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**HOUSE BILL 881**

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

**INTRODUCED BY**

**Joseph M Thompson**

**AN ACT**

**RELATING TO PRIVATELY OPERATED CORRECTIONAL FACILITIES;  
IMPOSING MINIMUM STANDARDS; PROVIDING THE SECRETARY OF  
CORRECTIONS WITH AUTHORITY TO ADOPT RULES REGARDING  
INCARCERATION OF OUT-OF-STATE AND OUT-OF-COUNTY INMATES IN  
PRIVATELY OPERATED CORRECTIONAL FACILITIES.**

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

**Section 1. INCARCERATION OF OUT-OF-STATE AND OUT-OF-  
COUNTY INMATES IN PRIVATELY OPERATED CORRECTIONAL FACILITIES--  
MINIMUM STANDARDS--SECRETARY'S AUTHORITY TO ADOPT RULES--  
IMMUNITY.--**

**A. As used in this section:**

**(1) "out-of-county inmate" means a person  
incarcerated in a privately operated correctional facility  
within this state who is being incarcerated in a county**

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1 facility or ~~municipal~~ facility on behalf of a New Mexico  
2 county that is not the county where the facility is located or  
3 on behalf of a New Mexico ~~municipality~~ that is not within the  
4 county where the privately operated correctional facility is  
5 located. "Out-of-county inmate" does not include a person who  
6 is being incarcerated on behalf of an Indian tribe or pueblo  
7 whose lands are located wholly or partially within the county  
8 where the facility is located, or on behalf of the United  
9 States;

10 (2) "out-of-state inmate" means a person  
11 incarcerated in a privately operated correctional facility  
12 within this state who is being incarcerated on behalf of a  
13 state other than New Mexico, a governmental entity whose  
14 jurisdiction is outside the state of New Mexico or any private  
15 entity. "Out-of-state inmate" does not include a person who  
16 is being incarcerated on behalf of an Indian tribe or pueblo  
17 whose lands are located wholly or partially within New Mexico,  
18 or on behalf of the United States;

19 (3) "privately operated correctional  
20 facility" means a correctional facility that has all or  
21 substantially all of its security operations performed by  
22 persons employed by, or engaged by, a private entity to  
23 perform security functions; and

24 (4) "secretary" means the secretary of  
25 corrections or his designee.

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1           B. A privately operated correctional facility  
2 shall meet the following minimum standards before housing ten  
3 or more out-of-state inmates or out-of-county inmates:

4           (1) all correctional officers and other  
5 persons, employed or engaged by a privately operated  
6 correctional facility, whose primary function is to provide  
7 security shall, before being assigned to provide the security  
8 functions, successfully complete a screening, background check  
9 and training course approved by the secretary, unless the  
10 secretary grants the person a waiver. The secretary shall  
11 offer to provide services to the privately operated  
12 correctional facility or private entity, including qualifying  
13 screening, background checks and a training program at the  
14 corrections academy at a reasonable cost;

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

23                   (a) discharge of a firearm other than  
24 for training purposes;

25                   (b) discharge of a chemical agent, gas

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1 or munitions to control the behavior of two or more inmates;

2 (c) a hostage situation;

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

5 (e) a disturbance involving five or  
6 more inmates;

7 (f) an escape or attempted escape;

8 (g) the commission of a felony offense;

9 (h) an erroneous release of an out-of-  
10 state inmate or an inmate who was being held on behalf of the  
11 corrections department; or

12 (i) a report or other indication of the  
13 use of excessive force upon an inmate, unless the report is  
14 clearly false;

15 (3) a privately operated correctional  
16 facility shall obtain and maintain current accreditation by  
17 the American correctional association regarding standards for  
18 prisons or standards for jails as deemed appropriate by the  
19 secretary, unless a waiver is obtained from the secretary. As  
20 to any new privately operated correctional facility, the  
21 secretary may allow the facility a period of two years from  
22 the date the facility becomes operational to obtain  
23 accreditation or may require the facility to apply for and  
24 receive provisional accreditation;

25 (4) a privately operated correctional

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1 facility shall prepare and submit an emergency plan deemed  
2 satisfactory by the secretary; and

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

11 C. The secretary may adopt, implement and enforce  
12 standards and rules regarding privately operated correctional  
13 facilities that house or propose to house ten or more out-of-  
14 state inmates or out-of-county inmates. The secretary shall  
15 review all contracts and proposed contracts between the owner  
16 or operator of a privately operated correctional facility and  
17 the entity that proposes to house ten or more out-of-state  
18 inmates or out-of-county inmates in the facility. The inmates  
19 shall not be housed in the privately operated correctional  
20 facility until the contract is approved by the secretary.

21 D. The secretary shall inspect and monitor a  
22 privately operated correctional facility that houses or  
23 proposes to house ten or more out-of-state inmates or out-of-  
24 county inmates to ensure compliance with the minimum standards  
25 set forth in this section and to ensure compliance with

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

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1 state inmates.

2 E. The secretary and his designees are granted  
3 immunity from lawsuits with regard to claims that are  
4 primarily related to:

5 (1) the secretary's authority to adopt,  
6 implement and enforce standards and rules, as authorized in  
7 this section; and

8 (2) the secretary's authority to inspect and  
9 monitor privately operated correctional facilities, as  
10 authorized in this section.

11 Section 2. EFFECTIVE DATE. -- The effective date of the  
12 provisions of this act is July 1, 2001.