WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

HOUSE BILL No. 5599

(By Rep. Del. Ashley & Rowe)

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Passed March 7, 1990

In Effect From Passage

C-641
AN ACT to amend and reenact section fourteen, article two-
a, chapter fourteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend chapter twenty-five of said code by adding
thereto a new article, designated article five; and to
amend and reenact sections eight, nine, ten and twelve,
article five, chapter sixty-one of said code, all relating
to disallowing an award from the crime victims
compensation fund for any victim if the injury occurred
while the victim was confined in any state, county or city
jail, prison, private prison or correctional facility;
relating to the private prison enabling and contracting
act; granting authority to the commissioner of the
division of corrections; granting authority to the
secretary of the department of public safety; prohibiting
the operation of a private prison without the approval
of the secretary; prohibiting the construction, modifica-
tion, lease or alteration of a private prison without the
approval of the regional jail authority; granting
authority for the state or its political subdivisions to
contract with private prisons for correctional services;
granting the private prison contractor the ability to
contract with foreign authorities for correctional
services; allowing private prison contractors to house
certain foreign inmates within West Virginia; limita-
tions; requiring the contractor to report to the commis-
sioner of the division of corrections and to appropriate
foreign authorities regarding public information, inspections, crimes, extraordinary or unusual occurrences; mandating that certain records of the private prison be deemed public records; requiring the terms of the contract include provisions for security, discipline, adherence to rules of the commissioner, proper provisions for inmates, requiring the contractor and the contracting agency hold the state and its political subdivisions harmless, requiring the contractor to indemnify the state, requiring the contractor to transport an inmate back to the sending state for parole, furlough or release; allowing the regional jail authority to approve the site of a proposed facility; allowing for an exemption from regional jail authority approval for the Spencer state hospital location; providing for the standards of operation of the facility; requiring that services and programs meet the standards of the jail and correctional facility standards commission; requiring that the prison operations comply with all federal, state and local laws, rules, regulations, or ordinances, building, safety and health codes; providing a mechanism for notices of violations, assessing penalties, providing for a maximum dollar limit for violations and penalties, criteria for determining dollar amount; relating to hearing requirements and informal hearings; providing for a hearing board; providing for access by the contracting agency or the commissioner to the prison facility; creating a special fund; providing for reimbursement of expenses of inspections by the commissioner; requiring annual report; providing for restrictions on the use of the defense of sovereign immunity; providing that certain powers and duties are not delegable to the contractor; providing for community service by inmates; requiring bonding; requiring insurance and the criteria therefor; prohibiting self insurance; requiring indemnification to the state from the contractor; providing for approval of firearms training program; relating to the capture of escapees; providing that nonresident private correctional officers be deemed residents in certain circumstances; relating to employee training requirements and preference; requiring reimbursement to the state and its political subdivisions for expenses incurred
in the recapture of escapees and the detention thereof; defining the offense of aiding escape from a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivering anything to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center with the intent to aid or facilitate or attempt escape therefrom or for forcibly rescuing or attempting to rescue therefrom and providing criminal penalties therefor; defining the offense of delivering money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to an adult or inmate confined in a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of the transportation of alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon or any controlled substance onto the grounds of jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivery of alcoholic liquor, nonintoxicating beer, poison, explosive, firearms or other dangerous or deadly weapon or any controlled substance to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for the purchase, acceptance as a gift, securing by barter, trade or in any other manner, any article or articles manufactured at or belonging to any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of persuading, inducing or enticing or attempting to persuade, induce or entice any person confined in a jail, prison, private prison, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the authority of any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for a jailor or other officer
or private correctional officer for permitting escape or refusing to receive custody and providing criminal penalties therefor; defining the offense of breaking or escaping by force, violence, or by any subterfuge, device or deception from a jail or private prison by a convicted or unconvicted prisoner and providing criminal penalties therefor; defining the offense of the abduction or persuading, inducing or enticing escape from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of concealment or harboring of an inmate or patient from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; providing for the return of fugitives; defining the offense of trespassing, idling, lounging or loitering on the grounds of state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of communicating or attempting to communicate, by signals, signs, writings or otherwise with an inmate or patient, or conveying or assisting in any way establishing communication with an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions; defining the offense of intent to defraud, purchase, accept gifts, secure by barter or trade, or in any other manner, any article of clothing from an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter twenty-five of said code be amended by adding thereto a new article designated article five; and that sections eight, nine, ten and twelve, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:
CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner shall not approve an award of compensation to a claimant who did not file his application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of compensation.

(b) An award of compensation shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or to the parent, child, brother or sister of the offender or his accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(e) An award of compensation shall not be approved
if the injury occurred while the victim was confined in
any state, county or city jail, prison, private prison or
correctional facility.

(f) After reaching a decision to approve an award of
compensation, but prior to announcing such approval,
the judge or commissioner shall require the claimant to
submit current information as to collateral sources on
forms prescribed by the clerk of the court of claims. The
judge or commissioner shall reduce an award of
compensation or deny a claim for an award of compensa-
tion that is otherwise payable to a claimant to the
extent that the economic loss upon which the claim is
based is or will be recouped from other persons,
including collateral sources, or if such reduction or
denial is determined to be reasonable because of the
contributory misconduct of the claimant or of a victim
through whom he claims. If an award is reduced or a
claim is denied because of the expected recoupment of
all or part of the economic loss of the claimant from a
collateral source, the amount of the award or the denial
of the claim shall be conditioned upon the claimant's
economic loss being recouped by the collateral source:
Provided, That if it is thereafter determined that the
claimant will not receive all or part of the expected
recoupment, the claim shall be reopened and an award
shall be approved in an amount equal to the amount of
expected recoupment that it is determined the claimant
will not receive from the collateral source, subject to the
limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable
to a victim and to all other claimants sustaining
economic loss because of injury to that victim shall not
exceed thirty-five thousand dollars in the aggregate.
Compensation payable to a victim of criminally injur-
ious conduct which causes permanent injury may
include, in addition to economic loss, an amount up to
fifteen thousand dollars for emotional distress and pain
and suffering which are proximately caused by such
conduct. Compensation payable to all claimants because
of the death of the victim shall not exceed fifty thousand
dollars in the aggregate, but may include, in addition
75 to economic loss, compensation to the claimants specified
76 in paragraph (2), subdivision (a), section three of this
77 article, for sorrow, mental anguish and solace.

CHAPTER 25. DEPARTMENT OF
CORRECTIONS.

ARTICLE 5. PRIVATE PRISONS.

§25-5-1. Short title.

1 This article shall be known as the "The Private Prison
2 Enabling and Contracting Act."

§25-5-2. Legislative findings and purpose.

1 The Legislature hereby finds that adequate and
2 modern prison facilities are essential to the safety and
3 welfare of the people of this state and other states, and
4 that contracting for portions of governmental services is
5 a viable alternative for this state and its political
6 subdivisions.
7 Further, the Legislature finds that allowing for the
8 establishment of private prison facilities is an economic
9 development opportunity for local communities and will
10 augment the general revenue fund.


1 As used in this article, unless the context clearly
2 requires a different meaning, the term:
3 (a) "Commissioner" means the commissioner of the
4 division of corrections.
5 (b) "Contracting agency" means the appropriate
6 governmental agency with the authority to enter into a
7 contract with a prison vendor for correctional services.
8 A contracting agency shall include, but not be limited
9 to, the state of West Virginia and its political subdivi-
10 sions, the federal government, any federal agency, one
11 or more of the remaining United States, or a political
12 subdivision of one or more of the remaining United
13 States.
14 (c) "Correctional services" means the following
15 functions, services and activities, when provided within
16 a prison or otherwise:
17 (1) Design and modification or construction of prison
18 facilities;
19 (2) Education, training and jobs programs;
20 (3) Development and implementation of systems for
21 the classification of inmates and management information systems or other information systems or services;
22 (4) Food services, commissary, medical services, transportation, sanitation or other ancillary services;
23 (5) Counseling, special treatment programs or other programs for special needs;
24 (6) Recreational, religious or other activities; and,
25 (7) Operation of correctional facilities, including management, custody of inmates, and providing security.
26
27 (d) “Division” means the division of corrections of the department of public safety of West Virginia.
28 (e) “Foreign” in the context of a foreign state or other unit of government means any state or political subdivision or the District of Columbia or the federal government or a federal agency other than the state of West Virginia and its political subdivisions.
29 (f) “Inmate” means an individual, sentenced to incarceration by a court or contracting agency.
30 (g) “Prison contractor” or “contractor” or “prison vendor” means any individual, partnership, corporation, unincorporated association or any other nongovernmental entity which is licensed to do business in the state of West Virginia and which has or will enter into a contractual agreement with a contracting agency to provide correctional services.
31 (h) “Prison” or “prison facility” or “facility” means any minimum or medium or maximum adult correctional institution operated under the authority of the division or of a political subdivision of this state, whether obtained by purchase, lease, construction,
(i) "Private correctional officer" means any full-time or part-time employee of a prison vendor whose primary responsibility is the supervision, protection, care and control of inmates within a private correctional facility.

(j) "Regional jail authority" means the West Virginia regional jail and correctional facility authority created by article twenty, chapter thirty-one of this code.

(k) "Secretary" means the secretary of the department of public safety.

(l) "State" means the state of West Virginia.

§25-5-4. Authority of the commissioner of the division of corrections; authority of secretary of department of public safety.

(a) The commissioner of the division of corrections shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.

(b) The commissioner shall have the authority to recommend or to not recommend to the secretary that a prison vendor be granted the privilege of operating a prison facility in this state.

(c) The commissioner shall have the authority to issue notices of violations, assess penalties and proceed in the collection of money due the state by private contractors.

(d) The secretary of the department of public safety may, upon the recommendation of the commissioner, grant approval for a prison vendor to operate a private prison in this state.

(e) The commissioner shall have the authority to accept the custody of and to confine inmates from sentencing authorities located outside the state of West Virginia.

(f) The commissioner shall have the authority to expend funds contained in the private prison fund, established pursuant to subdivision (2), subsection (g).
section eleven of this article, to cover any and all expenses incurred because of private prison operations within the state.

§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.

(a) No person may operate a private prison facility or provide correctional services in this state without first obtaining the written approval of the secretary.

(b) No person may construct, modify, lease, or otherwise alter a private prison facility without first obtaining the written approval of the regional jail authority.

(c) Nothing in this section shall impair the right of the state or its political subdivisions to operate a prison facility or provide correctional services.

(d) No private contractor may operate a correctional facility in this state for the confinement of maximum security inmates sentenced to a term of incarceration by a foreign court.

§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.

A contracting agency of this state, its political subdivisions or their designee may contract with a prison contractor for the construction, lease, acquisition, improvement, operation, and management of correctional facilities and services.

§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.

A private contractor upon the approval of the secretary and the regional jail authority may contract for correctional services with foreign contracting agencies provided such contract meets the minimal requirements contained in section nine of this article. Upon approval the facility may receive inmates sentenced to confinement by a foreign authority.

§25-5-8. Reporting requirements.

The contractor shall prepare the following informa-
tion and submit it to the commissioner, as applicable:

(1) The prison vendor shall develop and implement a plan for the dissemination of information about the facility to the public, government agencies and the media. This information shall be made available to all persons. All documents and records, except financial records, inmate records and personnel records, maintained by the prison vendor, shall be deemed public records.

(2) The facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety and health. Copies of inspections completed by the appropriate authorities shall be sent by the contractor to the division.

(3) The facility shall report for investigation all crimes in connection with the facility to the division of public safety and all other political subdivisions' law enforcement agencies having jurisdiction where the prison is located. A written report shall be made of all extraordinary or unusual occurrences and forwarded to the commissioner. Extraordinary or unusual occurrences shall include, but not be limited to:

(A) Death of an inmate or staff member;
(B) Attempted suicide or suicide;
(C) Serious injury, whether accidental or self-inflicted;
(D) Attempted escape or escape from confinement;
(E) Fire;
(F) Riot;
(G) Battery, whether by a staff member or inmate;
(H) Sexual assaults; and
(I) Occurrence of contagious diseases.

Contracts awarded under the provisions of this article shall:
(1) Provide for internal and perimeter security to protect the public, staff members and inmates.

(2) Impose discipline on inmates only in accordance with the rules promulgated by the commissioner.

(3) Provide for proper food, clothing, housing, and medical care for inmates.

(4) Require that a contractor shall adhere to the rules promulgated by the commissioner.

(5) Require that the contractor and the contracting agency, shall indemnify, defend and hold harmless the state, its agencies, political subdivisions, and the employees and other contractors of the state, its agencies and political subdivisions from any claim or cause of action which arises from any act or omission by the contractor or any of the contractor's employees or subcontractors.

(6) Require the contractor to indemnify the state or its political subdivisions for any monies the state or its political subdivisions may expend for claims against the state or its political subdivisions pursuant to section seventeen of this article.

(7) Require a foreign contracting agency to transport an inmate back to the contracting agency's state for parole, furlough or release.

§25-5-10. Site selection.

(a) The regional jail authority shall approve the site for the proposed facility. Approval shall be in accordance with legislative rules promulgated in accordance with chapter twenty-nine-a of this code. One such legislative rule shall establish criteria for identifying and evaluating potential sites for private prisons and shall provide for a public hearing or hearings to allow reasonable participation in the selection process by the citizens of the area to be affected by the construction and operation of a private prison.

(b) Notwithstanding the provisions of subsection (a) of this section, the Legislature hereby approves the site at the former Spencer state hospital for a private
prison facility: Provided, That the contractor shall comply with the remaining provisions of this article:
Provided, however, That the contractor shall not be required to comply with subsection (b) of section five of this article: Provided further, That the contractor shall not be required to obtain the approval of the regional jail authority as required by section seven of this article.

§25-5-11. Standards of operation; violations.

(a) The facility shall be staffed at all times. The staffing pattern shall be adequate to insure intense supervision of inmates and maintenance of security within the facility. The staffing pattern shall address the facility’s operations and programs, transportation and security needs. In determining security need, considerations shall include, but not be limited to, the proximity of the facility to neighborhoods and schools.

(b) The facility shall provide the following services and programs which shall be consistent with the standards of the jail and correctional facilities standards commission:

(1) Health and medical services;
(2) Food services;
(3) Mail, telephone use, and visitation;
(4) Access to legal services and legal materials;
(5) Vocational training;
(6) Educational programs;
(7) Counseling services including personal counseling;
(8) Drug and alcohol counseling; and
(9) Sanitation services.

(c) In addition to the requirements of subsections (a) and (b) of this section, all facilities governed by this article shall be designed, constructed and at all times maintained and operated in accordance with standards and rules of the jail and correctional facility standards commission pursuant to section nine, article twenty, chapter thirty-one of the code of West Virginia, as
amended: Provided, That any more stringent require-
ments mandated by the commissioner shall be complied
with.

(d) All facilities governed by this article shall at all
times comply with all applicable federal and state
constitutional standards, all applicable federal laws and
rules and regulations, state laws and rules and local
ordinances, building, safety and health codes.

(e) If any of the requirements of subsection (d) of this
section have not been complied with, the commissioner
may cause a notice of violation to be served upon the
contractor or his duly authorized agent. A copy of the
notice shall be handed to the contractor or his duly
authorized agent in person or served by United States
certified mail, return receipt requested, addressed to the
contractor at the permanent address shown on the
application for approval to operate a prison facility. The
notice shall specify in what respects the contractor has
failed to comply with subsection (d) and shall specify a
reasonable time for abatement of the violation not to
exceed fifteen days. If the contractor has not abated the
violation within the time specified in the notice, or any
reasonable extension thereof, which extension is not to
exceed seventy-five days, the commissioner shall assess
a penalty as hereinafter provided. If a violation is not
abated within the time specified or any extension
thereof, a mandatory civil penalty of not less than five
hundred dollars per day per violation shall be assessed
until the violation is abated.

(f) Any contractor who violates any part of subsection
(d) may also be assessed an additional civil penalty in
the discretion of the commissioner. The penalty shall not
exceed five hundred dollars per day. Each day of
continuing violation may be deemed a separate violation
for purposes of penalty assessments. In determining the
amount of the penalty, the commissioner shall consider
the contractor's history of previous violations at the
particular facility, the seriousness of the violation,
including any hazard to the health or safety of the
public, whether the contractor was negligent, and the
demonstrated good faith of the contractor in attempting
to achieve timely compliance after notification of the violation.

(g)(1) Upon the issuance of a notice or order pursuant to this section, the commissioner shall, within thirty days, set a proposed penalty assessment and notify the contractor in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt thereof or, if the contractor desires to contest the violation, an informal conference with the commissioner may be requested within fifteen days or a formal hearing before three members of the regional jail authority, who are appointed by the secretary to hear cases pursuant to this article, may be requested within thirty days. The notice of proposed penalty assessment shall advise the contractor of the right to an informal conference or a formal hearing pursuant to this section. When an informal conference is requested, the contractor shall have fifteen days from receipt of the commissioner's decision resulting therefrom to request a formal hearing before three members of the regional jail authority.

(A) When an informal conference is held, the commissioner shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) Formal hearings shall be subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing, the three regional jail authority members may affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment and costs of the proceedings be paid.

(2) Civil penalties under this section may be recovered by the commissioner in the circuit court in the county where the facility is located or in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the state treasurer to the credit of the division of corrections in a special revenue fund to be known as the “Private Prison Fund,” which is hereby created.

§25-5-12. Access by contracting agency, commissioner;
reimbursement of expenses; report by commissioner.

(a) The commissioner shall cause to be made such inspections of prison facilities as are necessary to effectively enforce the requirements of this article. The commissioner or his authorized representative or a contracting agency shall have access to all areas of the facility and to inmates and staff at all times. The contractor shall provide to the commissioner any and all data, reports, and other materials that the commissioner determines are necessary to carry out inspections pursuant to this article.

(b) The contractor shall reimburse the division of corrections for expenses incurred for inspections. Such reimbursement shall be payable to the division of corrections.

(c) The commissioner shall report on the performance of contractors operating within this state, no less frequently than annually, until the year one thousand nine hundred ninety-three and thereafter as requested by either the Speaker of the House of Delegates, the President of the Senate, the regional jail authority or the Governor. Upon such request, the report shall be submitted to the Speaker of the House of Delegates, to the President of the Senate, to the regional jail authority and to the Governor.


The sovereign immunity of the state shall not extend to the contractor or its insurer.


(a) No contract for correctional services may authorize, allow or imply a delegation of the authority or responsibility of the contracting agency to a prison contractor for any of the following:

(1) Developing or implementing procedures for calculating inmate release and parole eligibility dates;

(2) Developing or implementing procedures for calculating and awarding good time;
17  (3) Approving inmates for work release;
10  (4) Approving the type of work inmates may perform
11  and the wages or good time, if any, which may be given
12  to inmates engaging in such work;
13  (5) Granting, denying or revoking good time; and,
14  (6) Recommending that the contracting state’s parole
15  authority either deny or grant parole, although the
16  contractor may submit written reports that have been
17  prepared in the ordinary course of business.
18  (b) Notwithstanding the provisions of subsection
19  (a) of this section, the contractor may use inmates for
20  community service upon the request and approval of the
21  political subdivision where the prison is located.


A contractor shall give a performance bond payable to the state of West Virginia, in a form satisfactory to the commissioner, executed by a surety company qualified to do business in this state and in the penal sum, as determined by the commissioner, in an amount not less than one hundred thousand dollars. The bond shall be conditioned on the contractor performing all the requirements of this article and the rules promulgated hereunder.


(a) The contractor shall provide an adequate policy of insurance specifically including insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. In determining the adequacy of the policy, such risk management or actuarial firm shall determine whether:

(1) The insurance is adequate to protect the state, its political subdivisions or other contracting agencies from actions by a third party against the contractor;

(2) The insurance is adequate to protect the state, its political subdivisions or contracting agencies against claims arising as a result of any occurrence; and,
(3) The insurance is adequate to satisfy other requirements specified by the risk management or actuarial firm.

(b) The insurance contract shall contain a provision that the state, its political subdivisions and contracting agencies are named insureds, and that the state, its political subdivisions and contracting agencies shall be sent any notice of cancellation.

(c) The contractor shall not self-insure.

§25-5-17. Liability; indemnification.

A contractor which has been approved to operate a facility pursuant to this article shall indemnify, defend and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility from:

(1) Any claims or losses for services rendered by the contractor or person performing or supplying services in connection with the performance of the contract;

(2) Any claims or losses to any person injured or damaged by the wilful or negligent acts of the contractor, its officers or employees in the operation of a private prison or in the performance of the contract;

(3) Any claims or losses resulting to any person injured or damaged by the private contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or state regulations or statutes;

(4) Any failure of the contractor, its officers or employees to adhere to West Virginia laws, including but not limited to labor laws and minimum wage laws;

(5) Any constitutional, federal, state or civil rights claim brought against the state related to the prison facility;

(6) Any claims, losses, demands or causes of action
arising out of the contractors activities in this state; and

(7) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits which may arise, including, but not limited to, attorney's fees for the state's representation as well as for any court appointed representation of any inmate as well as the costs of any special judge who may be appointed to hear such actions.

§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.

(a) Private correctional officers of a private contractor shall be authorized to carry and use firearms in the course of their employment only after completing a training course, approved by the commissioner, in the use of firearms in accordance with rules promulgated by the division.

(b) Upon notification by the contractor of an escape from the facility or a disturbance at the facility, the state shall use all reasonable means to recapture escapees or quell any disturbance.

(c) When acting within the scope of their normal employment at the private prison facility, nonresident private correctional officers shall be deemed residents for purposes of section eleven, article six, chapter sixty-one of this code.

§25-5-19. Employee training requirements; preference.

(a) All employees of a facility operated pursuant to this article shall receive training in a program approved by the commissioner. All training expenses shall be the responsibility of the contractor.

(b) West Virginia residents shall be given a hiring preference for positions at the facilities permitted to operate in accordance with this article.


Any cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility shall be
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail, prison or private prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall deliver anything into the jail, prison, private prison, facility or juvenile detention center or other place of custody of such adult or juvenile with the intent to aid or facilitate such adult's or juvenile's escape or attempted escape therefrom, or if such other person shall forcibly rescue or attempt to rescue such adult or juvenile therefrom, such other person is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

(b) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail, prison or private prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall deliver any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to such adult or juvenile without the express authority and permission of the jailer, warden, private correctional officer or other supervising officer and with knowledge that such adult or juvenile is so lawfully detained, such other person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned in the county jail not less than three nor
more than twelve months: Provided, That nothing herein
shall preclude an attorney or any of his or her employees
from supplying to such detainee any written or printed
material which pertains to that attorney's representa-
tion of said detainee.

(c) If any person transports any alcoholic liquor,
nonintoxicating beer, poison, explosive, firearm or other
dangerous or deadly weapon or any controlled substance
as defined by chapter sixty-a of this code onto the
grounds of any jail or prison, or private prison or
juvenile facility or detention center within this state and
is unauthorized by law to do so, or is unauthorized by
the administration of said jail or prison, or private
prison or juvenile facility or detention center, such
person is guilty of a felony, and, upon conviction thereof,
shall be fined not less than one thousand nor more than
five thousand dollars or imprisoned in the penitentiary
not less than one year nor more than five years, or, in
the discretion of the court, be confined in the county jail
not more than one year and shall be fined not more than
five hundred dollars.

(d) If any person delivers any alcoholic liquor,
nonintoxicating beer, poison, explosive, firearm or other
dangerous or deadly weapon, or any controlled sub-
stance as defined by chapter sixty-a of this code to an
inmate or prisoner in any jail, prison or private prison
or to any resident of any juvenile facility or juvenile
detention center within this state and is unauthorized by
law to do so, or is unauthorized by the administration
of said jail or prison, or private prison or juvenile
facility or detention center, such person is guilty of a
felony, and, upon conviction thereof, shall be fined not
less than one thousand nor more than five thousand
dollars or imprisoned in the penitentiary not less than
one year nor more than five years.

(e) Whoever purchases, accepts as a gift, or secures by
barter, trade or in any other manner, any article or
articles manufactured at or belonging to any jail, prison,
or private prison, juvenile facility or juvenile detention
center from any inmate, prisoner or resident detained
therein is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor
more than five hundred dollars and imprisoned in the
county jail not less than three nor more than twelve
months: Provided, That this subsection (e) shall not
apply to articles specially manufactured in such jail,
prison, or private prison, juvenile facility or juvenile
detention center under the authorization of the admin-
istration of such jail, prison, private prison, juvenile
facility or juvenile detention center for sale inside or
outside of such jail, prison, private prison, juvenile
facility or juvenile detention center.

(f) Whoever persuade, induces or entices or attempts
to persuade, induce or entice, any person who is an
inmate or prisoner in any jail, prison, private prison or
resident of any juvenile facility or juvenile detention
center to escape therefrom or to engage or aid in any
insubordination to the authority of such jail, prison,
private prison, juvenile facility or juvenile detention
center is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor
more than five hundred dollars and imprisoned in the
county jail not less than three nor more than twelve
months.

§61-5-9. Permitting escape; refusal of custody of prisoner;
penalties.

If a jailor or other officer, or private correctional
officer aid or voluntarily suffer a prisoner convicted or
charged with felony to escape from his custody, he shall
be deemed guilty of a felony, and, upon conviction, shall
be confined in the penitentiary not less than one nor
more than five years. If any such jailer or other officer,
or private correctional officer negligently, but not
voluntarily, suffer a person convicted of or charged with
felony, or voluntarily or negligently suffer a person
convicted of or charged with an offense not a felony, to
escape from his custody, or willfully refuse to receive
into his custody any person lawfully committed thereto,
he shall be guilty of a misdemeanor, and, upon convic-
tion, shall be confined in jail not less than six months,
or be fined not exceeding one thousand dollars, or both
such fine and confinement.
§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

(a) Any person confined in jail on conviction of a criminal offense, who escapes therefrom by force, violence, or by any subterfuge, device or deception, shall, if previously sentenced to confinement in the penitentiary, be guilty of a felony, and, upon conviction, shall be confined in the penitentiary for not less than one nor more than five years; and if he be previously sentenced to confinement in jail, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail one year.

(b) If any person be lawfully confined in jail or private prison and not sentenced on conviction of a criminal offense, shall escape therefrom by any means, such person shall, (i) if he be confined upon a charge of a felony, be guilty of an additional felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or (ii) if he be confined upon a charge of a misdemeanor, be guilty of an additional misdemeanor, and, upon conviction thereof, shall be confined in jail one year.

(c) If any person is lawfully confined in a private prison and escapes therefrom by force, violence, or by any subterfuge, device or deception, he or she shall be guilty of a felony, and, upon conviction, shall be imprisoned for not less than one nor more than five years.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

Except where otherwise provided, whoever abducts any person who is an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years. Whoever persuades, induces or entices, or attempts to persuade, induce or entice, any person who
is an inmate or patient of any such institution, private
prison or facility to escape therefrom, or whoever
conceals or harbors any such person, knowing him or
her to have run away from any such institution, private
prison or facility, shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than one
hundred nor more than one thousand dollars, and in
addition thereto, in the discretion of the court, may be
imprisoned in the county jail not less than one nor more
than six months.

Any fugitive from any state benevolent or correctional
institution, private prison or mental health facility, may,
on the order of the superintendent or other officer of
such institution or facility, be arrested and returned to
such institution or facility, or to any officer or agent
thereof, by any sheriff, police officer or other person,
and may also be arrested and returned by any officer
or agent of such institution, private prison or facility.

Whoever trespasses, idles, lounges or loiters upon the
grounds of any other state benevolent or correctional
institution, private prison or mental health facility or
communicates, or attempts to communicate, by signals,
 signs, writings or otherwise with any inmate or patient
of such institution, private prison or facility, or conveys
or assists in any way in establishing communication
between an inmate or patient of such institution, private
prison or facility and any person or persons outside
thereof, except as authorized by the rules or regulations
in force by the authority governing the same, shall be
guilty of a misdemeanor, and, upon conviction, shall be
fined not less than twenty nor more than five hundred
dollars, or imprisoned not less than ten nor more than
thirty days in the county jail, or both, in the discretion
of the court or magistrate. Whoever, with intent to
defraud, purchases, accepts as a gift, or secures by
barter or trade, or in any other manner, any article of
clothing from an inmate or patient of any state benevo-
ent or correctional institution, private prison or mental
health facility issued to him or her, by any officer of
such institution or facility, or by any private correc-
tional officer of such private prison for his or her use,
or, with such intent, secures any other article or articles
belonging to any inmate or patient of such institution,
private prison or facility or to such institution, private
prison or facility from an inmate or patient thereof,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined a sum not less than double the
value of such articles, except that in no case shall the
fine be less than one hundred dollars. Magistrates shall
have jurisdiction of all misdemeanors included in this
paragraph, concurrently with the circuit court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 19th day of _______ 1990.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/13/90
Time 2:36 PM

RECEIVED
1830 MAR 13 PL H: 48
STATE OF FLORIDA
OFFICE OF THE GOVERNOR
SHERMAN DCosta