

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 124, 274 & 413

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO PRIVATELY OPERATED CORRECTIONAL FACILITIES;
ENACTING THE PRIVATELY OPERATED CORRECTIONAL FACILITIES
OVERSIGHT ACT; IMPOSING MINIMUM STANDARDS; PROVIDING THE
SECRETARY OF CORRECTIONS WITH AUTHORITY TO ADOPT RULES
REGARDING INCARCERATION OF OUT-OF-STATE INMATES IN PRIVATELY
OPERATED CORRECTIONAL FACILITIES; PROVIDING FOR SUPERVISION OF
OUT-OF-STATE INMATES IN PRIVATELY OPERATED CORRECTIONAL
FACILITIES; ASSESSING FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Privately Operated Correctional Facilities Oversight Act".

Section 2. DEFINITIONS.--As used in the Privately
Operated Correctional Facilities Oversight Act:

1 A. "out-of-state inmate" means a person
2 incarcerated in a privately operated correctional facility
3 within this state who is being incarcerated on behalf of a
4 state other than New Mexico, a governmental entity whose
5 jurisdiction is outside the state of New Mexico or any private
6 entity. "Out-of-state inmate" does not include a person who is
7 being incarcerated on behalf of an Indian tribe or pueblo whose
8 lands are located wholly or partially within New Mexico, or on
9 behalf of the United States;

10 B. "privately operated correctional facility" means
11 a correctional facility or jail that has all or substantially
12 all of its security operations performed by persons employed
13 by, or engaged by, a private entity to perform security
14 functions; and

15 C. "secretary" means the secretary of corrections
16 or his designee.

17 Section 3. INCARCERATION OF OUT-OF-STATE INMATES IN
18 PRIVATELY OPERATED CORRECTIONAL FACILITIES--MINIMUM
19 STANDARDS--SECRETARY'S AUTHORITY TO ADOPT RULES.--

20 A. A privately operated correctional facility shall
21 meet the following minimum standards before housing ten or
22 more out-of-state inmates:

23 (1) all correctional officers and other
24 persons, employed or engaged by a privately operated
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1 correctional facility, whose primary function is to provide
2 security shall, before being assigned to provide the security
3 functions, successfully complete a screening, background check
4 and training course approved by the secretary. The secretary
5 may offer to provide services to the privately operated
6 correctional facility, including qualifying screening,
7 background checks and a training program at the corrections
8 academy at a reasonable cost;

9 (2) a privately operated correctional
10 facility shall provide immediate oral notice, followed by a
11 written report, to the secretaries of public safety and
12 corrections, the local county sheriff and the chief of police
13 of the municipality in which the facility is located, or the
14 chief of police of the nearest municipality, or their
15 designees, whenever any of the following events occur at the
16 privately operated correctional facility:

17 (a) discharge of a firearm other than
18 for training purposes;

19 (b) discharge of a chemical agent, gas
20 or munitions to control the behavior of two or more inmates;

21 (c) a hostage situation;

22 (d) the death of an inmate, staff
23 member, visitor or other person;

24 (e) a disturbance involving five or more
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1 inmates;

2 (f) an escape or attempted escape; or

3 (g) the commission of a felony offense;

4 (3) a privately operated correctional facility
5 shall obtain and maintain current accreditation by the American
6 correctional association regarding standards for prisons or
7 standards for jails as deemed appropriate by the secretary. As
8 to any new privately operated correctional facility, the
9 secretary may allow the facility a period of two years from the
10 date the facility becomes operational to obtain accreditation
11 or may require the facility to apply for and receive
12 provisional accreditation;

13 (4) a privately operated correctional facility
14 shall prepare an emergency response plan deemed satisfactory by
15 the secretary. A copy of the emergency response plan shall be
16 provided to the secretaries of public safety and corrections,
17 the local county sheriff and the chief of police of the
18 municipality in which the facility is located, or the chief of
19 police of the nearest municipality, or their designees;

20 (5) a privately operated correctional facility
21 shall ensure that an out-of-state inmate released from the
22 privately operated correctional facility is released to his
23 state of origin; and

24 (6) the owner or operator of a privately
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1 operated correctional facility shall enter into a written
 2 contract with the entity that proposes to house ten or more
 3 out-of-state inmates in the facility, and the contract shall
 4 contain provisions that require compliance with the minimum
 5 standards set forth in this subsection. The contract shall be
 6 subject to advance review by the secretary.

7 B. The secretary may adopt, implement and enforce
 8 standards and rules regarding privately operated correctional
 9 facilities that house or propose to house ten or more out-of-
 10 state inmates. The secretary shall review all contracts and
 11 proposed contracts between the owner or operator of a privately
 12 operated correctional facility and the entity that proposes to
 13 house ten or more out-of-state inmates in the facility.

14 C. The secretary shall inspect and monitor a
 15 privately operated correctional facility that houses or proposes
 16 to house ten or more out-of-state inmates to ensure compliance
 17 with the minimum standards set forth in this section and to
 18 ensure compliance with standards and rules adopted by the
 19 secretary pursuant to this section. The secretary shall be
 20 provided with the classification records and other relevant
 21 records pertaining to the out-of-state inmates who are proposed
 22 to be incarcerated at the privately operated correctional
 23 facility. The secretary shall have subpoena authority as to all
 24 present and former employees and other personnel of the
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1 privately operated correctional facility, as well as to all
2 records pertaining to the facility, for the purposes of
3 inspecting and monitoring the facility. Upon completion of an
4 inspection, the secretary shall submit a report with findings
5 and recommendations to the privately operated correctional
6 facility, the board of county commissioners for the county where
7 the facility is located, the county sheriff of the county where
8 the facility is located and the legislative corrections
9 oversight committee. The secretary shall allow the facility a
10 reasonable period of time to address any deficiencies and
11 recommendations set forth in the report. The secretary may
12 conduct additional inspections to determine compliance with
13 minimum standards, rules and any recommendations. If a
14 privately operated correctional facility that houses or proposes
15 to house out-of-state inmates fails to comply with the standards
16 and rules authorized pursuant to this section, the secretary may
17 prohibit the privately operated correctional facility from
18 housing out-of-state inmates.

19 Section 4. SECRETARY'S AUTHORITY TO SUPERVISE THE
20 INCARCERATION OF OUT-OF-STATE INMATES IN PRIVATELY OPERATED
21 CORRECTIONAL FACILITIES--ASSESSING FEES.--

22 A. An out-of-state inmate shall not be incarcerated
23 in a privately operated correctional facility in New Mexico:

24 (1) unless the privately operated correctional
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1 facility is designed to meet or exceed the appropriate
2 classification level for the out-of-state inmate; and

3 (2) without the express approval of the
4 secretary. The secretary shall not unreasonably withhold his
5 approval.

6 B. The operator of a privately operated correctional
7 facility that houses out-of-state inmates shall pay a fee, on a
8 quarterly basis, to the county sheriff's department of the
9 county in which the privately operated correctional facility is
10 located. The amount of the fee shall be seventy-five cents
11 (\$0.75) per inmate per day for each out-of-state inmate who is
12 incarcerated in the privately operated correctional facility.

13 C. The operator of a privately operated correctional
14 facility that houses out-of-state inmates shall pay a fee, on a
15 quarterly basis, to the corrections department to reimburse the
16 department for the actual costs of supervising, inspecting and
17 monitoring the privately operated correctional facility.

18 Section 5. EFFECTIVE DATE. -- The effective date of the
19 provisions of this act is July 1, 2001.

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