

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1416

By: Waldron

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5  
6 AS INTRODUCED

7 An Act relating to diversionary court programs;  
8 creating the Oklahoma Diversionary Court Funding  
9 Program Act; describing purpose of program;  
10 authorizing creation of additional diversionary  
11 courts through public-private partnerships; directing  
12 Legislature to appropriate matching funds for  
13 program; requiring Department of Mental Health and  
14 Substance Abuse Services to promulgate rules;  
15 creating the Oklahoma Diversionary Court Funding  
16 Program Revolving Fund; stating type and contents of  
17 fund; providing for administration and purpose of  
18 fund; providing for expenditures and payment from  
19 fund; amending 57 O.S. 2011, Section 561.1, as last  
20 amended by Section 1, Chapter 84, O.S.L. 2014 (57  
21 O.S. Supp. 2018, Section 561.1), which relates to  
22 private prison contracts; modifying contents of  
23 contracts; requiring private prison to pay daily per  
24 diem for each inmate; providing for deposit in  
certain fund; providing for codification; and  
providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 473 of Title 22, unless there is  
created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma  
Diversionary Court Funding Program Act".

1 B. The Oklahoma Diversionary Court Funding Program shall fund  
2 diversionary court programs in the state including, but not limited  
3 to, drug courts and juvenile drug courts as specified in the  
4 Oklahoma Drug Court Act, community sentencing programs established  
5 by the Department of Corrections and mental health courts as  
6 established in the Anna McBride Act. Courts may also establish  
7 additional diversionary courts through public-private partnerships  
8 with nonprofit organizations or charitable foundations.

9 C. Monies collected pursuant to paragraph 7 of subsection D of  
10 Section 561.1 of Title 57 of the Oklahoma Statutes shall be matched  
11 equally with monies appropriated by the Legislature and deposited in  
12 the Oklahoma Diversionary Court Funding Program Revolving Fund  
13 created in Section 2 of this act.

14 D. The Department of Mental Health and Substance Abuse Services  
15 shall promulgate rules to implement the provisions of the Oklahoma  
16 Diversionary Court Funding Program Act.

17 SECTION 2. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 474 of Title 22, unless there is  
19 created a duplication in numbering, reads as follows:

20 There is hereby created in the State Treasury a revolving fund  
21 for the Department of Mental Health and Substance Abuse Services to  
22 be designated the "Oklahoma Diversionary Court Funding Program  
23 Revolving Fund". The fund shall be a continuing fund, not subject  
24 to fiscal year limitations, and shall consist of appropriations made

1 by the Legislature and monies collected pursuant to paragraph 7 of  
2 subsection D of Section 561.1 of Title 57 of the Oklahoma Statutes.  
3 All monies accruing to such fund are hereby appropriated and may be  
4 budgeted and expended by the Department of Mental Health and  
5 Substance Abuse Services for the purpose of providing diversionary  
6 court programs and services, as provided in the Oklahoma  
7 Diversionary Court Funding Program. Expenditures from said fund  
8 shall be made upon warrants issued by the State Treasurer against  
9 claims filed as prescribed by law with the Department of Mental  
10 Health and Substance Abuse Services for approval and payment.

11 SECTION 3. AMENDATORY 57 O.S. 2011, Section 561.1, as  
12 last amended by Section 1, Chapter 84, O.S.L. 2014 (57 O.S. Supp.  
13 2018, Section 561.1), is amended to read as follows:

14 Section 561.1 A. Except as otherwise provided by subsection K  
15 of this section, prior to entering into a contract with any private  
16 prison contractor for construction or operation, or both, of a  
17 correctional facility, the Department of Corrections shall establish  
18 a process for requesting proposals or negotiated contracts from such  
19 contractors. The Department of Corrections shall develop criteria  
20 for the process by which a contractor for the construction or  
21 operation, or both, of a private prison is to be awarded a contract.  
22 The criteria shall be subject to approval by the State Board of  
23 Corrections. The criteria for selection of a site for a proposed  
24 facility to be constructed or operated, or both, by a private

1 contractor shall include, but shall not be limited to, the  
2 availability of medical services, support services, transportation  
3 services and the availability of potential employees who would be  
4 qualified to perform required functions at a state correctional  
5 facility.

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

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

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

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

23 4. Granting the Department the option at the beginning of each  
24 fiscal year pursuant to an agreement, to purchase any such facility,

1 with or without inventory or other personal property, at a  
2 predetermined price, which shall be negotiated and included in a  
3 schedule or a formula to be contained in the original agreement.  
4 Such agreements relating to a correctional facility, the  
5 construction of which was financed or is to be financed by  
6 obligations issued from a local governmental entity the repayment of  
7 which is to be made in whole or in part from rentals from the State  
8 of Oklahoma or the Department of Corrections, shall be submitted to  
9 the Council on Bond Oversight as provided in subsection I of this  
10 section.

11 C. A contractor proposing to enter a contract with the  
12 Department of Corrections for construction or operation, or both, of  
13 a correctional facility pursuant to this section must demonstrate:

14 1. The qualifications and the operations and management  
15 experience to carry out the terms of the contract; and

16 2. The ability to comply with the standards of the American  
17 Correctional Association and with specific court orders.

18 D. In addition to meeting the requirements specified in the  
19 requests for proposals, a proposal for the construction and  
20 operation of a correctional facility must:

21 1. Provide for regular, on-site monitoring by the Department of  
22 Corrections;

23 2. Acknowledge that payment by the state is subject to the  
24 availability of appropriations;

- 1           3. Provide for payment of a maximum amount per fiscal year;
- 2           4. Demonstrate a cost benefit to the State of Oklahoma when  
3 compared to the level and quality of programs provided by state-  
4 operated facilities that have similar types of inmates at an  
5 operational cost not more than the cost of housing inmates in  
6 similar facilities and providing similar programs to those types of  
7 inmates in state-operated facilities. The Department of Corrections  
8 shall be responsible for determining the ~~cost/benefit~~ cost benefit  
9 of the proposal;
- 10          5. Permit the state to terminate the contract for cause;
- 11          6. Contain a proposed per diem operational cost per inmate for  
12 the initial year and subsequent years of operations;
- 13          7. Contain a proposed daily per diem cost of One Dollar (\$1.00)  
14 per inmate per day for agreements executed after November 1, 2019.  
15 The per diem shall be paid beginning when the inmate enters the  
16 private prison and deposited in the Oklahoma Diversionary Court  
17 Funding Program Revolving Fund created in Section 2 of this act;
- 18          8. Subject to appropriations, provide that cost adjustments may  
19 be made only once each fiscal year, to take effect at the beginning  
20 of the next fiscal year using as the maximum percentage increase, if  
21 any, an increase not to exceed the previous year's Consumer Price  
22 Index for All Urban Consumers (CPI-U) as prepared by the United  
23 States Bureau of Labor Statistics, except as otherwise provided by  
24 subsection K of this section;

1       ~~8.~~ 9. Have an initial contract term of not more than one (1)  
2 year, with an option to renew for additional periods not to exceed  
3 twenty (20) years;

4       ~~9.~~ 10. If the proposal includes construction of a facility,  
5 contain a performance bond approved by the Department that is  
6 adequate and appropriate for the proposed contract;

7       ~~10.~~ 11. Provide for assumption of liability by the private  
8 vendor for all claims arising from the services performed under the  
9 contract by the private vendor;

10       ~~11.~~ 12. Provide for an adequate plan of insurance for the  
11 private vendor and its officers, employees, and agents against all  
12 claims, including claims based on violations of civil rights arising  
13 from the services performed under the contract by the private  
14 vendor;

15       ~~12.~~ 13. Provide for an adequate plan of insurance to protect  
16 the state against all claims arising from the services performed  
17 under the contract by the private vendor and to protect the state  
18 from actions by a third party against the private vendor, its  
19 officers, employees, and agents as a result of the contract;

20       ~~13.~~ 14. Provide plans for the purchase and assumption of  
21 operations by the state in the event of the bankruptcy of the  
22 private vendor; and

23       ~~14.~~ 15. Contain comprehensive standards for conditions of  
24 confinement.

1 E. At the beginning of each fiscal year, the Department of  
2 Corrections shall determine the budgeted average daily cost per  
3 inmate. The budgeted average daily cost per inmate shall include  
4 all direct and indirect costs incurred by the Department. There  
5 shall be a separate computation of budgeted average daily cost for  
6 maximum security, medium security, minimum security, and community  
7 facilities. This information shall be presented to the State Board  
8 of Corrections for informational purposes only. After the close of  
9 each fiscal year, the Department shall determine the actual average  
10 daily cost per inmate for the operational costs at each major  
11 category of correctional facility. The actual average daily cost  
12 per inmate shall include all direct and indirect costs incurred by  
13 the Department. There shall be a separate computation of the  
14 average daily rate for maximum security, medium security, minimum  
15 security, and community facilities. The Department shall present to  
16 the State Board of Corrections at its January meeting comparative  
17 data on budgeted daily cost versus actual daily cost, and, after  
18 appropriate review and analysis, the Board shall adopt as a final  
19 action of the Board an average daily cost per inmate by facility  
20 category for the immediately preceding fiscal year.

21 F. If a request for proposal process is utilized and no  
22 proposals conform to the established criteria, the Department shall  
23 prepare an additional request for proposals. The Department of  
24 Corrections shall evaluate the proposals within thirty (30) days of

1 receipt from the prospective contractor. The Department of  
2 Corrections shall specifically determine whether a proposal meets  
3 the requirements of paragraph 4 of subsection D of this section by  
4 comparing the daily rate for housing and care of inmates pursuant to  
5 any proposed contract with a private contractor to the daily rate  
6 for housing and care of inmates at the comparable type of facility  
7 operated by the Department of Corrections using the information  
8 provided pursuant to paragraph 6 of subsection D of this section.  
9 The Department shall evaluate proposals taking into account any  
10 direct or indirect costs that would continue to be paid by the  
11 Department of Corrections including, but not limited to,  
12 transportation, records management, discipline, general  
13 administration, management of inmate trust funds, and major medical  
14 coverage. Such costs shall be added to the proposed per diem of the  
15 private vendor when comparing the total per diem costs of the state  
16 operating facilities.

17 G. If the Department of Corrections proposes to enter into a  
18 contract for the construction or the operation, or both, of a  
19 private prison, the Department shall compare both the capital costs  
20 and the operating costs for the facility to the imputed capital  
21 costs and the projected operating costs of a comparable facility  
22 constructed and operated by the Department of Corrections.

23 H. The Department of Corrections shall deliver to the State  
24 Board of Corrections the top three qualified prospective private

1 prison contractors identified pursuant to this section and pursuant  
2 to Section 561 of this title together with the information reviewed  
3 and analyzed by the Department of Corrections during analysis of the  
4 proposals as required by this section. The Board of Corrections  
5 shall evaluate the information provided and shall make a final  
6 decision selecting the contractor within fifteen (15) days of  
7 receipt of the information.

8 I. Any contract subject to the provisions of this section  
9 entered into by the Board of Corrections shall be subject to the  
10 approval of the Council on Bond Oversight in the same manner as  
11 provided by law for the review of issuance of obligations by State  
12 Governmental Entities as prescribed by Section 695.8 of Title 62 of  
13 the Oklahoma Statutes.

14 J. Before submission of the proposed contract to the Council on  
15 Bond Oversight, and prior to the date as of which the proposed  
16 contract is executed by the Board of Corrections, the Attorney  
17 General and the Director of the Office of Management and Enterprise  
18 Services shall review the proposed final version of the contract.  
19 The Attorney General and the Director of the Office of Management  
20 and Enterprise Services shall have a period of fifteen (15) days  
21 from receipt of the proposed final version of the contract to  
22 approve the contract and execute the document. If either the  
23 Attorney General or the Director of the Office of Management and  
24 Enterprise Services has objections to the proposed contract, the

1 objections shall be communicated in writing to the Department of  
2 Corrections. The Department of Corrections shall take appropriate  
3 action regarding the objections and shall resubmit the proposed  
4 contract for additional review. The Attorney General and the Office  
5 of Management and Enterprise Services shall have an additional  
6 fifteen-day period to approve the proposed contract and to execute  
7 the document. Failure of the Attorney General or the Director of  
8 the Office of Management and Enterprise Services, respectively, to  
9 act within the fifteen-day period shall constitute approval of the  
10 respective official to the proposed final version of the contract.  
11 The contract shall contain a separate signature block or line for  
12 signature by the Attorney General and the Office of Management and  
13 Enterprise Services. The contract shall contain a statement to be  
14 executed by the Attorney General and the Director of the Office of  
15 Management and Enterprise Services that each one of them,  
16 respectively, has reviewed the proposed contract for compliance with  
17 the provisions of this section and Section 561 of this title, and  
18 all other applicable provisions of law and that the contract  
19 conforms with those requirements. Neither the private prison  
20 contractor nor the State Board of Corrections shall execute the  
21 contract until the document has been executed by the Attorney  
22 General and the Director of the Office of Management and Enterprise  
23 Services as required by this subsection unless the approval of the  
24

1 respective official has been made as a result of failure to take  
2 action within the fifteen-day period prescribed by this subsection.

3 K. The State Board of Corrections may renew a private prison  
4 contract which is in effect for any time period during the fiscal  
5 year ending June 30, 2009, if the Board determines that the renewal  
6 of such contract will result in a reduced per diem in the fiscal  
7 year ending June 30, 2010. If the State Board of Corrections makes  
8 such determination, the contract shall not be subject to the  
9 restrictions of paragraph 7 8 of subsection D of this section and  
10 the Board shall negotiate the contract based upon such terms as the  
11 Board deems to be in the best interest of operational efficiency,  
12 including the inmate population, per inmate cost, public safety and  
13 such other terms as the State Board of Corrections determines to be  
14 relevant to such contract. The State Board of Corrections shall  
15 have the authority to negotiate the term of any contract executed  
16 pursuant to the provisions of this subsection subject to the  
17 availability of appropriations to the Department of Corrections each  
18 year.

19 SECTION 4. This act shall become effective November 1, 2019.

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