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| Joe M. Allbaugh, Director Oklahoma Department of Corrections | | Signature on File | |

Private Prison Monitoring Requirements

In accordance with 57 O.S. § 561, the Department of Corrections (ODOC), under the policies of the Board of Corrections, is authorized to contract with non-governmental entities or public trusts for the housing, care, and control of inmates. Services offered for persons under the custody or supervision of the agency includes but is not limited to: housing, alcoholism and drug treatment, medical and mental health services, nursing home care, or halfway house placement.

The division manager of West Institutions will monitor compliance with standards to include, but not be limited to: Prison Rape Elimination Act, internal and perimeter security, inmate discipline, education and employment, programming, food service, clothing, and appropriate dental, optometric, mental health and medical care for inmates assigned to private prisons.

This procedure outlines the requirements for contract compliance to ensure all applicable laws and standards are met. (4-4017)

I. Definitions

A. Contract

An agreement between the ODOC and a non-governmental entity or public trust.

B. Contract Monitor

The person appointed by ODOC who will work for, and is paid by, the agency. The contract monitor will serve as the official liaison between the agency and the private prison contractor/operator on all matters pertaining to the operation and management services as specified by state statute and/or contractual agreement.

C. Medical Monitor

The person appointed by ODOC who will work for, and is paid by, the agency to serve as the official liaison between the agency and the private prison contractor/operator on all matters pertaining to the operation and management of medical, dental, optometric, and mental health care for inmates who are housed in private prisons, as specified by state statute and/or contractual agreement. The medical monitor is supervised by the agency's chief medical officer; however medical monitoring activities will be coordinated with the division manager of West Institutions and chief mental health officer. Communication regarding matters involving medical and mental health care/treatment will occur as appropriate.

D. Audit Team

Those persons who have been appointed by the division manager of West Institutions to conduct an annual evaluation of the operations of the private prison as specified in this procedure.

E. Private Prison Contractor/Operator

1. A non-governmental entity or public trust which, pursuant to a contract with ODOC, provides for housing, care, and control of Oklahoma inmates and performs other functions related to said responsibilities within a maximum, medium, or minimum security level facility not owned by the agency, but operated by the contractor; or
2. A non-governmental entity or public trust which, pursuant to a contract with the United States government or another state, provides for the housing, care, and control of maximum, medium, or minimum security inmates in the custody of the United States government or another state, and performs other functions related to said responsibilities within a facility owned or operated by a private contractor.

II. Contract Negotiations and Interpretations

- A. The division manager of West Institutions, in conjunction with the associate director of field operations and general counsel, is responsible for contract negotiations and interpretations.
- B. The division manager of West Institutions coordinates the application of ODOC procedures, payment of private prison invoices, statutory and contractual compliance, onsite monitoring, and audits.

III. Private Prison Industries (4-4456)

- A. Private prison industries are subject to Federal Private Industry Enhancement (PIE) guidelines 18 U.S.C. § 1761. Private prisons which participate in PIE programs must secure an Oklahoma license to use Oklahoma inmate labor.
- B. In accordance with 57 O.S. § 549, inmates assigned to private prison industries will be charged costs of incarceration consistent with [OP-120230](#) entitled "Offender Banking System" and [OP-080201](#) entitled "Private Sector Correctional Industry Standards."

IV. Requirements for All Private Prisons Doing Business in Oklahoma

A. Location Restrictions

1. A private prison may not be located within one mile of any public or private elementary or secondary school, unless approved by the governing body of the school as provided in 57 O.S. § 563.1.
2. The contractor will obtain written authorization from the governing board of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written

authorization from the board of county commissioners of the county in which the facility is to be located.

B. Escapes

1. Escapes from any private prison doing business in Oklahoma will be processed in accordance with [OP-052001](#) entitled "Emergency Procedures for Private Prisons."
2. The private prison contractor/operator is responsible for reimbursing the agency for all costs associated with emergency responses and for escape apprehensions.

C. Use of Firearms

Any private prison facility personnel authorized to carry and use firearms will comply with the provisions of 57 O.S § 563.2 D.

D. Felony Record Search

A national felony record search, based on fingerprints of employees or prospective employees, is required.

E. Employment of Personnel with Felony Convictions

1. A private prison contractor will not employ any personnel convicted of a felony without prior approval of the director or designee. Request for approval under this requirement will be submitted to the division manager of West Institutions.
2. A private prison contractor may employ personnel convicted of drug related felonies who have appropriate credentials and training as substance abuse treatment providers. These providers must be approved by the director or designee. Request for approval will be submitted to the division manager of West Institutions.

F. Reporting of Incidents

Private facilities will report all incidents as required by [OP-050108](#) entitled "Use of Force Standards and Reportable Incidents."

G. Compliance with Federal and State Court Orders

The contractor/operator will comply with all applicable federal and state court orders.

H. Monitoring/Audit Fees

1. ODOC may charge the private prison contractor/operator a reasonable fee for monitoring compliance, audits, inspections, or other services deemed necessary by the division manager of West Institutions to preserve the safety of the public, employees or inmates.
2. The fee will not exceed the cost of the service. The fee will include the contract monitors' salaries, benefits, travel and other expenses.

I. Cost of Audits, Inspections and Other Services

Costs will include, but not be limited to:

1. The salary of team members for time spent to prepare, conduct, and respond to findings, to include follow-up incidental to identified deficiencies;
2. Lodging and per diem (if any) for the audit team members;
3. Transportation costs; and
4. Other costs incidental to the audit.

J. Training Costs

1. The agency may make arrangements with the private prison contractor/operator to provide training for the private prison staff. The costs incurred for the training will be borne by the private prison contractor/operator.
2. Such costs may include, but will not be limited to: room and board, costs of supplies, and other administrative and personnel costs required to develop and present the training as agreed to between parties in compliance with the requirements of state statute.

K. Invoice/Payment/Reimbursement

1. ODOC will submit an invoice or statement to the private prison contractor/operator for costs incurred, listing the line item costs and total. The private prison contractor/operator will reimburse the agency within 30 days of receipt of the invoice or statement; or the costs may be deducted from a contract-housing invoice.

ODOC units providing training will submit invoices to the division manager of West Institutions for payment processing.

L. Provision of Plans Prior to Construction

All private prison contractors/operators operating in Oklahoma will provide construction plans to ODOC for approval prior to commencement of construction of any new physical plant or addition to existing facilities.

1. The contractor/operator will provide reimbursement to the agency for costs associated with monitoring construction (i.e., inspection teams, etc.). Approval of the plans will be based on applicable state statute, American Correctional Association (ACA) construction standards, [OP-150202](#) entitled "Facility Construction Security Standards" and OP-040101 entitled "Facility Security Standards."
2. Any private prison contractor/operator that fails to comply with construction requirements will be subject to assessment of penalties as specified in this procedure.

M. American Correctional Association (ACA) Accreditation (4-4017)

A private prison contractor/operator will attain accreditation by ACA within three years of commencing operation of the facility and will thereafter maintain their accreditation status.

1. The contractor/operator will notify the division manager of West Institutions when an audit by ACA has been scheduled and will send a copy of the American Correctional Association audit team report to the division manager of West Institutions within five working days of receipt; and
2. The contractor will notify the division manager of West Institutions within five working days of receiving the final action by the Commission on Accreditation.

N. Public Works Projects

A private prison contractor/operator may allow minimum-security inmate labor to be used as approved by the division manager of West Institutions in accordance with [OP-090106](#) entitled "Prisoner Public Works Contracts and Assignment of Offenders to Public Work Programs."

V. Monitoring Private Prisons Housing Oklahoma Inmates (Contract Prisons)

A. Standard Contract Provisions

Any contract between ODOC and a private prison contractor whereby the contractor provides for the housing, care, and control of inmates in a non-agency facility operated by the contractor will contain, in addition to other provisions, terms, and conditions, specific facility requirements of 57 O.S. § 561-3 and 563.1-2.

B. Compliance with Oklahoma Department of Corrections Procedures

Private prison facilities under contract with ODOC will comply with the procedures of ODOC as specified in the contract and as updated in the contract renewal.

C. Reporting Requirements

Private prisons will submit timely, monthly reports to the division manager of West Institutions, medical services and other ODOC offices as required by the contract. Copies of reports provided to medical services and other agency units will also be provided to the division manager of West Institutions.

D. Audits (2-CO-1C-17)

Private prisons will cooperate with ODOC staff assigned to audit facility operations, inmate classification, medical, programs, financial and trust fund records as scheduled.

E. Security Level Restrictions

Security level restrictions refer to the security levels applicable to inmates in institutions within ODOC, as determined by policy and procedure of ODOC, unless ODOC approves more restrictive levels of security as prescribed by the private prison contractor/operator.

F. Contract Monitoring (2-CO-1B-10)

State statutes, the contract and subsequent addenda, amendments and memoranda of understanding between ODOC and the contractor will form the basis of the standards for contract compliance monitoring. Monitoring of contract prison facilities may also consist of gathering information not specified herein but made necessary by a federal, state, local, or agency initiative or court order.

1. Contract Monitors

The contract monitors for the agency will:

- a. Serve as liaison between the agency and vendors involved in the care and custody of inmates to ensure proper interpretation and uniform application of Oklahoma State Statutes, ACA Standards, policies and procedures of ODOC and compliance with contractual agreements.
- b. The division manager of West Institutions staff will monitor the contract private prisons through regular monitoring visits and/or by an on-site monitor.

2. Monitoring Process (2-CO-1A-22, 4-4017)

The agency will monitor contractual compliance utilizing the following methods that include, but are not limited to:

a. On-Site Monitoring and Periodic Visits

The contract monitors will conduct regular on-site visits, to include unannounced audits. During these visits, the facility will be observed during normal daily operations, to include observation on all three shifts. The contract monitors may review various procedures, interview staff/inmates and review files, records, and programs. Additionally, the contract monitors may meet and discuss any issues with the contractor, communicate any relevant information and follow-up with former concerns. The following specific areas will be monitored in accordance with state statutes, ODOC procedures, contract standards, court order, and sound correctional practices:

- (1) Inmate housing, program participation and employment in accordance with [OP-030102](#) entitled "Offender Housing" and [OP-030103](#) entitled "Offender Job and Program Assignments";
- (2) Inmate programs/employment/idleness;
- (3) Disciplinary process/actions;
- (4) Classification/records;
- (5) Earned credit levels; assignment, approval;
- (6) Reportable incidents and serious incident report reviews;
- (7) Incident reports;
- (8) Grievance process;
- (9) Segregation operations;
- (10) Population statistics - count (in/out), type of moves;
- (11) Escorted leave for funeral/hospital trips;
- (12) Population transfers;
- (13) Inmate population;
- (14) Internal/external security;

- (15) Staffing levels;
- (16) Staff training;
- (17) ACA standards;
- (18) Medical, mental health, optometric and dental services;
- (19) Food service;
- (20) Access to courts; and
- (21) Prison Rape Elimination Act ([OP-030601](#) entitled "Oklahoma Prison Rape Elimination Act")- Zero tolerance information: poster, reporting, training (staff, contractors, volunteers, inmates), etc.

b. Contract Monitoring Reports

Contract monitoring reports will be prepared on a weekly basis.

c. Team Visits

- (1) Based upon need and specialized area, a team may conduct audits, inspections, or evaluation/assessments of each contractor site. Audits will be conducted by the auditing and compliance unit under the direction of the Inspector General.
- (2) Following these visits, the team will complete a report outlining their findings. If there is corrective action required of the contractor, notice is given with a due date for compliance. The contractor may appeal the findings of the team to the division manager of West Institutions.

d. Annual Audit

A compliance audit team from the Inspector General's office will conduct an annual audit to evaluate the facility's performance and compliance with the provision of rules and standards as set forth in the applicable contract as well as pertinent state statutes, PREA standards, Standards for Adult Correctional Institutions as amended and published by ACA, sound correctional practices, and applicable ODOC procedures.

e. Review and Appeal of Audit

- (1) The ODOC audit team will submit a report of its findings and recommendations to the private prison contractor and the division manager of West Institutions.
- (2) The private prison contractor will have 30 days in which to review the audit report, prepare a corrective action plan and/or appeal any findings or conclusions in writing.
 - (a) The division manager of West Institutions will review the corrective action plan and any appeals and render a decision.
 - (b) If there is a disagreement over the findings, an additional appeal may be pursued according to the contract requirements.
- (3) A copy of the final report will be provided to the associate director of Field Operations and the Inspector General

G. Liquidated Damages Non-Performance Penalties

1. Non-Compliance

In the event of non-compliance by the contractor, the state may withhold, as liquidated damages, the amounts designated in the contract from any amounts owed to the contractor.

2. Notification

The state will notify the contractor in writing of the breach of contract and afford 45 days to resolve the breach unless the matter is so serious that immediate correction is needed or unless a longer time period is mutually agreed upon.

3. Repeated Non-Performance

Notice and opportunity to resolve will not be applicable in the event of successive or repeated non-performance of the same nature or the lack of due diligence, in which case the director may order immediate compliance, enhancement of the liquidated damages by a factor of two, or termination of the contract for cause.

4. Notice of Damages

The state will notify the contractor in writing of the amounts to be withheld as liquidated damages. Liquidated damages represent

solely the damages and injuries sustained by the agency in losing the benefit of the agreement with the private prison contractor.

5. Assessment of Liquidated Damages

Liquidated damages will be assessed for each day the breach remains unresolved. The agency may continue to withhold the liquidated damages or a portion thereof until the private prison contractor resolves the non-performance or the agency terminates the contract.

6. Obligation to Assess Liquidated Damages

The state is not obligated to assess liquidated damages before availing itself of any other remedy.

7. Discontinuing Liquidated Damages

The state may choose to discontinue liquidated damages and avail itself of any other remedy available under contract or at law in equity.

H. Housing of Non-Oklahoma Inmates with Oklahoma Inmates

A private prison contractor will not house inmates from this state with federal inmates or inmates from another state unless segregated or otherwise housed in such a manner as to satisfy the director of ODOC. The private prison contractor will submit a written plan to the division manager of West Institutions for multiple jurisdiction populations when Oklahoma inmates are housed at the private prison.

VI. Monitoring Private Prisons Housing Non-Oklahoma Inmates (Non-Contract Private Prisons)

In accordance with 57 O.S. § 563.1-3, private prison operators, not contracting with ODOC which house inmates of another state, will meet the following requirements:

A. Standards

A private prison operator, within two months of commencing operations and thereafter as required by ODOC, will accomplish the following:

1. Approval

Obtain ODOC approval of the internal and perimeter security of the facility. Such approval will be given only if the division manager of West Institutions determines that the security is adequate to protect the public.

2. Audit Procedures

The division manager of West Institutions will assign staff to conduct an audit based on sound correctional practices and ACA standards which verify, to the satisfaction of ODOC, that the requirements of 57 O.S. § 563 are being met.

3. Inmate Classification Management

- a. A private prison operator may contract with the federal government or another state to provide housing, care and control of inmates in accordance with 57 O.S. § 563.2.

(1) Statutory Authorization

A private prison operator may contract with another state to provide housing, care and control of inmates, except for inmates who:

- (a) Have histories of escape from medium or maximum security level correctional facilities for adults;
- (b) Have a felony conviction for rioting;
- (c) Are sentenced to terms of incarceration for conviction of a sex-related offense; or
- (d) Are incarcerated with a sentence of death.

(2) Provisions

Private prison contractors will not contract with other states to provide for the housing, care, and control of detainees designated as enemy combatants by the federal government, or who are under federal, state, or local investigation, charge, or conviction for crimes of international terrorism or conspiracy to commit international terrorism or acts of hostile aggression against the United States or allies of the United States.

- b. The operator of North Fork Correctional Facility may contract with the federal government or another state to house the same type of inmates as if contracting with Oklahoma.
- c. Prior to housing maximum security inmates in the custody of another state, the private prison contractor/operator will receive authorization from ODOC to house maximum security inmates at the facility.

- (1) Authorization granted by the agency will be based on facility design and physical plant security requirements consistent with standards established by ACA or the physical plant security requirements of ODOC for agency-operated maximum security facilities.
- (2) Upon written request by a private prison contractor/operator for all or part of a facility to be granted authorization to house maximum security inmates, the agency will complete an assessment within thirty days. The assessment will either result in authorization being granted to the private prison contractor/operator or will provide detailed requirements that will be met by the facility in order for authorization to be granted.

B. Transfers

Per 57 O.S. § 563.2, private prison operators must submit classification documents to the division manager of West Institutions for review as part of transferring inmates into private prison facilities in Oklahoma.

1. At least ten business days prior to the transfer of inmates who are in the custody of another state to a private prison facility in Oklahoma, the private prison contractor/operator will provide the division manager of West Institutions with the following information:
 - a. The number of inmates to be transferred;
 - b. The name of each inmate to be transferred;
 - c. The date of transfer of the inmate;
 - d. The security level of each inmate to be transferred, as determined by the sentencing state;
 - e. The facility to which the inmate will be transferred; and
 - f. The criminal history and institutional behavior record for each inmate transferred.
2. The information provided will not be public record until the transfer of the inmate is complete and then only to the extent required by state law.
3. The division manager of West Institutions will have 30 days after receipt of the information to determine whether a transferred inmate

is compliant with the provisions specified Section VI. A. item 3. of this procedure.

- a. If a determination is made that the inmate is not compliant with Section VI. A. item 3. of this procedure, the private prison contractor/operator will be notified of the name of the inmate and the reason why the inmate is not qualified to be housed at the facility to which he was transferred or to be housed within Oklahoma.
 - b. The contractor/operator will either provide supplemental information verifying compliance or transfer the inmate within 30 days of receiving notification.
4. Failure to review the inmate information provided will not prevent the transfer of inmates into Oklahoma for housing at a private prison facility.
 5. If an inmate is to be released or discharged from incarceration, released or discharged by any court order, placed on probation, paroled, becomes ineligible for placement in an Oklahoma facility or if the federal government or sending state requests transfer or return of the inmate, the private prison operator will immediately transfer or return the inmate to the sending state which has legal authority over the inmate. In the case of federal inmates, the inmate will be transferred or returned to the closest federal prison or to the federal authority of the state in which federal custody over the inmate originated.

C. Travel Restrictions

A private prison operator housing federal inmates from jurisdictions other than Oklahoma or inmates sentenced pursuant to the legal authority of another state, will not allow any such inmate to leave the premises of the facility except to comply with an order to appear in a court of competent jurisdiction, to receive medical care not available at the facility, to work as provided in Section IV. item O. of this procedure or to be transferred to another state.

D. Failure to Comply with Statutory Requirements

The division manager of West Institutions will monitor the performance of the private prison operator and the continued compliance of the private prison operator with the provisions of this procedure. If at any time after commencing operations a private prison operator fails to comply with any of said provisions:

1. The director may recommend that the State Board of Corrections assess the private prison contractor/operator at least one-half the per diem rate up to but not to exceed the full per diem rate paid by

the jurisdiction(s) to the private prison contractor/operator for the period of time the violation continues and is not corrected with due diligence, or when ODOC has identified other physical plant security deficiencies based on ACA standards and the deficiencies are not corrected with due diligence. This penalty does not preclude the director from ordering the facility to cease operations.

2. The director may order the facility to cease operations. This order may be enforced by injunction issued by a district court of this state, and all legal fees and costs will be assessed to the private prison owner/operator.

E. Litigation Responsibilities

A private prison operator housing federal inmates or inmates of another state will be responsible for the reimbursement of all reasonable costs and expenses incurred by this state or a political subdivision of this state for legal actions brought in this state by or on behalf of any federal inmate or inmate of another state while incarcerated in the facility.

Such costs will, include: court costs, sheriff's mileage fees, witness fees, district attorney expenses, expenses of the Attorney General, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees, or expenses associated with the proceedings or actions.

VII. References

Policy Statement No. P-030100 entitled "Provisions of Services/Offender Rights and Responsibilities"

OP-030102 entitled "Offender Housing"

OP-030103 entitled "Offender Job and Program Assignments"

OP-030601 entitled "Oklahoma Prison Rape Elimination Act"

OP-040101 entitled "Facility Security Standards"

OP-050108 entitled "Use of Force Standards and Reportable Incidents"

OP-052001 entitled "Emergency Procedures for Private Prisons"

OP-080201 entitled "Private Sector Correctional Industry Standards"

OP-090106 entitled "Prisoner Public Works Contracts and Assignment of Offenders to Public Work Programs"

OP-120230 entitled "Offender Banking System"

OP-150202 entitled "Facility Construction Security Standards"

18 U.S.C. § 1761 (c) Federal Private Industry Enhancement (PIE) guidelines

57 O.S. § 549

57 O.S. § 561-561.3

57 O. S. § 563

70 O.S. § 3311

VIII. Action

The division manager of West Institutions is responsible for compliance with this procedure.

The associate director of Field Operations is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-030401 entitled "Private Prison Monitoring Requirements" dated January 21, 2015

Distribution: Policy and Operations Manual
Agency Website