

REFERENCE TITLE: private prisons; contracts; requirements

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2783

Introduced by
Representatives Smith: Marshall, Montenegro

AN ACT

AMENDING SECTIONS 41-1609 AND 41-1609.01, ARIZONA REVISED STATUTES;
AMENDING TITLE 41, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING
ARTICLE 9; 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 41-1609, Arizona Revised Statutes, is amended to
3 read:

4 41-1609. Agreements with federal or private agencies and
5 institutions; contract review; emergency contracts

6 A. The department may enter into agreements with the federal
7 government, other states or agencies of the federal government or other
8 states for such compensation ~~upon~~ ON which they agree to accept or deliver
9 adult offenders or to administer correctional programs. Notwithstanding
10 ~~the provisions of~~ section 35-193, any ~~funds~~ MONIES received by the
11 department under the agreements shall be kept in a separate revolving fund
12 for current usage and shall not revert to the state general fund if
13 unexpended at the close of a fiscal year.

14 B. The department may contract with any private or public
15 institution that is located inside or outside this state for facilities or
16 the operation of facilities that are dedicated to the confinement of
17 persons who are committed to the department. Notwithstanding chapter 4,
18 article 7 of this title and article 4 of this chapter, the contract may
19 include a purchase option and if the contract has a per diem provision the
20 contract may include a provision that allows a portion of the per diem to
21 be applied to reduce the purchase price. ALL CONTRACTS ENTERED INTO
22 PURSUANT TO THIS SUBSECTION SHALL COMPLY WITH ARTICLE 9 OF THIS CHAPTER.

23 C. The department shall submit all contracts entered into pursuant
24 to subsection B of this section to the attorney general to determine if
25 the contract is within the authority granted under the laws of this state
26 and in proper form. All contracts involving the detention or
27 incarceration of adult offenders shall conform to the requirements of
28 section 41-1609.01.

29 D. Notwithstanding subsection C of this section, the department may
30 enter into emergency contracts pursuant to section 41-2537 with private or
31 public institutions for facilities or the operation of facilities that are
32 dedicated to the confinement of persons who are committed to the
33 department.

34 E. The director may declare an emergency for acts of God, natural
35 catastrophes, prison riots and overcrowding. In an emergency, the
36 director shall:

37 1. Confine persons who are committed to the department in either of
38 the following:

39 (a) An existing public institution.

40 (b) A private institution that is described in subsection B of this
41 section.

42 2. Up to twenty-four hours before declaring the emergency, notify
43 the governor and the attorney general of the emergency and the need to
44 relocate persons who are committed to the department to another existing

1 public or private facility established pursuant to sections 41-1609.01 and
2 41-1609.02.

3 3. Within thirty days after declaring the emergency, determine the
4 length of the emergency confinement. If the director determines that the
5 emergency confinement will exceed six months in duration, the emergency
6 contract shall comply with sections 41-1609.01 and 41-1609.02.

7 F. Notwithstanding subsection E, paragraph 2 of this section, if
8 the director declares that an emergency exists due to the overcrowding of
9 a public or private correctional facility, the director shall discuss with
10 the governor, the attorney general and the majority and minority
11 leadership in the senate and the house of representatives relocating the
12 inmates from the overcrowded facility to another facility before
13 relocating the inmates.

14 G. An emergency contract shall not exceed one year in duration.

15 Sec. 2. Section 41-1609.01, Arizona Revised Statutes, is amended to
16 read:

17 41-1609.01. Adult incarceration contracts; criteria

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

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

22 1. The qualifications, operations and management experience and
23 experienced personnel necessary to carry out the terms of the contract,
24 INCLUDING ANNUAL IMPROVEMENT OF THE PERFORMANCE METRICS REQUIRED IN
25 SECTION 41-1692.

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

28 3. A demonstrated history of successful operation and management of
29 other secure facilities.

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

34 D. A contract may provide for annual contract price or cost
35 adjustments TO THE BASE ACHIEVEMENT CONTRACT PRESCRIBED IN SECTION
36 41-1693, except that any adjustments may be made only once each year
37 effective on the anniversary of the effective date of the contract. If
38 any adjustment is made pursuant to the terms of the contract, it shall be
39 applied to the total payments made to the contractor for the previous
40 contract year and shall not exceed the ~~per cent~~ PERCENT of change in the
41 average consumer price index as published by the United States department
42 of labor, bureau of labor statistics between that figure for the latest
43 calendar year and the next previous calendar year.

44 E. Any price or cost adjustments to a contract different than those
45 authorized in subsection D of this section OR SECTION 41-1693 may be made

1 only if the legislature specifically authorizes the adjustments and
2 appropriates monies for that purpose, if required.

3 F. An award of a contract shall not be made unless an acceptable
4 proposal is received pursuant to any request for proposals. For the
5 purposes of this subsection, "acceptable proposal" means a proposal that
6 substantially meets all of the requirements or conditions set forth in
7 this section AND SECTIONS 41-1692 AND 41-1693 and that meets all of the
8 requirements in the request for proposals.

9 G. EXCEPT FOR FINANCIAL INCENTIVES UNDER SECTION 41-1693, a
10 proposal shall not be accepted unless the proposal offers cost savings to
11 this state.

12 H. A proposal shall not be accepted unless BOTH OF THE FOLLOWING
13 APPLY:

14 1. The proposal offers a level and quality of services that are at
15 least functionally equal to those that would be provided by this state.

16 2. THE PROPOSAL DEMONSTRATES THE ABILITY TO IMPROVE ON THE
17 PERFORMANCE METRICS PRESCRIBED IN SECTION 41-1692.

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

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

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

25 1. The contractor provides audited financial statements for the
26 previous five years, or for each of the years the contractor has been in
27 operation, if fewer than five years, and provides other financial
28 information as requested.

29 2. The contractor provides an adequate plan of insurance,
30 specifically including coverage or insurance for civil rights claims and
31 liabilities as approved by the risk management division of the department
32 of administration.

33 3. The contractor agrees to be liable for the costs of any
34 emergency, public safety or security services provided to the contractor
35 by the state or any political subdivision of the state and to reimburse
36 the state or any political subdivision of the state for the cost of any
37 such services.

38 L. The sovereign immunity of this state does not apply to the
39 contractor. Neither the contractor nor the insurer of the contractor may
40 plead the defense of sovereign immunity in any action arising out of the
41 performance of the contract.

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

1 1. Developing and implementing procedures for calculating inmate
2 release dates.

3 2. Developing and implementing procedures for calculating and
4 awarding sentence credits.

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

7 4. Granting, denying or revoking sentence credits, ~~placing an~~
8 ~~inmate under less restrictive custody or more restrictive custody or~~
9 ~~taking any disciplinary actions.~~

10 Sec. 3. Title 41, chapter 11, Arizona Revised Statutes, is amended
11 by adding article 9, to read:

12 ARTICLE 9. PRIVATE PRISON CONTRACT REQUIREMENTS
13 AND CORRECTIONAL DATA REPORTING

14 41-1691. Definitions

15 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 1. "BASELINE JOB PLACEMENT RATE" MEANS THE AVERAGE OF THE
17 DEPARTMENT'S JOB PLACEMENT RATE FOR FISCAL YEARS 2021-2022 AND 2022-2023
18 AS MEASURED BY UNEMPLOYMENT INSURANCE CONTRIBUTIONS.

19 2. "BASELINE RETURN TO PRISON RATE" MEANS THE AVERAGE OF THE
20 DEPARTMENT'S RETURN TO PRISON RATES FOR FISCAL YEARS 2020-2021, 2021-2022
21 AND 2022-2023.

22 3. "CONTRACTOR" MEANS AN ENTITY THAT CONTRACTS WITH ANY
23 GOVERNMENTAL ENTITY TO PROVIDE CORRECTIONAL SERVICES FOR OFFENDERS.

24 4. "CORRECTIONAL SERVICES":

25 (a) MEANS SERVICES THAT ARE NECESSARY FOR THE OPERATION OF A
26 FACILITY.

27 (b) INCLUDES FOOD, CLOTHING, SECURITY, PROGRAMS AND HEALTH CARE.

28 5. "DEPARTMENT" MEANS THE STATE DEPARTMENT OF CORRECTIONS.

29 6. "ELIGIBLE OFFENDERS" MEANS OFFENDERS WHO WERE UNDER THE
30 JURISDICTION OF A FACILITY FOR AT LEAST THE FINAL TWO YEARS OF EACH
31 OFFENDER'S SENTENCE OR FIFTY-ONE PERCENT OF EACH OFFENDER'S SENTENCE,
32 WHICHEVER IS LESS.

33 7. "FACILITY" MEANS A CORRECTIONAL FACILITY THAT IS OPERATED BY THE
34 DEPARTMENT OR THAT IS UNDER CONTRACT WITH THE DEPARTMENT AND THAT HOUSES
35 OFFENDERS IN A SECURE OR NONSECURE SETTING.

36 8. "HOUSING PLACEMENT FAILURE" MEANS EACH OFFENDER WHO IS RELEASED
37 FROM A FACILITY AND WHO FAILS TO ATTAIN HOUSING PLACEMENT WITHIN ONE WEEK
38 AFTER RELEASE.

39 9. "IDLE TIME":

40 (a) MEANS THE LENGTH OF TIME AN OFFENDER COULD BE PARTICIPATING IN
41 EDUCATION OR VOCATIONAL PROGRAMMING BUT IS OTHERWISE UNOCCUPIED.

42 (b) DOES NOT INCLUDE TIME FOR REST, PERSONAL CARE, MEALS AND OTHER
43 ACTIVITIES THAT WOULD BE COMMONLY UNDERSTOOD TO MAKE THE OFFENDER
44 OTHERWISE UNABLE TO PARTICIPATE IN PROGRAM ACTIVITIES.

1 10. "JOB PLACEMENT" MEANS ANY OCCUPATION OR COMBINATION OF
2 OCCUPATIONS FOR WHICH A RELEASED OFFENDER CAN PROVIDE DOCUMENTATION OF
3 VERIFIABLE WAGE-EARNING HOURS IN THE AMOUNT OF AT LEAST ONE HUNDRED THIRTY
4 HOURS OVER A THIRTY-DAY PERIOD.

5 11. "JOB PLACEMENT RATE" MEANS THE PERCENTAGE OF OFFENDERS WHO ARE
6 RELEASED FROM A FACILITY IN A GIVEN FISCAL YEAR AND WHO ATTAINED AND
7 MAINTAINED A JOB PLACEMENT FOR AT LEAST NINE MONTHS, AT LEAST PART OF
8 WHICH WAS IN THE SAME FISCAL YEAR, COMPARED TO ALL OFFENDERS WHO WERE
9 RELEASED FROM THAT FACILITY IN THE SAME FISCAL YEAR, AS MEASURED BY
10 UNEMPLOYMENT INSURANCE CONDITIONS.

11 12. "RETURN TO PRISON RATE" MEANS THE PERCENTAGE OF OFFENDERS WHO
12 ARE RELEASED FROM A FACILITY WITHIN THE PREVIOUS FORTY-EIGHT MONTHS OF A
13 GIVEN FISCAL YEAR AND WHO WERE REINCARCERATED WITHIN THE THIRTY-SIX MONTHS
14 AFTER BEING RELEASED FROM A FACILITY COMPARED TO ALL OFFENDERS WHO WERE
15 RELEASED FROM THAT FACILITY WITHIN THE PREVIOUS FORTY-EIGHT MONTHS OF THAT
16 FISCAL YEAR.

17 41-1692. Performance metrics

18 FOR ANY CONTRACT ENTERED INTO BETWEEN A CONTRACTOR AND THE
19 DEPARTMENT PURSUANT TO SECTIONS 41-1609 AND 41-1609.01, THE PERFORMANCE
20 METRICS FOR EACH FACILITY PER FISCAL YEAR ARE AS FOLLOWS:

21 1. A REDUCTION OF THE RETURN TO PRISON RATE OF ELIGIBLE OFFENDERS
22 COMPARED TO THE BASELINE RETURN TO PRISON RATE.

23 2. AN INCREASE IN THE JOB PLACEMENT RATE OF ELIGIBLE OFFENDERS
24 COMPARED TO THE BASELINE JOB PLACEMENT RATE.

25 41-1693. Base achievement contract; base payment; performance
26 incentive payment

27 A. A CONTRACT TO PROVIDE CORRECTIONAL SERVICES SHALL DEFINE THE
28 BASE ACHIEVEMENT CONTRACT AMOUNT AND SHALL CONSIST OF A BASE PAYMENT OF
29 NINETY PERCENT OF THE TOTAL VALUE OF THE CONTRACT AND A PERFORMANCE
30 INCENTIVE PAYMENT OF TEN PERCENT OF THE TOTAL VALUE OF THE CONTRACT. ALL
31 OF THE FOLLOWING APPLY TO THE PERFORMANCE INCENTIVE PAYMENT:

32 1. EACH PERFORMANCE METRIC LISTED IN SECTION 41-1692 CONSTITUTES A
33 PERCENTAGE OF THE PERFORMANCE INCENTIVE PAYMENT OF THE BASE ACHIEVEMENT
34 CONTRACT AS FOLLOWS:

35 (a) A REDUCTION OF THE RETURN TO PRISON RATE OF ELIGIBLE OFFENDERS,
36 COMPARED TO THE BASELINE RETURN TO PRISON RATE, CONSTITUTES SIXTY PERCENT
37 OF THE PERFORMANCE INCENTIVE PAYMENT.

38 (b) AN INCREASE IN THE JOB PLACEMENT RATE OF ELIGIBLE OFFENDERS,
39 COMPARED TO THE BASELINE JOB PLACEMENT RATE, CONSTITUTES FORTY PERCENT OF
40 THE PERFORMANCE INCENTIVE PAYMENT.

41 2. THE PERFORMANCE INCENTIVE PAYMENT OF THE BASE ACHIEVEMENT
42 CONTRACT SHALL BE PAID, IN PROPORTION TO THE PERCENTAGES PRESCRIBED IN
43 PARAGRAPH 1 OF THIS SUBSECTION, AFTER THE ACHIEVEMENT OF EACH PERFORMANCE
44 METRIC AS FOLLOWS:

1 (a) A REDUCTION OF THE RETURN TO PRISON RATE OF ELIGIBLE OFFENDERS,
2 COMPARED TO THE BASELINE RETURN TO PRISON RATE, OF FIVE PERCENT.

3 (b) AN INCREASE IN THE JOB PLACEMENT RATE OF ELIGIBLE OFFENDERS,
4 COMPARED TO THE BASELINE JOB PLACEMENT RATE, OF FIVE PERCENT.

5 3. FOR EACH PERCENTAGE POINT IMPROVEMENT PER METRIC THAT EXCEEDS
6 THE BASE ACHIEVEMENT RATE, THE BONUS PAYMENT SHALL EQUAL ONE PERCENT OF
7 THAT METRIC'S VALUE OF THE BASE ACHIEVEMENT CONTRACT'S PERFORMANCE
8 INCENTIVE PAYMENT, EXCEPT THAT THE SUM OF BONUS PAYMENTS PER YEAR MAY NOT
9 EXCEED TWENTY PERCENT OF THE BASE ACHIEVEMENT CONTRACT.

10 4. UNTIL THE FOURTH FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS
11 SECTION, A CONTRACTOR IS ASSUMED TO HAVE MET THE BASE ACHIEVEMENT RATE.
12 BEGINNING IN THE FOURTH FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS
13 SECTION, FOR EACH PERCENTAGE POINT IMPROVEMENT OF THE RETURN TO PRISON
14 METRIC THE BONUS PAYMENT SHALL EQUAL TWO PERCENT OF THAT METRIC'S VALUE OF
15 THE BASE ACHIEVEMENT CONTRACT'S PERFORMANCE INCENTIVE PAYMENT.

16 5. FOR EACH HOUSING PLACEMENT FAILURE, A 0.1 PERCENT PENALTY SHALL
17 BE DEDUCTED FROM THE PERFORMANCE INCENTIVE PAYMENT.

18 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, FOR THE FIRST TWO
19 YEARS OF THE BASE ACHIEVEMENT CONTRACT, THE BASE PAYMENT SHALL CONSIST OF
20 ONE HUNDRED PERCENT OF THE TOTAL VALUE OF THE CONTRACT.

21 41-1694. Reporting requirements

22 A. WITHIN TWELVE MONTHS AFTER THE DATE A CONTRACTOR ASSUMES FULL
23 CONTROL OF A FACILITY AND EACH YEAR THEREAFTER, THE CONTRACTOR SHALL
24 SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER
25 OF THE HOUSE OF REPRESENTATIVES AND THE DIRECTOR OF THE DEPARTMENT ON THE
26 PERFORMANCE METRICS PRESCRIBED IN SECTION 41-1692 OF EACH FACILITY UNDER
27 THE CONTRACTOR'S MANAGEMENT. THE REPORT SHALL INCLUDE:

- 28 1. THE TYPES OF PROGRAMMING OFFERED.
- 29 2. THE PARTICIPATION AND COMPLETION RATES OF EACH PROGRAM.
- 30 3. THE EFFECTIVENESS OF EACH PROGRAM.
- 31 4. THE AVERAGE IDLE TIME PER OFFENDER.
- 32 5. THE AVERAGE STAFF TO OFFENDER RATIO.
- 33 6. THE RATES OF ALL PERFORMANCE METRICS.
- 34 7. THE LENGTH OF STAY AT EACH FACILITY PER HOUSED OFFENDER.
- 35 8. ANY INCIDENTS OF VIOLENCE IN THE FACILITY.

36 B. THE CONTRACTOR SHALL PROVIDE A COPY OF THE REPORT PRESCRIBED BY
37 SUBSECTION A OF THIS SECTION TO THE SECRETARY OF STATE AND MAKE THE REPORT
38 AVAILABLE TO THE PUBLIC.

39 C. ON OR BEFORE DECEMBER 31, 2025 AND EACH YEAR THEREAFTER, THE
40 DIRECTOR OF THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GOVERNOR, THE
41 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES ON
42 THE PERFORMANCE METRICS PRESCRIBED IN SECTION 41-1692 OF EACH FACILITY
43 UNDER THE DEPARTMENT'S MANAGEMENT. THE REPORT SHALL INCLUDE:

- 44 1. THE TYPES OF PROGRAMS OFFERED.
- 45 2. THE PARTICIPATION RATES OF EACH PROGRAM.

1 3. THE EFFECTIVENESS OF EACH PROGRAM.
2 4. THE AVERAGE IDLE TIME PER OFFENDER.
3 5. THE AVERAGE STAFF TO OFFENDER RATIO.
4 6. THE RATES OF ALL PERFORMANCE METRICS.
5 7. THE LENGTH OF STAY AT EACH FACILITY PER HOUSED OFFENDER.
6 8. ANY INCIDENTS OF VIOLENCE IN EACH FACILITY.
7 D. THE DEPARTMENT SHALL PROVIDE A COPY OF THE REPORT PRESCRIBED BY
8 SUBSECTION C OF THIS SECTION TO THE SECRETARY OF STATE AND MAKE THE REPORT
9 AVAILABLE TO THE PUBLIC.
10 41-1695. Baseline rates; reports
11 A. NOT LATER THAN THE END OF EACH FISCAL YEAR, THE ARIZONA CRIMINAL
12 JUSTICE COMMISSION, WITH THE ASSISTANCE OF THE DEPARTMENT AND ANY OTHER
13 RELEVANT AGENCIES, SHALL SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF
14 THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE DIRECTOR
15 OF THE DEPARTMENT THAT DEFINES THE BASELINE RATES PRESCRIBED BY THIS
16 ARTICLE AND PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF STATE.
17 B. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL DETERMINE ANY
18 EMPLOYMENT DATA THAT IS NECESSARY FOR THE CALCULATIONS PRESCRIBED BY THIS
19 ARTICLE FOR THOSE EMPLOYED IN THIS STATE BY REFERENCE TO EACH INDIVIDUAL'S
20 UNEMPLOYMENT INSURANCE WAGE RECORDS THAT ARE MAINTAINED BY THE INDUSTRIAL
21 COMMISSION OF ARIZONA.
22 C. THE ARIZONA CRIMINAL JUSTICE COMMISSION AND THE DEPARTMENT MAY
23 EXECUTE DATA SHARING AGREEMENTS WITH AGENCIES IN OTHER STATES OR
24 TERRITORIES OR WITH FEDERAL AGENCIES TO ASSIST THE ARIZONA CRIMINAL
25 JUSTICE COMMISSION AND THE DEPARTMENT IN EFFECTUATING THE PURPOSES OF THIS
26 ARTICLE BY DETERMINING ANY EMPLOYMENT DATA NECESSARY FOR THE CALCULATIONS
27 PRESCRIBED BY THIS ARTICLE.
28 Sec. 4. Short title
29 This act may be cited as the "Private Prison Performance Act."