

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1468

By: Dank, Ferguson and Hiett
of the House

and

Wright of the Senate

AS INTRODUCED

An Act relating to prisons and reformatories;

amending 57 O.S. 1991, Sections 502, as last amended by Section 1, Chapter 277, O.S.L. 1994, 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993, and 561, as amended by Section 7, Chapter 319, O.S.L. 1992 and Sections 5, 14 and 15, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Sections 502, 510.2, 510.9, 510.10, 561 and 612), which relate to the duties, powers and programs of the Department of Corrections; modifying definition; expanding authority of Department of Corrections to contract with private prison contractors; stating procedures; modifying definition of electronic monitoring; limiting devices to be used for electronic monitoring; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 57 O.S. 1991, Section 502, as last amended by Section 1, Chapter 277, O.S.L. 1994 (57 O.S. Supp. 1994, Section 502), is amended to read as follows:

Section 502. As used in this title, unless the context otherwise requires:

(a) "Board" means the State Board of Corrections;

(b) "Department" means the Department of Corrections of this state;

(c) "Institutions" means the Oklahoma State Penitentiary located at McAlester, Oklahoma; the Oklahoma State Reformatory located at Granite, Oklahoma; the Lexington Assessment and Reception Center located at Lexington, Oklahoma; the Joseph Harp Correctional Center located at Lexington, Oklahoma; the Jackie Brannon Correctional Center located at McAlester, Oklahoma; the Howard C. McLeod Correctional Center located at Farris, Oklahoma; the Mack H. Alford Correctional Center located at Stringtown, Oklahoma; the Ouachita Correctional Center located at Hodgen, Oklahoma; the Mabel Bassett Correctional Center located at Oklahoma City, Oklahoma; the R.B. "Dick" Conner Correctional Center located at Hominy, Oklahoma; the James Crabtree Correctional Center located at Helena, Oklahoma; the Jess Dunn Correctional Center located at Taft, Oklahoma; the John Lilley Correctional Center located at Boley, Oklahoma; the William S. Key Correctional Center located at Fort Supply, Oklahoma; the Dr. Eddie Walter Warrior Correctional Center located at Taft, Oklahoma; the Northeast Oklahoma Correctional Center located at Vinita, Oklahoma; the Oklahoma City, Clara Waters and Kate Barnard Community Corrections Centers located at Oklahoma City, Oklahoma; the Tulsa Community Corrections Center located at Tulsa, Oklahoma; the Community Corrections Centers located at Lawton, Enid, Muskogee and McAlester; and other facilities under the jurisdiction and control of the Department of Corrections or hereafter established by the Department of Corrections;

(d) "Director" means the Director of the Department of Corrections;

(e) "Halfway house" means a private facility for the placement of inmates in a community setting for the purpose of reintegrating into the community inmates who are nearing their release dates. The term shall not include private prisons;

(f) "House arrest" means a program whereby persons committed to the Department of Corrections are authorized to be away from a correctional facility and are placed by the Department in a community for the purpose of reintegration of the person into society, pursuant to the provisions of Section 510.2 of this title; and

(g) "Private prison contractor" means:

(1) a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an institution within the Department, or provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the Department but operated by the contractor;

(2) a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates a house arrest program, as provided in Section 510.2 of this title;

(3) a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an electronic monitoring program, as provided in Section 510.9 or 510.10 of this title; or

(4) a nongovernmental entity or public trust which, pursuant to a contract with the United States or another state, provides for the housing, care, and control of minimum or medium security inmates in the custody of the United States or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 510.2, as amended by Section 2, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 510.2), is amended to read as follows:

Section 510.2 A. The Department of Corrections may implement a house arrest program for persons in the custody of the Department, who meet the following guidelines:

1. Only inmates who are incarcerated for a nonviolent offense as defined in Section 571 of this title, or inmates who are within six (6) months of their projected release date, except those convicted of a sex-related offense or denied parole within the previous twelve (12) months pursuant to Section 332.7 of this title, shall be eligible to participate in the house arrest program.

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration prior to being assigned to the house arrest program.

B. The total number of persons assigned to the house arrest program shall not exceed fifteen percent (15%) of the total population of persons committed to the custody of the Department of Corrections, excluding those on probation and parole; provided, if said total population of persons committed to the custody of the Department decreases so that the percentage of persons on house arrest exceeds fifteen percent (15%) of that population, the Department shall not be required to remove inmates from the program. Inmates assigned to the house arrest program shall remain in the program until the completion of the sentence or until the inmate is otherwise removed from the program. An inmate assigned to the house arrest program may be required to pay the costs of supervision or other costs or fees associated with the program while assigned to the house arrest program. The Department of Corrections shall determine whether the inmate has the ability to pay all or part of such costs and fees.

C. Prior to any eligible inmate assigned to the house arrest program being placed in a community setting, the Department shall deliver written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which said inmate is to be supervised under the house arrest program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, when the victims are known to live in the same city, town or county.

D. After an inmate has been assigned to the house arrest program, failure to be granted parole pursuant to Section 332.7 of this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the house arrest program, if otherwise eligible, until the completion of the sentence.

E. Any inmate violating any rule, regulation or condition of the house arrest program shall be subject to disciplinary proceedings as established by the Department of Corrections. Any inmate who escapes from the house arrest program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Any inmate removed from the house arrest program for violation of any rule, regulation or condition of the program and reassigned by the Department to imprisonment in a correctional facility shall not be eligible for any future assignment to the house arrest program.

G. Upon an inmate assigned to the house arrest program becoming eligible for parole consideration, pursuant to Section 332.7 of this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's

investigation. Inmates assigned to the house arrest program shall not be allowed to waive consideration or recommendation for parole.

H. The Department of Corrections may contract with a private prison contractor to provide house arrest services and monitoring. Such contract shall be subject to the procedures and requirements provided in Section 561 of this title.

I. The Department of Corrections shall promulgate and adopt rules, regulations and procedures to implement the provisions of this section.

SECTION 3. AMENDATORY Section 5, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 510.9), is amended to read as follows:

Section 510.9 A. There is hereby created the Electronic Monitoring Program for inmates in the custody of the Department of Corrections who are sentenced for a nonviolent offense as defined by Section 571 of Title 57 of the Oklahoma Statutes.

B. All eligible inmates assigned to the Electronic Monitoring Program shall first be processed and received through the Lexington Assessment and Reception Center. The Director of the Department of Corrections shall exercise his discretion in selecting eligible inmates for assignment to the Electronic Monitoring Program; provided, however, the following inmates shall not be eligible for assignment to the program:

1. Inmates convicted of a violent offense within the previous ten (10) years;

2. Inmates convicted of any violation of the provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

3. Inmates denied parole within the previous twelve (12) months pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes;

4. Inmates convicted pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes who are not receptive to substance abuse treatment and follow-up treatment;

5. Inmates removed from the Electronic Monitoring Program or any other alternative to incarceration authorized by law for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

6. Inmates deemed by the Department to be a security risk or threat to the public; or

7. Inmates requiring educational, medical or other services or programs not available in a community setting as determined by the Department.

In addition, any inmate removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility shall not be eligible for consideration for the Preparole Conditional Supervision Program, pursuant to Section 365 of Title 57 of the Oklahoma Statutes, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

C. Every eligible inmate assigned to the Electronic Monitoring Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

3. The inmate is assigned by the Department to another alternative to incarceration authorized by law, except inmates assigned to the Electronic Monitoring Program shall not be considered for the Preparole Conditional Supervision Program,

Section 365 of Title 57 of the Oklahoma Statutes, except as provided in subsection B of this section; or

4. The inmate is paroled by the Governor pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes.

D. After an inmate has been assigned to the Electronic Monitoring Program, failure to be granted parole pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the program, if otherwise eligible, until the completion of the sentence.

E. The Electronic Monitoring Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections with monitoring by an electronic bracelet ~~or other device~~ approved by the Department under such rules, regulations and conditions as may be established by the Department. If an inmate violates any rule, regulation or condition of the program, the Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of security or removing the inmate from the program with reassignment to imprisonment in a correctional facility. Any inmate who escapes from the Electronic Monitoring Program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Upon an inmate assigned to the Electronic Monitoring Program becoming eligible for parole consideration, pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Electronic Monitoring Program shall not be allowed to waive consideration or recommendation for parole.

G. Prior to any eligible inmate assigned to the Electronic Monitoring Program being placed in a community setting, the Department of Corrections shall deliver a written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be monitored and supervised under the program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if any, when the victims are known to live in the same city, town or county.

H. An inmate assigned to the Electronic Monitoring Program may be required to pay the Department of Corrections for all or part of any monitoring equipment or fee, substance abuse treatment program or follow-up treatment expense, supervision cost, or other costs while assigned to the program. The Department shall determine whether the inmate has the ability to pay all or part of such fee or costs.

I. The Department of Corrections may contract with a private prison contractor to provide for electronic monitoring services. Such contracts shall be subject to the procedures and requirements provided for in Section 561 of this title.

J. The Department of Corrections shall promulgate and adopt rules, regulation and procedures necessary to implement the Electronic Monitoring Program, including but not limited to methods of monitoring and supervision, disciplinary action, reassignment to higher and lower security levels, removal from the program, and costs of monitoring and supervision to be paid by the inmate, if any.

SECTION 4. AMENDATORY Section 15, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 510.10), is amended to read as follows:

Section 510.10 The Department of Corrections is hereby authorized to use electronic monitoring devices, as defined by

Section ~~14~~ 612 of this ~~act~~ title, for any inmate sentenced to the custody of the Department, when such inmate is assigned, as provided by law, to an alternative to incarceration or approved for placement under the provisions of the Preparole Conditional Supervision Program, provided for in Section 365 of Title 57 of the Oklahoma Statutes this title.

The electronic monitoring of an inmate pursuant to this section shall be in addition to active supervision required by law and shall be considered a level of security and confinement for the inmate within the assigned program. The provisions of this section shall not be construed to alter, amend or modify the criteria for eligibility for any alternative to incarceration program authorized by law or any of the provisions of the Electronic Monitoring Program, pursuant to Section ~~5~~ 510.9 of this ~~act~~ title.

The Department of Corrections may contract with a private prison contractor to provide for electronic monitoring services. Such contracts shall be subject to the procedures and requirements provided for in Section 561 of this title.

The Department shall promulgate and adopt rules, regulations and procedures necessary to implement the provisions of this section.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 561, as amended by Section 7, Chapter 319, O.S.L. 1992 (57 O.S. Supp. 1994, Section 561), is amended to read as follows:

Section 561. A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, housing, alcoholism or drug treatment, mental health services, nursing home care, or halfway house placement. Such services must meet standards prescribed and established by the Board of Corrections for implementing such a program, including but not

limited to standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as provided in subsections C through J of this section.

B. The Department of Corrections is hereby authorized to provide for the operation of correctional institutions of the Department by private prison contractors. Such operation shall meet standards prescribed by the Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, and medical care. ~~Such~~ The Department of Corrections is hereby authorized to provide for the operation of house arrest programs and electronic monitoring programs by private prison contractors, subject to standards prescribed by the Board of Corrections. Any services provided to the Department by private prison contractors shall be contracted for in accordance with the provisions of subsections C through J of this section.

C. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department or providing for the housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include a completed application form, a resume of the contractor's staff and capability, a completed performance evaluation form for past projects on which the contractor has provided private prison services, a list of past contracts with this state, and a list of contracts to provide similar services to other states or to the United States.

The file shall include the mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

D. If the Department intends to secure the services of a private prison contractor, all persons and firms included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated time schedule for project;
3. Last date for submitting notice of interest in performing services to Director; and
4. Other pertinent data.

Private prison contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

E. The Department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors. Before the Department awards a contract to a private prison contractor, the plans shall be approved by the Board.

F. The Department shall review the files of the private prison contractors desiring consideration for the project, and shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the contractor to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

G. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the Department and submitted to the Board for the independent review of the entire process.

H. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project description. The Department shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract. The contract shall be sent to the Department of Central Services for approval or disapproval. If the Department of Central Services disapproves the contract or the Department and the selected contractor cannot reach an agreement, the Department may either renegotiate with the selected contractor or begin negotiations with the next-choice contractor. Should the Department be unable to negotiate a satisfactory contract with any of the three selected contractors, the Department shall select additional contractors in

order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

I. Should there be an inadequate expression of interest in the project, the Director and the Board shall confer to add additional private prison contractors for consideration which are known to be appropriate for the project.

J. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor.

K. The Director of Central Services is authorized to lease real property and improvements thereon to a private prison contractor in conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

L. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period of one (1) year, subject to renewal at the option of the State of Oklahoma for a cumulative period not to exceed fifty (50) years.

M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board of Corrections:

1. That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;
2. That the contractor can provide the necessary qualified personnel to implement the terms of the contract;

3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. That the contractor has the ability to comply with applicable court orders and corrections standards; and

5. That, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection R of this section.

N. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance to:

1. Indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and

2. Compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

O. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

P. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

Q. The Director or his designee shall monitor the performance of the contractor.

R. Any contract between the Department and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

1. Requiring the contractor to provide said services in a facility which meets accreditation standards established by the American Corrections Association;

2. Requiring the contractor to receive accreditation for said facility from the American Corrections Association, within three (3) years of commencement of operations of the facility;

3. Requiring the contractor to obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the board of county commissioners of the county in which the facility is to be located; and

4. Granting the Department the option at the beginning of each fiscal year to purchase or lease, at a predetermined price, any such facility.

SECTION 6. AMENDATORY Section 14, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 1994, Section 612), is amended to read as follows:

Section 612. A. Any person convicted of violating the provisions of Section 11-902 of Title 47 of the Oklahoma Statutes and sentenced to the custody of the Department of Corrections shall be processed through the Lexington Assessment and Reception Center, classified and assigned as follows:

1. To the Department of Mental Health and Substance Abuse Services for substance abuse treatment, if the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk. The inmate may be required to

reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate is assigned to the Department of Mental Health and Substance Abuse Services. The Department of Corrections shall determine whether the inmate has the ability to pay for all or part of the cost of treatment. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the inmate shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment;

2. To the Electronic Monitoring Program pursuant to Section 5 of this act, with participation in a substance abuse treatment program and follow-up treatment, when the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk;

3. To another alternative to incarceration authorized by law;
or

4. To a correctional facility when:

- a. the person is evaluated not to be receptive to treatment,
- b. the person is evaluated to be a security risk,

- c. the person requires educational, medical or other services or programs not available in the community setting as determined by the Department, or
- d. alternatives to incarceration are not available or are otherwise inappropriate as determined by the Department.

B. As used in this section:

1. "Substance abuse treatment program" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services and selected by the Department of Corrections to provide substance abuse treatment for the inmate; and

2. "Electronic monitoring" means monitoring of the inmate within a specified location or locations in a community setting by means of an electronic bracelet ~~or other device~~ approved by the Department of Corrections with active supervision by correctional officers or other employees of the Department of Corrections.

SECTION 7. This act shall become effective July 1, 1995.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-5522

SD