

REFERENCE TITLE: private prisons; oversight

State of Arizona
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SB 1446

Introduced by
Senators Lopez: Jackson; Representatives Farley, Heinz, Miranda C

AN ACT

AMENDING SECTIONS 41-1604, 41-1682, 41-1683 AND 41-1822, ARIZONA REVISED
STATUTES; RELATING TO PRIVATE PRISONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1604, Arizona Revised Statutes, is amended to
3 read:

4 41-1604. Duties and powers of director

5 A. The director shall:

6 1. Be responsible for the overall operations and policies of the
7 department.

8 2. Maintain and administer all institutions and programs within the
9 department, including prisons, reception and diagnostic centers, conservation
10 camps, community correctional centers and such other facilities and programs
11 as may be required and established for the custody, control, correction,
12 treatment and rehabilitation of all adult offenders who are committed to the
13 department.

14 3. Be responsible for the administration and execution of all
15 community supervision services, including those for adult offenders who are
16 released in accordance with law.

17 4. Develop a program to provide uniform statewide community
18 supervision field services in this state and employ parole or community
19 supervision officers based on qualifications prescribed by the director,
20 including physical, psychological and educational qualifications and
21 practical experience.

22 5. Be responsible for the development of policies and programs that
23 shall be recommended to the governor and the legislature for the purpose of
24 improving the various adult correctional programs of this state.

25 6. Develop and establish a uniform statewide method of reporting
26 statistics as related to this chapter.

27 7. Employ deputy directors and other key personnel based on
28 qualifications prescribed by the director that require education and
29 practical experience.

30 8. Adopt rules pursuant to chapter 6 of this title for the development
31 of incentives to encourage good behavior and the faithful performance of work
32 by prisoners.

33 9. Adopt rules pursuant to chapter 6 of this title to limit inmate
34 access to the internet through the use of a computer, computer system,
35 network, computer service provider or remote computing service.

36 10. Cooperate with the Arizona-Mexico commission in the governor's
37 office and with researchers at universities in this state to collect data and
38 conduct projects in the United States and Mexico on issues that are within
39 the scope of the department's duties and that relate to quality of life,
40 trade and economic development in this state in a manner that will help the
41 Arizona-Mexico commission to assess and enhance the economic competitiveness
42 of this state and of the Arizona-Mexico region.

43 11. ADOPT RULES FOR THE RANDOM INSPECTION OF ALL PRIVATE PRISONS IN
44 THIS STATE TO ENSURE THAT THE PRIVATE PRISON IS IN COMPLIANCE WITH THE

1 DEPARTMENT'S PUBLIC SAFETY STANDARDS. FOR THE PURPOSES OF THIS PARAGRAPH,
2 "PRIVATE PRISON" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1681.

3 B. The director may:

4 1. Adopt rules to implement the purposes of the department and the
5 duties and powers of the director.

6 2. Take any administrative action to improve the efficiency of the
7 department, including the following:

8 (a) Create new divisions or units or consolidate divisions or units.

9 (b) Transfer employees between the various divisions and units of the
10 department.

11 (c) Shift duties between divisions or units.

12 (d) Delegate to appropriate personnel the administrative functions,
13 powers or duties that the director believes can be competently, efficiently
14 and properly performed. The director shall not delegate the responsibilities
15 in subsection A, paragraphs 1 and 5 of this section.

16 (e) Transfer adult inmates between adult institutions or adult
17 facilities.

18 (f) Authorize work crews to perform acceptable tasks in any part of
19 the state.

20 (g) Accept unconvicted persons pursuant to a court order for purposes
21 of examination and treatment regarding competency to understand any stage of
22 a criminal proceeding after indictment or information or their ability to
23 assist in their own defense.

24 (h) Accept convicted yet unsentenced persons pursuant to a court order
25 for purposes of conducting a mental health examination or a diagnostic
26 evaluation.

27 (i) Appoint certain employees of the department to peace officer
28 status for purposes of guarding, transporting or pursuing persons who are
29 under the jurisdiction of the department and appoint certain employees of the
30 department to peace officer status for purposes of investigating or arresting
31 persons who commit or attempt to commit offenses directly relating to the
32 operations of the department. Peace officers of the department shall not
33 preempt the authority and jurisdiction of established agencies of this state
34 and political subdivisions of this state. Such officers shall notify
35 agencies of this state and political subdivisions of this state before
36 conducting an investigation within the jurisdiction of the agency and before
37 making an arrest within the jurisdiction of the agency and shall ask, except
38 in an emergency, if the agency wishes to participate, perform the
39 investigation or arrest the person to be arrested before proceeding.
40 Personnel who are appointed as peace officers by the director shall have the
41 minimum qualifications established for peace officers pursuant to section
42 41-1822. Personnel who are appointed by the director pursuant to this
43 subdivision are not eligible to participate in the public safety personnel
44 retirement system except as otherwise provided in title 38, chapter 5,
45 article 4.

1 (j) Operate travel reduction programs that are subsidized by the
2 department for employees who commute between work and home by vanpools,
3 carpools and buses or in vehicles that are purchased or leased by the
4 department.

5 Sec. 2. Section 41-1682, Arizona Revised Statutes, is amended to read:
6 41-1682. Private prisons; prohibitions; liability for services;
7 financial responsibility; security officer
8 qualifications

9 A. No private prison may operate in this state unless the private
10 contractor complies with this section.

11 B. A private prison shall provide the department of administration
12 with financial responsibility to cover this state's potential liability in
13 the amount of ten million dollars. The monies shall be used by the state if
14 the state is held liable for civil damages resulting from the escape of a
15 prisoner from the private prison **OR THE ABUSE OR DEATH OF A PRISONER THAT IS**
16 **CAUSED BY A SECURITY OFFICER WHO IS EMPLOYED BY THE PRIVATE CONTRACTOR.** The
17 private prison may file proof of financial responsibility by filing one of
18 the following:

19 1. Proof that ten million dollars is deposited in the private prison
20 escapee fund established by section 41-1830.31.

21 2. An insurance policy that is in a form approved by the department of
22 administration, that provides civil liability and civil rights liability
23 coverage in the amount of ten million dollars and ~~listing~~ **THAT LISTS** the
24 state as an insured.

25 3. A surety bond with the principal sum of ten million dollars.

26 4. A certified financial statement that is not more than ninety days
27 old and that shows a net worth of more than fifteen million dollars. Every
28 ninety days the private prison shall submit a certified financial statement
29 to the department of administration signed under oath by the chief financial
30 officer of the prison. If the financial statement indicates a net worth of
31 less than fifteen million dollars, the private prison shall comply with
32 ~~paragraphs~~ **PARAGRAPH** 1, 2 or 3 of this subsection.

33 C. An insurance company or surety company duly authorized to transact
34 business in this state shall execute the insurance policy or bond prescribed
35 in subsection B of this section.

36 D. The insurance policy or surety bond shall continue in effect until
37 ninety days after the private prison is sold or closed. Any monies deposited
38 in the private prison escapee fund by the private prison shall be refunded to
39 the private prison within ninety days after submission of evidence to the
40 director of the department of administration that the private prison is
41 either sold or closed and there are no remaining liabilities for which the
42 state might be required to assume responsibility.

43 E. On receipt by the director of the department of administration of
44 notice to cancel an insurance policy or bond by an insurance company or
45 surety, the director **OF THE DEPARTMENT OF ADMINISTRATION** shall immediately

1 notify the private prison NAMED on the insurance policy or the surety bond of
2 the effective date of cancellation of the insurance policy or the surety
3 bond. The private prison shall furnish a like insurance policy or surety
4 bond within thirty days after mailing of the notice by the director OF THE
5 DEPARTMENT OF ADMINISTRATION. Unless a replacement insurance policy or
6 surety bond is filed with the director OF THE DEPARTMENT OF ADMINISTRATION,
7 the right of the private ~~prisons~~ PRISON to operate in this state shall be
8 suspended by operation of law on the date the bond is canceled.

9 F. If any of the monies required by subsection B, paragraph 1 of this
10 section are used to satisfy civil damage claims or civil rights claims, the
11 private prison shall reestablish the full amount of those monies within
12 thirty days after notification by the director of the department of
13 administration.

14 G. A security officer WHO IS employed by a private prison contractor
15 shall ~~be at least twenty-one years of age and have no felony convictions~~
16 COMPLY WITH THE MINIMUM STANDARDS AND COMPLETE THE BASIC TRAINING PROGRAM
17 ESTABLISHED PURSUANT TO SECTION 41-1822, SUBSECTION B. THE PRIVATE PRISON
18 CONTRACTOR SHALL REIMBURSE THIS STATE FOR ANY COSTS ASSOCIATED WITH THE
19 TRAINING AND CERTIFICATION OF A SECURITY OFFICER WHO IS EMPLOYED BY THE
20 PRIVATE CONTRACTOR.

21 H. A PRIVATE PRISON SHALL GRANT THE STATE DEPARTMENT OF CORRECTIONS
22 ACCESS TO ITS FACILITIES FOR THE PURPOSE OF CONDUCTING RANDOM INSPECTIONS FOR
23 PUBLIC SAFETY COMPLIANCE.

24 Sec. 3. Section 41-1683, Arizona Revised Statutes, is amended to read:
25 41-1683. Private prison; prisoner identification; notice

26 A. Private prisons shall maintain photographs and fingerprints on site
27 of all prisoners WHO ARE incarcerated in ~~the facility~~ PRIVATE PRISON
28 FACILITIES.

29 B. Before another state transfers prisoners to a private prison in
30 this state, the private prison housing prisoners under incarceration orders
31 from a court of another state shall provide the governor, the director of the
32 department of public safety and the director of the state department of
33 corrections with the following information:

- 34 1. The number of prisoners to be transferred.
- 35 2. The names of the prisoners to be transferred.
- 36 3. The date of the transfer.
- 37 4. The security level of each prisoner to be transferred, as
38 determined by the sentencing state.

39 C. If ~~one to~~ ten OR FEWER prisoners are transferred into this state,
40 the private prison shall comply with the notification requirements in
41 subsection B at least forty-eight hours before the prisoners arrive in this
42 state. If eleven or more prisoners are transferred into this state, the
43 private prison shall comply with the notification requirements pursuant to
44 subsection B at least seven days before the prisoners arrive in this state.

1 D. The information provided pursuant to subsection B, paragraphs 2, 3
2 and 4 ~~shall~~ IS not ~~be~~ A public record until the transfer of the prisoners is
3 completed.

4 E. WITHIN TWENTY-FOUR HOURS AFTER AN INCIDENT THAT INVOLVES THE ESCAPE
5 OF OR SERIOUS PHYSICAL INJURY TO A PRISONER, THE PRIVATE PRISON SHALL NOTIFY
6 THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY, THE DIRECTOR OF THE STATE
7 DEPARTMENT OF CORRECTIONS AND THE GOVERNOR OF THE INCIDENT.

8 Sec. 4. Section 41-1822, Arizona Revised Statutes, is amended to read:
9 41-1822. Powers and duties of board; definition

10 A. With respect to peace officer training and certification, the board
11 shall:

12 1. Establish rules for the government and conduct of the board,
13 including meeting times, places and matters to be placed on the agenda of
14 each meeting.

15 2. Make recommendations, consistent with this article, to the
16 governor, the speaker of the house of representatives and the president of
17 the senate on all matters relating to law enforcement and public safety.

18 3. Prescribe reasonable minimum qualifications for officers to be
19 appointed to enforce the laws of this state and the political subdivisions of
20 this state and certify officers in compliance with these qualifications.
21 Notwithstanding any other law, the qualifications shall require United States
22 citizenship, shall relate to physical, mental and moral fitness and shall
23 govern the recruitment, appointment and retention of all agents, peace
24 officers and police officers of every political subdivision of this state.
25 The board shall constantly review the qualifications established by this
26 section and may amend the qualifications at any time, subject to the
27 requirements of section 41-1823.

28 4. Prescribe minimum courses of training and minimum standards for
29 training facilities for law enforcement officers. Only this state and
30 political subdivisions of this state may conduct basic peace officer
31 training. Basic peace officer academies may admit individuals who are not
32 peace officer cadets only if a cadet meets the minimum qualifications
33 established by paragraph 3 of this subsection. Training shall include:

34 (a) Courses in responding to and reporting all criminal offenses that
35 are motivated by race, color, religion, national origin, sexual orientation,
36 gender or disability.

37 (b) Training certified by the director of the department of health
38 services with assistance from a representative of the board on the nature of
39 unexplained infant death and the handling of cases involving the unexplained
40 death of an infant.

41 (c) Medical information on unexplained infant death for first
42 responders, including awareness and sensitivity in dealing with families and
43 child care providers, and the importance of forensically competent death
44 scene investigations.

1 (d) Information on the protocol of investigation in cases of an
2 unexplained infant death, including the importance of a consistent policy of
3 thorough death scene investigation.

4 (e) The use of the infant death investigation checklist pursuant to
5 section 36-2293.

6 (f) If an unexplained infant death occurs, the value of timely
7 communication between the medical examiner's office, the department of health
8 services and appropriate social service agencies that address the issue of
9 infant death and bereavement, to achieve a better understanding of these
10 deaths and to connect families to various community and public health support
11 systems to enhance recovery from grief.

12 5. Recommend curricula for advanced courses and seminars in law
13 enforcement and intelligence training in universities, colleges and community
14 colleges, in conjunction with the governing body of the educational
15 institution.

16 6. Make inquiries to determine whether this state or political
17 subdivisions of this state are adhering to the standards for recruitment,
18 appointment, retention and training established pursuant to this article.
19 The failure of this state or any political subdivision to adhere to the
20 standards shall be reported at the next regularly scheduled meeting of the
21 board for action deemed appropriate by that body.

22 7. Employ an executive director and other staff as are necessary to
23 fulfill the powers and duties of the board in accordance with the
24 requirements of the law enforcement merit system council.

25 B. With respect to state department of corrections correctional
26 officers AND SECURITY OFFICERS WHO ARE EMPLOYED BY A PRIVATE PRISON
27 CONTRACTOR, the board shall:

28 1. Approve a basic training curriculum of at least two hundred forty
29 hours.

30 2. Establish uniform minimum standards. These standards shall include
31 high school graduation or the equivalent and a physical examination as
32 prescribed by the director of the state department of corrections.

33 3. Establish uniform standards for background investigations,
34 including criminal histories under section 41-1750, of all applicants before
35 enrolling in the academy. The board may adopt special procedures for
36 extended screening and investigations in extraordinary cases to ensure
37 suitability and adaptability to a career as a correctional officer.

38 4. Issue a certificate of completion to any state department of
39 corrections correctional officer OR SECURITY OFFICER WHO IS EMPLOYED BY A
40 PRIVATE PRISON CONTRACTOR who satisfactorily complies with the minimum
41 standards and completes the basic training program. The board may issue a
42 certificate of completion to a state department of corrections correctional
43 officer who has received comparable training in another state if the board
44 determines that the training was at least equivalent to that provided by the
45 academy and if the person complies with the minimum standards.

- 1 5. Establish continuing training requirements and approve curricula.
2 C. The board may:
3 1. Deny, suspend, revoke or cancel the certification of an officer who
4 is not in compliance with the qualifications established pursuant to
5 subsection A, paragraph 3 of this section.
6 2. Provide training and related services to assist state, tribal and
7 local law enforcement agencies to better serve the public.
8 3. Enter into contracts to carry out its powers and duties.
9 D. This section does not create a cause of action or a right to bring
10 an action, including an action based on discrimination due to sexual
11 orientation.
12 E. ~~As used in~~ FOR THE PURPOSES OF this section, "sexual orientation"
13 means consensual homosexuality or heterosexuality.