

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 1416

 By: Waldron

7 AS INTRODUCED

8 An Act relating to diversionary court programs;
9 creating the Oklahoma Diversionary Court Funding
10 Program Act; describing purpose of program;
11 authorizing creation of additional diversionary
12 courts through public-private partnerships; directing
13 Legislature to appropriate matching funds for
14 program; requiring Department of Mental Health and
15 Substance Abuse Services to promulgate rules;
16 creating the Oklahoma Diversionary Court Funding
17 Program Revolving Fund; stating type and contents of
18 fund; providing for administration and purpose of
19 fund; providing for expenditures and payment from
20 fund; amending 57 O.S. 2011, Section 561.1, as last
21 amended by Section 1, Chapter 84, O.S.L. 2014 (57
22 O.S. Supp. 2018, Section 561.1), which relates to
23 private prison contracts; modifying contents of
24 contracts; requiring private prison to pay daily per
 diem for each inmate; providing for deposit in
 certain fund; providing for codification; and
 providing an effective date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 473 of Title 22, unless there is
23 created a duplication in numbering, reads as follows:
24

1 A. This act shall be known and may be cited as the "Oklahoma
2 Diversionary Court Funding Program Act".

3 B. The Oklahoma Diversionary Court Funding Program shall fund
4 diversionary court programs in the state including, but not limited
5 to, drug courts and juvenile drug courts as specified in the
6 Oklahoma Drug Court Act, community sentencing programs established
7 by the Department of Corrections and mental health courts as
8 established in the Anna McBride Act. Courts may also establish
9 additional diversionary courts through public-private partnerships
10 with nonprofit organizations or charitable foundations.

11 C. Monies collected pursuant to paragraph 7 of subsection D of
12 Section 561.1 of Title 57 of the Oklahoma Statutes shall be matched
13 equally with monies appropriated by the Legislature and deposited in
14 the Oklahoma Diversionary Court Funding Program Revolving Fund
15 created in Section 2 of this act.

16 D. The Department of Mental Health and Substance Abuse Services
17 shall promulgate rules to implement the provisions of the Oklahoma
18 Diversionary Court Funding Program Act.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 474 of Title 22, unless there is
21 created a duplication in numbering, reads as follows:

22 There is hereby created in the State Treasury a revolving fund
23 for the Department of Mental Health and Substance Abuse Services to
24 be designated the "Oklahoma Diversionary Court Funding Program

1 Revolving Fund". The fund shall be a continuing fund, not subject
2 to fiscal year limitations, and shall consist of appropriations made
3 by the Legislature and monies collected pursuant to paragraph 7 of
4 subsection D of Section 561.1 of Title 57 of the Oklahoma Statutes.
5 All monies accruing to such fund are hereby appropriated and may be
6 budgeted and expended by the Department of Mental Health and
7 Substance Abuse Services for the purpose of providing diversionary
8 court programs and services, as provided in the Oklahoma
9 Diversionary Court Funding Program. Expenditures from said fund
10 shall be made upon warrants issued by the State Treasurer against
11 claims filed as prescribed by law with the Department of Mental
12 Health and Substance Abuse Services for approval and payment.

13 SECTION 3. AMENDATORY 57 O.S. 2011, Section 561.1, as
14 last amended by Section 1, Chapter 84, O.S.L. 2014 (57 O.S. Supp.
15 2018, Section 561.1), is amended to read as follows:

16 Section 561.1 A. Except as otherwise provided by subsection K
17 of this section, prior to entering into a contract with any private
18 prison contractor for construction or operation, or both, of a
19 correctional facility, the Department of Corrections shall establish
20 a process for requesting proposals or negotiated contracts from such
21 contractors. The Department of Corrections shall develop criteria
22 for the process by which a contractor for the construction or
23 operation, or both, of a private prison is to be awarded a contract.
24 The criteria shall be subject to approval by the State Board of

1 Corrections. The criteria for selection of a site for a proposed
2 facility to be constructed or operated, or both, by a private
3 contractor shall include, but shall not be limited to, the
4 availability of medical services, support services, transportation
5 services and the availability of potential employees who would be
6 qualified to perform required functions at a state correctional
7 facility.

8 B. Any contract between the Department of Corrections and a
9 private prison contractor, whereby the contractor provides for the
10 housing, care, and control of inmates in a nondepartmental facility
11 operated by the contractor, shall contain, in addition to other
12 provisions, terms and conditions:

13 1. Requiring the contractor to provide said services in a
14 facility which meets accreditation standards established by the
15 American Correctional Association;

16 2. Requiring the contractor to receive accreditation for said
17 facility from the American Correctional Association, within three
18 (3) years of commencement of operations of the facility;

19 3. Requiring the contractor to obtain written authorization
20 from the governing board of any municipality in which the facility
21 is to be located, or if the facility is not to be located within a
22 municipality, written authorization from the board of county
23 commissioners of the county in which the facility is to be located;
24 and

1 4. Granting the Department the option at the beginning of each
2 fiscal year pursuant to an agreement, to purchase any such facility,
3 with or without inventory or other personal property, at a
4 predetermined price, which shall be negotiated and included in a
5 schedule or a formula to be contained in the original agreement.
6 Such agreements relating to a correctional facility, the
7 construction of which was financed or is to be financed by
8 obligations issued from a local governmental entity the repayment of
9 which is to be made in whole or in part from rentals from the State
10 of Oklahoma or the Department of Corrections, shall be submitted to
11 the Council on Bond Oversight as provided in subsection I of this
12 section.

13 C. A contractor proposing to enter a contract with the
14 Department of Corrections for construction or operation, or both, of
15 a correctional facility pursuant to this section must demonstrate:

16 1. The qualifications and the operations and management
17 experience to carry out the terms of the contract; and

18 2. The ability to comply with the standards of the American
19 Correctional Association and with specific court orders.

20 D. In addition to meeting the requirements specified in the
21 requests for proposals, a proposal for the construction and
22 operation of a correctional facility must:

23 1. Provide for regular, on-site monitoring by the Department of
24 Corrections;

- 1 2. Acknowledge that payment by the state is subject to the
2 availability of appropriations;
- 3 3. Provide for payment of a maximum amount per fiscal year;
- 4 4. Demonstrate a cost benefit to the State of Oklahoma when
5 compared to the level and quality of programs provided by state-
6 operated facilities that have similar types of inmates at an
7 operational cost not more than the cost of housing inmates in
8 similar facilities and providing similar programs to those types of
9 inmates in state-operated facilities. The Department of Corrections
10 shall be responsible for determining the ~~cost/benefit~~ cost benefit
11 of the proposal;
- 12 5. Permit the state to terminate the contract for cause;
- 13 6. Contain a proposed per diem operational cost per inmate for
14 the initial year and subsequent years of operations;
- 15 7. Contain a proposed daily per diem cost of One Dollar (\$1.00)
16 per inmate per day for agreements executed after November 1, 2019.
17 The per diem shall be paid beginning when the inmate enters the
18 private prison and deposited in the Oklahoma Diversionary Court
19 Funding Program Revolving Fund created in Section 2 of this act;
- 20 8. Subject to appropriations, provide that cost adjustments may
21 be made only once each fiscal year, to take effect at the beginning
22 of the next fiscal year using as the maximum percentage increase, if
23 any, an increase not to exceed the previous year's Consumer Price
24 Index for All Urban Consumers (CPI-U) as prepared by the United

1 States Bureau of Labor Statistics, except as otherwise provided by
2 subsection K of this section;

3 ~~8.~~ 9. Have an initial contract term of not more than one (1)
4 year, with an option to renew for additional periods not to exceed
5 twenty (20) years;

6 ~~9.~~ 10. If the proposal includes construction of a facility,
7 contain a performance bond approved by the Department that is
8 adequate and appropriate for the proposed contract;

9 ~~10.~~ 11. Provide for assumption of liability by the private
10 vendor for all claims arising from the services performed under the
11 contract by the private vendor;

12 ~~11.~~ 12. Provide for an adequate plan of insurance for the
13 private vendor and its officers, employees, and agents against all
14 claims, including claims based on violations of civil rights arising
15 from the services performed under the contract by the private
16 vendor;

17 ~~12.~~ 13. Provide for an adequate plan of insurance to protect
18 the state against all claims arising from the services performed
19 under the contract by the private vendor and to protect the state
20 from actions by a third party against the private vendor, its
21 officers, employees, and agents as a result of the contract;

22 ~~13.~~ 14. Provide plans for the purchase and assumption of
23 operations by the state in the event of the bankruptcy of the
24 private vendor; and

1 ~~14.~~ 15. Contain comprehensive standards for conditions of
2 confinement.

3 E. At the beginning of each fiscal year, the Department of
4 Corrections shall determine the budgeted average daily cost per
5 inmate. The budgeted average daily cost per inmate shall include
6 all direct and indirect costs incurred by the Department. There
7 shall be a separate computation of budgeted average daily cost for
8 maximum security, medium security, minimum security, and community
9 facilities. This information shall be presented to the State Board
10 of Corrections for informational purposes only. After the close of
11 each fiscal year, the Department shall determine the actual average
12 daily cost per inmate for the operational costs at each major
13 category of correctional facility. The actual average daily cost
14 per inmate shall include all direct and indirect costs incurred by
15 the Department. There shall be a separate computation of the
16 average daily rate for maximum security, medium security, minimum
17 security, and community facilities. The Department shall present to
18 the State Board of Corrections at its January meeting comparative
19 data on budgeted daily cost versus actual daily cost, and, after
20 appropriate review and analysis, the Board shall adopt as a final
21 action of the Board an average daily cost per inmate by facility
22 category for the immediately preceding fiscal year.

23 F. If a request for proposal process is utilized and no
24 proposals conform to the established criteria, the Department shall

1 prepare an additional request for proposals. The Department of
2 Corrections shall evaluate the proposals within thirty (30) days of
3 receipt from the prospective contractor. The Department of
4 Corrections shall specifically determine whether a proposal meets
5 the requirements of paragraph 4 of subsection D of this section by
6 comparing the daily rate for housing and care of inmates pursuant to
7 any proposed contract with a private contractor to the daily rate
8 for housing and care of inmates at the comparable type of facility
9 operated by the Department of Corrections using the information
10 provided pursuant to paragraph 6 of subsection D of this section.
11 The Department shall evaluate proposals taking into account any
12 direct or indirect costs that would continue to be paid by the
13 Department of Corrections including, but not limited to,
14 transportation, records management, discipline, general
15 administration, management of inmate trust funds, and major medical
16 coverage. Such costs shall be added to the proposed per diem of the
17 private vendor when comparing the total per diem costs of the state
18 operating facilities.

19 G. If the Department of Corrections proposes to enter into a
20 contract for the construction or the operation, or both, of a
21 private prison, the Department shall compare both the capital costs
22 and the operating costs for the facility to the imputed capital
23 costs and the projected operating costs of a comparable facility
24 constructed and operated by the Department of Corrections.

1 H. The Department of Corrections shall deliver to the State
2 Board of Corrections the top three qualified prospective private
3 prison contractors identified pursuant to this section and pursuant
4 to Section 561 of this title together with the information reviewed
5 and analyzed by the Department of Corrections during analysis of the
6 proposals as required by this section. The Board of Corrections
7 shall evaluate the information provided and shall make a final
8 decision selecting the contractor within fifteen (15) days of
9 receipt of the information.

10 I. Any contract subject to the provisions of this section
11 entered into by the Board of Corrections shall be subject to the
12 approval of the Council on Bond Oversight in the same manner as
13 provided by law for the review of issuance of obligations by State
14 Governmental Entities as prescribed by Section 695.8 of Title 62 of
15 the Oklahoma Statutes.

16 J. Before submission of the proposed contract to the Council on
17 Bond Oversight, and prior to the date as of which the proposed
18 contract is executed by the Board of Corrections, the Attorney
19 General and the Director of the Office of Management and Enterprise
20 Services shall review the proposed final version of the contract.
21 The Attorney General and the Director of the Office of Management
22 and Enterprise Services shall have a period of fifteen (15) days
23 from receipt of the proposed final version of the contract to
24 approve the contract and execute the document. If either the

1 Attorney General or the Director of the Office of Management and
2 Enterprise Services has objections to the proposed contract, the
3 objections shall be communicated in writing to the Department of
4 Corrections. The Department of Corrections shall take appropriate
5 action regarding the objections and shall resubmit the proposed
6 contract for additional review. The Attorney General and the Office
7 of Management and Enterprise Services shall have an additional
8 fifteen-day period to approve the proposed contract and to execute
9 the document. Failure of the Attorney General or the Director of
10 the Office of Management and Enterprise Services, respectively, to
11 act within the fifteen-day period shall constitute approval of the
12 respective official to the proposed final version of the contract.
13 The contract shall contain a separate signature block or line for
14 signature by the Attorney General and the Office of Management and
15 Enterprise Services. The contract shall contain a statement to be
16 executed by the Attorney General and the Director of the Office of
17 Management and Enterprise Services that each one of them,
18 respectively, has reviewed the proposed contract for compliance with
19 the provisions of this section and Section 561 of this title, and
20 all other applicable provisions of law and that the contract
21 conforms with those requirements. Neither the private prison
22 contractor nor the State Board of Corrections shall execute the
23 contract until the document has been executed by the Attorney
24 General and the Director of the Office of Management and Enterprise

1 Services as required by this subsection unless the approval of the
2 respective official has been made as a result of failure to take
3 action within the fifteen-day period prescribed by this subsection.

4 K. The State Board of Corrections may renew a private prison
5 contract which is in effect for any time period during the fiscal
6 year ending June 30, 2009, if the Board determines that the renewal
7 of such contract will result in a reduced per diem in the fiscal
8 year ending June 30, 2010. If the State Board of Corrections makes
9 such determination, the contract shall not be subject to the
10 restrictions of paragraph 7 8 of subsection D of this section and
11 the Board shall negotiate the contract based upon such terms as the
12 Board deems to be in the best interest of operational efficiency,
13 including the inmate population, per inmate cost, public safety and
14 such other terms as the State Board of Corrections determines to be
15 relevant to such contract. The State Board of Corrections shall
16 have the authority to negotiate the term of any contract executed
17 pursuant to the provisions of this subsection subject to the
18 availability of appropriations to the Department of Corrections each
19 year.

20 SECTION 4. This act shall become effective November 1, 2019.

21
22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
23 PASS.

24