
DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Revises the authority of the Department of Rehabilitation and Correction (DRC), a county, or a municipality to contract for the private operation and management of a state or specified local correctional facility by a private person or entity by repealing a 2-year limitation on the duration of an initial contract and repealing a requirement that the contractor generally must be accredited by the American Correctional Association.
- Expressly authorizes DRC's Director and the Director of Administrative Services to contract with a private person or entity for the private operation of the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, the North Central Correctional Institution, and the vacated correctional facility previously operated by the Department of Youth Services that is adjacent to the North Central Correctional Institution (transferred to DRC and renamed the North Central Correctional Institution Camp) and the transfer of the state's right, title, and interest in the facility to the private person or entity, and requires additional terms in a contract of that nature.
- Authorizes the sale of the state's right, title, and interest in the real property on which a facility described in the preceding dot point is situated and any surrounding land to the private person or entity privately operating the facility pursuant to a contract described in that dot point.
- Specifies that any facility described in the second preceding dot point that is transferred must be returned to the county auditor's tax list and duplicate and is subject to all real property taxes and assessments, that no exemption from real property taxation under R.C. Chapter 5709. applies to any such facility that is sold, and that the gross receipts and income of a contractor to whom any such facility is sold that are derived from operating the facility are exempt from gross receipts and income taxes levied by the state and its subdivisions.
- Specifies that after the sale of any facility described in the third preceding dot point the state has a right to repurchase the facility if the contractor wants to sell or otherwise transfer the facility or becomes insolvent, defaults on the contract, or defaults on the financial agreement for the purchase of the facility (PARTIALLY VETOED).
- Provides that if a contract for the operation and management of a facility described in the fourth preceding dot point is terminated, the operation and management of the facility must be transferred to another contractor under the same terms or DRC



and the new contractor or DRC may purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

- Requires that any case challenging the constitutionality of R.C. 9.06 or Section 753.10 (sale of DRC facilities) or the legality of certain official actions taken pursuant to those provisions be brought in the Franklin County Court of Common Pleas and that the case and any appeal from a final order in the case be given priority and be decided expeditiously.
- Permits rather than requires the DRC to provide laboratory services to itself and the departments of Mental Health (DMH), Developmental Disabilities, and Youth Services.
- Expands the definition of a DRC "psychiatric hospital" operated for the treatment of inmates to also include a part of a facility.
- Provides that a psychiatric hospital is all or a part of a facility that is operated and managed by DMH pursuant to an agreement with DRC or an accredited psychiatric hospital licensed by DMH and operated and managed by DRC or a contractor of DRC.
- Transfers specified responsibilities related to inmate patient care and treatment from the warden of a psychiatric hospital to DRC.
- Provides that any money received by DRC for agricultural products produced in penal and correctional institutions be deposited into the Ohio Penal Industries Manufacturing Fund.
- Renames the Services and Agricultural Fund the Institutional Services Fund.
- Modifies the purposes for which money in the Institutional Services Fund may be used.
- Modifies the purposes for which money in the Ohio Penal Industries Manufacturing Fund may be used.
- Permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity that allows the agency, subdivision, or entity to use property and facilities that are under the jurisdiction of the Department but that are not being used by the Department.



Correctional facilities – private operation and transfer of state facilities to private owner

Private operation of state or local correctional facilities

(R.C. 9.06; Section 753.10)

Continuing law authorizes the Department of Rehabilitation and Correction (DRC) to contract for the private operation and management of any state correctional institution. It also generally authorizes counties and municipal corporations to contract for the private operation and management of a county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other correctional facility used only for misdemeanants. Any state correctional institution or local facility that is the subject of any such contract is a "facility" for purposes of the provision. Prior law specified that a contract under the provision had to be for an initial term of not more than two years with an option to renew for additional periods of two years. Prior law also required that a person or entity that entered into a contract to operate and manage a state correctional institution or local facility under the provision (the contractor) generally had to be accredited by the American Correctional Association (ACA) and, at the time of the person's or entity's application to enter into the contract, had to operate and manage one or more facilities accredited by the ACA. Continuing law establishes procedures that govern the execution of any such contract, prescribes terms that must be in the contract, imposes duties and standards that apply to the contractor in operating the facility, and specifies other criteria that apply to the operation of the facility. Among the mandatory contract terms under prior law was a requirement that the contractor retain accreditation from the ACA throughout the contract term.

The act modifies prior law regarding a contract for the private operation and management of a state correctional institution or for any of the specified local facilities in several ways:

(1) First, it replaces the requirement that any such contract must be for an initial term of not more than two years with a requirement that the contract must be for an initial term specified in the contract.

(2) Second, it repeals the requirement that the contractor generally must be accredited by the ACA and the related mandatory contract term that specifies that any such contract must include a requirement that the contractor retain accreditation from the ACA throughout the contract term. However, it retains the requirement that, at the time of the application to operate and manage a facility, the contractor operates and



manages one or more facilities accredited by the ACA (the ACA accredits facilities, not operators).

(3) Third, it expands the provision to include new language that applies only in relation to the private operation and management of any of five state institutions that DRC and the Department of Administrative Services (DAS) are authorized to sell, as described below in "**Authorization for sale of state facilities.**" The institutions are four specified state correctional institutions and one closed Department of Youth Services (DYS) institution, jurisdiction of which the act transfers to DRC. Regarding those institutions, the act expands the definition of "facility" that applies to the provision so that the term includes any of those institutions at any time prior to or after any sale to a contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land. It specifies that if, on or after June 30, 2011, a contractor enters into a contract with DRC for the operation and management of any of those institutions, if the contract provides for the sale of the facility to the contractor, if the facility is sold to the contractor subsequent to the execution of the contract, and if the contractor is privately operating and managing the facility, notwithstanding the contractor's private operation and management of the facility, all of the following apply:

(a) Except as expressly provided to the contrary in the provision, the facility being privately operated and managed by the contractor is to be considered for purposes of the Revised Code as being under the control of, or under the jurisdiction of, DRC.

(b) Any reference in the provision to "state correctional institution," any reference in R.C. Chapter 2967. to "state correctional institution," other than the definition of that term set forth in R.C. 2967.01, or to "prison," and any reference in R.C. Chapter 2929., 5120., 5145., 5147., or 5149. or any other R.C. provision to "state correctional institution" or "prison" is to be considered to include a reference to the facility being privately operated and managed by the contractor, unless the context makes the inclusion of that facility clearly inapplicable.

(c) Upon the sale and conveyance of the facility: (i) the facility must be returned to the tax list and duplicate maintained by the county auditor and is subject to all real property taxes and assessments, (ii) no exemption from real property taxation under R.C. Chapter 5709. applies to the facility, and (iii) the gross receipts and income of the contractor to whom the facility is conveyed that are derived from operating and managing the facility under the provision are exempt from gross receipts and income taxes levied by the state and its subdivisions, including the taxes levied pursuant to R.C. Chapters 718., 5747., 5748., and 5751.



(d) After the sale and conveyance of the facility, all of the following apply:

(i) Before the contractor may resell or otherwise transfer the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the contractor first must offer the state the opportunity to repurchase the facility, real property, and surrounding land and must sell it to the state if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract. The Governor vetoed language that established a formula for determining the maximum repurchase price.

(ii) Upon the default by the contractor of any financial agreement for the purchase of the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the default by the contractor of any other term in the contract, or the financial insolvency of the contractor or inability of the contractor to meet its contractual obligations, the state may repurchase the facility, real property, and surrounding land, if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract. The Governor vetoed language that established a formula for determining the maximum repurchase price.

(iii) If the contract for the operation and management of the facility is terminated, the operation and management responsibilities of the facility must be transferred to another contractor under the same terms and conditions as applied to the original contractor or to the Department of Rehabilitation and Correction, and the Department or the new contractor, whichever is applicable, may enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

Authorization for sale of state facilities

(Section 753.10; R.C. 9.06 and 5120.092)

The act authorizes the DAS Director and the DRC Director to award one or more contracts through requests for proposals for the operation and management by a contractor of one or more of the facilities described in this paragraph, pursuant to the provision described above in "**Private operation of state or local correctional facilities**," and for the transfer of the state's right, title, and interest in the real property on which the facility is situated and any surrounding land. This provision applies to the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, and the North Central Correctional Institution. It also applies to the vacated facility previously operated by DYS that is adjacent to the North Central Correctional Institution, which the act transfers to DRC and renames the North



Central Correctional Institution Camp. The act identifies the approximate acreage of the authorized land transfer for each of the five identified facilities.

If the DAS Director and the DRC Director award a contract of the type described in the preceding paragraph to a contractor regarding any of the five specified facilities, in addition to the requirements, statements, and authorizations that must be included in the contract pursuant to the provision described above in "**Private operation of state or local correctional facilities**," the contract must include all of the following regarding the facility that is the subject of the contract:

(1) An agreement for the sale to the contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land;

(2) A requirement that the contractor provide preferential hiring treatment to DRC employees in order to retain staff displaced as a result of the transition of the operation and management of the facility and to meet the administrative, programmatic, maintenance, and security needs of the facility;

(3) Notwithstanding any Revised Code provision and subject to the condition described in the following sentence, authorization for the transfer to the contractor of any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the DRC Director and the DAS Director for the continued operation and management of the facility. If the contract is for the transfer of the state's right, title, and interest in the real property on which the Grafton Correctional Institution is situated and any surrounding land, the DRC Director may transfer to another state correctional institution to be determined by the Director the Braille printing press and related accessories located at the Grafton Correctional Institution and all programs associated with the Braille printing press.

(4) A binding commitment that irrevocably grants to the state a right to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both if: (a) the contractor or the contractor's successor wants to sell or otherwise transfer to a third party the facility and the real property on which it is situated, any surrounding land transferred under the contract, or both, or (b) the contractor defaults on any financial agreement for the purchase of the facility and real property on which it is situated, any surrounding land transferred with the facility, or both, defaults on any term of the contract, or becomes insolvent or unable to meet its contractual obligations. Under (a), the contractor or successor first must offer the facility or property to the state at least 120 days before it intends to make the sale or transfer to the third party. The Governor vetoed provisions requiring that, in either situation, the state's purchase price must be not greater than the price the contractor paid, less depreciation from the time of the conveyance to the



contractor, plus the depreciated value of any capital improvements funded by anyone other than the state after the conveyance to the contractor.

(5) A requirement that if the contract for the operation and management of the facility is terminated, (a) the operation and management responsibilities of the facility will be transferred to another contractor under the same terms and conditions as applied to the original contractor or to DRC, and (b) DRC or the new contractor, whichever is applicable, may enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

If the DAS Director and the DRC Director award a contract of the type described above to a contractor regarding any of the five specified facilities, notwithstanding any Revised Code provision, the state may transfer to the contractor in accordance with the contract any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the DRC Director and the DAS Director for the continued operation and management of the facility. For purposes of this paragraph and the transfer authorized under it, any such supplies, equipment, furnishings, fixtures, or other assets are not considered supplies, excess supplies, or surplus supplies as defined in R.C. 125.12 and may be disposed of as part of the transfer of the facility to the contractor.

The act states that nothing in the provisions described in the preceding paragraphs or in its parts that identify the five specified facilities and provide the procedures and details of a sale of any of those facilities restricts DRC from contracting for only the private operation and management of any of those facilities.

The act provides procedures and details regarding the sale of any of the five specified facilities. It authorizes the Governor to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the particular facility, the land situated thereon, and any surrounding land. Consideration for conveyance of the real estate must be set forth in the contract and be paid in accordance with its terms. The deed may contain any restriction that the DAS Director and the DRC Director determine is reasonably necessary to protect the state's interest in neighboring state-owned land. The deed must contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility on it, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land. The real estate must be sold as an entire tract and not in parcels. Upon payment of the purchase price as set forth in the contract, the Auditor of State, with the assistance of the Attorney General, is to prepare a deed to the real estate. The grantee must present the deed for recording in the office of the recorder of the county in which the particular facility is located. The grantee must pay all costs associated with the



purchase and conveyance of the real estate, including recordation costs of the deed. The authorizations for the sale of the five specified facilities expire June 30, 2013.

The proceeds of the conveyance of any of the five specified facilities must be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund, which the act creates. The proceeds must be used to redeem or defease the outstanding portion of any state bonds issued for the facilities sold, in accordance with procedures specified in the act, and any remaining proceeds after the redemption or defeasance must be transferred to the General Revenue Fund. Upon completion of that transfer, the Fund is abolished.

Legal challenges to sale of facilities

(R.C. 9.06(K))

The act requires that any action asserting that R.C. 9.06 or Section 753.10 of the act violates any provision of the Ohio Constitution or that any action taken by the Governor, DAS, or DRC pursuant to those sections violates any provision of the Ohio Constitution or the Revised Code be brought in the Franklin County Court of Common Pleas. Under the act, the court must give any such action priority over all other civil cases pending on its docket and expeditiously make a determination on the claim, and the court of appeals must give like priority to an appeal from any final order issued in the case and decide the appeal expeditiously.

State and local taxes

(R.C. 9.06(J)(3))

The act expressly subjects a private contractor that enters into a contract to own and operate one of the five prisons authorized by the act to state and municipal income taxes and the commercial activity tax. Further, sales involving a contractor in the contractor's role as a consumer or purchaser are subject to all state and local sales and use taxes unless exempted under another existing provision of sales and use tax law. After a prison facility is sold to a contractor, the facility is placed on the county tax list and duplicate, with the effect of making the facility subject to all real property taxes and assessments, with no exemption from real property taxation applying to the conveyed facility.

Laboratory services

(R.C. 5120.135)

The act permits rather than requires DRC to provide laboratory services to itself and the departments of Mental Health, Developmental Disabilities, and Youth Services.



The act also removes from law a complementary provision detailing what happens if DRC provides unsatisfactory laboratory services to the departments of Mental Health, Developmental Disabilities, and Youth Services.

Definition of a Department "psychiatric hospital"

(R.C. 5120.17(A)(3), (D)(2), (E), (I), and (J))

Under continuing law, DRC may transfer an inmate who is a mentally ill person subject to hospitalization from a state correctional institution to a psychiatric hospital, pursuant to specified procedures. The act redefines a "psychiatric hospital" for this purpose.

The act amends the prior definition of a psychiatric hospital to define a psychiatric hospital as *all or part of a facility that is operated and managed by the Department of Mental Health (DMH) to provide psychiatric hospitalization services pursuant to an agreement between the Directors of DRC and DMH (added by the act) or is licensed by the DMH as a psychiatric hospital accredited by a healthcare accrediting organization approved by the DMH and operated and managed by DRC within a facility operated by DRC, by a contractor for DRC within a facility operated by DRC, or by an entity that has contracted with DRC to provide psychiatric hospitalization services in a community (added by the act).* As defined prior to the act, a psychiatric hospital did not include "part" of a facility. Under the prior definition, a part of a facility otherwise meeting the qualifications of a psychiatric hospital was not a psychiatric hospital.

Under the prior definition, the psychiatric hospital was operated by DRC, rather than by DMH pursuant to an agreement with DRC, and was required to be in substantial compliance with standards set by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), rather than being required to be accredited by an approved healthcare accrediting organization. The prior definition did not specify the entities that could operate and manage the psychiatric hospital.

Law largely unchanged by the act prohibited inmate patients in the *physical custody* of DRC who were transported or transferred to a psychiatric hospital from being subjected to convulsive therapy, major aversive interventions, unusually hazardous treatment procedures, or psychosurgery. The act prohibits inmate patients who are transported to a psychiatric hospital *within a facility operated by DRC* from being subjected to these treatments.

Law largely retained by the act provided that the warden of a psychiatric hospital or the warden's designee was responsible for ensuring that inmate patients hospitalized in a psychiatric hospital received statutorily required care and treatment. The act places that responsibility on DRC. Law largely retained by the act permitted the



warden of a psychiatric hospital to file an affidavit with the probate court prior to the release of an inmate patient from a psychiatric hospital, alleging that the inmate patient was mentally ill and subject to hospitalization by court order or was mentally retarded and subject to institutionalization by court order. The act permits DRC or a designee of DRC to file this affidavit.

Law retained in part by the act required DRC to set standards for the treatment provided to inmate patients consistent, where applicable, with the standards set by JCAHO. Under the act, DRC's treatment standards are not required to be consistent with JCAHO standards.

Deposit into Institutional Services Fund and Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28(B) and (C))

Prior law required that any money received by DRC for labor and services performed and agricultural products produced be deposited into the Services and Agricultural Fund. That money was required to be used for specified purchases and payments and to be accounted for pursuant to an accounting system for the allocation of the earnings of each prisoner, created by rule pursuant to R.C. 5145.03(B).

The act removes the requirement that those moneys be deposited into the Services and Agricultural Fund and instead requires that any money received by DRC for labor and services performed be deposited into the Institutional Services Fund (new name for the Services and Agricultural Fund). The act requires that money received by DRC for agricultural products produced also be deposited into the Ohio Penal Industries Manufacturing Fund instead of the Renamed Institutional Services Fund.

Institutional Services Fund

(R.C. 5120.29(A))

Prior law created the Services and Agricultural Fund and specified the purposes for which the Fund may be used. The act renames the Services and Agricultural Fund the Institutional Services Fund. It also alters several of the purposes for which the money in the Institutional Services Fund may be used by specifying that the money may be used for the following purposes:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in *services provided between institutions of the Department of Rehabilitation and Correction* (replacing service industries and agriculture);



(2) Payment of compensation to employees necessary to carry on *institutional services* (replacing the service industries and agriculture);

(3) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by DRC (same as prior law).

The act also eliminates the purchase of lands and buildings for service industries and agriculture as one of the purposes of the Fund.

Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28(C) and 5120.29(B))

Continuing law requires that the Ohio Penal Industries Manufacturing Fund be used for the following:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in manufacturing;

(2) Purchasing of lands and buildings necessary to carry on or extend the manufacturing industries;

(3) Payment of compensation necessary to carry on the manufacturing industries;

(4) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by DRC.

The act modifies the purposes of the Ohio Penal Industries Manufacturing Fund by allowing the purchase of materials, supplies, and equipment, the erection and extension of buildings, the purchase of lands and buildings, and the payment of compensation of employees for agriculture.

Lease of unused Department of Rehabilitation and Correction facilities

(R.C. 5120.22(C))

The act permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity, which lease or agreement allows the state agency, political subdivision, or private entity to use property and facilities that are under the jurisdiction of the Department that are not being used by the Department. The act provides that all money collected for leasing and services performed in accordance with the lease or agreement must be deposited into the Property Receipts



Fund and that the money in the Fund is to be used for any expenses resulting from the lease or agreement. These expenses include, but are not limited to, expenses for services performed, construction, maintenance, repair, reconstruction, or demolition of the facilities or other property.

The Property Receipts Fund is a previously existing fund and will continue to also be used to pay for any expenses necessary to provide for state-owned housing under the Department's jurisdiction that is used by the Department's employees.

