

CHAPTER 90**(HB 616)**

AN ACT relating to prisons.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 197.510 is amended to read as follows:

Any contract entered on or after July 15, 1988, between the state and a private provider for the operation and management of an adult correctional facility shall include terms which comply with at least the following:

- (1) Unless otherwise provided by KRS 197.505 to 197.525, any adult correctional facility contracted for pursuant to KRS 197.505 shall submit a plan to the department for achieving American Correctional Association standards within five (5) years, which is appropriate for the specific type of adult correctional facility.
- (2) The provisions of KRS Chapter 45A shall apply to any contract or any proposal for a contract authorized by KRS 197.505 to 197.525 for an adult correctional facility.
- (3) The adult correctional facility shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority. The facility shall have written policies which govern revisions in the budget. The facility shall have a fiscal system which accounts for all income and expenditures on an on-going basis.
- (4) The adult correctional facility shall prepare and distribute to its governing authority and appropriate agencies including the department, at a minimum, the following documents: annual budget income and expenditure statements; funding source financial reports; and annual independent audit report.
- (5) The adult correctional facility shall have written fiscal policies and procedures adopted by the governing authority which include at a minimum: internal controls; petty cash; bonding; signature control on checks; resident funds; and employee expense reimbursement.
- (6) There shall be an annual independent audit of the adult correctional facility. The facility shall have a written policy for inventory control of all property and assets and for purchasing and requisitioning supplies and equipment. The facility shall use a method which documents and authorizes wage payment to employees and consultants.
- (7) The private provider shall develop and implement a plan for the dissemination of information about the adult correctional facility to the public, government agencies, and the media. The plan shall be made available to all persons. All documents and records, except financial records, maintained by the private provider shall be deemed public records as defined by KRS 61.870 and be subject to the provisions of KRS 61.872 to 61.884.
- (8) The adult correctional facility shall conform to all applicable zoning ordinances and all applicable state and local building codes, including the Kentucky Building Code, 1983 edition and subsequent modifications or replacements thereto.
- (9) The adult correctional 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 to the department.
- (10) The adult correctional facility shall comply with the provisions of the Life Safety Code, 1983 edition, National Fire Protection Association 101 and the regulations of the state or the local fire safety authority, whichever has primary jurisdiction over the adult correctional facility. Copies of the inspections completed by the appropriate authorities shall be sent to the department.
- (11) A minimum of sixty (60) square feet of floor space per resident shall be provided in the **living**~~sleeping~~ area of the adult correctional facility. Other areas to be provided shall include space and furnishings to accommodate group meetings of the residents, private counseling space with adequate furniture, and a visiting area.
- (12) The adult correctional facility shall provide a variety of indoor and outdoor recreational and leisure time activities to include but not be limited to: television, radio, library materials, and recreational facilities. Telephone facilities shall be available on the premises, which are accessible to residents.

- (13) The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.
- (14) The adult correctional facility shall be staffed twenty-four (24) hours per day seven (7) days per week. The staffing pattern shall be adequate to insure close inmate surveillance and maintenance of security within the facility. The staffing pattern shall address the program, transportation, and security needs of the facility. In determining security need, the proximity of the facility to neighborhood and schools shall be considered.
- (15) The adult correctional facility shall have a written personnel policy and employees shall be given a copy. The personnel policies shall include, at a minimum:
 - (a) Organization chart;
 - (b) Employment practices and procedures including in-service training and staff developing;
 - (c) Promotions;
 - (d) Job qualifications and job descriptions;
 - (e) Grievance and appeal procedures;
 - (f) Employee evaluation;
 - (g) Personnel records;
 - (h) Benefits;
 - (i) Holidays;
 - (j) Leave;
 - (k) Hours of work;
 - (l) Salaries (or the base for determining salaries);
 - (m) Disciplinary procedures;
 - (n) Termination; and
 - (o) Resignation.
- (16) The adult correctional facility shall maintain written job descriptions and job qualifications for all positions in the facility including: job title, responsibilities of the positions, and required minimum experience and education. An affirmative action program shall be adopted by the governing authority. The correctional facility shall maintain a current, accurate, and confidential personnel record on each employee. The facility shall have written policy and procedures requiring an annual performance evaluation of all employees. This evaluation shall be reviewed and discussed with the employee.
- (17) Prior to employment, all employees of the adult correctional facility shall be subject to thorough background investigation to include criminal, medical, and employment history. All security employees of the facility shall be at least ***eighteen (18)*** ~~twenty-one (21)~~ years of age. The facility shall provide initial orientation for all new employees during the first week of employment. The facility shall comply with all governmental regulatory requirements related to employment and personnel practices. Personnel selection and assignments shall be based on merit.
- (18) The administrator of the adult correctional facility shall have a minimum of five (5) years experience in corrections or law enforcement and five (5) years experience in administration. The remaining staff of the facility shall have the same qualifications and training as the staff employed in similar positions in adult correctional facilities operated by the department.
- (19) The adult correctional facility shall provide the following services and programs, the extent to which shall be set forth in the contract between the state and the private provider but shall be consistent with the standards of the American Correctional Association:
 - (a) Health and medical services;

- (b) Food services;
 - (c) Mail, telephone use, and visitation;
 - (d) Access to legal services and legal materials;
 - (e) Vocational training;
 - (f) Educational programs;
 - (g) Counseling services including personal counseling;
 - (h) Drug and alcohol counseling; and
 - (i) Sanitation services.
- (20) The adult correctional facility shall have a written fire and emergency plan for the facility which shall be communicated to all employees and inmates and updated, if needed. The facility's written emergency plan shall be conspicuously posted in the facility. The facility staff shall document the conduct of quarterly emergency drills.
- (21) The adult correctional facility shall have a written policy restricting the use of physical force to instances of justifiable self-protection, prevention of property damage, and prevention of escapes, and only to the degree necessary. In compliance with applicable laws, the facility shall maintain and make public, written policies and procedures for conducting searches of residents and all areas of the facility, to control contraband and locate missing or stolen property. The facility shall have a written plan to control movement in and out of the facility. The facility shall have written procedures to account for the whereabouts of the residents at all times.
- (22) The adult correctional facility shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly. Isolated security spot checks shall be conducted daily. Items considered as contraband or items permitted in the facility shall be clearly defined in the facility's rules.
- (23) The adult correctional facility shall report all suspected felonies to the Kentucky State Police for investigation. A written report shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence. This report shall be placed in the inmate's folder and a copy forwarded to the department. All these occurrences shall be promptly reported to the department verbally prior to submission of the written report. Extraordinary or unusual occurrences shall include, but not be limited to:
- (a) Death of a resident;
 - (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 resident;
 - (h) Sexual assaults; and
 - (i) Occurrence of contagious or infectious disease, or illness within the facility.
- (24) Each adult correctional facility shall have written policy and procedures for emergency situations including but not limited to:
- (a) Escapes;
 - (b) Taking of hostages;
 - (c) Riots;
 - (d) Food poisoning;
 - (e) Civil disturbances in the community;
 - (f) Natural disaster;

- (g) Suicides; and
 - (h) Other deaths and disorder.
- (25) The adult correctional facility shall adopt a written policy and procedures which shall insure that the constitutional rights of inmates to voluntarily practice their own religious activities are protected, subject only to those limitations necessary to maintain order and security of the facility.
- (26) The adult correctional facility shall adopt a written policy which shall be implemented to insure that no inmate or group of inmates is in a position of control or authority over other inmates.
- (27) The adult correctional facility shall have a policy and procedure for recommending awarding of meritorious good time for inmates in accordance with policies and procedures of the department. The procedures shall include formation of a committee to include an administrator to screen all recommendations. The recommendations shall be sent to the department. Recommendations for restoration of good time shall be screened by the same committee and forwarded to the department.
- (28) If the adult correctional facility operates a canteen, all profits shall be spent for recreational programs for inmates. Prices shall be in accordance with those established by the Department of Corrections Inmate Canteen Board.
- (29) The department shall have the authority to conduct periodic, scheduled, and unannounced inspections of the adult correctional facility during the term of the contract. The department shall generally observe and monitor the operations of the adult correctional facility at least once per week.
- (30) The contract shall provide a hold harmless clause by which the private provider agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:
- (a) Any claims or losses for service rendered by the private provider, person, or firm performing or supplying services in connection with performance of the contract;
 - (b) Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the private provider, its officers, or employees in the performance of the contract;
 - (c) Any claims or losses resulting to any person or firm injured or damaged by the private provider, 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 Commonwealth regulations or statutes; and
 - (d) Any failure of the private provider, its officers, or employees to observe Kentucky laws, including, but not limited to, labor laws and minimum wage laws.
- (31) The contract shall require that the private provider give a performance bond to the Commonwealth as obligee, in form satisfactory to the Commonwealth, executed by a surety company authorized to do business in Kentucky and in the penal sum equal to: twenty percent (20%) multiplied by the maximum number of inmates to be housed in the adult correctional facility multiplied by three hundred sixty-five (365) and further multiplied by the rate to be paid the private provider per inmate per day.
- (32) The private provider shall provide public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the private provider's operations under the terms of this contract. If any carrier of the insurance exercises cancellation, notice shall be made immediately to the Commonwealth of the cancellation.
- (33) As set forth within the contract between the Department of Corrections and the private provider:
- (a) Failure of the private provider to provide the required services, products, or facilities shall entitle the department to withhold from the contract an amount up to two (2) times the estimated value per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.
 - (b) The department shall in writing notify the provider of any failure to provide services, products, or facilities as required. A copy of the written notice shall be sent to the Finance and Administration Cabinet. The private provider shall have fourteen (14) calendar days from its receipt of the notice to abate the failure to provide and to notify the department of the corrective action taken by the private provider.

- (c) In the event the department determines that the failure to provide has not been abated within fourteen (14) calendar days after the initial notice, the commissioner of the Department of Corrections shall hold, or assign the matter to a hearing officer for, a hearing and issue findings of fact, conclusions of law, and a recommended order.
- (d) Failure to provide services, products, or facilities as required in this agreement shall result in an order to withhold from the contract an amount up to two (2) times the estimated value, as determined after a hearing, per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.
- (e) The withholding shall continue until such time as the failure to provide is corrected in the manner stated in the order.
- (f) The department and private provider shall in good faith negotiate the actual fair value of the omitted service, product, or facility which shall be subtracted from the amount withheld. The balance of the withholding, if any, shall be promptly returned to the private provider upon final agreement of the department and private provider. Additional withholding from the contract shall be made by the department if an additional amount is due.
- (g) The provider may appeal, within thirty (30) days, any order of the department to the Franklin Circuit Court.

Approved March 28, 2006.