

IN THE SENATE

SENATE BILL NO. 1384

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE STATE PENITENTIARY; AMENDING SECTION 20-111, IDAHO CODE,  
2 TO REVISE PROVISIONS RELATING TO THE JUSTIFIABLE KILLING OR WOUNDING  
3 OF A PRISONER IN A STATE PENITENTIARY OR IN CERTAIN PRIVATE PRISON  
4 FACILITIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
5 20-209B, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DUTIES OF  
6 THE STATE DIRECTOR OF CORRECTION IN PRIVATE PRISON FACILITIES AND TO  
7 CORRECT A CODIFIER'S ERROR; AND AMENDING SECTION 20-241A, IDAHO CODE,  
8 TO PROVIDE THAT CERTAIN CONTRACTS BETWEEN THE STATE BOARD OF CORRECTION  
9 AND A PRIVATE PRISON CONTRACTOR SHALL CONTAIN CERTAIN TERMS AND TO  
10 REVISE PROVISIONS RELATING TO THE POWERS AND RESPONSIBILITIES OF THE  
11 DIRECTOR OF THE IDAHO DEPARTMENT OF CORRECTION WHEN ACTING AS THE CHIEF  
12 CONTRACT MONITOR OF THE PRIVATE PRISON CONTRACT AND TO MAKE TECHNICAL  
13 CORRECTIONS; AND DECLARING AN EMERGENCY.  
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Section 20-111, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 20-111. PRISONERS IN STATE PENITENTIARY -- JUSTIFIABLE KILLING OR  
19 WOUNDING. If any ~~convict prisoner~~ threatens personal injury to any officer,  
20 keeper or guard of the ~~State Penitentiary or other place maintained by~~  
21 the state board of correction, or acts in such manner as may reasonably lead  
22 the officer, keeper or guard to believe his life or the life of any ~~convict~~  
23 prisoner is in danger, or which leads the officer, keeper or guard, to  
24 believe the ~~convict prisoner~~ is attempting escape, then such officer, keeper  
25 or guard, may proceed forthwith to use any weapon he may have to enforce  
26 obedience, and if in so doing any ~~convict prisoner~~ shall be necessarily  
27 wounded or killed, the officer, keeper or guard is justified and shall be  
28 held guiltless. For purposes of this section, a facility operated by a  
29 private prison contractor and housing prisoners pursuant to a contract  
30 between the contractor and the state board of correction, as set forth in  
31 section 20-241A, Idaho Code, shall be deemed to be maintained by or under the  
32 control of the state board of correction.

33 SECTION 2. That Section 20-209B, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 20-209B. DUTY TO CONTROL DISTURBANCES AT STATE PENITENTIARY. It shall  
36 be the primary duty of the state director of correction, or his designee, to  
37 prevent, control and suppress all riots, escapes, affrays and insurrections  
38 at the state penitentiary or other place maintained by the state board of  
39 correction which come to his knowledge, and to control and suppress all  
40 attempts to riot or escape.

1 The director of correction, or his designee, shall be primarily  
2 responsible for all security measures to be taken at the time of any riot,  
3 escape, affray or insurrection, or attempts to commit the same, at the  
4 state penitentiary or other place under the control of the state board of  
5 correction.

6 Any county sheriff, deputy sheriff or any person so acting, and all  
7 other law enforcement officers, shall be subject to the authority herein  
8 conferred upon the director of correction, or his designee, and shall be  
9 subject to his direction and control during any riots, escapes, affrays,  
10 insurrections, or attempts to commit the same, at the state ~~penitentiary~~  
11 penitentiary or other place maintained by the state board of correction.

12 Nothing in this act shall preclude the use of any county sheriff or  
13 other law enforcement officers by the director of correction during any such  
14 existing emergency. If at any such time the director of correction shall  
15 find need for the assistance of any county sheriff or other law enforcement  
16 officers, the sheriff and such other officers may respond and render  
17 assistance at the direction of the director of correction.

18 For purposes of this section, a facility operated by a private prison  
19 contractor and housing prisoners pursuant to a contract between the  
20 contractor and the state board of correction, as set forth in section  
21 20-241A, Idaho Code, shall be deemed to be maintained by or under the control  
22 of the state board of correction.

23 SECTION 3. That Section 20-241A, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 20-241A. AGREEMENTS FOR CONFINEMENT OF INMATES. The state board of  
26 correction shall have the power and it shall be its duty:

27 (1) To determine the availability of state facilities suitable for  
28 the detention and confinement of prisoners held under authority of state  
29 law. If the state board of correction determines that suitable state  
30 facilities are not available, it may enter into an agreement with the proper  
31 authorities of the United States, another state, a political subdivision  
32 of this state or another state, or a private prison contractor, to provide  
33 for the safekeeping, care, subsistence, proper government, discipline,  
34 and to provide programs for the reformation, rehabilitation and treatment  
35 of prisoners. Facilities made available to the state board of correction  
36 by agreement may be in this state, or in any other state, territory or  
37 possession of the United States. The state board of correction shall not  
38 enter into an agreement with an authority unable to provide the degree or  
39 kind of safekeeping, care and subsistence required by state or federal laws,  
40 the constitution of the state of Idaho, the United States constitution,  
41 and the rules adopted by the state board of correction. All contracts or  
42 agreements entered into by the state board of correction and a private prison  
43 contractor shall ~~by~~ be subject to the provisions of this section and section  
44 20-209, Idaho Code.

45 (a) An authority or private prison contractor, receiving physical  
46 custody for the purpose of incarceration of a person sentenced by a  
47 court under the terms of an agreement made under this section, shall  
48 be considered as acting solely as an agent of this state. This state  
49 retains jurisdiction over a person incarcerated in an institution of

1 another state, the United States, a political subdivision of this state  
2 or another state, or of a private institution;

3 (b) The attorney general of this state shall enforce an agreement or  
4 contract made under this section in a civil suit.

5 (2) The state board of correction shall have the authority to enter into  
6 contracts with private prison contractors for the site selection, design,  
7 design/building, acquisition, construction, construction management,  
8 maintenance, leasing, leasing/purchasing, management or operation of  
9 private prison facilities or any combination of these services, subject to  
10 the following requirements and limitations:

11 (a) Any request for proposals, any original contract, any contract  
12 renewal, any price or cost adjustment or any other amendment to any  
13 contract for the incarceration of individuals in a private institution,  
14 shall be reviewed by the board of correction;

15 (b) No contract authorized by the provisions of this section shall  
16 be awarded until the private prison contractor demonstrates to the  
17 satisfaction of the state board of correction that the contractor  
18 possesses the necessary qualifications and experience to provide the  
19 services specified in the contract; that the contractor can provide the  
20 necessary qualified personnel to implement the terms of the contract;  
21 that the financial condition of the contractor is such that the terms of  
22 the contract can be fulfilled; that the contractor has the ability to  
23 comply with applicable court orders and corrections standards; and that  
24 the proposed private prison facilities or the correctional services  
25 proposed by the contractor meet constitutional minimums;

26 (c) No contract authorized by the provisions of this section shall  
27 be awarded until the private prison contractor demonstrates to the  
28 satisfaction of the state board of correction that the contractor can  
29 obtain insurance or provide self-insurance to indemnify the state  
30 against possible claims arising from the operation of prison facilities  
31 by the contractor, and to compensate the state for any losses incurred  
32 due to the operation of prison facilities;

33 (d) Contracts awarded to private prison contractors pursuant to  
34 the provisions of this section shall be entered into for a period  
35 specified in each contract, subject to availability of funds annually  
36 appropriated by the Idaho legislature for that purpose. No contract  
37 awarded pursuant to this section shall provide for the encumbrance of  
38 funds beyond the amount available for a fiscal year;

39 (e) A contract may provide for annual contract price or cost  
40 adjustments, except that any adjustments may be made only once each year  
41 effective on the anniversary of the effective date of the contract.

42 (3) Any contract between the state board of correction and a private  
43 prison contractor, whereby the contractor provides for the housing, care,  
44 and control of inmates in a nondepartmental facility operated by the  
45 contractor, shall contain, in addition to other provisions, terms and  
46 conditions~~+~~:

47 (a) A requirement that the contractor is to provide said services in a  
48 facility which meets standards as required by the Idaho department of  
49 correction;

1 (b) If a private prison institution is to be located in the state of  
2 Idaho on private land, it shall be required that the contractor obtain  
3 written authorization from the governing board of any municipality  
4 in which the facility is to be located, or if the facility is not to be  
5 located within the municipality, written authorization from the board  
6 of county commissioners of the county in which the facility is to be  
7 located;

8 (c) A requirement that the private prison contractor shall provide  
9 training to its personnel to a level acceptable to the Idaho department  
10 of correction. The Idaho department of correction may provide training  
11 to the personnel of a private prison contractor and may charge a  
12 reasonable fee for the training, not to exceed the cost of training.  
13 The provisions of this section shall not be construed to confer peace  
14 officer status upon any employee of the private prison contractor or to  
15 authorize the use of firearms except to prevent escape from the facility  
16 or from custody while being transported to or from the facility or to  
17 prevent an act which would cause death or serious bodily injury to any  
18 person. The provisions of this section shall not be construed to confer  
19 Idaho state employee status upon any employee of the private prison  
20 contractor;

21 (d) A requirement that any private prison contractor operating a  
22 facility that houses prisoners pursuant to a contract between the  
23 contractor and the state board of correction shall cooperate with the  
24 Idaho department of correction for the prevention and suppression  
25 of serious disturbances, including riots, escapes, affrays or  
26 insurrections, at the private prison facilities. To effectuate  
27 this provision, the contract shall, at a minimum, provide:

28 (i) For participation by the private prison contractor in  
29 multiagency training for the preventing and responding to serious  
30 disturbances at a private prison facility;

31 (ii) For participation by the private prison contractor in  
32 multiagency agreements for the prevention of and response  
33 to serious disturbances at a private prison facility and  
34 reimbursement for emergency services provided by governmental  
35 entities;

36 (iii) For notification by the private prison contractor to the  
37 director of the Idaho department of correction in the event  
38 of a serious disturbance at a private prison facility and for  
39 consultation by the director of the Idaho department of correction  
40 with the private prison contractor prior to a response by the  
41 director of the Idaho department of correction;

42 (iv) That the private prison contractor shall provide access to  
43 the private prison facility for the Idaho department of correction  
44 and such other governmental entities or agencies as the Idaho  
45 department of correction may designate, including space to  
46 establish a command post, for responding to a serious disturbance;

47 (v) That, in the event of a serious disturbance, the private  
48 prison contractor shall participate in a unified command  
49 structure under the director of the Idaho department of correction

1                   until, in the director of the Idaho department of correction's  
2                   discretion, the serious disturbance is resolved.

3           (4) Contracts awarded under the provisions of this section shall, at a  
4           minimum, comply with the following:

5           (a) Provide for internal and perimeter security to protect the public,  
6           employees and inmates;

7           (b) Provide that the private prison contractor shall not benefit  
8           financially from the labor of inmates nor shall any inmate ever be  
9           placed in a position of authority over another inmate. Any profits  
10          realized from the operation of a prison enterprise program shall revert  
11          to the department of correction or appropriate governmental authority.  
12          Private prison contractors may work with the Idaho department of  
13          correction in setting up work and training programs. Private prison  
14          contractors shall be authorized to purchase services and commodities  
15          from the Idaho department of correction which are necessary for  
16          implementing work or training opportunities as outlined in this  
17          section;

18          (c) Impose discipline on inmates only in accordance with applicable  
19          Idaho department of correction rules and procedures;

20          (d) Provide proper food, clothing, housing and medical care as provided  
21          for in the contract.

22          (5) A private prison contractor, in carrying out its duties and  
23          responsibilities under contract with the state board of correction,  
24          shall not be bound by the enactments of the legislature which govern the  
25          appointment, qualifications, duties, salaries or benefits of wardens,  
26          managers or other correctional employees. No employee of the private prison  
27          contractor shall be considered an employee of the state of Idaho. A private  
28          prison contractor shall not employ any person who does not satisfy the board  
29          of correction's personnel policies.

30          (6) The director of the Idaho department of correction or his designee  
31          shall monitor the performance of the private prison contractor. In all  
32          such contracts the state shall retain clear supervisory and monitoring  
33          powers over the operation and management of the private institutions to  
34          insure that the inmates are properly cared for and that the employees of the  
35          facility and the public are adequately protected. Included in the powers and  
36          responsibilities of the director of the Idaho department of correction or  
37          his designee when acting as the chief contract monitor of the private prison  
38          contract are:

39               (a) Approval of all inmate releases on furlough or work release;

40               (b) Approval of the type of work offenders may perform pursuant to this  
41               section and review and approval of any incentive pay plan presented by  
42               the private prison contractor for offender pay;

43               (c) Approval of the training program for the private prison  
44               contractor's employees;

45               (d) A determination if the minimum requirements of the contract are  
46               being satisfactorily performed;

47               (e) Promulgation of rules interpreting or making specific application  
48               of the provisions of this section;

1 (f) A determination if appropriate policies and procedures of the  
2 Idaho department of correction are being followed by the private prison  
3 contractor and its personnel;

4 (g) The duty, as set forth in section 20-209B, Idaho Code, to prevent,  
5 control and suppress serious disturbances, including riots, escapes,  
6 affrays and insurrections at a private prison facility that houses  
7 prisoners pursuant to a contract between the private prison contractor  
8 and the state board of correction, that, in the director of the Idaho  
9 department of correction's discretion, threaten the health, safety,  
10 security and property of the facility, facility staff, prisoners,  
11 the public and the state of Idaho. This duty shall be exercised in  
12 the director of the Idaho department of correction's discretion after  
13 consultation with the private prison contractor. The director of  
14 the Idaho department of correction shall designate personnel and  
15 facilities under the control of the state board of correction and shall  
16 enter into such agreements as deemed necessary with other governmental  
17 entities, to respond to serious disturbances at a private prison  
18 facility.

19 (7) No contract for correctional services may authorize, allow, or  
20 imply a delegation of authority or responsibility to a private prison  
21 contractor which would allow the contractor to:

22 (a) Develop or implement procedures for calculating inmate release  
23 dates;

24 (b) Approve the type of work inmates may perform and the wages which may  
25 be given to inmates engaging in the work;

26 (c) Place an inmate under less restrictive custody or more restrictive  
27 custody or take any disciplinary actions contrary to rules and  
28 procedures approved by the Idaho department of correction;

29 (d) Develop or implement procedures regarding the care, custody and  
30 treatment of inmates which are contrary to the Idaho department of  
31 correction's policies and procedures, state or federal law.

32 (8) Any offense, which if committed in a state institution or facility  
33 would be a crime, including escape, shall also be a crime if committed by  
34 or with regard to offenders assigned to an institution or facility operated  
35 pursuant to a contract between the state and a private prison contractor.

36 (9) Any reference in the Idaho Code to imprisonment in a state  
37 penitentiary, or state prison, or incarceration under the control and  
38 custody of the Idaho board of correction shall be interpreted to include  
39 incarceration in a private prison facility.

40 SECTION 4. An emergency existing therefor, which emergency is hereby  
41 declared to exist, this act shall be in full force and effect on and after its  
42 passage and approval and shall apply to contracts entered into or renewed on  
43 or after its passage and approval.