



Dennis M. Papp

Bill Analysis
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Sen. Johnson

BILL SUMMARY

- In relation to correctional facilities in Ohio that house out-of-state prisoners and are operated by a private contractor, modifies the provisions that must be in the contract between the private contractor and the involved local public entity to: require the private contractor to immediately report by telephone to specified law enforcement officials all escapes from the facility; require that Department of Rehabilitation and Correction (DRC) personnel be allowed access to the facility at any time to inspect its internal and perimeter security; require the security classification schedule used for prisoners housed in the facility to provide for the consideration of all relevant information, including pending criminal charges; require that the facility will not be used to house any prisoner who has a record of institutional violence involving the use of a deadly weapon *or* a pattern of committing acts of an assaultive nature against employees of, or visitors to, the facility; and require that no prisoner inside or on the premises of the facility be permitted to wear "street clothes."
- Provides that any private contractor that operates a correctional facility in Ohio for housing out-of-state prisoners pursuant to a contract entered into with a local public entity prior to March 17, 1998, must enter into a contract with the local public entity, no later than 30 days after the bill's effective date, that comports to the existing requirements and criteria for such contracts and to the provisions of the bill described in the preceding paragraph.
- In relation to correctional facilities in Ohio that house Ohio prisoners and are operated by a contractor, modifies the provisions that must be in the contract between the contractor and the involved public entity

to: specify that, if the contractor is not accredited by the American Correctional Association, the contractor must continue complying with the DRC-adopted criteria and specifications that it satisfied in order to become the contractor and that remain applicable; require the contractor to immediately report to specified law enforcement officials all escapes from the facility; require that DRC personnel be allowed access to the facility at any time to inspect its internal and perimeter security; and require that no prisoner inside or on the premises of the facility be permitted to wear "street clothes."

- In relation to correctional facilities in Ohio that house Ohio prisoners and are operated by a contractor, specifies that the involved public entity, in accordance with the security classification schedule that it uses for inmates that it houses, must classify all inmates to be housed in the facility.
- In relation to correctional facilities that are operated by the state, or by a county, a municipal corporation, or a combination of counties and municipal corporations, requires correctional officials to immediately report to specified law enforcement officials all escapes from the facility, requires the security classification schedule used for prisoners housed in the facility to provide for the consideration of all relevant information, including pending criminal charges, and requires that no prisoner inside or on the premises of the facility be permitted to wear "street clothes."
- Declares an emergency.

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CONTENT AND OPERATION

Regulation of privately operated prisons that house out-of-state prisoners

Existing law

Generally. Existing law, enacted in Am. Sub. H.B. 293 of the 122nd General Assembly, effective March 17, 1998, limits the operation of correctional facilities that house out-of-state prisoners in Ohio and sets forth comprehensive criteria for the establishment and operation in Ohio of privately operated correctional facilities that house out-of-state prisoners. 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" in Ohio are a "local public entity" that operates a correctional facility in accordance with specified criteria (those criteria generally are not discussed in this analysis) or a "private contractor" that operates a correctional facility in accordance with specified criteria under a contract with a local public entity, as described below. Additionally, subject to the provisions described below in "**Preexisting contracts**," a private entity may operate a correctional facility in Ohio for the housing of out-of-state prisoners only if the private entity is a private contractor that 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**." (See "**Definitions**" in COMMENT 1 for definitions of terms in quotation marks.) (R.C. 9.07(B).)

Contract between local public entity and private contractor. Subject to the provisions described below in "**Preexisting contracts**," on and after March 17, 1998, 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:

(1) 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 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 (R.C. 9.07(D)(4));

(2) 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 (R.C. 9.07(D)(6));

(3) A requirement that the private contractor develop a security classification schedule for prisoners, classify each prisoner in accordance with the schedule, and house all prisoners in the facility in accordance with their classification (R.C. 9.07(D)(9));

(4) A requirement that the private contractor not accept for housing, and 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**" in **COMMENT 1**) and a pattern of committing acts of an assaultive nature against employees of, or visitors to, the place of confinement or has a record of escape or attempted escape from secure custody (R.C. 9.07(D)(10)).

(5) Provisions that pertain to: (a) the private contractor's obtaining and maintaining American Correctional Association accreditation for the facility, compliance with all applicable laws and regulations, and sending of inspection reports and reports of unusual incidents occurring at the facility to specified state and local officials, (b) required staffing levels at the facility, (c) the private contractor's provision of insurance, indemnification of government entities and officials, and repayment of the cost of defending a government entity or official, its agreement with DRC regarding law enforcement agency coordination in

response to any riot, rebellion, escape, insurrection, or other emergency at the facility, and its cooperation with, and provision of access to, the Correctional Institution Inspection Committee in the performance of the Committee's duties under R.C. 103.73, (d) the private contractor's granting of access to peace officers from agencies with jurisdiction over the facility's location for the investigation of criminal offenses or delinquent acts at the facility, (e) criminal records checks of prospective employees at the facility, and a prohibition against employing a person with a record of prior malfeasance, (f) the place and manner of confinement of a prisoner who is convicted of committing a crime while in the facility, (g) the private contractor's development of a conversion plan to be followed if the facility is closed or ceases to exist, (h) a schedule of fines that the local public entity must impose upon the private contractor for its failure to perform its contractual duties, in addition to any other rights the entity has under the contract, and (i) the private contractor's adoption and use of DRC's drug testing and treatment program (see **COMMENT 2** for a more detailed summary of these provisions) (R.C. 9.07(D)(1) to (3), (5), (7), (8), and (11) to (18)).

Other provisions

COMMENT 1 reviews other provisions of existing law, none of which are changed by the bill, that pertain to the private management and operation of a correctional facility in Ohio to house out-of-state prisoners.

Preexisting contracts. Except as described in the next sentence, all of the above-described provisions and all of the provisions described in **COMMENT 1** apply in relation to any correctional facility operated by a private contractor in Ohio to house out-of-state prisoners, regardless of whether the facility is operated pursuant to a contract entered into prior to, on, or after March 17, 1998. However, if the private contractor operates the correctional facility under a contract entered into with a local public entity prior to March 17, 1998, no later than 180 days after March 17, 1998, the private contractor must enter into a new contract with the local public entity that comports to the requirements and criteria described above in "**Contract between local public entity and private contractor.**" Additionally, the existing provisions requiring a public hearing before a private contractor and a local public entity enter into such a contract (see "**Public hearing**" in **COMMENT 1**) apply to a private contractor that is subject to the provision described in the preceding sentence. (R.C. 9.07(C)(3) and (I).)

Operation of the bill

Contract between local public entity and private contractor. The bill modifies the provisions discussed above in paragraphs (1) through (4) under "**Contract between local public entity and private contractor**" and that must be

included in a contract that a local public entity enters into, on or after March 17, 1998, with a private contractor for the management and operation of a correctional facility in Ohio to house out-of-state prisoners, and enacts a new provision that must be so included, as follows (R.C. 9.07(D)):

(1) It modifies the provision described above in paragraph (1) that pertains to the reporting of escapes from, and disturbances at, the facility. Under the bill, the contract must include a requirement that the private contractor report offenses and delinquent acts as under existing law, report to DRC all disturbances at the facility, *and immediately report all escapes from the facility by telephone to DRC, to all local law enforcement agencies with jurisdiction over the place at which the facility is located, and to the State Highway Patrol. A failure to comply with this requirement regarding an escape is declared to be a violation of existing R.C. 2921.22 (see COMMENT 3).* (R.C. 9.07(D)(4).)

(2) It modifies the provision described above in paragraph (2) that pertains to security at the facility. Under the bill, in addition to the existing requirement related to providing internal and perimeter security, *the contract also must include a requirement that DRC's Director, or one or more DRC staff members designated by the Director, be allowed access to the facility at any time to inspect the internal and perimeter security of the facility.* (R.C. 9.07(D)(6).)

(3) It modifies the provision described above in paragraph (3) that pertains to the security classification of prisoners at the facility. The bill adds a requirement that *the contract include a requirement that the security classification schedule developed under the existing requirement must require the consideration of all information relevant to the classification, including, but not limited to, all pending criminal charges against the prisoner being classified, the offense for which the prisoner will be confined in the facility, and all prior criminal convictions of or pleas of guilty by the prisoner.* (R.C. 9.07(D)(9).)

(4) It modifies the provision described above in paragraph (4) that pertains to a prohibition against accepting certain categories of prisoners for housing in the facility. The bill changes the language of the provision so that, instead of prohibiting the housing of a prisoner who, while confined in an out-of-state jurisdiction, has a record of institutional violence involving the use of a deadly weapon *and* a pattern of committing assaultive acts against employees of or visitors to the facility, it prohibits the housing of a prisoner who, while so confined, has a record of institutional violence involving the use of a deadly weapon *or* a pattern of committing such assaultive acts. The bill does not change the requirement that the contract include a requirement that the private contractor not accept for housing, and not house, any out-of-state prisoner: (a) for whom the private entity has not obtained from the appropriate out-of-state jurisdiction a copy

of the prisoner's institutional record while previously confined in that out-of-state jurisdiction or a statement that the prisoner previously has not been so confined, and a copy of all medical records pertaining to that prisoner that are in the possession of the out-of-state jurisdiction or (b) while confined in any out-of-state jurisdiction, has a record of escape or attempted escape from secure custody. (R.C. 9.07(D)(10).)

(5) It enacts a new provision that specifies that the contract must include *a requirement that the private contractor provide clothing for all out-of-state prisoners housed in the facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as a prisoner, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-prisoners, that the private contractor require all out-of-state prisoners housed in the facility to wear the clothing so provided, and that the private contractor not permit any out-of-state prisoner, while inside or on the premises of the facility, to wear any clothing of a nature that does not conspicuously identify its wearer as a prisoner and that normally is worn outside the facility by non-prisoners* (R.C. 9.07(D)(19)).

The bill does not change any of the other provisions that are required to be in the contract and that are described above in "**Contract between local public entity and private contractor**" and in **COMMENT 2**. (R.C. 9.07(D)(1) to (3), (5), (7), (8), and (11) to (18).)

Preexisting contracts. All of the above-described provisions of the bill will apply in relation to any correctional facility operated by a private contractor in Ohio to house out-of-state prisoners, regardless of when the contract under which the facility is operated was entered into. But the bill specifies that if the contract for the operation of the facility was entered into prior to March 17, 1998, *no later than 30 days after the bill's effective date* (instead of no later than 180 days after March 17, 1998, as under existing law), the private contractor must enter into a contract with the local public entity that comports to all of the bill's requirements and criteria and all of the existing requirements and criteria not changed by the bill and, in accordance with the existing provisions requiring a public hearing before a private contractor and a local public entity enter into such a contract, must conduct a public hearing before entering into that contract. (R.C. 9.07(C)(3) and (I).)

Regulation of privately operated, government-owned correctional facilities that house Ohio prisoners

Existing law

Generally. Existing law requires DRC to contract for the private operation and management of the initial intensive program prison it is required to establish pursuant to R.C. 5120.033 for fourth degree felony state OMVI offenders, authorizes DRC to contract for the private operation and management of any other "facility," authorizes counties and municipal corporations to contract for the private operation and management of specified types of local correctional facilities, and establishes criteria and procedures that apply regarding any such operation and management contract. An operation and management contract of this nature must be for an initial term of not more than two years, with an option to renew for additional periods of two years.

Any person or entity that applies to operate and manage a facility for DRC or a political subdivision under this provision must satisfy one or more of the following: (1) it must be accredited by the American Correctional Association (ACA) and, at the time of the application, must operate and manage one or more facilities accredited by the ACA, or (2) it must satisfy all of the minimum criteria and specifications that a person or entity that does not satisfy clause (1) of this sentence must satisfy in order to apply to operate and manage the initial intensive program prison for fourth degree felony state OMVI offender, as adopted by DRC, by rule, not later than December 31, 1998. Generally, before a "public entity" enters into a contract under these provisions, the "contractor" must convincingly demonstrate to the public entity that it can operate the facility with the inmate capacity required by the public entity and provide the required services and realize at least a 5% savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract. *No out-of-state prisoners may be housed in any facility that is the subject of a contract entered into under these provisions.* (See "**Definitions**" in **COMMENT 4** for definitions of terms in quotes.) (R.C. 9.06(A).)

Contract between public entity and contractor--mandatory terms. Any contract entered into under the above-described provisions for the private operation of a correctional facility for Ohio prisoners must include all of the following provisions (R.C. 9.06(B)):

(1) A requirement that the contractor retain the contractor's accreditation from the ACA throughout the contract term (R.C. 9.06(B)(1));

(2) A requirement that the contractor 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 (R.C. 9.06(B)(4));

(3) A requirement that the contractor provide internal and perimeter security as agreed upon in the contract (R.C. 9.06(B)(10));

(4) Provisions pertaining to: (a) the contractor's doing all of the following: obtaining ACA accreditation of the facility; complying with all applicable DRC rules and all laws and regulations and sending inspection reports to specified state and local officials; sending reports of unusual incidents at the facility to specified state or local officials; controlling inmates' personal funds; preparing and distributing specified fiscal reports; and appointing and cooperating with a contract monitor, (b) if the facility is a state correctional facility, the contractor's provision of access to the facility to DRC employees and imposition of inmate discipline in accordance with DRC rules, (c) the provision of staffing, programs, and operational needs at the facility, (d) if the contract is with a "local public entity" (see "Definitions" in COMMENT 4), the provision of services and programs in accordance with state law, (e) the non-extension to the contractor of any governmental immunity, (f) the contractor's maintenance of records relative to the facility, (g) authorization for the public entity to impose a fine on the contractor for its failure to perform its contractual duties or to cancel the contract, (h) the provision of services and the production of goods at the facility, (i) DRC's establishment of prison industries at the facility, if it is operated for DRC, and (j) if the facility is an intensive program prison for felony state OMVI offenders, the facility's compliance with criteria applicable to facilities of that nature (R.C. 9.06(B)(2), (3), (5) to (9), and (11) to (19)).

Other provisions

COMMENT 4 reviews other provisions of existing law, none of which are changed by the bill, that pertain to the private operation of a government-owned correctional facility for Ohio prisoners.

Operation of the bill

Contract between public entity and contractor--mandatory terms. The bill modifies some of the provisions discussed above under "Contract between public entity and contractor--mandatory terms" and that must be included in a contract that a public entity enters into with a contractor for the management and operation of a correctional facility in Ohio to house Ohio prisoners, and enacts a new provision that must be so included, as follows:

(1) It modifies the provision described above in paragraph (1) that pertains to continued ACA accreditation to recognize that such accreditation is not always necessary to apply to operate and manage a facility. Under the bill, the mandatory provision specifies that a contractor must retain the contractor's ACA accreditation throughout the contract term *or, if the contractor applied pursuant to the existing alternative provision (i.e., complying with DRC's criteria and specifications), it must continue applying with the criteria and specifications adopted by DRC as they are applicable.* (R.C. 9.06(B)(1).)

(2) It modifies the provision described above in paragraph (2) that pertains to the reporting of crimes at the facility. Under the bill, in addition to including a requirement as under existing law that the contractor report for investigation all crimes to the public entity, all local law enforcement agencies with jurisdiction, and, for a state correctional institution, the State Highway Patrol, *the contract must include a requirement that the contractor immediately report all escapes from the facility by telephone to all local law enforcement agencies with jurisdiction over the place at which the facility is located, to the State Highway Patrol, and, if the institution is a state correctional institution, to DRC. A failure to comply with this requirement regarding an escape is declared to be a violation of existing R.C. 2921.22 (see COMMENT 3).* (R.C. 9.06(B)(4).)

(3) It modifies the provision described above in paragraph (3) that pertains to security for the facility. Under the bill, in addition to including a requirement that the contractor provide internal and perimeter security as agreed upon in the contract, *the contract must include a requirement that DRC's Director, or one or more DRC staff members designated by the Director, be allowed access to the facility at any time to inspect its internal and perimeter security.* (R.C. 9.06(B)(10).)

(4) It enacts a new provision that specifies that the contract must include *a requirement that the contractor provide clothing for all inmates housed in the facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as an inmate, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-inmates, that the contractor require all inmates housed in the facility to wear the clothing so provided, and that the contractor not permit any inmate, while inside or on the premises of the facility, to wear any clothing of a nature that does not conspicuously identify its wearer as an inmate and that normally is worn outside the facility by non-inmates* (R.C. 9.06(B)(20)).

(5) It does not modify any of the provisions described above in paragraph (4) (R.C. 9.06(B)(2), (3), (5) to (9), and (11) to (19)).

Classification of inmates to be housed in a facility pursuant to a contract between a public entity and a contractor. Related to the existing specification that a contract for the operation of a correctional facility to house Ohio prisoners cannot require, authorize, or imply a delegation of a public entity's authority or responsibility to classify an inmate or place an inmate in a more or less restrictive custody than ordered by the public entity (see **COMMENT 4**), the bill specifies that, if a public entity enters into such a contract, the appropriate officials of the public entity, in accordance with the security classification schedule that is used for inmates housed by the public entity, must classify all inmates to be housed in the facility operated by a contractor under the contract. (R.C. 9.06(C)(5) and (H)(2).)

Regulation of publicly operated correctional facilities

Notification of escape from facility

Existing law. Under existing law, if a person who was convicted of a felony offense of violence or was indicted or otherwise charged with a felony offense of violence escapes from a county or municipal jail or workhouse, escapes from a DRC correctional institution, or otherwise escapes from the custody of a sheriff, the custody of a municipal corporation, or the custody of DRC, the sheriff, the municipal police chief or other chief law enforcement officer, or DRC (as applicable), immediately after the escape must cause notice of the escape to be published in a newspaper of the appropriate county or municipal corporation and must give notice of the escape by telephone and in writing to the prosecuting attorney. Upon the apprehension of the escaped person, the sheriff, the municipal police chief or other chief law enforcement officer, or DRC must give notice of the apprehension by telephone and in writing to the appropriate prosecuting attorney. (R.C. 341.011, 753.19, and 5120.14.)

Operation of the bill. The bill enacts new escape-notification provisions regarding any prisoner in any state or local correctional institution. It specifies that, if a person who was convicted of *any offense* escapes from a county or municipal jail or workhouse, escapes from a DRC correctional institution, or otherwise escapes from the custody of a sheriff, the custody of a municipal corporation, or the custody of DRC, the sheriff, the municipal police chief or other chief law enforcement officer, or DRC (as applicable), immediately after the escape must report the escape by telephone to all local law enforcement agencies with jurisdiction over the place at which the jail, workhouse, or institution is located or from which the escape otherwise occurred, to the State Highway Patrol, and, if the person who escapes is a prisoner under the custody of DRC who is temporarily in a jail or workhouse, to DRC. A failure to comply with this requirement is declared to be a violation of existing R.C. 2921.22 (see

COMMENT 3). Upon the apprehension of the escaped person, the sheriff, the municipal police chief or other chief law enforcement officer, or DRC must give notice of the apprehension by telephone and in writing to the persons notified of the escape. (R.C. 341.011(B) and (C), 753.19(B) and (C), and 5120.14(B) and (C).)

Security classification of prisoners

The bill enacts provisions regarding the security classification of prisoners housed in state or local correctional facilities. It requires DRC to develop a security classification schedule for prisoners housed in county or municipal jails or workhouses, minimum security jails, joint city and county workhouses, municipal-county correctional centers, multicounty-municipal correctional centers, municipal-county jails or workhouses, or multicounty-municipal jails or workhouses and to distribute copies of the schedule so developed to each such facility in the state. The schedule so developed must require the consideration of all information relevant to the classification, including, but not limited to, all criminal charges pending against the prisoner being classified, the offense for which the prisoner will be confined in the facility, and all prior convictions of or pleas of guilty by the prisoner. Each of the specified types of local correctional facilities must use the schedule in classifying all prisoners that it houses in any of the specified types of facilities. (R.C. 341.14(C)(2), 753.31(C)(2), and 5120.11(B).)

The bill provides that the security classification schedule that DRC uses in its classification of inmates housed in a state correctional institution must require the consideration of all information relevant to the classification, including, but not limited to, all criminal charges pending against the prisoner being classified, the offense for which the prisoner will be confined in the institution, and all prior convictions of or pleas of guilty by the prisoner (R.C. 5120.11(A) and 5145.30(C)(2)).

Clothing of prisoners

The bill enacts provisions governing the clothing of prisoners housed in state or local correctional facilities. It specifies that, for each county or municipal jail or workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, multicounty-municipal jail or workhouse, or DRC correctional institution, the officer or employee in charge of the facility, in relation to a local facility, or DRC, in relation to a DRC institution, must provide clothing for all prisoners housed in the facility or institution that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as a

prisoner, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility or institution by non-prisoners, must require all prisoners housed in the facility or institution to wear the clothing so provided, and must not permit any prisoner, while inside or on the premises of the facility or institution, to wear any clothing of a nature that does not conspicuously identify its wearer as a prisoner and that normally is worn outside the facility or institution by non-prisoners. (R.C. 341.41(C)(1), 753.31(C)(1), and 5145.30(C)(1).)

COMMENT

1. **Other provisions regarding privately operated facilities for out-of-state prisoners.** Existing law also contains the following provisions, none of which are changed by the bill, that pertain to the private management and operation of a correctional facility in Ohio to house out-of-state prisoners (R.C. 9.07 and 103.73):

Public hearing. If a local public entity and a private contractor intend to enter into a contract for the private contractor's management and operation of a correctional facility in Ohio to house out-of-state prisoners, prior to entering into the contract, the entity and private contractor must conduct a public hearing. In addition, prior to entering into the contract, the governing authority of the local public entity in which the facility will be located must authorize the location and operation of the facility. The hearing must be conducted locally, after prior notice is given in a specified manner by publication. This provision applies to a private contractor that, prior to March 17, 1998, had a contract to operate a correctional facility in Ohio for the housing of out-of-state prisoners and that is required within a specified period of time after March 17, 1998, to enter into a contract with a local public entity (see "**Preexisting contract**" in body of analysis). (R.C. 9.07(C)(3).)

Imposition and use of fines. If a private contractor, on or after March 17, 1998, enters into a contract with a local public entity for the operation of a correctional facility that houses out-of-state prisoners and 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 and may exercise any other rights it has under the contract. The fine must be paid to the local public entity, to be used for community policing. The local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine. (R.C. 9.07(F)(2).)

Escapes from and disturbances at the facility. Upon notification by the private contractor of an escape from, or of a disturbance at, a correctional facility that is operated by a private contractor and that houses out-of-state prisoners, DRC

and state and local law enforcement agencies must use all reasonable means to recapture the escapees or quell the disturbance in accordance with the plan and procedure for coordination of law enforcement activities that the private contractor and DRC enter into for contracts entered into on or after March 17, 1998, and in accordance with their normal procedures for contracts entered into prior to that date. Any cost incurred by Ohio or an Ohio political subdivision relating to the apprehension of an escapee, the quelling of a disturbance, or the investigation or prosecution 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 an escapee following recapture. (R.C. 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, an Ohio political subdivision, or a 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 in Ohio pursuant to a contract. If any Ohio political subdivision experiences any cost in the investigation or prosecution of such an offense, the private contractor must reimburse the political subdivision for those costs. (R.C. 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 in Ohio, 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. Existing law prohibits a private contractor that operates such a correctional facility, from failing to comply with this requirement and specifies that a violation of the prohibition is a misdemeanor of the first degree. (R.C. 9.07(H).)

Miscellaneous. Existing law provides the state, any officer or employee of the state, a "non-contracting political subdivision" (see "**Definitions**" in COMMENT 1), and any employee of a non-contracting political subdivision with a qualified immunity from liability in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in Ohio pursuant to a contract between a local public entity other than the non-contracting political subdivision and an out-of-state jurisdiction, a local public entity other than the non-contracting political subdivision and a private

contractor, or a private contractor and an out-of-state jurisdiction (R.C. 9.07(G)(3)).

A private correctional officer or other designated employee of a private contractor that operates a correctional facility that houses out-of-state prisoners in Ohio may carry and use firearms in the course of employment only if the person has satisfactorily completed an approved training program under section 109.78(A) designed to qualify persons as special policemen, security guards, or persons otherwise privately employed in a police capacity (R.C. 9.07(E)).

Correctional Institution Inspection Committee duties and functions. The Correctional Institution Inspection Committee (the CIIC) has certain duties and functions relative to private correctional facilities. Subject to the provisions described in the next paragraph: (a) it must establish and maintain a continuing program of inspection of each 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, (b) it must make an inspection (including attendance at one general meal period and one rehabilitative or educational program) of each private correctional facility each biennium, (c) for the purpose of making a required or authorized inspection, it and each of its members has access to any part of any private correctional facility and is not required to give advance notice of, or make prior arrangements before conducting, an inspection, and (d) it must prepare and submit to the succeeding General Assembly a report of the findings it makes in its inspections.

The CIIC cannot conduct an inspection of a private correctional facility unless its Chairperson grants prior approval for the inspection and unless at least one CIIC member and at least one staff member are present (or, if it is to be conducted by a subcommittee, at least two CIIC members are present). Unless the CIIC Chairperson specifically determines to the contrary, an inspection must be conducted only during normal business hours. Specific criteria govern whether a CIIC staff member may be present. (R.C. 103.73.)

Definitions. Existing law defines the following terms for use in the provisions described above and in the body of the analysis under "**Regulation of privately operated prisons that house out-of-state prisoners**" (R.C. 9.07(A) and 103.73(D)):

(a) "Deadly weapon" has the same meaning as in the existing Weapons Control Law definitions in R.C. 2923.11.

(b) "Governing authority of a local public entity" means whichever of the following is applicable: (i) for a county, the board of county commissioners of the

county, (ii) for a municipal corporation, the municipal legislative authority, or (iii) 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 the local public entity.

(c) "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.

(d) "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.

(e) "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.

(f) "Private contractor" means either of the following: (i) a person who, on or after March 17, 1998, enters into a contract with a local public entity to operate and manage a correctional facility in Ohio for out-of-state prisoners, or (ii) a person who, pursuant to a contract with a local public entity entered into prior to March 17, 1998, operates and manages on that date a correctional facility in Ohio for housing out-of-state prisoners.

(g) "Non-contracting political subdivision" means any political subdivision to which all of the following apply: (i) a correctional facility for the housing of out-of-state prisoners in Ohio is or will be located in the political subdivision, (ii) that correctional facility is being, or will be, operated and managed by a local public entity or a private contractor pursuant to a contract entered into prior to, on, or after March 17, 1998, and (iii) the political subdivision is not a party to the contract for the management and operation of the correctional facility.

2. **Other mandatory provisions in contract for private operation of facility for out-of-state prisoners.** In detail, these additional mandatory provisions that existing law requires to be in a contract between a local public entity and a private contractor that will operate a correctional facility in Ohio for the housing of out-of-state prisoners specify that the contract also must include all of the following (R.C. 9.07(D)(1) to (3), (5), (7), (8), and (11) to (18)):

(a) 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 under the contract and that it maintain that accreditation for the term of the contract;

(b) 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;

(c) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with applicable laws, rules, and regulations 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;

(d) 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.

(e) 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.

(f) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in section 9.06(D) regarding contractors who operate and manage a facility under that section, and that the private contractor indemnify 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 reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and reimburse any local government entity of that nature for its costs in defending the local government entity, in the manner described in section 9.06(D) regarding contractors who operate and manage a facility under that section;

(g) A requirement that the private contractor, prior to housing any out-of-state prisoner in the facility under the contract, 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;

(h) A requirement that the private contractor cooperate with the Correctional Institution Inspection Committee in the Committee's performance of its duties under R.C. 103.73 and provide the Committee, its subcommittees, and its staff members, in performing those duties, with access to the facility as described in that section;

(i) 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;

(j) A requirement that the private contractor will not employ any person at the facility until after the private contractor has submitted to the Bureau of Criminal Identification and Investigation of the Attorney General's office, on a form prescribed by the Bureau's Superintendent, a request that the Bureau conduct a criminal records check of the person and a requirement that the private contractor 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;

(k) 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 private contractor and the out-of-state jurisdiction will do all of the following: (i) unless the existing Interstate Corrections Compact (R.C. 5120.50) does not apply in relation to the offense the prisoner committed while confined in Ohio and the term of confinement imposed for that offense, the out-of-state jurisdiction will accept the prisoner pursuant to that Compact 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, and (ii)

if that Compact does not apply in relation to the offense the prisoner committed while confined in Ohio and the term of confinement imposed for that offense, the prisoner must be returned to the out-of-state jurisdiction or its private contractor for completion of the period of time remaining under the out-of-state sentence for which the prisoner was confined in the facility in Ohio before starting service of the term of confinement imposed for the offense committed while confined in Ohio, the out-of-state jurisdiction or its private contractor will confine the prisoner for that remaining period of time and will transport the prisoner outside of Ohio for service of that remaining period of time, and, if the prisoner is confined in Ohio in a DRC-operated facility, the private contractor will be financially responsible for reimbursing DRC at the per diem cost of confinement for the duration of such incarceration, with the amount of the reimbursement so paid to be deposited in DRC's prisoner programs fund;

(l) A requirement that the private contractor, prior to housing any out-of-state prisoner in the facility under the contract, 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.

(m) 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 above in "**Imposition and use of fines**," in COMMENT 1 of this analysis, apply regarding such a fine.

(n) A requirement that the private contractor adopt and use in the correctional facility the drug testing and treatment program that DRC uses for inmates in state correctional institutions.

3. **Failure to report a crime, death, or burn injury**. Existing R.C. 2921.22, not in the bill, contains a series of prohibitions related to the failure to report a crime, death, or burn injury. Relevant to the bill, it: (a) prohibits a person, knowing that a felony has been or is being committed, from knowingly failing to report such information to law enforcement authorities, (b) except for conditions that are within the scope of a burn injury-related prohibition (not discussed in this COMMENT), prohibits a physician, limited practitioner, nurse, or other person

giving aid to a sick or injured person from negligently failing to report to law enforcement authorities any gunshot or stab wound that the person treated or observed or any serious physical harm to persons that the person knows or has reasonable cause to believe resulted from an offense of violence, (c) prohibits a person who discovers the body or acquires the first knowledge of the death of a person from failing to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, ambulance service, emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained, and (d) prohibits a person from failing to provide upon request of the person to whom the person has made a report required by clause (c) of this sentence, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

The section contains several exceptions to the above-described prohibitions, that generally are not relevant to the bill. A person who violates the prohibition described in clause (a) or (b) of the preceding paragraph is guilty of "failure to report a crime"; a violation of the prohibition described in clause (a) is a misdemeanor of the fourth degree and a violation of the prohibition described in clause (b) is a misdemeanor of the second degree. A person who violates the prohibition described in clause (c) or (d) of the preceding paragraph is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

4. **Other provisions regarding private operation of government-owned facility for Ohio prisoners.** The following existing law provisions, none of which are changed by the bill, also apply to the private operation of a government-owned correctional facility for Ohio prisoners:

Contract between public entity and contractor--prohibited terms. A contract entered into for the private operation of a correctional facility for Ohio prisoners may not require, authorize, or imply a delegation of the authority or responsibility of the public entity to a contractor for: (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, (b) developing or implementing procedures for calculating and awarding earned credits or good time, approving the type of inmate work and the wages, earned credits, or good time for the work, and granting, denying, or revoking earned credits or good time, (c) extending an inmate's term pursuant to law for bad time, (d) *classifying an inmate or placing an inmate in a more or a less restrictive custody than the custody ordered by the public entity*, (e) approving

inmates for work release, or (f) contracting for telephone services for inmates or receiving commissions from such services at a facility owned by or operated under a contract with DRC (R.C. 9.06(C)).

Miscellaneous. A contractor that has been approved to operate a facility for Ohio prisoners must provide an adequate policy of insurance of a specified nature, must indemnify and hold harmless specified governmental entities and specified officials and employees, and must reimburse specified governmental entities for their costs, of a specified nature, in defending the entity or specified officials and employees (R.C. 9.06(D)).

Private correctional officers of a contractor may carry and use firearms in the course of their employment only after satisfactorily completing an approved training program under existing division (A) of R.C. 109.78 (R.C. 9.06(E)).

Upon notification by the contractor of an escape from, or a disturbance at, the subject facility, DRC and state and local law enforcement agencies must use all reasonable means to recapture escapees or quell any disturbance. Any 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 must be borne by the contractor, and the contractor must reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture. Any offense that would be a crime if committed at a state local correctional institution is a crime if committed by or with regard to inmates at facilities operated pursuant to a contract entered into under the above-described provisions. (R.C. 9.06(F) and (G).)

A contractor operating a facility for Ohio prisoners must pay any inmate workers at the facility at the rate approved by the public entity; the inmate workers are not considered employees of the contractor. DRC is authorized, in accordance with specified criteria, to enter into a contract with a contractor for the general operation and management of a prison and to enter into one or more separate contracts with other persons or entities for the provisions of specialized services, such as medical, counseling, or educational, etc., services. (R.C. 9.06(H) and (I).)

Definitions. For purposes of the above-described provisions and the provisions in the body of the analysis dealing with contracts for the private operation of facilities for Ohio prisoners (R.C. 9.06(J)):

(a) "Public entity" means DRC, or a county or municipal corporation or a combination of counties and municipal corporations, that has jurisdiction over a facility that is the subject of such a contract.

(b) "Local public entity" means a county or municipal corporation, or a combination of counties and municipal corporations, with jurisdiction over a jail, workhouse, or other correctional facility used only for misdemeanants that is the subject of such a contract.

(c) "Contractor" means a person who enters into such a contract to operate and manage a jail, workhouse, or other correctional facility.

(d) "Facility" means the specific county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other type of correctional institution or facility used only for misdemeanants, or a state correctional institution, that is the subject of such a contract.

HISTORY

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