

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.