



## Ohio Revised Code

### Section 9.07 Correctional facility to house out-of-state prisoners.

Effective: June 30, 1999

Legislation: House Bill 283 - 123rd General Assembly

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(A) As used in this section:

(1) Deadly weapon has the same meaning as in section 2923.11 of the Revised Code.

(2) Governing authority of a local public entity means whichever of the following is applicable:

(a) For a county, the board of county commissioners of the county;

(b) For a municipal corporation, the legislative authority of the municipal corporation;

(c) For a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations, all boards of county commissioners and legislative authorities of all of the counties and municipal corporations that combined to form a local public entity for purposes of this section.

(3) Local public entity means a county, a municipal corporation, a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations.

(4) Non-contracting political subdivision means any political subdivision to which all of the following apply:

(a) A correctional facility for the housing of out-of-state prisoners in this state is or will be located in the political subdivision.

(b) The correctional facility described in division (A)(4)(a) of this section is being operated and managed, or will be operated and managed, by a local public entity or a private contractor pursuant to a contract entered into prior to March 17, 1998, or a contract entered into on or after March 17,



1998, under this section.

(c) The political subdivision is not a party to the contract described in division (A)(4)(b) of this section for the management and operation of the correctional facility.

(5) Out-of-state jurisdiction means the United States, any state other than this state, and any political subdivision or other jurisdiction located in a state other than this state.

(6) Out-of-state prisoner means a person who is convicted of a crime in another state or under the laws of the United States or who is found under the laws of another state or of the United States to be a delinquent child or the substantially equivalent designation.

(7) Private contractor means either of the following:

(a) A person who, on or after March 17, 1998, enters into a contract under this section with a local public entity to operate and manage a correctional facility in this state for out-of-state prisoners.

(b) A person who, pursuant to a contract with a local public entity entered into prior to March 17, 1998, operates and manages on March 17, 1998, a correctional facility in this state for housing out-of-state prisoners.

(B) Subject to division (I) of this section, the only entities other than this state that are authorized to operate a correctional facility to house out-of-state prisoners in this state are a local public entity that operates a correctional facility pursuant to this section or a private contractor that operates a correctional facility pursuant to this section under a contract with a local public entity.

Subject to division (I) of this section, a private entity may operate a correctional facility in this state for the housing of out-of-state prisoners only if the private entity is a private contractor that enters into a contract that comports with division (D) of this section with a local public entity for the management and operation of the correctional facility.

(C)(1) Except as provided in this division, on and after March 17, 1998, a local public entity shall not enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional



facility in this state. On and after March 17, 1998, a local public entity may enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in this state only if the local public entity and the out-of-state jurisdiction with which the local public entity intends to contract jointly submit to the department of rehabilitation and correction a statement that certifies the correctional facility's intended use, intended prisoner population, and custody level, and the department reviews and comments upon the plans for the design or renovation of the correctional facility regarding their suitability for the intended prisoner population specified in the submitted statement.

(2) If a local public entity and an out-of-state jurisdiction enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, in addition to any other provisions it contains, the contract shall include whichever of the following provisions is applicable:

(a) If a private contractor will operate the facility in question pursuant to a contract entered into in accordance with division (D) of this section, a requirement that, if the facility is closed or ceases to operate for any reason and if the conversion plan described in division (D)(16) of this section is not complied with, the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners;

(b) If a private contractor will not operate the facility in question pursuant to a contract entered into in accordance with division (D) of this section, a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall include, but is not limited to, provisions that specify whether the local public entity or the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(3) If a local public entity and an out-of-state jurisdiction intend to enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, or if a local public entity and a private contractor intend to enter into a contract pursuant to division (D) of this section for the private contractor's management and operation of a correctional facility in this state to house out-of-state prisoners, prior to entering into the contract the local public



entity and the out-of-state jurisdiction, or the local public entity and the private contractor, whichever is applicable, shall conduct a public hearing in accordance with this division, and, prior to entering into the contract, the governing authority of the local public entity in which the facility is or will be located shall authorize the location and operation of the facility. The hearing shall be conducted at a location within the municipal corporation or township in which the facility is or will be located. At least one week prior to conducting the hearing, the local public entity and the out-of-state jurisdiction or private contractor with the duty to conduct the hearing shall cause notice of the date, time, and place of the hearing to be made by publication in the newspaper with the largest general circulation in the county in which the municipal corporation or township is located. The notice shall be of a sufficient size that it covers at least one-quarter of a page of the newspaper in which it is published. This division applies to a private contractor that, pursuant to the requirement set forth in division (I) of this section, is required to enter into a contract under division (D) of this section.

(D) Subject to division (I) of this section, on and after March 17, 1998, if a local public entity enters into a contract with a private contractor for the management and operation of a correctional facility in this state to house out-of-state prisoners, the contract, at a minimum, shall include all of the following provisions:

- (1) A requirement that the private contractor seek and obtain accreditation from the American correctional association for the correctional facility within two years after accepting the first out-of-state prisoner at the correctional facility under the contract and that it maintain that accreditation for the term of the contract;
- (2) A requirement that the private contractor comply with all applicable laws, rules, or regulations of the government of this state, political subdivisions of this state, and the United States, including, but not limited to, all sanitation, food service, safety, and health regulations;
- (3) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with laws, rules, and regulations of the type described in division (D)(2) of this section to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located;



- (4) A requirement that the private contractor report to the local law enforcement agencies with jurisdiction over the place at which the correctional facility is located, for investigation, all criminal offenses or delinquent acts that are committed in or on the grounds of, or otherwise in connection with, the correctional facility and report to the department of rehabilitation and correction all disturbances at the facility;
- (5) A requirement that the private contractor immediately report all escapes from the facility, and the apprehension of all escapees, by telephone and in writing to the department of rehabilitation and correction, to all local law enforcement agencies with jurisdiction over the place at which the facility is located, to the state highway patrol, to the prosecuting attorney of the county in which the facility is located, and to a daily newspaper having general circulation in the county in which the facility is located. The written notice may be by either facsimile transmission or mail. A failure to comply with this requirement is a violation of section 2921.22 of the Revised Code.
- (6) A requirement that the private contractor provide a written report to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located of all unusual incidents occurring at the correctional facility. The private contractor shall report the incidents in accordance with the incident reporting rules that, at the time of the incident, are applicable to state correctional facilities for similar incidents occurring at state correctional facilities.
- (7) A requirement that the private contractor provide internal and perimeter security to protect the public, staff members of the correctional facility, and prisoners in the correctional facility;
- (8) A requirement that the correctional facility be staffed at all times with a staffing pattern that is adequate to ensure supervision of inmates and maintenance of security within the correctional facility and to provide for appropriate programs, transportation, security, and other operational needs. In determining security needs for the correctional 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.
- (9) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in division (D) of section 9.06 of the Revised Code regarding contractors



who operate and manage a facility under that section, and that the private contractor indemnify and hold harmless the state, its officers, agents, and employees, and any local public entity in the state with jurisdiction over the place at which the correctional facility is located or that owns the correctional facility, reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and reimburse any local government entity of that nature for its costs in defending the local government entity, in the manner described in division (D) of that section regarding contractors who operate and manage a facility under that section;

(10) A requirement that the private contractor adopt for prisoners housed in the correctional facility the security classification system and schedule adopted by the department of rehabilitation and correction under section 5145.03 of the Revised Code, classify in accordance with the system and schedule each prisoner housed in the facility, and house all prisoners in the facility in accordance with their classification under this division;

(11) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner in relation to whom any of the following applies:

(a) The private entity has not obtained from the out-of-state jurisdiction that imposed the sentence or sanction under which the prisoner will be confined in this state a copy of the institutional record of the prisoner while previously confined in that out-of-state jurisdiction or a statement that the prisoner previously has not been confined in that out-of-state jurisdiction and a copy of all medical records pertaining to that prisoner that are in the possession of the out-of-state jurisdiction.

(b) The prisoner, while confined in any out-of-state jurisdiction, has a record of institutional violence involving the use of a deadly weapon or a pattern of committing acts of an assaultive nature against employees of, or visitors to, the place of confinement or has a record of escape or attempted escape from secure custody.

(c) Under the security classification system and schedule adopted by the department of rehabilitation and correction under section 5145.03 of the Revised Code and adopted by the private contractor under division (B)(10) of this section, the out-of-state prisoner would be classified as being at a security level higher than medium security.



(12) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into a written agreement with the department of rehabilitation and correction that sets forth a plan and procedure that will be used to coordinate law enforcement activities of state law enforcement agencies and of local law enforcement agencies with jurisdiction over the place at which the facility is located in response to any riot, rebellion, escape, insurrection, or other emergency occurring inside or outside the facility;

(13) A requirement that the private contractor cooperate with the correctional institution inspection committee in the committee's performance of its duties under section 103.73 of the Revised Code and provide the committee, its subcommittees, and its staff members, in performing those duties, with access to the correctional facility as described in that section;

(14) A requirement that the private contractor permit any peace officer who serves a law enforcement agency with jurisdiction over the place at which the correctional facility is located to enter into the facility to investigate any criminal offense or delinquent act that allegedly has been committed in or on the grounds of, or otherwise in connection with, the facility;

(15) A requirement that the private contractor will not employ any person at the correctional facility until after the private contractor has submitted to the bureau of criminal identification and investigation, on a form prescribed by the superintendent of the bureau, a request that the bureau conduct a criminal records check of the person and a requirement that the private contractor will not employ any person at the facility if the records check or other information possessed by the contractor indicates that the person previously has engaged in malfeasance;

(16) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner unless the private contractor and the out-of-state jurisdiction that imposed the sentence for which the prisoner is to be confined agree that, if the out-of-state prisoner is confined in the facility in this state, commits a criminal offense while confined in the facility, 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 private contractor and the out-of-state jurisdiction will do all of the following:

(a) Unless section 5120.50 of the Revised Code does not apply in relation to the offense the prisoner



committed while confined in this state and the term of confinement imposed for that offense, the out-of-state jurisdiction will accept the prisoner pursuant to that section for service of that term of confinement and for any period of time remaining under the sentence for which the prisoner was confined in the facility in this state, the out-of-state jurisdiction will confine the prisoner pursuant to that section for that term and that remaining period of time, and the private contractor will transport the prisoner to the out-of-state jurisdiction for service of that term and that remaining period of time.

(b) If section 5120.50 of the Revised Code does not apply in relation to the offense the prisoner committed while confined in this state and the term of confinement imposed for that offense, the prisoner shall be returned to the out-of-state jurisdiction or its private contractor for completion of the period of time remaining under the out-of-state sentence for which the prisoner was confined in the facility in this state before starting service of the term of confinement imposed for the offense committed while confined in this state, the out-of-state jurisdiction or its private contractor will confine the prisoner for that remaining period of time and will transport the prisoner outside of this state for service of that remaining period of time, and, if the prisoner is confined in this state in a facility operated by the department of rehabilitation and correction, the private contractor will be financially responsible for reimbursing the department at the per diem cost of confinement for the duration of that incarceration, with the amount of the reimbursement so paid to be deposited in the department's prisoner programs fund.

(17) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into an agreement with the local public 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 include, but is not limited to, provisions that specify whether the private contractor, the local public entity, or the out-of-state jurisdictions that imposed the sentences for which the out-of-state prisoners are confined in the facility will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(18) A schedule of fines that the local public entity shall impose upon the private contractor if the private contractor fails to perform its contractual duties, and a requirement that, if the private contractor fails to perform its contractual duties, the local public entity shall impose a fine on the private contractor from the schedule of fines and, in addition to the fine, may exercise any other





rights it has under the contract. Division (F)(2) of this section applies regarding a fine described in this division.

(19) A requirement that the private contractor adopt and use in the correctional facility the drug testing and treatment program that the department of rehabilitation and correction uses for inmates in state correctional institutions;

(20) A requirement that the private contractor provide clothing for all out-of-state prisoners housed in the correctional facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as a prisoner, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-prisoners, that the private contractor require all out-of-state prisoners housed in the facility to wear the clothing so provided, and that the private contractor not permit any out-of-state prisoner, while inside or on the premises of the facility or while being transported to or from the facility, to wear any clothing of a nature that does not conspicuously identify its wearer as a prisoner and that normally is worn outside the facility by non-prisoners;

(21) A requirement that, at the time the contract is made, the private contractor provide to all parties to the contract adequate proof that it has complied with the requirement described in division (D)(9) of this section, and a requirement that, at any time during the term of the contract, the private contractor upon request provide to any party to the contract adequate proof that it continues to be in compliance with the requirement described in division (D)(9) of this section.

(E) A private correctional officer or other designated employee of a private contractor that operates a correctional facility that houses out-of-state prisoners in this state under a contract entered into prior to, on, or after March 17, 1998, 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 an approved training program designed to qualify persons for positions as special police officers, security guards, or persons otherwise privately employed in a police capacity, as described in division (A) of section 109.78 of the Revised Code.

(F)(1) Upon notification by the private contractor of an escape from, or of a disturbance at, a correctional facility that is operated by a private contractor under a contract entered into prior to, on, or after March 17, 1998, and that houses out-of-state prisoners in this state, the department of



rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture persons who escaped from the facility or quell any disturbance at the facility, in accordance with the plan and procedure included in the written agreement entered into under division (D)(12) of this section in relation to contracts entered into on or after March 17, 1998, and in accordance with their normal procedures in relation to contracts entered into prior to March 17, 1998. Any cost incurred by this state or a political subdivision of this state relating to the apprehension of a person who escaped from the facility, to the quelling of a disturbance at the facility, or to the investigation or prosecution as described in division (G)(2) of this section of any offense relating to the escape or disturbance shall be chargeable to and borne by the private contractor. The contractor also shall reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of a person who escaped from the facility, following the person's recapture.

(2) If a private contractor that, on or after March 17, 1998, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners fails to perform its contractual duties, the local public entity shall impose upon the private contractor a fine from the schedule of fines included in the contract and may exercise any other rights it has under the contract. A fine imposed under this division shall be paid to the local public entity that enters into the contract, and the local public entity shall deposit the money so paid into its treasury to the credit of the fund used to pay for community policing. If a fine is imposed under this division, the local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine.

(3) If a private contractor, on or after March 17, 1998, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners in this state, the private contractor shall comply with the insurance, indemnification, hold harmless, and cost reimbursement provisions described in division (D)(9) of this section.

(G)(1) Any act or omission that would be a criminal offense or a delinquent act if committed at a state correctional institution or at a jail, workhouse, prison, or other correctional facility operated by this state or by any political subdivision or group of political subdivisions of this state shall be a criminal offense or delinquent act if committed by or with regard to any out-of-state prisoner who is housed at any correctional facility operated by a private contractor in this state pursuant to a contract



entered into prior to, on, or after March 17, 1998.

(2) If any political subdivision of this state experiences any cost in the investigation or prosecution of an offense committed by an out-of-state prisoner housed in a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, the private contractor shall reimburse the political subdivision for the costs so experienced.

(3)(a) Except as otherwise provided in this division, the state, and any officer or employee, as defined in section 109.36 of the Revised Code, of the state is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity and an out-of-state jurisdiction, a local public entity and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to March 17, 1998, or that is entered into on or after March 17, 1998, in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an officer or employee, as defined in section 109.36 of the Revised Code, of the state that is manifestly outside the scope of the officer's or employee's official responsibilities or regarding an act or omission of the state, or of an officer or employee, as so defined, of the state that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(b) Except as otherwise provided in this division, a non-contracting political subdivision, and any employee, as defined in section 2744.01 of the Revised Code, of a non-contracting political subdivision is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity other than the non-contracting political subdivision and an out-of-state jurisdiction, a local public entity other than the non-contracting political subdivision and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to March 17, 1998, or that is entered into on or after March 17, 1998, in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an employee, as defined in section 2744.01 of the Revised Code, of a non-contracting political subdivision that is manifestly outside the scope of the employee's employment or official responsibilities or regarding an act or omission of a non-contracting political subdivision or an employee, as so defined, of a non-



contracting political subdivision that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) Divisions (G)(3)(a) and (b) of this section do not affect any immunity or defense that the state and its officers and employees or a non-contracting political subdivision and its employees may be entitled to under another section of the Revised Code or the common law of this state, including, but not limited to, section 9.86 or Chapter 2744. of the Revised Code.

(H)(1) Upon the completion of an out-of-state prisoner's term of detention at a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, the operator of the correctional facility shall transport the prisoner to the out-of-state jurisdiction that imposed the sentence for which the prisoner was confined before it releases the prisoner from its custody.

(2) No private contractor that operates and manages a correctional facility housing out-of-state prisoners in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, shall fail to comply with division (H)(1) of this section.

(3) Whoever violates division (H)(2) of this section is guilty of a misdemeanor of the first degree.

(I) Except as otherwise provided in this division, the provisions of divisions (A) to (H) of this section apply in relation to any correctional facility operated by a private contractor in this state to house out-of-state prisoners, regardless of whether the facility is operated pursuant to a contract entered into prior to, on, or after March 17, 1998. Division (C)(1) of this section shall not apply in relation to any correctional facility for housing out-of-state prisoners in this state that is operated by a private contractor under a contract entered into with a local public entity prior to March 17, 1998. If a private contractor operates a correctional facility in this state for the housing of out-of-state prisoners under a contract entered into with a local public entity prior to March 17, 1998, no later than thirty days after the effective date of this amendment, the private contractor shall enter into a contract with the local public entity that comports to the requirements and criteria of division (D) of this section.