

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1164

By: Cannaday

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5  
6 AS INTRODUCED

7 An Act relating to prisons and reformatories;  
8 amending 57 O.S. 2011, Section 561, as amended by  
9 Section 255, Chapter 304, O.S.L. 2012 (57 O.S. Supp.  
10 2014, Section 561), which relates to incarceration of  
11 inmates at other facilities; providing restrictions  
12 prior to transferring inmates to certain correctional  
13 facilities; and providing an effective date.

14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 57 O.S. 2011, Section 561, as  
16 amended by Section 255, Chapter 304, O.S.L. 2012 (57 O.S. Supp.  
17 2014, Section 561), is amended to read as follows:

18 Section 561. A. The Department of Corrections is hereby  
19 authorized to provide for incarceration, supervision, and  
20 residential treatment at facilities other than those operated by the  
21 Department of Corrections; provided, however, correctional  
22 facilities of the Department and any county jail that has a contract  
23 with the Department to house inmates shall be operating at seventy-  
24 five percent (75%) capacity prior to the Department transferring any  
inmates to a private prison facility in this state or correctional

1 facility operating in another state. Services offered for persons  
2 under the custody or supervision of the Department are to include,  
3 but not be limited to, housing, alcoholism or drug treatment, mental  
4 health services, nursing home care, or halfway house placement.  
5 Such services must meet standards prescribed and established by the  
6 State Board of Corrections for implementing such a program,  
7 including but not limited to standards concerning internal and  
8 perimeter security, discipline of inmates, educational and  
9 vocational training programs, employment of inmates, and proper  
10 food, clothing, housing, and medical care. Such services must be  
11 contracted for in accordance with Section 85.7 of Title 74 of the  
12 Oklahoma Statutes. Such services, if provided by private prison  
13 contractors, shall be contracted for as required by this section.

14 B. The Department of Corrections is authorized to lease  
15 existing facilities or portions thereof from private prison  
16 contractors, counties or other governmental entities and operate  
17 such facilities or portions thereof in the same manner as other  
18 state owned and operated prison facilities. All lease agreements  
19 entered into pursuant to this section shall be negotiated between  
20 the Department and the lessor. The Office of Management and  
21 Enterprise Services shall assist in the negotiations if requested by  
22 the Department of Corrections.

23 C. Subject to the requirements of this section and Section  
24 561.1 of this title, the Department of Corrections is hereby

1 authorized to provide for the construction or operation or both  
2 construction and operation of correctional institutions of the  
3 Department of Corrections by private prison contractors. Such  
4 operation shall meet standards prescribed by the State Board of  
5 Corrections, including but not limited to, standards concerning  
6 internal and perimeter security, discipline of inmates, educational  
7 and vocational training programs, and proper food, clothing,  
8 housing, transportation, and medical care. Such services shall be  
9 contracted for in accordance with the provisions of Section 561.1 of  
10 this title and the provisions of this section.

11 D. A comprehensive file for all private prison contractors  
12 interested in and capable of operating an institution within the  
13 Department of Corrections or providing for the housing, care, and  
14 control of inmates in a facility owned and operated by the  
15 contractor shall be maintained by the Department. These files shall  
16 include:

- 17 1. A completed application form;
- 18 2. A resume of the contractor's staff and capability;
- 19 3. A completed performance evaluation form for past projects on  
20 which the contractor has provided private prison services;
- 21 4. A list of past contracts with this state;
- 22 5. A list of contracts to provide similar services to other  
23 states or to the United States; and
- 24 6. The mailing address of each private prison contractor.

1 Any person or firm wishing to be a private prison contractor may  
2 request at any time to be included in the comprehensive file, and  
3 shall be provided necessary forms within twenty (20) days of the  
4 request and the Department shall add such contractor to the list  
5 within twenty (20) days of receipt of a properly completed  
6 application.

7 The Department may solicit evaluation of work done by private  
8 prison contractors from members of the private sector, which  
9 evaluation shall be part of the comprehensive file.

10 E. If the Department intends to secure the services of a  
11 private prison contractor, all persons and firms included in the  
12 file shall be notified through the mail of such intent. Such  
13 notification shall contain the following information:

- 14 1. Description and scope of the project or projects;
- 15 2. Estimated time schedule for project;
- 16 3. Last date for submitting notice of interest in performing  
17 services to the Director; and
- 18 4. Other pertinent data.

19 Private prison contractors desiring consideration shall meet the  
20 requirements of this section and to be considered shall submit a  
21 letter expressing interest in the project to the Department within  
22 thirty (30) days of the postmark date of the letter of notification  
23 mailed by the Department. Contractors shall file an updated  
24 application form at the request of the Department.

1 F. The Department shall define the scope of a proposed project,  
2 determine the various project components, phases and timetables, and  
3 prepare detailed project descriptions to guide prospective  
4 contractors. Before the Department awards a contract to a private  
5 prison contractor, the plans shall be approved by the State Board of  
6 Corrections.

7 G. The Department shall review the files of the private prison  
8 contractors desiring consideration for the project. After  
9 performing the analysis required by Section 561.1 of this title, the  
10 Department shall select no less than three and no more than five  
11 contractors for more detailed consideration. In the event  
12 interviews for more than one contract are being considered at the  
13 same time, the number of contractors selected for more detailed  
14 consideration should be at least twice the number of contracts  
15 contemplated. This initial screening should consider the  
16 requirements of the project, as well as the following factors to be  
17 determined from the comprehensive file, and replies to inquiries to  
18 former clients:

- 19 1. Specialized experience in the type of work contemplated;
- 20 2. Capacity of the contractor to accomplish the work in the  
21 required time; and
- 22 3. Past performance, from the performance evaluation form.

23 H. A full report of the evaluation procedures and  
24 recommendations of the Department shall be prepared by the

1 Department and submitted to the State Board of Corrections for the  
2 independent review of the entire process.

3 I. 1. The Department shall select the contractor whose  
4 qualifications and project proposal most substantially meet the  
5 criteria of the project description.

6 2. The Department shall execute the contract with the selected  
7 contractor, which contract shall include a fair and reasonable fee.

8 3. The negotiated scope and fee shall be reported to the Board  
9 for the approval of the award of the contract.

10 J. The Office of Management and Enterprise Services shall  
11 render assistance to the Department of Corrections in implementing  
12 the contracting procedures provided for in this section. The Office  
13 of Management and Enterprise Services may have a representative at  
14 any meeting involving negotiations of a contract between the  
15 Department and a private prison contractor. Before submission of  
16 the proposed contract to the Council on Bond Oversight, and prior to  
17 the date as of which the proposed contract is executed by the State  
18 Board of Corrections, the Attorney General and the Director of the  
19 Office of Management and Enterprise Services shall review the  
20 proposed final version of the contract. The Attorney General and  
21 the Director of the Office of Management and Enterprise Services  
22 shall have a period of fifteen (15) days from receipt of the  
23 proposed final version of the contract to approve the contract and  
24 execute the document. If either the Attorney General or the

1 Director of the Office of Management and Enterprise Services has  
2 objections to the proposed contract, the objections shall be  
3 communicated in writing to the Department of Corrections. The  
4 Department of Corrections shall take appropriate action regarding  
5 the objections and shall resubmit the proposed contract for  
6 additional review. The Attorney General and the Office of  
7 Management and Enterprise Services shall have an additional fifteen-  
8 day period to approve the proposed contract and to execute the  
9 document. Failure of the Attorney General or the Director of the  
10 Office of Management and Enterprise Services, respectively, to act  
11 within the fifteen-day period shall constitute approval of the  
12 respective official to the proposed final version of the contract.  
13 The contract shall contain a separate signature block or line for  
14 signature by the Attorney General and the Office of Management and  
15 Enterprise Services. The contract shall contain a statement to be  
16 executed by the Attorney General and the Director of the Office of  
17 Management and Enterprise Services that each one of them,  
18 respectively, has reviewed the proposed contract for compliance with  
19 the provisions of this section and Section 561.1 of this title, and  
20 all other applicable provisions of law and that the contract  
21 conforms with those requirements. Neither the private prison  
22 contractor nor the State Board of Corrections shall execute the  
23 contract until the document has been executed by the Attorney  
24 General and the Director of the Office of Management and Enterprise

1 Services as required by this subsection unless the approval of the  
2 respective official has been made as a result of failure to take  
3 action within the fifteen-day period prescribed by this subsection.

4 K. The Director of the Office of Management and Enterprise  
5 Services is authorized to lease real property and improvements  
6 thereon to a private prison contractor in conjunction with a  
7 contract for private management of a state correctional institution  
8 located or to be built on the property. Said lease may be entered  
9 into for one (1) year periods, renewable at the sole option of the  
10 State of Oklahoma, but not to exceed a cumulative period of fifty  
11 (50) years.

12 L. Contracts awarded to private prison contractors pursuant to  
13 the provisions of this section shall be entered into for a period  
14 specified in each contract, subject to availability of funds  
15 annually appropriated by the Legislature for that purpose. No  
16 contract awarded pursuant to this section shall provide for the  
17 encumbrance of funds beyond the amount available for a fiscal year.

18 M. No contract authorized by the provisions of this section  
19 shall be awarded until the private prison contractor demonstrates to  
20 the satisfaction of the State Board of Corrections:

21 1. That the contractor possesses the necessary qualifications  
22 and experience to provide the services specified in the contract;

23 2. That the contractor can provide the necessary qualified  
24 personnel to implement the terms of the contract;



1           3. That the financial condition of the contractor is such that  
2 the terms of the contract can be fulfilled;

3           4. That the contractor has the ability to comply with  
4 applicable court orders and corrections standards; and

5           5. That, in the case of a contractor who will be providing the  
6 services in a nondepartmental facility operated by said contractor,  
7 the contractor shall be able to meet accreditation standards and  
8 receive accreditation, as required by the terms of the contract  
9 pursuant to subsection C of Section 561.1 of this title.

10          N. No contract authorized by the provisions of this section  
11 shall be awarded until the private prison contractor demonstrates to  
12 the satisfaction of the Board that the contractor can obtain  
13 insurance or provide self-insurance to:

14           1. Indemnify the state against possible lawsuits arising from  
15 the operation of prison facilities by the contractor; and

16           2. Compensate the state for any property damage or expenses  
17 incurred due to the operation of prison facilities.

18          O. A private prison contractor shall not be bound by state laws  
19 or other legislative enactments governing the appointment,  
20 qualifications, duties, salaries, or benefits of wardens,  
21 superintendents, or other correctional employees, except that any  
22 personnel authorized to carry and use firearms shall comply with the  
23 certification standards required by the provisions of Section 3311  
24 of Title 70 of the Oklahoma Statutes and be authorized to use

1 firearms only to prevent a felony, to prevent escape from custody,  
2 or to prevent an act which would cause death or serious bodily  
3 injury to the personnel or to another person.

4 P. Any offense which would be a crime if committed within a  
5 state correctional institution also shall be a crime if committed in  
6 an institution or facility operated by a private prison contractor.

7 Q. The Director or his designee shall monitor the performance  
8 of the contractor.

9 SECTION 2. This act shall become effective November 1, 2015.

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