



S.B. 26
123rd General Assembly
(As Introduced)

Sen. Hagan

BILL SUMMARY

- Prohibits a private entity from operating a correctional facility in Ohio for the housing of out-of-state prisoners unless, in addition to satisfying all existing criteria, the correctional facility was constructed and the private entity had commenced its operation and management of the correctional facility before the bill's effective date.

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CONTENT AND OPERATION

Privately operated prisons for housing out-of-state prisoners--in general

Existing law

Existing law, enacted in Am. Sub. H.B. 293 of the 122nd General Assembly, effective March 17, 1998, limits the operation in Ohio of correctional

facilities for the housing of out-of-state prisoners and sets forth comprehensive criteria for the establishment and operation in Ohio of privately operated correctional facilities for the housing of out-of-state prisoners. Subject to the provisions described in the next paragraph, the only entities other than the state of Ohio that are authorized to operate a correctional facility to house "out-of-state prisoners" (see below) in Ohio are a "local public entity" (see below) that operates a correctional facility in accordance with specified criteria (those criteria generally are not discussed in this analysis) or a "private contractor" (see below) that operates a correctional facility in accordance with specified criteria under a contract with a local public entity. Additionally, subject to the exception related to facilities operated under preexisting contracts that is described in the next paragraph, 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 "*Privately operated prisons for housing out-of-state prisoners--criteria and operation.*" (R.C. 9.07(B).)

Except as described in the next sentence, all of the above-described provisions and all of the provisions described below in "*Privately operated prisons for housing out-of-state prisoners--criteria and operation*" apply in relation to any correctional facility operated by a private contractor in Ohio for the housing of 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 a private contractor operates a correctional facility in Ohio for the housing of out-of-state prisoners 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 of existing law for such facilities. Additionally, the existing provisions requiring a public hearing before a private contractor and a local public entity enter into a contract for the operation of a correctional facility in Ohio for housing out-of-state prisoners (see "*Privately operated prisons for housing out-of-state prisoners--criteria and operation,*" below) apply to a private contractor that is subject to the provision described in the preceding sentence. (R.C. 9.07(C)(3) and (I).)

Existing law defines the following terms for purposes of the existing law that applies to privately operated prisons for housing out-of-state prisoners (R.C. 9.07(A) and 103.73(D)):

(1) "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.

(2) "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.

(3) "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.

(4) "Private contractor" means either of the following: (a) 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 (b) 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.

Operation of the bill

The bill enacts an additional restriction on the operation by a private entity of a correctional facility in Ohio for the housing of out-of-state prisoners. Under the bill, a private entity may operate a correctional facility in Ohio for the housing of out-of-state prisoners only if: (1) as under existing law, 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 existing statutory requirements for the operation of such facilities, and (2) additionally (added by the bill), the correctional facility was constructed, and that private contractor had commenced its operation and management of the facility, before the bill's effective date. (See **COMMENT.**) (R.C. 9.07(B).)

As a result of this additional requirement, under the bill, a private entity cannot operate a correctional facility in Ohio for the housing of out-of-state prisoners unless the facility was in existence and operational before the bill's effective date.

Privately operated prisons for housing out-of-state prisoners--criteria and operation

In addition to the general provisions described above, existing law contains numerous specific criteria that must be complied with in order for a private

contractor to operate a correctional facility in Ohio for the housing of out-of-state prisoners, and numerous specific provisions that apply regarding the operation of such a facility. These specific criteria and operational provisions, *none of which are modified by the bill*, are described below.

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 and 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, as described above, with a local public entity. (R.C. 9.07(C)(3).)

Contract between local public entity and private contractor

Subject to the provisions described above that pertain to exceptions for facilities operated under 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 the following provisions (R.C. 9.07(D)):

(1) A requirement that the private contractor seek and obtain accreditation from the American Correctional Association for the facility within two years after accepting the first out-of-state prisoner at the facility under the contract and that it maintain that accreditation for the term of the contract;

(2) A requirement that the private contractor comply with all applicable federal, Ohio, and local laws, rules, or regulations, including, but not limited to, all sanitation, food service, safety, and health regulations;

(3) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with applicable laws, rules, and regulations to the Director of the Department of Rehabilitation and Correction (DRC) or the Director's designee and to the governing authority of the local public entity in which the facility is located;

(4) A requirement that the private contractor report to the local law enforcement agencies with jurisdiction over the place at which the facility is located, for investigation, all criminal offenses or delinquent acts that are committed in or on the grounds of, or otherwise in connection with, the facility and report to DRC all escapes from or disturbances at the facility;

(5) A requirement that the private contractor provide a written report to DRC's Director or the Director's designee and to the governing authority of the local public entity in which the facility is located of all unusual incidents occurring at the facility. The private contractor must report the incidents in accordance with the incident reporting rules that, at the time of the incident, are applicable to state correctional facilities for similar incidents occurring at state correctional facilities;

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

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

(8) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in 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 R.C. 9.06(D) regarding contractors who operate and manage a facility under that section;

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

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

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

(12) 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 (see below) and provide the Committee, its subcommittees, and its staff members, in performing those duties, with access to the facility as described in that section;

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

(14) A requirement that the private contractor will not employ any person at the facility until after the private contractor has 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;

(15) A requirement that the private contractor will not accept for housing, and will not house, in the facility any out-of-state prisoner unless the private contractor and the out-of-state jurisdiction that imposed the sentence for which the prisoner is to be confined agree that, if the out-of-state prisoner is confined in the facility in Ohio, commits a criminal offense while confined in the facility, is convicted of or pleads guilty to that offense, and is sentenced to a term of confinement for that offense but is not sentenced to death for that offense, the private contractor and the out-of-state jurisdiction will do all of the following: (a) 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 (b) 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.

(16) 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.

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

(18) 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.

Imposition and use of fines

If a private contractor that, on or after March 17, 1998, enters into a contract, as described above, with a local public entity for the operation of a correctional facility that houses out-of-state prisoners fails to perform its contractual duties, the local public entity must impose upon the private contractor a fine from the schedule of fines included in the contract and may exercise any other rights it has under the contract. A fine imposed under this provision must be paid to the local public entity that enters into the contract, to be used to pay for community policing. If a fine is imposed under this provision, the local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine. (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 under a contract entered into prior to, on, or after March 17, 1998, and that houses out-of-state prisoners in Ohio, DRC and state and local law enforcement agencies must use all reasonable means to recapture persons who escaped from the facility or quell any disturbance at the facility, in accordance with the plan and procedure for coordination of law enforcement activities that the private contractor and DRC enter into, as described above in paragraph (11) of "**Contract between local public entity and private contractor**," in relation to contracts entered into on or after March 17, 1998, and in accordance with their normal procedures in relation to contracts entered into prior to March 17, 1998. Any cost incurred by Ohio or an Ohio political subdivision relating to the apprehension of a person who escaped from the facility, to the quelling of a disturbance at the facility, or to the investigation or prosecution as described in the next paragraph of any offense relating to the escape or disturbance is chargeable to and must be borne by the private contractor. The contractor also must reimburse Ohio or its political

subdivisions for all reasonable costs incurred relating to the temporary detention of a person who escaped from the facility, following the person's recapture. (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 Ohio 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 entered into prior to, on, or after March 17, 1998. If any Ohio political subdivision experiences any cost in the investigation or prosecution of an offense committed by an out-of-state prisoner housed in a correctional facility operated by a private contractor in Ohio pursuant to a contract entered into prior to, on, or after March 17, 1998, the private contractor must reimburse the political subdivision for the costs so experienced. (R.C. 9.07(G)(1) and (2).)

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 pursuant to a contract entered into prior to, on, or after March 17, 1998, 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 a correctional facility housing out-of-state prisoners in Ohio pursuant to a contract entered into prior to, on, or after March 17, 1998, 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 below), 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 that was entered into prior to, or on or after, March 17, 1998. For purposes of this provision, a "non-contracting political subdivision" is any political subdivision to which all of the following apply: (1) a correctional facility for the housing of out-of-state prisoners in Ohio is or will be located in the political subdivision, (2) 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 (3) the political subdivision is not a party to the contract for the management and operation of the correctional facility. (R.C. 9.07(A)(4) and (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 under a contract entered into prior to, on, or after March 17, 1998, 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 police officers, 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: (1) it must establish and maintain a continuing program of inspection of each "private correctional facility" (defined as a correctional facility in Ohio that houses out-of-state prisoners and that is operated by a private contractor under a contract with a local public entity), (2) 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, (3) for the purpose of making an inspection required or authorized by law, 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 (4) 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--not in the bill.)

COMMENT

An issue related to the bill concerns the relationship of its general prohibition against the operation of new privately operated facilities in Ohio for the housing of out-of-state prisoners to Article I, §8 of the United States Constitution, generally referred to as the Commerce Clause. The United States Supreme Court has not specifically addressed the issues of whether, for purposes of the Commerce Clause, prisoners are articles of commerce and the moving of prisoners from one state to another is interstate commerce. Arguably, though, the Commerce Clause might apply in relation to such an activity--if it does, the Supreme Court's decisions that impose restrictions on states in their enactment of laws that interfere with interstate commerce might apply in relation to the bill.

HISTORY

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Introduced	01-20-99	p. 29

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