

PRIVATE PRISON REQUIREMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Brad King

AN ACT RELATING TO CORRECTIONS AND STATE INSTITUTIONS; CREATING STANDARDS AND REQUIREMENTS FOR A PRIVATE CORRECTIONAL FACILITY TO CONTRACT WITH THE DEPARTMENT OF CORRECTIONS TO HOUSE AND PROVIDE SERVICES FOR INMATES § ; **AND PROVIDING AN EFFECTIVE DATE** § .

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

64-13c-101, Utah Code Annotated 1953

64-13c-102, Utah Code Annotated 1953

64-13c-103, Utah Code Annotated 1953

64-13c-104, Utah Code Annotated 1953

64-13c-105, Utah Code Annotated 1953

64-13c-106, Utah Code Annotated 1953

64-13c-107, Utah Code Annotated 1953

64-13c-108, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **64-13c-101** is enacted to read:

CHAPTER 13c. PRIVATE CORRECTIONAL FACILITIES ACT

64-13c-101. Title.

This chapter is known as the "Private Correctional Facilities Act."

Section 2. Section **64-13c-102** is enacted to read:

64-13c-102. Definitions.

(1) As used in this chapter:

(a) "Contractor" means a private entity seeking to contract with or currently contracting

28 with the department to establish or operate a private correctional facility.

29 (b) "Correctional services" means those services necessary for the operation of a
30 correctional facility, including the provision of food, clothing, security, programs, and health care.

31 (c) "Facility" means a private correctional facility established or operated under a contract
32 with the department.

33 (2) The definitions used under Section 64-13-1 apply to this chapter.

34 Section 3. Section **64-13c-103** is enacted to read:

35 **64-13c-103. Private contracts.**

36 (1) The department may contract with a contractor to finance, acquire, construct, lease, or
37 provide full or partial correctional services.

37a h (2) BEFORE ENTERING INTO A CONTRACT, THE DEPARTMENT SHALL:

37b (a) HOLD A PUBLIC HEARING WITHIN THE COUNTY OR MUNICIPALITY WHERE THE
37c FACILITY IS TO BE SITED FOR THE PURPOSE OF OBTAINING PUBLIC COMMENT; § [AND] §

37d (b) GIVE CONSIDERATION TO THE INPUT RECEIVED AT THE PUBLIC HEARING WHEN
37e MAKING DECISIONS REGARDING THE AWARDING OF A CONTRACT AND THE CONTRACT
37f PROCESS § []; AND § h

37g § (c) HAVE RECEIVED WRITTEN NOTIFICATION FROM THE LEGISLATIVE BODY OF THE
37h MUNICIPALITY OR COUNTY WHERE THE PROPOSED FACILITY IS TO BE SITED, STATING THAT
THE

37i LEGISLATIVE BODY HAS AGREED TO THE ESTABLISHMENT OF THE FACILITY WITHIN ITS
37j BOUNDARIES. §

38 h [(2)] (3) h Before entering into a contract, the department shall require that the contractor
39 proposing to provide the services demonstrate that it has:

40 (a) management personnel with the qualifications and experience necessary to carry out
41 the terms of the contract;

42 (b) sufficient financial resources to:

43 (i) complete and operate the facility;

44 (ii) provide indemnification for liability arising from the operation of the facility; and

45 (iii) provide reimbursement as required under Section 64-13c-501;

46 (c) the ability and resources to meet applicable court orders, correctional standards as
47 defined by the department, and constitutional requirements; and

48 (d) liability insurance adequate to protect the state, the political subdivision where the
49 facility is located, and the officers and employees of the facility from all claims and losses

50 incurred as a result of h [the operation of the facility] ACTION OR INACTION BY THE CONTRACTOR
50a OR ITS EMPLOYEES h .

51 h [(3)] (4) h A contract awarded for the operation of a facility shall be consistent with
51a commonly

52 accepted correctional practices as defined by the department and shall include:

- 53 (a) adequate internal and perimeter security to protect the public, employees, and inmates,
54 based on the security level of the inmate population;
55 (b) work, training, educational, and treatment programs for inmates;

- 56 (c) a minimum ~~h~~ [staff] CORRECTIONAL OFFICER ~~h~~ to inmate ratio;
- 57 (d) imposition of inmate discipline in accordance with applicable state law and department
- 58 policy; and

59 (e) adequate food, clothing, housing, and medical care for inmates.

60 Section 4. Section **64-13c-104** is enacted to read:

61 **64-13c-104. Use of force -- Private prison employees.**

62 (1) Employees of a facility contractor may use reasonable force to the extent allowed by
63 state law. The use of force, power, and authority shall be limited to:

64 (a) the grounds of a facility operated in whole or in part by their employer;

65 (b) when transporting inmates; and

66 (c) when pursuing escapees from the facility.

67 (2) Training standards for employees of a contractor shall be in accordance with the
68 standards in Section 64-13-24.

69 (3) Subsection (2) does not confer peace officer status on the contractor or its employees.

70 Section 5. Section **64-13c-105** is enacted to read:

71 **64-13c-105. Restricted powers and duties of contractors.**

72 (1) A contract for correctional services may not authorize a contractor to perform the
73 following:

74 (a) calculate or establish inmate release and parole eligibility dates;

75 (b) grant, deny, or revoke sentence credit;

76 (c) approve inmates for furlough, work release, or parole; or

77 (d) approve the types of work inmates may perform.

78 (2) A contractor shall reimburse amounts incurred by local and state agencies for providing
79 assistance with riots, escapes, transportation, medical services, and legal services regarding the
80 operation of the facility.

81 (3) A contractor shall have in place a written plan approved by the department regarding
82 the reporting and management of escapes, riots, and other emergency situations.

83 Section 6. Section **64-13c-106** is enacted to read:

84 **64-13c-106. Monitoring contracts.**

85 (1) The executive director or his designee shall monitor the performance of all facilities
86 incarcerating inmates under the jurisdiction of the department.

87 (2) The executive director or his designee shall have unlimited access to all facilities,
88 records, and staff for monitoring purposes.

89 (3) The executive director may appoint a monitor to inspect a facility. The monitor shall

90 have unlimited access to all facilities, records, and staff for monitoring purposes.

91 (4) The department shall be reimbursed by the entity operating the facility for that portion
 92 of the salary and expenses of the monitor attributable to monitoring the particular facility.

93 (5) Monitoring consists of ensuring that:

94 (a) all state laws, department rules, and contractual obligations applicable to the facility
 95 are being met; and

96 (b) all operations are effective, efficient, and economical.

97 Section 7. Section **64-13c-107** is enacted to read:

98 **64-13c-107. Facility construction -- Housing out-of-state inmates.**

99 (1) A contractor may not expand its original housing capacity ~~h~~ [except as necessary to carry
 100 out its contract with the department] WITHOUT THE APPROVAL OF THE:

100a (a) LEGISLATURE; AND

100b (b) COUNTY OR MUNICIPAL LEGISLATIVE BODY ~~h~~ [IN WHICH] WITHIN WHOSE
 100c JURISDICTION ~~h~~ THE FACILITY IS LOCATED ~~h~~ .

101 (2) A contractor may ~~h~~ NOT ~~h~~ incarcerate out-of-state inmates in a facility operated in the
 101a state ~~h~~ [with

102 the executive director's approval] , EXCEPT IN ACCORDANCE WITH ANY INTERSTATE COMPACT OF
 102a WHICH UTAH IS A PARTY ~~h~~ .

103 ~~h~~ [(3) The executive director shall establish the highest security level, using the department's
 104 classification criteria, at which out-of-state inmates may be eligible for incarceration in the facility.

105 ~~————~~ (4) Out-of-state inmates may not be released in Utah, unless the state has a detainer on the
 106 inmate or has accepted custody of the inmate through the interstate compact. In every other case,
 107 out-of-state inmates shall be returned to the custody of the sending jurisdiction, or other
 108 jurisdiction that has agreed to accept custody of the inmate, prior to the inmate's release from
 109 custody.

110 ~~————~~ (5) A facility housing out-of-state inmates may not allow an inmate to leave the premises
 111 of the facility, except to:

112 ~~————~~ (a) comply with an order to appear in a court of competent jurisdiction;

113 ~~————~~ (b) receive medical care not available at the facility;

114 ~~————~~ (c) release custody of the inmate under Subsection (4); or

115 ~~————~~ (d) participate in a public works project under Subsection (6).

116 ~~————~~ (6) A contractor may allow out-of-state inmates to work on public works projects outside
 117 the facility provided that:

118 ~~————~~ (a) the public works project is located in the county or the county adjacent to where the
 119 facility is located; and

120 ~~————~~ (b) the public works project is authorized by the department and the county where the] h

121 ~~h [public works project is located.] h~~

122 Section 8. Section **64-13c-108** is enacted to read:

123 **64-13c-108. Private entity must contract with department.**

124 An entity may not establish a facility in the state without a contract with the department.

124a **§ SECTION 9. EFFECTIVE DATE.**

124b **IF APPROVED BY TWO-THIRDS OF ALL THE MEMBERS ELECTED TO EACH HOUSE, THIS**

124c **ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR, OR THE DAY FOLLOWING THE**

124d **CONSTITUTIONAL TIME LIMIT OF UTAH CONSTITUTION ARTICLE VII, SECTION 8, WITHOUT THE**

124e **GOVERNOR'S SIGNATURE, OR IN THE CASE OF A VETO, THE DATE OF VETO OVERRIDE. §**

**Legislative Review Note
as of 2-1-99 10:50 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel