

ASSEMBLY, No. 1735

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1996

By Assemblyman BODINE, Assemblywoman BARK and
Assemblyman O'Toole

1 AN ACT concerning county correctional facilities and supplementing
2 chapter 8 of Title 30 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. This act shall be known and may be cited as the "County
8 Correctional Facilities Private Management Act."

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10 2. As used in this act, "correctional services" shall include:

11 a. The general management, administration, and operation of the
12 facility, including the responsibility for the security of the facility and
13 the custody of the inmates incarcerated therein;

14 b. Responsibility for providing basic services, including, but not
15 limited to, food and commissary services; health, dental and medical
16 services; clothing and household services; and facility maintenance and
17 equipment services;

18 c. Treatment and counseling services, including, but not limited to,
19 substance abuse treatment and counseling; individual and group
20 therapy and counseling; community integration programs; life and
21 family skills programs; and specialized psychological treatment
22 programs;

23 d. Education and training programs, including, but not limited to,
24 remedial skills training; adult basic skills programs; General
25 Equivalency Diploma programs; vocational skills and technical training
26 programs; interpersonal skills programs; and job placement and
27 retention programs; and

28 e. Ancillary services, including, but not limited to, recreational,
29 cultural and religious activities and programs.

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31 3. a. The governing body of any county, by ordinance or
32 resolution, as appropriate, may enter into a contract with a qualified
33 private entity to provide correctional services, or any part of those
34 services, at the county correctional facility. The contract shall be for
35 a term of not more than five years and, at the discretion of the
36 governing body of the county, be renewed for an additional term of

1 not more than five years.

2 b. Prior to entering into any such contract, the governing body
3 shall publicly advertise for bids and conduct the bidding therefor. The
4 public advertising for bids and bidding required under this subsection
5 shall be in accordance with the provisions of the "Local Public
6 Contracts Law," P.L.1978, c.198 (C.40A:11-1 et seq.).

7 c. To qualify as a bidder to provide correctional services, or any
8 part of such services, under the provisions of this act, a private entity
9 shall certify that:

10 (1) It has the operational experience, managerial expertise, and
11 qualified, supervisory personnel available to provide the correctional
12 services required to meet the specifications set forth in the public
13 advertisement for bids;

14 (2) In providing correctional services in other jurisdictions, it has:

15 (a) achieved compliance with appropriate American Correctional
16 Association's standards;

17 (b) received accreditation from the American Correctional
18 Association, if required; and

19 (c) received certification for its facility medical services from the
20 National Commission on Correctional Health Care, if appropriate;

21 (3) It is capable of providing appropriate insurance and
22 indemnification coverages, including, but not limited to:

23 (a) civil rights liability coverage;

24 (b) general liability coverage; and

25 (c) claims relating to a breach of contractual obligations.

26 d. In addition to the certifications required under subsection b. of
27 this section, each entity seeking qualification as a bidder shall submit
28 a statement indicating whether the entity has ever been a litigant in any
29 litigation, or a defendant in any criminal action, relating to the
30 operation, administration or management of a correctional facility.
31 The knowing failure to disclose such information shall be grounds for
32 disqualification.

33

34 4. The contract to provide correctional services shall include, but
35 not be limited to:

36 a. Specifications of the correctional services to be provided;

37 b. The insurance coverage and indemnification to be provided;

38 c. A schedule identifying those American Correctional Association
39 certifications, accreditations or compliances the entity is to be required
40 to achieve and maintain;

41 d. Any other such certifications, accreditations or compliances
42 relating to the provision of the correctional services to be provided
43 under the contract which the entity is required to achieve and maintain;

44 e. Any surety or bond the entity is to furnish for claims arising
45 from a breach of contract;

46 f. A provision assuring the county's contract compliance officer

1 24-hour access to the contract site and to designated managers and
2 officers of the entity; and

3 g. A provision prohibiting the entity from accepting defendants or
4 offenders from another jurisdictions for incarceration in the
5 correctional facility without the written consent of the governing body
6 of the county.

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8 5. a. The entity under contract to provide correctional services
9 under the provisions of this act shall be liable for any and all claims
10 relating to the provision of those services or arising from its
11 supervision, care, custody or control of the inmates incarcerated in
12 that facility.

13 b. An entity under contract to provide correctional services under
14 the provisions of this act shall not be deemed a public entity for the
15 purposes of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.
16 and shall not be entitled to any of the immunities, protections and
17 defenses accorded public entities therein.

18 c. An employee of an entity under contract to provide correctional
19 services under the provisions of this act shall not be deemed a public
20 employee for the purposes of the "New Jersey Tort Claims Act,"
21 N.J.S.59:1-1 et seq. and shall not be entitled to any of the immunities,
22 protections and defenses accorded public employees therein.

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24 6. a. An employee of an entity under contract to provide
25 correctional services under the provisions of this act, while in the
26 actual performance of his duties, may exercise, pursuant to the
27 provisions of subsection c. of N.J.S.2C:3-7 and N.J.S.2C:3-4, the
28 justifiable use of force, including deadly force, to prevent an inmate's
29 escape from custody and, if that employee reasonably believes that
30 such force is necessary, to protect himself or others against death or
31 serious bodily harm.

32 b. Any offense committed by an inmate against any employee of an
33 entity under contract to provide correctional services under the
34 provisions of this act shall be deemed to be an offense against a duly
35 appointed county corrections officer, and the offender shall be subject
36 to the penalties which may be imposed for such an offense being
37 committed against such an officer.

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39 7. The officers and employees of an entity under contract to
40 provide correctional services under the provisions of this act shall not
41 be construed to be employees of the contracting county or any agency
42 thereof and shall not be entitled to any of the benefits, rights and
43 privileges afforded such public employees by State law.

44
45 8. a. No contract entered into pursuant to the provisions of this
46 act shall be construed to grant, extend or delegate to the contracting

1 entity any distinctly judicial or governmental function, authority or
2 power relating to:

3 (1) the determination of the offenders to be incarcerated and the
4 term, conditions and place of that incarceration;

5 (2) the parole, probation or release of any inmate;

6 (3) the temporary or conditional release of an inmate on furlough
7 or to participate in a work release program;

8 (4) the establishment and implementation of any system or program
9 which would involve the awarding, denying or revoking of credits
10 which would in any way reduce or extend an inmate's term of
11 incarceration or change the date on which an inmate becomes eligible
12 for parole; and

13 (5) the formulation and implementation of any program or system
14 of rules governing inmate behavior or discipline, and imposing
15 sanctions for violations thereof.

16 b. Notwithstanding the provisions of subsection a. of this section,
17 the county may provide in the provisions of the contract that the
18 contracting entity may file with the appropriate county authority:

19 (1) requests that an inmate be transferred to another correctional
20 facility or disciplined for a violation of the rules governing inmate
21 behavior; and

22 (2) recommendations relating to an inmate's parole, probation,
23 work release or furlough; the granting, denying or revoking of credits
24 that may alter the inmate's term of incarceration or parole eligibility;
25 a change in an inmate's conditions of custody; or any changes in or
26 amendments to the rules governing an inmate's behavior within the
27 correctional facility.

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29 9. A county that enters into a contract with a private entity to
30 provide correctional services under the provisions of this act shall
31 designate a contract compliance officer. The contract compliance
32 officer shall have 24 hour access to the contract site and to designated
33 officers and managers of the contracting entity. The contract
34 compliance officer shall submit biannual reports on the entity's
35 performance to the governing body of the county, along with any
36 recommendations he may have.

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38 10. a. Nothing in R.S.30:8-17 concerning a sheriff's responsibility
39 to provide for the care and custody of the inmates or detainees in a jail
40 under his control shall be construed to prohibit, restrict or otherwise
41 hinder the county from entering into a contract with a public entity, in
42 accordance with the provisions of P.L. , c. (C.)(now pending
43 before the Legislature as this bill), to provide correctional services at
44 that jail.

45 b. Nothing in R.S.30:8-19 concerning the county governing body's
46 responsibility to provide for the custody and care of the inmates or

1 detainees in a jail under its control shall be construed to prohibit,
2 restrict or otherwise hinder the county from entering into a contract
3 with a public entity, in accordance with the provisions of P.L. ,
4 c. (C.)(now pending before the Legislature as this bill), to provide
5 correctional services at that jail.

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7 11. The Attorney General, in consultation with the Commissioner
8 of Corrections, shall promulgate advisory guidelines to assist the
9 governing bodies of those counties that wish to exercise the authority
10 afforded them under this act to enter into contracts with private
11 entities for the provision of correctional services at county correctional
12 facilities.

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14 12. This act shall take effect on the first day of the fourth month
15 following enactment.

16 17 18 STATEMENT

19
20 This bill, the "County Correctional Facilities Private Management
21 Act," would permit the privatization of county correctional facilities.

22 Under the provisions of the bill, the governing body of any county
23 is authorized to enter into a contract with a private entity to provide
24 all or some of the correctional services at the county correctional
25 facility. Correctional services are defined in the bill to include the
26 general management, administration and operation of the facility; basic
27 facility services, such as food, medical, household and maintenance
28 services; treatment and counseling programs; education and training
29 programs; and ancillary service programs, such as recreational and
30 cultural programs.

31 The contracts, which could run for terms of up to five years and
32 could be extended by the governing body for an additional term of up
33 to five years, would be awarded after public advertisement and
34 bidding.

35 To qualify as a bidder, the entity must certify that it:

36 (1) has the operational experience, managerial expertise and
37 supervisory personnel necessary to meet the specifications of the
38 contract;

39 (2) has, in its other contractual agreements, met American
40 Correctional Association compliance and accreditation standards; and

41 (3) is capable of providing appropriate insurance coverages and
42 indemnifications.

43 The bill also requires potential bidders to submit a statement
44 indicating whether they have ever been a litigant in any litigation, or
45 a defendant in any criminal action, relating to the operation,
46 administration or management of a correctional facility. While having

1 been a litigant or a defendant is not necessarily grounds for
2 disqualification, an entity which knowingly failed to provide such
3 information would be disqualified.

4 In addition to specifying the services to be provided at the
5 correctional facility, the contract is to include provisions concerning
6 required insurance coverages and indemnifications; surety or bond
7 covering breach of contract; and the American Correctional
8 Association certifications and compliances the entity is required to
9 achieve and maintain. The bill also specifies that the contract is to
10 contain provisions prohibiting the entity from accepting inmates from
11 other jurisdictions without the approval of the county and to assure the
12 county contract compliance officer has 24-hour access to the site and
13 to designated officers and managers of the entity.

14 The bill clarifies that the contracting entity and its employees are
15 not to be construed to be a public employer and public employees and,
16 therefore, are not afforded any protections or defenses under the "New
17 Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.) and are not accorded
18 any of the benefits, rights and privileges available to public employers
19 and employees under State law.

20 Provided it is consistent with the provisions of subsection c. of
21 N.J.S.2C:3-4 and N.J.S.2C:3-7, the bill permits the employees of the
22 contracting entity to exercise the justifiable use of force, including
23 deadly force, to prevent an inmate's escape and to protect himself or
24 others.

25 Most importantly, the bill provides that a contractual arrangement
26 for correctional services should not be construed to grant, extend or
27 delegate to a private entity any distinctly judicial or governmental
28 function, authority or power relating to the determination of the
29 offenders to be incarcerated, and the terms conditions and location of
30 their incarceration; the parole, probation or release of any inmate; the
31 temporary or conditional release of an inmate on furlough or to
32 participate in a work release program; or any disciplining of an inmate.
33 The bill does provide, however, that the county may, as part of the
34 contract, provide for the entity to file various reports, requests and
35 recommendations concerning the disciplining of inmates; the
36 conditions of their incarceration; and their parole, probation, furlough,
37 and release with the appropriate county authorities.

38 Finally, the bill directs the Attorney General, in consultation with
39 the Commissioner of Corrections, to prepare advisory guidelines to
40 assist county governing bodies that wish to privatize services at their
41 correctional facilities.

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46 Permits privatization of county correctional facilities.