

TITLE 20
STATE PRISON AND COUNTY JAILS

CHAPTER 8
PRIVATE PRISON FACILITIES

20-801. DEFINITIONS. In this chapter:

(1) "Contracting authority" means a board of county commissioners or the governing body of a city.

(2) "Correctional facility" means a facility for the confinement of prisoners. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "detention institution (facility)," "county jail," "jail," "private prison (facility)" or "private correctional facility." The term does not include a treatment facility designed to evaluate and treat substance abuse when the treatment facility is operated under the direction of a political subdivision of the state of Idaho.

(3) "Governmental entity" means a state, county, city, municipal corporation or other political subdivision of the state, or a territory of the United States and any political subdivision thereof.

(4) "In-state prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole for that crime or in custody for trial and sentencing, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho.

(5) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

(6) "Medium security" or "medium custody" means a security or custody classification reserved for prisoners who have demonstrated an ability to follow institutional rules and regulations, who may have a considerable amount of time remaining to serve and who may present an escape risk at a lower assigned custody level.

(7) "Minimum security" or "minimum custody" means a security or custody classification reserved for prisoners who have continuously demonstrated an ability to follow institutional rules and regulations; who are either committed for a nonviolent crime or are committed on a violent crime; who are generally within twelve (12) months of parole eligibility; and who normally do not present an escape risk.

(8) "Out-of-state prisoner" or "out-of-state inmate" means a person who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(9) "Prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole for that crime or in custody for trial and sentencing, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United

States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho. The term shall be construed to include references to terms including, but not limited to, "inmate," "convict," "detainee," and other similar terms, and shall include "out-of-state prisoner" and "out-of-state inmate."

(10) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of these services. For purposes of this chapter, "private prison contractor" does not include those persons, organizations, partnerships, joint ventures, corporations or other business entities that contract with a political subdivision of the state of Idaho for the construction of a facility provided the facility will be operated by the political subdivision or where the facility is operated under the direction of the political subdivision and is designed to evaluate and treat substance abuse.

(11) "Private prison facility" or "private correctional facility," for purposes of this chapter, means a correctional facility constructed or operated in the state of Idaho by a private prison contractor pursuant to contract with a contracting authority as defined herein.

[20-801, added 1998, ch. 360, sec. 1, p. 1124; am. 2001, ch. 335, sec. 1, p. 1178.]

20-802. APPLICATION OF CHAPTER. The provisions of this chapter shall not apply to contracts of the state of Idaho for the housing of inmates in a private prison facility or local government detention facility.

[20-802, added 1998, ch. 360, sec. 1, p. 1124.]

20-803. PRIVATE PRISON CONTRACTORS -- CONTRACT OR APPROVAL REQUIRED TO CONSTRUCT AND OPERATE PRIVATE PRISON FACILITIES AND TO HOUSE OUT-OF-STATE PRISONERS. (1) A private prison contractor may not construct or operate a private prison facility in this state except pursuant to a contract with the state of Idaho, as authorized in chapter 2, title 20, Idaho Code, or pursuant to a written contract with a county or city of this state, as authorized by the provisions of this chapter.

(2) A private prison contractor may not house in a private prison facility in this state prisoners who have been convicted of offenses committed against the laws of a governmental entity other than the state of Idaho and its political subdivisions except pursuant to a written contract with the board of county commissioners of the county in which the facility is located or the governing body of the city in which the facility is located, and only if the requirements of this chapter are met.

[20-803, added 1998, ch. 360, sec. 1, p. 1124; am. 2001, ch. 335, sec. 2, p. 1180.]

20-804. AUTHORITY OF COUNTY OR CITY TO HOUSE PRISONERS IN A PRIVATE PRISON FACILITY. (1) A board of county commissioners or the governing body of a city may authorize the housing of specific minimum to medium security prisoners of the county or the city in a private prison facility pursuant to contract with the private prison contractor and subject to the review and approval of the prisoners by the department of correction. Provided, however,

that in no event shall a board of county commissioners or the governing body of a city authorize, nor shall the department of correction approve, housing of any maximum or close custody prisoners, inmates imprisoned for sexual offenses or prisoners with a history or record of institutional violence involving the use of a deadly weapon, a history or record of committing any act of an assaultive nature that would qualify as a felony under the laws of the state of Idaho against any prisoner, employee or visitor while confined, or a history or record of escape or attempted escape from secure custody.

(2) A board of county commissioners may not contract with a private prison contractor in which a commissioner or an elected or appointed peace officer or other county official has an interest pursuant to chapter 5, title 74, Idaho Code. The governing body of a city may not contract with a private prison contractor in which the mayor, a member of the city council, or any appointed peace officer or other city official has an interest pursuant to chapter 5, title 74, Idaho Code. A contract made in violation of the provisions of this subsection is voidable.

[20-804, added 1998, ch. 360, sec. 1, p. 1125; am. 2001, ch. 335, sec. 3, p. 1180; am. 2015, ch. 141, sec. 27, p. 407.]

20-805. CONTRACTS WITH A PRIVATE PRISON CONTRACTOR. (1) A board of county commissioners or the governing body of a city, may enter into a contract with a private prison contractor for the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of these services, subject to the following requirements and limitations:

(a) Any request for proposals, any original contract, any contract renewal, any price or cost adjustment or any other amendment to any contract for the incarceration of individuals in a private prison facility shall be reviewed and approved by the contracting authority. The contract shall be in a form as provided for by the department of administration in consultation with the department of correction;

(b) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the contracting authority that the contractor possesses the necessary qualifications and experience to provide the services specified in the contract; that the contractor can provide the necessary qualified personnel to implement the terms of the contract; that the financial condition of the contractor is such that the terms of the contract can be fulfilled; that the contractor has the ability to comply with applicable court orders and meet corrections standards; and that the proposed private prison facilities or the correctional services proposed by the contractor meet constitutional minimums;

(c) The contract shall provide for the assumption of liability by the private prison contractor for all claims arising from the services performed under the contract by the private prison contractor;

(d) No contract authorized by the provisions of this section shall be awarded until the private prison contractor provides a policy of insurance for all claims satisfactory to the contracting authority specifically including, but not limited to, insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. The insurance policy shall provide coverage for the private prison contrac-

tor and its officers, guards, employees and agents as well as insure the state, including all state agencies, and all political subdivisions of the state with jurisdiction over the facility or in which a facility is located against all claims arising from the services performed under the contract by the private prison contractor, its officers, guards, employees and agents. The private prison contractor shall immediately provide written notification of cancellation of insurance to the state department of correction and the contracting authority. The private prison contractor may not self-insure. Proof of insurance shall be provided on or before January 1 of every year to the state department of correction and the contracting authority;

(e) If the contract includes construction or renovation, the contract shall require a performance bond approved by the contracting authority that is adequate and appropriate for the proposed construction or renovation contract;

(f) Except as otherwise permitted under the constitution or laws of the state of Idaho, no contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year;

(g) The contract shall require the private prison contractor to be licensed by the department of correction pursuant to the provisions of this chapter.

(2) Any contract between a contracting authority and a private prison contractor, whereby the contractor provides for the housing, care, and control of prisoners in a facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

(a) A requirement that the private prison contractor provide the services in a facility which meets correctional standards satisfying constitutional minimums, state and federal laws, rules and regulations and applicable court orders, including, but not limited to, all sanitation, food service, safety and health regulations;

(b) A requirement that the private prison contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with laws, rules and regulations of the type described in subsection (2) (a) of this section to the governing authority of the local public entity in which the correctional facility is located;

(c) If a private prison contractor enters into a contract with a board of county commissioners for a private prison facility to be located on private land within the limits of any city, it shall be required that the contractor obtain written authorization from the governing body of the city in which the facility is to be located;

(d) A requirement that the private prison contractor provide training to its personnel to a level acceptable to the contracting authority. The provisions of this section shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms. A private correctional officer or other designated employee of a private prison contractor may carry and use firearms in the course of the officer's or employee's employment only if the officer or employee is certified as having satisfactorily completed a training program approved by the department of correction and only if used to prevent escape from the facility or from custody while being transported to or from the facility or to prevent an act which would cause death or serious bodily injury to any person. The provisions of

this section shall not be construed to confer county or city employee status upon any employee of the private prison contractor;

(e) A requirement that the private prison contractor will not employ any person at the private prison facility until after the private contractor has submitted to the bureau of criminal identification, on a form prescribed by the bureau, a request that the bureau conduct a criminal records check of the person and a requirement that the private prison contractor will not employ any person at the facility if the records check or other information possessed by the contractor indicates that the person has a criminal history or record, regardless of the form of judgment;

(f) A requirement that the private prison facility be staffed at all times to ensure supervision of prisoners and maintenance of security within the private prison facility and to provide for appropriate programs, transportation, security and other operational needs. In determining security needs for the private prison facility, the private contractor and the contract requirements shall fully take into account all relevant factors including, but not limited to, the proximity of the facility to neighborhoods and schools;

(g) A requirement that the private prison contractor, its officers, guards, employees, and agents immediately notify the county sheriff and any other law enforcement or other governmental entities, agencies or personnel named in the contract or required to be informed as provided in this chapter of any riot, rebellion, escape, crime or other emergency situation occurring inside or outside the facility, and a requirement that the private prison contractor reimburse costs as provided in section 20-809, Idaho Code. Notification shall be made by telephone and in writing. The written notice may be made by facsimile transmission or mail;

(h) A requirement that the private contractor adopt and use in the private prison facility a drug testing and treatment program that meets the standards of any drug testing and treatment program the department of correction uses for its prisoners in state correctional institutions;

(i) A requirement that the private prison contractor provide advance written notice to the county sheriff of the contracting authority and any other law enforcement or other governmental entities, agencies or personnel named in the contract, of its intent to provide for transport of any prisoners to or from the private prison facility and of the intended destination;

(j) A requirement that the private prison contractor shall be solely responsible for any damage caused by a prisoner in its custody and shall be solely responsible for security and all costs associated with transporting and housing prisoners to and from locations outside the private prison facility including, but not limited to, court, medical and sending facility locations. The private prison contractor's responsibility for costs will include, but not be limited to, all costs which may be required by court officials for additional security for the prisoner provided by federal, state, county or city officials;

(k) A requirement that no prisoner shall be housed in a private prison facility pursuant to this chapter without the prior approval of the department of correction pursuant to the provisions of this chapter. Prior to housing any proposed prisoner in the private prison facility, all records in the possession of, or available to, the sending entity,

including, but not limited to, classification, medical information, conduct and confinement history of the prisoner shall be provided to the department of correction for review and the department shall have the authority to approve or reject housing of the prisoner based on standards as set forth pursuant to this chapter. Provided however, that in lieu of providing the department of correction with medical information of a prisoner, a sending entity may elect to certify, by a physician licensed in this state and employed by, or under contract with, the private prison facility, that the prisoner under consideration for placement in the facility has been tested, and has not tested positive, for the presence of HIV antibodies or antigens, hepatitis B virus, hepatitis C virus and tuberculosis;

(l) A requirement that the private prison contractor, prior to housing any out-of-state prisoner in the private prison facility under the contract, enter into an agreement with the local contracting governmental entity that sets forth a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall provide, in part, that the private prison contractor shall be responsible for housing and providing for the transportation of the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of such housing and transporting of those prisoners;

(m) A requirement that the private prison contractor conform to applicable standards, and obtain accreditation from, the American correctional association and the national commission on correction health care;

(n) A requirement that the private prison contractor indemnify and hold harmless the state, its officers, agents and employees and any local governmental entity in the state with jurisdiction over the place at which the private prison facility is located or that owns the private prison facility, and shall reimburse the state or local governmental entity for costs incurred defending the state or local governmental entity or any of its officers, agents or employees against all claims including the following:

(i) Any claims or losses for services rendered by the contractor, its officers, agents or employees, performing or supplying services in connection with the performance of the contract;

(ii) Any failure of the contractor, its officers, agents or employees to adhere to the laws, rules, regulations or terms agreed to in the contract;

(iii) Any constitutional, federal, state or civil rights claim brought against the governmental entity related to the facility operated and managed by the contractor;

(iv) Any claims, losses, demands or causes of action arising out of the activities in this state of the contractor, its officers, agents or employees;

(v) Any attorney's fees or court costs arising from any habeas corpus actions or other prisoner suits that may arise from any event that occurred at the facility or was a result of such an event, or arise over the conditions, management or operation of the facility, which fees and costs shall include, but not be limited to, attorney's fees for the governmental entity's rep-

resentation and for any court-appointed representation of any prisoner.

(o) A clear statement that provisions set forth within this chapter do not affect any immunity or defense that the state and its officers and employees or a contracting authority and its officers and employees may be entitled to under another section of the Idaho Code, including, but not limited to chapter 9, title 6, Idaho Code;

(p) A clear statement that no immunity from liability granted to the state, and no immunity from liability granted to political subdivisions pursuant to chapter 9, title 6, Idaho Code, shall extend to the private prison contractor or any of the private prison contractor's employees;

(q) A requirement that the private prison contractor and its personnel comply with the provisions of this chapter, all laws of the state of Idaho, and all ordinances, policies and procedures of the contracting authority;

(r) A requirement that any ambiguities in the contract shall be construed against the private prison contractor and in favor of the contracting authority.

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

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

(b) Provide that the private prison contractor shall not benefit financially from the labor of prisoners nor shall any prisoner ever be placed in a position of authority over another prisoner. Any profits realized from the operation of a prison enterprise program shall revert to the contracting authority;

(c) Provide that the private prison contractor shall impose discipline on prisoners only in accordance with applicable rules, policies and procedures satisfying constitutional minimums, state and federal laws and applicable court orders;

(d) Require that the private prison contractor provide proper food, clothing, housing and medical care as provided for in the contract. The governmental entity contracting with the private prison contractor shall not be responsible for any costs associated with the medical care of prisoners in the custody of the private prison contractor.

(4) The contracting authority or its designee, as provided in the contract, shall monitor the performance of the private prison contractor. Included in the powers and responsibilities of the contracting authority or its designee, when acting as the contract monitor of the private prison contract are:

(a) A determination if the requirements of the contract are being satisfactorily performed;

(b) A determination whether the private prison contractor and its personnel are complying with the provisions of this chapter, all laws of the state of Idaho and any ordinances or written policies and procedures of the county or city governing the private prison facility;

(c) A determination if applicable ordinances, written policies and procedures of the contracting authority are being followed by the private prison contractor and its personnel;

(d) A determination whether the facility is being operated in a manner which adequately safeguards and protects the safety of the public;

(e) Approval of all prisoner releases on furlough or work release;

(f) The enactment of ordinances or the adoption of written policies or procedures interpreting or making specific application of the provisions of this chapter.

[20-805, added 1998, ch. 360, sec. 1, p. 1125; am. 2000, ch. 272, sec. 10, p. 792; am. 2001, ch. 335, sec. 4, p. 1181.]

20-806. PRIVATE PRISON FACILITIES -- REQUIREMENTS -- LICENSING. A private prison contractor that has contracted for the location or operation of a private prison facility within a county or a city of this state shall comply with the following requirements:

(1) An individual, corporation, partnership, association, or other private organization or entity may not operate a private prison facility in this state unless licensed by the department of correction. The board of correction shall have the power and it shall be its duty to promulgate rules necessary to implement and enforce standards for the licensing and operation of private prison facilities as set forth pursuant to this chapter. Applications for licenses shall be made on forms provided by the department of correction and accompanied by the required license fee. Licenses for the operation of private prisons shall be nontransferable. A license may be revoked if the facility fails to meet the standards and provisions of this chapter. All final decisions by the board shall be subject to review pursuant to the provisions and procedures of the administrative procedure act, chapter 52, title 67, Idaho Code;

(2) The facility shall meet correctional standards satisfying constitutional minimums, state and federal laws and applicable court orders;

(3) If the private prison facility is located on land owned by the county or the city or other publicly owned land which is not subject to real property taxes, the county or the city, if the facility is located within the limits of the city, may require the private prison contractor to pay fees to the county or the city in lieu of property taxes, as compensation for the costs to the county or the city of regulating, monitoring and providing services to the facility;

(4) The facility must provide internal and perimeter security to protect the public, employees and prisoners;

(5) The private prison contractor shall impose discipline on prisoners only as permitted by correctional standards satisfying constitutional minimums, state and federal laws, and applicable court orders;

(6) The private prison contractor shall provide prisoners with proper food, clothing, housing and medical care in accordance with constitutional minimums, state and federal laws, and applicable court orders. The private prison contractor shall require that anyone providing professional services to prisoners shall be licensed as provided by the state of Idaho if the professional would be required to be licensed in the state of Idaho to provide services to the general public;

(7) The private prison contractor shall allow access to the facility at all times and cooperate with all state and local authorities and their designees in the performance of their duties pursuant to section 20-805(4), Idaho Code, and section 20-808, Idaho Code.

[20-806, added 1998, ch. 360, sec. 1, p. 1127; am. 2001, ch. 335, sec. 5, p. 1186.]

20-807. OUT-OF-STATE PRISONERS. (1) A board of county commissioners may authorize a private prison contractor operating a private prison facil-

ity within the county and the governing body of a city may authorize a private prison contractor operating a private prison facility within the city to house specific minimum to medium security prisoners convicted of offenses committed against the laws of a governmental entity other than the state of Idaho or its political subdivisions pursuant to contract with the private prison contractor and subject to the review and approval of the prisoners by the department of correction. Provided however, that in no event shall a board of county commissioners or the governing body of a city authorize, nor shall the department of correction approve, housing of any maximum or close custody prisoners, inmates imprisoned for sexual offenses or prisoners with a history or record of institutional violence involving the use of a deadly weapon, a history or record of committing any act of an assaultive nature that would qualify as a felony under the laws of the state of Idaho against any prisoner, employee or visitor while confined, or a history or record of escape or attempted escape from secure custody.

(2) Out-of-state prisoners may be housed in a private prison facility only if the following requirements are met:

(a) The custody level capacity and availability in the private prison facility is adequate to house the prisoners;

(b) The private prison contractor and the board of county commissioners or the governing body of the city, in cooperation with state and local law enforcement agencies, and other appropriate governmental entities and agencies, have developed a written plan explaining the procedure to be used to coordinate law enforcement and other necessary activities in response to any riot, rebellion, escape or other emergency situation occurring in or on the grounds of, or otherwise in connection with, the facility;

(c) The private prison facility meets standards for the care, custody, treatment and control of prisoners which comply with constitutional minimums, state and federal laws and applicable court orders and any additional standards required by the county or the city;

(d) Each prisoner to be paroled or released from custody must be transported and released by the private prison contractor or its agent in the sending governmental entity's jurisdiction;

(e) Before transferring the prisoner to Idaho, the private prison contractor shall obtain prior approval of the department of correction pursuant to the provisions of this chapter. Prior to housing any proposed prisoner in the private prison facility, all records in the possession of, or available to, the sending entity including, but not limited to, classification, medical information, conduct and confinement history of the prisoner shall be provided to the department of correction for review and the department shall have the authority to approve or reject housing of the prisoner based on standards as set forth pursuant to this chapter. Provided however, that in lieu of providing medical information of a prisoner, a sending entity may elect to certify, by a physician licensed in this state and employed by, or under contract with, the private prison facility, that the prisoner under consideration for placement in the facility has been tested, and has not tested positive, for the presence of HIV antibodies or antigens, hepatitis B virus, hepatitis C virus and tuberculosis;

(f) The sending governmental entity will not transfer and the private prison contractor will not accept a prisoner who has a history or record of institutional violence involving the use of a deadly weapon, a

history or record of committing any act of an assaultive nature that would qualify as a felony under the laws of the state of Idaho against any prisoner, employee or visitor while confined or a history or record of escape or attempted escape from secure custody;

(g) The private prison contractor will determine the prisoner's custody level in order to ensure that the custody level assignments for the facility as a whole are compatible with the construction security level availability in the facility. If it is determined by the county or the city or the private prison contractor that the prisoner poses a substantial risk to the community, prison population or staff or should be classified as maximum security or close custody, the prisoner will be returned to the sending governmental entity.

(3) Neither this section nor any other provision of this chapter shall be construed to authorize the release of an out-of-state prisoner confined in a private prison facility on work release, furlough or other release from the facility except as provided in any contract authorized in this chapter or as provided by county or city ordinance.

(4) The provisions of this section shall not be construed as a limitation upon the authority of the state of Idaho, a county or a city of this state to incarcerate, detain or place a person convicted of an offense committed against the laws of the United States, a territory of the United States, another state or a political subdivision thereof in a correctional facility, county jail or other governmental detention facility in this state pursuant to the laws of the United States, the state of Idaho or other applicable law.

[20-807, added 1998, ch. 360, sec. 1, p. 1128; am. 2000, ch. 272, sec. 11, p. 794; am. 2001, ch. 335, sec. 6, p. 1187.]

20-808. MONITORING PRIVATE PRISONS. In addition to and without limiting the authority provided in this chapter or by contract entered into pursuant to section 20-805, Idaho Code, or as provided by other applicable law, the board of county commissioners, the county sheriff, the prosecuting attorney or the authorized agents and employees of a county in which a private prison facility is located and the governing board of a city, the city attorney, law enforcement personnel of the city and other authorized agents and employees of the city in which a private prison facility is located, shall be authorized to monitor the facility and to enter the facility and the grounds thereof for the following purposes:

(1) To determine if the private prison contractor, its personnel and the private prison facility are in compliance with the provisions of this chapter, all laws of the state of Idaho and any ordinances or written policies and procedures of the county or city governing the private prison facility;

(2) To investigate any criminal conduct which has occurred, is occurring or is alleged to have occurred in or on the grounds of, or otherwise in connection with, the facility;

(3) To determine whether the facility is being operated in a manner which adequately safeguards and protects the safety of the public;

(4) To review prisoner security or custody classifications to determine whether any classifications need to be revised.

[20-808, added 1998, ch. 360, sec. 1, p. 1129; am. 2001, ch. 335, sec. 7, p. 1189.]

20-809. RIOT, REBELLION, ESCAPE, CRIME OR EMERGENCY SITUATION -- NOTICE -- REIMBURSEMENT FOR COSTS. (1) The private prison contractor, its officers, guards, employees, and agents shall immediately notify the county sheriff and, if the facility is located within the limits of a city, the city law enforcement agency, along with any other law enforcement or other governmental entities, agencies or personnel which the county or the city may require to be informed, of any riot, rebellion, escape, crime or other emergency situation occurring inside or outside the facility.

(2) In the event of an escape by a prisoner from a private prison facility to which this chapter applies, the private prison contractor must contact the county sheriff and, if the facility is located within the limits of a city, the city law enforcement agency, and any other governmental entities or agencies which the county or city may require to be informed, upon receiving knowledge of the escape, but may attempt to apprehend the prisoner while the search or pursuit is on the private prison contractor's private property. In the event that the escaping prisoner flees from the private prison contractor's private property, the sheriff of the county, in cooperation with city law enforcement as appropriate, shall organize and have jurisdiction over the pursuit and apprehension of the prisoner.

(3) A private prison contractor shall reimburse Idaho governmental entities for costs incurred by the entities in responding to any riot, rebellion, escape, crime or other emergency situation occurring in or on the grounds of, or otherwise in connection with, the facility. The private prison contractor shall also reimburse Idaho governmental entities for costs incurred by the entities with respect to the investigation, prosecution, detention or appellate litigation, without regard to whether conviction is obtained, of a prisoner charged with a crime resulting from a riot, rebellion, escape or other criminal conduct.

(4) If a prisoner commits a criminal offense while confined in a private prison facility in this state and is convicted of or pleads guilty to that offense and is sentenced to a term of confinement for that offense but is not sentenced to death for that offense, the prisoner shall be returned to the out-of-state jurisdiction or the out-of-state jurisdiction's private contractor for confinement. The prisoner shall not begin serving the term of confinement imposed for the offense committed while confined in this state until such time as the prisoner is released from the custody of the out-of-state jurisdiction. The private prison contractor or its agent will transport the prisoner, or cause the prisoner to be transported, to the out-of-state jurisdiction. If the prisoner is confined in this state in a facility operated by, or pursuant to a state contract with, the department of correction for any period of time prior to transfer back to the out-of-state jurisdiction, the private contractor will be financially responsible for reimbursing the department at the per diem cost of confinement for the duration of that incarceration. Notwithstanding the provisions of this subsection, any sentence imposed against a prisoner by a court in the state of Idaho may be imposed to run concurrently with any sentence already being served by the prisoner.

[20-809, added 1998, ch. 360, sec. 1, p. 1129; am. 2001, ch. 335, sec. 8, p. 1189.]

20-812. ENFORCEMENT -- AVAILABLE REMEDIES -- CIVIL PENALTY. (1) The county prosecuting attorney shall have authority to enforce the provisions of this chapter, and any county ordinances enacted, or written policies or

procedures adopted by the county with respect to the operation of a private prison facility in the county, or any contract entered into between a board of county commissioners and a private prison contractor by civil action and may seek all available civil remedies including injunction. If the prosecuting attorney prevails in the action, the private prison contractor shall be liable to the county for attorney's fees and costs of suit. The action shall be brought in the district court of the county in which the private prison facility is located or is proposed to be located.

(2) The city attorney shall have authority to enforce the provisions of this chapter, and any city ordinances enacted or written policies or procedures adopted by the governing body of the city with respect to the operation of a private prison facility within the city, or any contract entered into between the governing body of a city and a private prison contractor by civil action and he may seek all available civil remedies including injunction. If the city attorney prevails in the action, the private prison contractor shall be liable for attorney's fees and costs of suit. The action shall be brought in the district court of the county in which the private prison facility is located or is proposed to be located.

(3) In addition to any other remedies, a private prison contractor constructing, renovating or operating a private prison facility in this state in violation of the provisions of this chapter, or any ordinances enacted or written policies or procedures adopted by a county or city governing the construction, renovation or operation of a private prison facility, or a contract entered into pursuant to this chapter shall be subject to a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each separate violation or for each day of a continuing violation.

[20-812, added 1998, ch. 360, sec. 1, p. 1130; am. 2001, ch. 335, sec. 9, p. 1190.]