals, and any other state penal institution including a correctional facility operated by a private entity pursuant to Section 3 of this Act.

(I) "Local government" means any city, town, joint powers board, or county in the state.

(J) "Nondeadly force" means force that normally would cause neither death nor serious bodily injury.

(K) "Private-company detention officer" means a private contractor's employee serving as a detention officer at a facility being operated pursuant to a contract under Section 3 of this Act.

(L) "State" means the state acting through the office of the governor.

**Section 3. {Authority to contract.}**

(A) The state or a local government may contract with private entities for the construction, lease (as lesser or lessee), acquisition, improvement, operation, maintenance, purchase, or management of facilities and services as provided in this Act, only with prior approval from the legislature, with the governor acting as the

chief executive, as to the site, number of beds, and classifications of inmates or prisoners to be housed in the facility.

(B) No contract shall be entered into or renewed unless the contracting governmental entity, with the concurrence of the five state elected officials, determines that the contract offers demonstrable benefits to the contracting governmental entity and at least the same quality of services provided by the state or by similar local governments.

(C) After receiving the majority consent of the five state elected officials as to the site, number of beds, and classifications of inmates or prisoners to be housed in the facility, the state or local government may contract with private entities for the construction, lease (as lesser or lessee), acquisition, improvement, operation, maintenance, purchase, or management of facilities, either:

- (1) for the incarceration of its own inmates or prisoners;
- (2) for the incarceration of prisoners or inmates of the state or any other local government;
- (3) for the incarceration of any prisoners or inmates:
  - (a) under the jurisdiction of the United States government or any of its offices, departments, or agencies;
  - (b) otherwise under the control of the United States government or any of its offices, departments, or agencies; or
  - (c) lawfully confined by any jurisdiction within the United States.

(D) Notwithstanding any other provision of law or any rules or regulations adopted pursuant to statutory authority, a negotiated selection process, including requests for proposals from a list of applicants prequalified by the state or the local government, shall be applicable to any contract between the state or a local government and any private entity entered into under the authority of this Act. Standards for prequalification of applicants under this subsection shall be promulgated by the state or local government entity before the commencement of the selection process.

**Section 4. {Incarceration of inmates in privately operated facilities.}** At the direction of the state, in the case of a person sentenced to imprisonment in the state penitentiary or the state women's correctional facility, or of a person sentenced to the state penitentiary and serving a sentence at any penitentiary farm or camp, or at the direction of the local government in the case of a person sentenced to imprisonment in a city or county jail, the person sentenced to imprisonment may be incarcerated in a facility constructed or operated by a private entity pursuant to a contract under this Act.

**Section 5. {Contract term and renewal.}** The initial contract for the operation of a facility or for incarceration of prisoners or inmates therein shall be for a period of not more than seven years with an option to renew every three years thereafter. Contracts for purchase or lease (as lesser or lessee) of a facility shall not exceed a term of 30 years. Any contract for the construction or operation of a facility shall be subject to annual appropriation by the contracting governmental entity.

**Section 6. {Standards of operation.}**

(A) All facilities governed by this Act shall be designed, constructed, and at times maintained and operated in accordance with the American Correctional Association (ACA) standards enforced at the time of contracting. The facility shall meet the percentage of standards required for accreditation by the ACA, except where the contract requires compliance with a higher percentage of non-mandatory standards. The contract may allow the contractor an extension of time in which to meet a lower percentage of non-mandatory standards only when the contract is for the renovation of an existing facility, in which case the

contractor shall have not longer than two years to meet those standards that are applicable to the physical plant.

(B) Facilities governed by this Act shall comply with all federal and state constitutional standards, state and local laws, and all court orders.

**Section 7. {Private company detention officers.}**

(A) No person shall be employed as a private company detention officer unless the person has been trained in the use of force and the use of firearms in accordance with ACA standards 3-4070 through 3-4091, and, at the contractor's expense, has satisfactorily completed the basic training program approved by the state. If the training is provided under contract with the state, the costs of a basic training program shall not be greater than the costs of peace officer training at the state law enforcement academy.

(B) A private company detention officer may use force only while on the grounds of the facility or while transporting inmates. Nondeadly force and deadly force shall be used by a private company detention officer only as provided in this section.

(C) A private company detention officer is authorized to use only such nondeadly force as the circumstances require in the following situations:

- (1) to prevent the commission of a felony or misdemeanor, including escape;
- (2) to defend the officer or others against physical assault;
- (3) to prevent serious damage to property;
- (4) to enforce institutional regulations and orders; and
- (5) to prevent or quell a riot.

(D) A private detention officer who is trained pursuant to the provisions of subsection (A) of this section, shall have a right to carry and use firearms and shall exercise such authority and use deadly force only as a last resort when reasonably necessary to prevent the commission of a violent felony in (cite state code), to prevent the escape of a convicted felon from custody, or to defend the officer or any other person from imminent danger of death or serious bodily injury.

(E) Within three days following an incident involving the use of force against an inmate or another, the employee shall file a written report describing the incident with the administrative staff of the facility and with the contract monitor pursuant to Section 9 of this Act.

(F) A private contractor shall have the same standing, authority, rights and responsibilities as the contracting governmental entity in any agreement, formal or informal, with local law enforcement agencies concerning the latter's obligations in the event of a riot, escape, or other emergency situation.

**Section 8. {Employee training requirements.}** All employees of a facility operated by a private contractor pursuant to this Act shall receive, at a minimum, the same quality and quantity of training as that required for employees of state operated facilities. If any or all of the applicable ACA standards relating to training are more stringent than are governmental standards, training shall be provided in accordance with the more stringent standards. All training expenses shall be the responsibility of the private contractor.

**Section 9. {Monitoring; right to access.}**

(A) The contracting governmental entity, at the contractor's expense, shall employ an individual to be responsible for monitoring all aspects of the private contractor's performance under a contract for the

operation of a facility pursuant to Section 3. The individual employed as contract monitor shall be qualified to perform this function by reason of education, training, and experience as determined by the five state elected officials. At a minimum, the contract monitor shall have completed at least the same training required by this Act for detention officers and shall have served a minimum three years as a detention officer. The monitor, with the approval of the contracting governmental entity, shall appoint staff as necessary to assist in monitoring at the facility, which staff shall be at the contractor's expense and will be solely responsible to the contract monitor. The monitor or his designee shall be provided an on-site work area by the contractor, shall be on-site on a daily basis, and shall have access to all areas of the facility and to inmates and staff at all times. The contractor shall provide any and all data, reports and other materials that the monitor determines are necessary to carry out monitoring responsibilities under this section.

(B) The monitor shall be responsible to and report to the contracting governmental entity at least monthly, and more often as necessary to ensure proper operation of the facility, concerning the contractor's performance.

(C) Members of the public shall have the same right of access to facilities operated by a private contractor pursuant to this Act as they do to state-operated facilities.

**Section 10. {Liability and sovereign immunity.}**

(A) The contractor shall assume all liability arising under a contract entered into pursuant to Section 3.

(B) Neither the sovereign immunity of the state nor the sovereign immunity applicable to any local government shall extend to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

(C) Nothing in this Act shall be construed to accord to any inmate in any facility or to a member of the public third party beneficiary status. -

**Section 11. {Insurance.}**

(A) The contractor shall provide an adequate plan of insurance, specifically including insurance for civil rights claims, as determined by an independent risk management or actuarial firm with demonstrated experience in public liability for state governments. In determining the adequacy of the plan, the firm shall determine whether the insurance is adequate to:

- (1) fully indemnify the contracting governmental entity and the state from actions by third parties against the contractor, the contracting governmental entity, or the state as a result of the contract;
- (2) assure the contractor's ability to fulfill its contract with the contracting governmental entity in all respects and to assure that the contractor is not limited in this ability due to financial liability that results from judgements;
- (3) protect the local government and the state against claims arising as the result of any occurrence during the term of the contract on an occurrence basis; and
- (4) satisfy other requirements specified by the independent risk management or actuarial firm.

**Section 12. {Termination of contract and resumption of control.}**

(A) The contracting government entity may, upon demonstration that a breach of contract has occurred and that after the passage of a reasonable period of time the breach has not been cured, without penalty to the contracting government entity, cancel a contract for the private operation of a facility at any time on giving a six-month written notice.

(B) Notwithstanding any other provision in this Act to the contrary, prior to entering into a contract for the private operation of a facility, a plan shall be developed by the contractor and approved by the contracting governmental entity establishing the method by which the state or the local government will resume control of the facility or the inmates incarcerated in a leased facility upon contract termination.

(C) Any contract entered into under this Act for the private operation of a facility shall provide that upon declaration by the state or the local government of any material breach of contract on the part of the private contractor, the state or local government may, if necessary, assume immediate temporary control of the operation of the facility pending transfer of inmates to another facility.

**Section 13. {Restrictions.}**

(A) No contract for private correctional services under this Act shall authorize, allow, or imply a delegation to a private contractor of authority or responsibility to:

- (1) classify inmates or place inmates in less restrictive custody or more restrictive custody;
- (2) transfer an inmate, although the contractor may recommend in writing that the state or the local government transfer a particular inmate;
- (3) formulate rules of inmate behavior, violations of which may subject inmates to sanctions, except to the extent that the rules are accepted or modified by the state or the local government;
- (4) take any disciplinary action against an inmate except as authorized by contracting government agency;
- (5) grant, deny, or revoke good time credits;
- (6) recommend that the parole board either deny or grant parole, provided the contractor may submit written reports that have been prepared in the ordinary course of business unless otherwise requested by the parole board;
- (7) develop procedures for calculating good time credits or inmate release and parole eligibility dates;
- (8) determine inmate eligibility for furlough, compassionate leave, participation in community corrections, or work release;
- (9) require an inmate to work, except as directed or authorized by the state or the local government. In connection with work required by the state or the local government, the private contractor shall not have authority to:
  - (a) approve the type of work that inmates may perform; or
  - (b) award or withhold wages or good time credits based on the manner in which individual inmates perform such work.

**Section 14. {Authority of state to contract with local governments.}** The state may contract with any local government or private contractor that is responsible for the maintenance or operation of a facility to house in the facility inmates or prisoners of the state penitentiary or any other facility operated under the control of the state, and any local government or private contractor may accept and house such inmates or prisoners in the facility pursuant to any contract with the state. The contract shall specify such matters as are deemed relevant by the state, the local government, or the private contractor and shall be approved as to form and content by the state's attorney general.

**Section 15. {Rulemaking authority.}** The state or the local government shall promulgate reasonable rules and regulations necessary to carry out this Act.

**Section 16. {Good time allowance.}** The governor, after consultation with the board and the wardens of the state penitentiary, shall adopt rules and regulations to establish a system of good time and special good time allowances for inmates of the state penitentiary, the women's correctional facility, any penitentiary honor farm or camp, or any correctional facility operated pursuant to Section 4 of this Act. The rules may provide either for good time to be deducted from the maximum sentence or for good time to be deducted from the minimum sentence imposed by the sentencing court, or both.

**Section 17. {Inmates.}**

(A) For the purposes of this Act:

(1) a male inmate incarcerated in a correctional facility operated by a private entity pursuant to Section 4 of this Act shall be deemed to be an inmate of the state penitentiary;

(2) a female inmate incarcerated in a correctional facility operated by a private entity pursuant to Section 4 of this Act shall be deemed to be an inmate of the state women's correctional facility.

**Section 18. {Tax privileges and exemptions.}** Any correctional facility operating pursuant to Section 3 of this Act shall come under the same tax classifications as the state penitentiary, the state women's correctional facility, or any penitentiary farms or camps.

**Section 19. {Severability clause.}**

**Section 20. {Repealer clause.}**

**Section 21. {Effective date.}**