

REFERENCE TITLE: private prison security officers; certification

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HB 2189**

Introduced by  
Representatives Andrade: Epstein, Powers Hannley, Quiñonez, Solorio,  
Senators Gabaldon, Terán

AN ACT

AMENDING SECTIONS 41-1609.01, 41-1682, 41-1822 AND 41-1823, ARIZONA  
REVISED STATUTES; RELATING TO PRIVATE PRISON SECURITY OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1609.01, Arizona Revised Statutes, is amended  
3 to read:

4 41-1609.01. Adult incarceration contracts; criteria

5 A. On publication, any request for proposals shall be provided to  
6 the joint legislative budget committee for its review.

7 B. To be considered for an award of a contract, the proposer must  
8 demonstrate that it has:

9 1. The qualifications, operations and management experience and  
10 experienced personnel necessary to carry out the terms of the contract.

11 2. The ability to comply with applicable correctional standards and  
12 any specific court order, if required.

13 3. A demonstrated history of successful operation and management of  
14 other secure facilities.

15 C. The proposer of a contract for correctional services must agree  
16 that this state may cancel the contract at any time after the first year  
17 of operation, without penalty to this state, on giving ninety days'  
18 written notice.

19 D. A contract may provide for annual contract price or cost  
20 adjustments, except that any adjustments may be made only once each year  
21 effective on the anniversary of the effective date of the contract. If  
22 any adjustment is made pursuant to the terms of the contract, it shall be  
23 applied to the total payments made to the contractor for the previous  
24 contract year and shall not exceed the ~~percent~~ PERCENT of change in the  
25 average consumer price index as published by the United States department  
26 of labor, bureau of labor statistics between that figure for the latest  
27 calendar year and the next previous calendar year.

28 E. Any price or cost adjustments to a contract different than those  
29 authorized in subsection D of this section may be made only if the  
30 legislature specifically authorizes the adjustments and appropriates  
31 monies for that purpose, if required.

32 F. An award of a contract shall not be made unless an acceptable  
33 proposal is received pursuant to any request for proposals. For the  
34 purposes of this subsection, "acceptable proposal" means a proposal that  
35 substantially meets all of the requirements or conditions set forth in  
36 this section and that meets all of the requirements in the request for  
37 proposals.

38 G. A proposal shall not be accepted unless the proposal offers cost  
39 savings to this state.

40 H. A proposal shall not be accepted unless the proposal offers a  
41 level and quality of services that are at least functionally equal to  
42 those that would be provided by this state.

43 I. Notwithstanding section 41-2546, a contract to provide  
44 correctional services as described in this section may be for an initial  
45 period of not more than ten years.

1 J. The initial contract may include an option to renew for two  
2 subsequent renewal periods of not more than five years each.

3 K. A contract for correctional services described in this section  
4 shall not be entered into unless the following requirements are met:

5 1. The contractor provides audited financial statements for the  
6 previous five years, or for each of the years the contractor has been in  
7 operation, if fewer than five years, and provides other financial  
8 information as requested.

9 2. The contractor provides an adequate plan of insurance,  
10 specifically including coverage or insurance for civil rights claims and  
11 liabilities as approved by the risk management division of the department  
12 of administration.

13 3. The contractor agrees to be liable for the costs of any  
14 emergency, public safety or security services provided to the contractor  
15 by the state or any political subdivision of the state and to reimburse  
16 the state or any political subdivision of the state for the cost of any  
17 such services.

18 4. THE CONTRACTOR USES ONLY SECURITY OFFICERS WHO ARE CERTIFIED  
19 PURSUANT TO SECTION 41-1822.

20 L. The sovereign immunity of this state does not apply to the  
21 contractor. Neither the contractor nor the insurer of the contractor may  
22 plead the defense of sovereign immunity in any action arising out of the  
23 performance of the contract.

24 M. A contract for correctional services shall not authorize, allow  
25 or imply a delegation of authority or responsibility to a prison  
26 contractor for any of the following:

27 1. Developing and implementing procedures for calculating inmate  
28 release dates.

29 2. Developing and implementing procedures for calculating and  
30 awarding sentence credits.

31 3. Approving the type of work inmates may perform and the wages or  
32 sentence credits that may be given to inmates engaging in the work.

33 4. Granting, denying or revoking sentence credits, placing an  
34 inmate under less restrictive custody or more restrictive custody or  
35 taking any disciplinary actions.

36 Sec. 2. Section 41-1682, Arizona Revised Statutes, is amended to  
37 read:

38 41-1682. Private prisons; prohibitions; liability for  
39 services; financial responsibility; security  
40 officer qualifications

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

43 B. A private prison shall provide the department of administration  
44 with financial responsibility to cover this state's potential liability in  
45 the amount of ~~ten million dollars~~ \$10,000,000. The monies shall be used

1 by the state if the state is held liable for civil damages resulting from  
2 the escape of a prisoner from the private prison. The private prison may  
3 file proof of financial responsibility by filing one of the following:

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

6 2. An insurance policy that is in a form approved by the department  
7 of administration, that provides civil liability and civil rights  
8 liability coverage in the amount of ~~ten million dollars~~ \$10,000,000 and  
9 ~~listing~~ THAT LISTS the state as an insured.

10 3. A surety bond with the principal sum of ~~ten million dollars~~  
11 \$10,000,000.

12 4. A certified financial statement that is not more than ninety  
13 days old and that shows a net worth of more than ~~fifteen million dollars~~  
14 \$15,000,000. Every ninety days the private prison shall submit a  
15 certified financial statement to the department of administration signed  
16 under oath by the chief financial officer of the prison. If the financial  
17 statement indicates a net worth of less than ~~fifteen million dollars~~  
18 \$15,000,000, the private prison shall comply with ~~paragraphs~~ PARAGRAPH 1,  
19 2 or 3 of this subsection.

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

23 D. The insurance policy or surety bond shall continue in effect  
24 until ninety days after the private prison is sold or closed. Any monies  
25 deposited in the private prison escapee fund by the private prison shall  
26 be refunded to the private prison within ninety days after submission of  
27 evidence to the director of the department of administration that the  
28 private prison is either sold or closed and there are no remaining  
29 liabilities for which the state might be required to assume  
30 responsibility.

31 E. On receipt by the director of the department of administration  
32 of notice to cancel an insurance policy or bond by an insurance company or  
33 surety, the director OF THE DEPARTMENT OF ADMINISTRATION shall immediately  
34 notify the private prison NAMED on the insurance policy or the surety bond  
35 of the effective date of cancellation of the insurance policy or the  
36 surety bond. The private prison shall furnish a like insurance policy or  
37 surety bond within thirty days after mailing of the notice by the director  
38 OF THE DEPARTMENT OF ADMINISTRATION. Unless a replacement insurance  
39 policy or surety bond is filed with the director OF THE DEPARTMENT OF  
40 ADMINISTRATION, the right of the private ~~prisons~~ PRISON to operate in this  
41 state shall be suspended by operation of law on the date the bond is  
42 canceled.

43 F. If any of the monies required by subsection B, paragraph 1 of  
44 this section are used to satisfy civil damage claims or civil rights  
45 claims, the private prison shall reestablish the full amount of those

1 monies within thirty days after notification by the director of the  
2 department of administration.

3 G. A security officer WHO IS employed by a private prison  
4 contractor shall be at least twenty-one years of age, ~~and~~ have no felony  
5 convictions AND BE CERTIFIED PURSUANT TO SECTION 41-1822. A SECURITY  
6 OFFICER WHO IS EMPLOYED BY A PRIVATE PRISON CONTRACTOR DOES NOT HAVE ANY  
7 AUTHORITY OR JURISDICTION OUTSIDE THE GROUNDS OF A PRIVATE PRISON  
8 FACILITY.

9 Sec. 3. Section 41-1822, Arizona Revised Statutes, is amended to  
10 read:

11 41-1822. Powers and duties of board; definition

12 A. With respect to peace officer training and certification, the  
13 board shall:

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

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

20 3. Prescribe reasonable minimum qualifications for officers to be  
21 appointed to enforce the laws of this state and the political subdivisions  
22 of this state and certify officers in compliance with these  
23 qualifications. Notwithstanding any other law, the qualifications shall  
24 require United States citizenship, shall relate to physical, mental and  
25 moral fitness and shall govern the recruitment, appointment and retention  
26 of all agents, peace officers and police officers of every political  
27 subdivision of this state. The board shall constantly review the  
28 qualifications established by this section and may amend the  
29 qualifications at any time, subject to the requirements of section  
30 41-1823.

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

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

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

44 (c) Medical information on unexplained infant death for first  
45 responders, including awareness and sensitivity in dealing with families

1 and child care providers, and the importance of forensically competent  
2 death scene investigations.

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

6 (e) The use of the infant death investigation checklist pursuant to  
7 section 36-3506.

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

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

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

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

27 B. With respect to state department of corrections correctional  
28 officers **AND PRIVATE PRISON SECURITY OFFICERS**, the board shall:

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

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

35 3. Establish uniform standards for background investigations,  
36 including criminal histories under section 41-1750, of all applicants  
37 before enrolling in the academy **OR WORKING IN A PRIVATE PRISON FACILITY**.  
38 The board may adopt special procedures for extended screening and  
39 investigations in extraordinary cases to ensure suitability and  
40 adaptability to a career as a correctional officer **OR PRIVATE PRISON**  
41 **SECURITY OFFICER**.

42 4. Issue a certificate of completion to any state department of  
43 corrections correctional officer **OR PRIVATE PRISON SECURITY OFFICER** who  
44 satisfactorily complies with the minimum standards and completes the basic  
45 training program. The board may issue a certificate of completion to a

1 state department of corrections correctional officer OR PRIVATE PRISON  
2 SECURITY OFFICER who has received comparable training in another state if  
3 the board determines that the training was at least equivalent to that  
4 provided by the academy and if the person complies with the minimum  
5 standards.

6 5. Establish continuing training requirements and approve  
7 curricula.

8 C. With respect to peace officer misconduct, the board may:

9 1. Receive complaints of peace officer misconduct from any person,  
10 request law enforcement agencies to conduct investigations and conduct  
11 independent investigations into whether an officer is in compliance with  
12 the qualifications established pursuant to subsection A, paragraph 3 of  
13 this section.

14 2. Receive a complaint of peace officer misconduct from the  
15 president or chief executive officer of a board recognized law enforcement  
16 association that represents the interests of certified law enforcement  
17 officers if the association believes that a law enforcement agency refused  
18 to investigate or made findings that are contradictory to prima facie  
19 evidence of a violation of the qualifications established pursuant to  
20 subsection A, paragraph 3 of this section. If the board finds that the  
21 law enforcement agency refused to investigate or made findings that  
22 contradicted prima facie evidence of a violation of the qualifications  
23 established pursuant to subsection A, paragraph 3 of this section, the  
24 board shall conduct an independent investigation to determine whether the  
25 officer is in compliance with the qualifications established pursuant to  
26 subsection A, paragraph 3 of this section and provide a letter of the  
27 findings based on the investigation conducted by the board to the  
28 president or chief executive officer of the board recognized law  
29 enforcement association who made the complaint.

30 D. The board may:

31 1. Deny, suspend, revoke or cancel the certification of an officer  
32 who is not in compliance with the qualifications established pursuant to  
33 subsection A, paragraph 3 AND SUBSECTION B of this section.

34 2. Provide training and related services to assist state, tribal  
35 and local law enforcement agencies to better serve the public, including  
36 training for emergency alert notification systems.

37 3. Enter into contracts to carry out its powers and duties.

38 E. This section does not create a cause of action or a right to  
39 bring an action, including an action based on discrimination due to sexual  
40 orientation.

41 F. For the purposes of this section, "sexual orientation" means  
42 consensual homosexuality or heterosexuality.

1           Sec. 4. Section 41-1823, Arizona Revised Statutes, is amended to  
2 read:

3           41-1823. Adoption of minimum qualifications; certification  
4                                   required; violation; classification

5           A. No minimum qualifications for law enforcement officers adopted  
6 pursuant to this article shall be effective until six months after they  
7 have been filed with the secretary of state pursuant to section 41-1031.

8           B. Except for agency heads duly elected as required by the  
9 constitution and persons given the authority of a peace officer pursuant  
10 to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise  
11 the authority or perform the duties of a peace officer unless ~~he~~ **THE**  
12 **PERSON** is certified by the board pursuant to section 41-1822, subsection  
13 A, paragraph 3. **A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**  
14 **CLASS 1 MISDEMEANOR.**