
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1153 Session of
1991

INTRODUCED BY PICCOLA, MAIALE, GERLACH, HECKLER, CLARK, HAGARTY,
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GODSHALL, GEIST, KENNEY, NAHILL, OLASZ, FARGO, J. TAYLOR,
SAURMAN, MERRY, FOX, BUNT AND LEH, APRIL 16, 1991

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 16, 1991

AN ACT

1 Regulating private correctional facilities; providing for
2 contracts with, licensing of and employee status for private
3 correctional facilities; and imposing powers and duties on
4 the Department of Corrections.

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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 CHAPTER 1
16 PRELIMINARY PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the Private
19 Correctional Facilities Act.

20 Section 102. Declaration of policy.

21 The General Assembly finds and declares as follows:

22 (1) The incarceration of prisoners is primarily a
23 government function.

24 (2) The private sector, which has demonstrated an
25 ability to provide government services in an efficient and
26 innovative manner, may serve a valuable role in helping the
27 government operate its corrections system.

28 (3) The private sector can best serve the corrections
29 system of the Commonwealth by operating minimum security
30 private correctional facilities for the incarceration of low-

1 risk offenders sentenced to a term of imprisonment in a
2 county prison.

3 Section 103. Definitions.

4 The following words and phrases when used in this act shall
5 have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Contract monitor." An employee of the county who shall be
8 assigned to the private correctional facility or facility where
9 private security services are provided.

10 "Department." The Department of Corrections of the
11 Commonwealth.

12 "Private contractor." A person who owns or operates a
13 private correctional facility.

14 "Private contractor for security services." A private
15 contractor who provides security services to a correctional
16 facility owned by a county.

17 "Private correctional facility." An adult correctional
18 facility for the incarceration of low-risk offenders, owned or
19 operated by a private contractor.

20 "Security services." The provision of corrections officers.

21 CHAPTER 3

22 PRIVATE CORRECTIONAL FACILITIES AND

23 SECURITY SERVICES

24 Section 301. Facilities and services.

25 (a) Contracts by the counties.--A county may enter into
26 contracts with private contractors in accordance with this act.

27 (b) Out-of-State contracts.--No private correctional
28 facility licensed under this act may incarcerate inmates from
29 states other than this Commonwealth.

30 Section 302. Licensure.

1 (a) Requirement.--Private contractors operating within this
2 Commonwealth must hold a valid license issued by the department.

3 (b) Licensure criteria.--The department shall have the
4 authority to establish criteria for licensure under this
5 section.

6 (c) Term and content.--Licenses issued by the department
7 shall be on a form prescribed by the department, shall not be
8 transferable, shall be issued only for the private correctional
9 facilities or contracted-for private security services named in
10 the application and shall specify the maximum number of
11 individuals who may be housed in the facility at one time. The
12 license shall be posted in a conspicuous place on the licensee's
13 premises.

14 (d) Fees.--Licenses and inspection fees shall be established
15 by the department.
16 Section 303. Contracts.

17 (a) Provisions enumerated.--Contracts executed under this
18 act shall include the following terms:

19 (1) The posting of an adequate performance bond by the
20 private contractor.

21 (2) Proof of adequate insurance.

22 (3) A requirement that the private contractor comply
23 with regulations of the department and with this act.

24 (4) A requirement of contract approval by the county
25 solicitor.

26 (5) A plan developed by the private contractor detailing
27 all aspects of operations in the private correctional
28 facility or in the provision of security services.

29 (6) A requirement of annual contract review by the
30 county solicitor.

1 (7) Proof that the private contractor holds a license
2 issued by the department.

3 (8) A requirement of access by the county to all records
4 of the private contractor.

5 (9) A requirement that the county provide a contract
6 monitor at the private correctional facility or facility
7 where private security services are provided.

8 (b) Approval by county solicitor.--Contracts must be
9 approved by the county solicitor. Contract approval shall be
10 conditioned upon all of the following:

11 (1) The private contractor's assumption of liability
12 caused by or arising out of all aspects of the ownership or
13 operation of the private correctional facility or the
14 provision of security services, including, but not limited
15 to, escape or other emergency situations, legal fees and
16 damage awards, involving the private contractor and the
17 county.

18 (2) Liability insurance covering the private contractor
19 and its officers, employees and agents in an amount
20 sufficient to cover liability arising out of the ownership or
21 operation of a private correctional facility or the provision
22 of security services. A copy of the proposed insurance policy
23 for the first year shall be submitted for approval with the
24 contract.

25 (c) Disapproval by county solicitor.--Disapproval of a
26 contract may be based on any reasonable grounds, including, but
27 not limited to, the following:

28 (1) Inadequacy or inappropriateness of the proposed plan
29 of operation.

30 (2) Failure to meet department regulations.

1 (3) Unsuitability of the proposed private contractor or
2 its employees.

3 (4) Absence of required or desired contract provisions.

4 (5) Unavailability of adequate funds.

5 (6) Lack of proof of appropriate insurance.

6 (7) Absence of licensure by the department.

7 (d) Termination.--Contracts executed under this act shall
8 provide for termination for cause by the Commonwealth or a
9 county upon 90 days' notice to the private contractor.

10 Termination shall be allowed for reasons which include, but are
11 not limited to, the following:

12 (1) Failure to be licensed or to comply with regulations
13 of the department.

14 (2) Failure to meet other contract provisions.

15 (3) Failure to meet the provisions of this act.

16 Section 304. Duties of contract monitor.

17 The contract monitor shall have the duty to:

18 (1) Monitor compliance of the private contractor with
19 terms of the contract.

20 (2) Supervise the administration of misconducts,
21 discipline and earned time within the correctional facility.

22 (3) Coordinate prerelease and parole release functions.

23 Section 305. Maximum capacity of facility.

24 A private correctional facility may not exceed a capacity of
25 250 inmates.

26 Section 306. Police power.

27 Security personnel employed by private contractors shall be
28 deemed peace officers under section 2.1 of the act of May 16,
29 1921 (P.L.579, No.262), referred to as the County Prison Board
30 Law.

1 Section 307. Labor disputes.

2 (a) Notice.--

3 (1) A private contractor shall notify the county and the
4 department 60 days prior to the termination of a labor
5 contract.

6 (2) A private contractor shall notify the county and the
7 department immediately upon learning of a potential or
8 impending strike.

9 (b) Assistance.--In the event of a strike, the department
10 shall assist a county to assume operation of the private
11 correctional facility and shall use Commonwealth emergency
12 resources necessary to operate the facility until the strike has
13 ended. Costs incurred by the Commonwealth, the department or a
14 county shall be reimbursed by the private contractor.

15 Section 308. Emergencies.

16 (a) Notification of police.--Upon the occurrence of an
17 escape of an inmate or upon a violent disturbance within a
18 private correctional facility or a facility using private
19 security services, the facility shall immediately notify the
20 local police within the county and the Pennsylvania State
21 Police.

22 (b) Authority of the department.--Upon the occurrence of an
23 emergency in a private correctional facility or a facility using
24 private security services, the department shall have the
25 authority to enter and control the facility until the emergency
26 ends.

27 (c) Costs.--Costs incurred by the Commonwealth, the
28 department or a county shall be reimbursed by the private
29 contractor.

30 Section 309. Inspections.

1 (a) Duty to inspect.--The department shall annually inspect
2 private correctional facilities and facilities using private
3 security services to insure compliance with its regulations. The
4 department shall submit a written report on the findings of its
5 inspection to the private contractor within 60 days of the
6 inspection. The private contractor shall be given a reasonable
7 period of time within which to correct deficiencies or to come
8 into compliance with the applicable regulations. If the private
9 contractor does not come into compliance with the applicable
10 regulations, the department may revoke its license after a
11 hearing under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
12 procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating
13 to judicial review of Commonwealth agency action).

14 (b) Authority to enter.--Personnel of the department or
15 other administrative agencies authorized by the Commissioner of
16 Corrections to inspect correctional facilities may enter a
17 private correctional facility unannounced at any time to
18 investigate any facet of the operation of a private correctional
19 facility.

20 Section 310. Regulations.

21 (a) Contents.--The department shall, within six months of
22 the effective date of this section, promulgate regulations for
23 the provision and operation of private correctional facilities
24 and for the provision of private security services. The
25 regulations shall include, but not be limited to:

26 (1) Security requirements including staffing levels and
27 emergency plans.

28 (2) Minimum standards for the care of inmates,
29 procedures for misconduct adjudication and disposition,
30 visitation policies, the provision of medical and mental

1 health services, treatment and education programs.

2 (3) A program of training and certification for
3 corrections officers employed by private contractors. Cost of
4 training shall be paid by the private contractor.

5 (b) Training.--A program of training and certification for
6 corrections officers employed by private contractors. Cost of
7 training shall be paid by the private contractor.

8 Section 311. Violations of contract.

9 (a) Notice.--If the department learns of a violation of a
10 contract by a private contractor, it shall immediately give
11 written notice to the Commonwealth or county, the private
12 contractor and the Attorney General. Violation of the contract
13 shall be grounds for termination of the contract under section
14 303(d).

15 (b) Compliance.--Notice to the private contractor shall
16 require action to bring the facility into compliance with the
17 relevant contractual provision in the time period determined by
18 the department.

19 CHAPTER 5

20 ENFORCEMENT

21 Section 501. License revocation.

22 (a) Practice and procedure.--The department shall, by
23 regulation, establish procedures for revocation of a license
24 under this act, to include provisions for notice and hearing
25 under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
26 procedure of Commonwealth agencies).

27 (b) Grounds.--Grounds for revocation include, but are not
28 limited to:

29 (1) Violation of this act or regulations of the
30 department.

- (2) Fraud or misrepresentation.
- (3) Failure to maintain adequate insurance.
- (4) Gross incompetence or negligence.
- (5) Moral turpitude.
- (6) Violation of other laws of the Commonwealth.
- (7) Violation of the civil rights of an individual inmate.
- (8) Failure to comply with official inspection reports of the department under section 1101(a).

Section 502. Criminal penalty.

A private contractor who operates a private correctional facility or provides private security services in this Commonwealth without a license under section 302 commits a misdemeanor of the first degree and shall, upon conviction, be sentenced to pay a fine of \$10,000 and costs of prosecution or, if the private contractor fails to pay the fine, to imprisonment for not more than one year. Each day of operation of a private correctional facility or of provision of private security services without a license shall constitute a separate offense. If the private contractor is a partnership, the partners are liable under this section. If the private contractor is a corporation or unincorporated association, the chief executive officer is liable under this section.

CHAPTER 11

MISCELLANEOUS PROVISIONS

Section 1101. Annual reports.

(a) Facilities and contractors.--A private contractor shall submit an annual report to the Commonwealth or county with which it has a contract.

(b) Department.--The department shall submit to the General

1 Assembly an annual report on the status of private contractors
2 in this Commonwealth, including problems related to private
3 contractors.

4 Section 1102. Other statutes.

5 Private correctional facilities are deemed to be correctional
6 institutions for purposes of 18 Pa.C.S. (relating to crimes and
7 offenses) and 42 Pa.C.S. (relating to judiciary and judicial
8 procedure) and are deemed to be prisons for purposes of the act
9 of July 11, 1923 (P.L.1044, No.425), referred to as the Prisoner
10 Transfer Law. Other statutes relating to penitentiaries,
11 prisons, workhouses, houses of corrections and institutions for
12 prisoners apply to private correctional facilities to the extent
13 necessary to carry out the intent and provisions of this act.

14 Section 1103. Effective date.

15 This act shall take effect as follows:

16 (1) Section 310 of this act shall take effect
17 immediately.

18 (2) The remainder of this act shall take effect in one
19 year.