



COUNTY ADVISORY BULLETIN

CAB

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SUB. HOUSE BILL 661 AUTHORIZES SHERIFFS TO ENTER INTO CONTRACTS FOR THE TRANSPORTATION FOR THE RETURN TO OHIO OF PRISONERS APPREHENDED OUTSIDE OF THE STATE

Effective date: March 15, 2001

Revised Code Sections Affected:

311.29(E) - Sheriff's contracting authority

5120.64 - Dept. of Rehabilitation and Correction rule making authority

Ohio Administrative Code:

5120:1-1-35 - Contracts for the transportation of inmates

Lead Sponsor: Winkler

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OVERVIEW

Sub. H.B. 661 of the 123rd General Assembly [better known as the "prison nursery bill"] was amended in the Senate to provide statutory authority for sheriffs to contract with private entities for the return to Ohio of Ohio prisoners apprehended outside of the State. Ohio Attorney General Opinion 2000-024 had held that Ohio law did not specifically authorize these contracts. Since there were many county sheriffs who had been contracting for prisoner transportation services this legislation was needed to make these contracts legal.

CONTRACT BETWEEN THE SHERIFF AND THE PRIVATE CONTRACTOR

The Act permits a sheriff to enter into a contract with a private person or entity for the return of Ohio prisoners who were apprehended outside of Ohio and are the responsibility of that sheriff to a location in Ohio specified by the sheriff. An "Ohio prisoner" is a person who is charged with or convicted of a crime in this state or who is alleged or found to be a

delinquent child in this state.

A sheriff may enter into such a contract only if there are adequate funds appropriated by the board of county commissioners and there is a certification pursuant to R.C. 5705.41(D) that the funds are available for this purpose. This gives the commissioners the ultimate authority by requiring them to provide an appropriation to fund the contract.

The Act requires that certain issues must be addressed by the contract. Also, the terms of the contract must comply with Rules adopted by the Department of Rehabilitation and Correction for prisoner transportation contracts. These rules require certain contract provisions and also establish the minimum training, equipment and safety standards that a private entity wishing to provide prisoner transportation services must comply with.

The provisions which the Act requires must be contained in the contract are listed at Section 311.29(E)(2)(a) through(f) of the Revised Code and include all of the following:

- (1) Specific provisions that assign the responsibility for costs related to medical care of prisoners while they are being returned that is not covered by insurance of the private contractor;
- (2) Specific provisions that set forth the number of days, not exceeding ten, within which the private contractor, after it receives the prisoner in the other state, must deliver the prisoner to the location in Ohio specified by the sheriff subject to any exceptions which must be specifically describe in the contract;
- (3) A requirement that the contractor immediately report all escapes of prisoners who are being returned to Ohio, and of the apprehension of all such escaped prisoners, to the sheriff and to the local law enforcement agency of Ohio or another state that has jurisdiction over the place at which the escape occurs;
- (4) A schedule of fines that the sheriff must impose upon the contractor for failure to perform its contractual duties, and clauses that require the sheriff must impose a fine if there is a breach of the contract and authorize the sheriff, in addition to the imposition of the required fine, to exercise any other rights specified in the contract which the sheriff may have for breach of the contract;
- (5) Specific provisions that comply with all applicable standards that are contained in the rules adopted by the Department of Rehabilitation and Corrections.

A fine for breach of contract is to be paid into the county treasury or can be used to reduce or offset payment on an invoice presented by the contractor. The amount of this fine will be determined and imposed based upon the schedule of fines for breach of contract as

contained in the contract.

ADOPTION OF RULES BY THE DEPT. OF REHABILITATION AND CORRECTION

The Act [Section 5120.64(B) of the Revised Code] requires the Department of Rehabilitation and Correction, in consultation with the Attorney General, the County Commissioners Association of Ohio, and the Buckeye State Sheriffs Association, to adopt rules under the Administrative Procedure Act regarding various subjects concerning the return of Ohio prisoners from outside of Ohio into Ohio by a private contractor. These rules were to be adopted not later than nine months after the effective date of the act. The rule making process is completed and the rules are effective July 13, 2001. The rules address, as required by the Act:

- (1) The type and length of training required for the officers and employees of the private contractor who wishes to engage in prisoner transportation including specific training in CPR and first-aid;
- (2) Criminal records checks, pre-employment drug testing ,and a random drug-screening policy for employees of the private;
- (3) Physical standards for vehicles used in the return of the prisoners;
- (4) Standards that govern the responsibility of the private contractor to provide liability insurance, indemnify and hold harmless the sheriff and the county, and file a performance bond or another surety to guarantee contract performance;
- (5) 24-hour monitoring and communications ability with vehicles in the field.

NOTE: Upon the effective date of the rules adopted by the Department of Rehabilitation and Correction which was July 13, 2001, any contract for prisoner transport in effect as of that date will be required to comply with all applicable standards that are contained in the rules. ***SUGGESTION: Your contract should include a provision which adopts and incorporates these rules by reference and makes them a part of the contract.***

NOTE: The provisions of this Act do not apply to any out-of-state prisoner who is brought into Ohio to be housed pursuant to R.C. 9.07 in a correctional facility in Ohio that is managed and operated by a private contractor. [R.C. 311.29(E) and 5149.03(B)]

CCAO wishes to thank: Bob Cornwell, Executive Director, Buckeye State Sheriffs' Association; Elizabeth Miller, CORSA legal counsel; and Scott Blough, Administrator, DRC Bureau of Adult Detention, for their assistance with the production of this CAB.

EXHIBIT A

Ohio Administrative Code 5120:1-1-35 - Contracts for the transportation of inmates

DEPARTMENT OF REHABILITATION AND CORRECTION

5120:1-1-35 CONTRACTS FOR THE TRANSPORTATION OF INMATES.

- (A) THE ADULT PAROLE AUTHORITY, IN ORDER TO DISCHARGE ITS DUTIES UNDER CHAPTERS 2967. AND 5149. OF THE REVISED CODE, MAY ENTER INTO A CONTRACT WITH A PRIVATE PERSON OR ENTITY FOR THE RETURN OF OHIO PRISONERS WHO ARE THE RESPONSIBILITY OF THE DEPARTMENT OF REHABILITATION AND CORRECTION FROM OUTSIDE OF THIS STATE TO A LOCATION IN THIS STATE SPECIFIED BY THE ADULT PAROLE AUTHORITY. PURSUANT TO DIVISION (E) OF SECTION 311.29 OF THE REVISED CODE, THIS RULE IS APPLICABLE TO CONTRACTS ENTERED INTO BETWEEN A PRIVATE PERSON OR ENTITY AND A COUNTY SHERIFF, FOR THE TRANSPORTATION OF PRISONERS WHO ARE THE RESPONSIBILITY OF THE COUNTY SHERIFF.

- (B) ANY CONTRACT ENTERED INTO UNDER THIS RULE SHALL INCORPORATE THE MANDATORY STANDARDS EXPRESSED IN THIS RULE. ANY PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL MAINTAIN COMPLIANCE WITH THESE STANDARDS THROUGHOUT THE TERM OF THE CONTRACT.

- (C) STANDARDS FOR TRAINING OF EMPLOYEES OF THE PRIVATE PERSON OR ENTITY THAT ENGAGE IN THE RETURN OF PRISONERS:
 - (1) EIGHTY HOURS OF PRESERVICE TRAINING WHICH SHALL MINIMALLY INCLUDE:

- (D) PHYSICAL STANDARDS FOR VEHICLES USED IN THE RETURN OF PRISONERS:
 - (1) VEHICLES UTILIZED TO TRANSPORT PRISONERS SHALL BE IN GOOD OPERATING CONDITION, WITH CURRENT MAINTENANCE AND REPAIR RECORDS ON FILE, AND MEET THE FOLLOWING MINIMUM CRITERIA:
 - (a) SEPARATE AND SAFELY SECURE THE DRIVING TEAM FROM THE PRISONER.

- (b) DOORS AND WINDOWS UNABLE TO BE OPENED FROM THE INSIDE OF THE PRISONER COMPARTMENT.
- (c) WELDED STEEL SCREENS COVERING THE WINDOWS.
- (d) OPERATIONAL HEATER AND AIR CONDITIONER FOR THE ENTIRE VEHICLE.
- (e) EQUIPPED WITH SOME FORM OF MOBILE COMMUNICATION.
- (f) READILY IDENTIFIABLE BY AIR AS PRISONER TRANSPORT VEHICLES.
- (g) MAINTAIN MANUFACTURER'S RECOMMENDED OCCUPANCY RATING.

(E) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL MAINTAIN COMPLIANCE WITH THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION REGULATION 395.3 REGARDING MAXIMUM DRIVING TIME FOR EMPLOYEES, AND ANY REVISION, AMENDMENT OR MODIFICATION OF THAT REGULATION.

(F) STANDARDS OF FINANCIAL RESPONSIBILITY:

(1) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL OBTAIN, AND MAINTAIN FOR THE DURATION OF THE CONTRACT TERM, A POLICY OF LIABILITY INSURANCE WITH A MINIMUM AMOUNT OF THIRTY MILLION DOLLARS TO COVER ALL INJURIES, DEATHS, OR LOSS TO PERSONS OR PROPERTY THAT ARISE FROM, OR IS RELATED TO, ITS RETURN OF PRISONERS.

(2) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT OF REHABILITATION AND CORRECTION AND ALL STATE OFFICERS AND EMPLOYEES FOR LIABILITIES WHICH ARISE IN CONNECTION WITH THE SERVICES PERFORMED UNDER THE CONTRACT AND ARE IN ANY WAY RELATED TO THE SERVICES RENDERED IN THE PERFORMANCE OF THE CONTRACT.

(3) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL PROVIDE A PERFORMANCE BOND IN THE AMOUNT OF TEN PERCENT OF THE TOTAL CONTRACT PRICE. THE PURPOSE OF

THE BOND IS TO ENSURE PROPER PERFORMANCE BY THE CONTRACTOR. THE BOND SHALL BE PAYABLE TO THE TREASURER, STATE OF OHIO. THE BOND SHALL REMAIN IN EFFECT FOR THE DURATION OF THE AWARDED CONTRACT AND ANY EXTENSIONS THERETO, AND SHALL COMPLY WITH ANY OTHER APPLICABLE REQUIREMENTS OF THE OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES.

(G) STANDARDS FOR PRE-EMPLOYMENT PRACTICES:

(1) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL REQUIRE A PRE-EMPLOYMENT CRIMINAL RECORDS CHECK, AT THE FEDERAL STATE AND LOCAL LEVELS, FOR EMPLOYEES WHO WOULD ACTUALLY ENGAGE IN THE RETURN OF PRISONERS, AND SHALL NOT HIRE AN INDIVIDUAL WITH A RECORD OF A CONVICTION FOR ANY FELONY, ANY SEX OFFENSE, AN OFFENSE OF DOMESTIC VIOLENCE, TWO OR MORE MISDEMEANOR DRUG OFFENSES, OR ANY OTHER OFFENSE WHICH DISQUALIFIES THE PROSPECTIVE EMPLOYEE FROM CARRYING A FIREARM.

(2) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL REQUIRE A PRE-EMPLOYMENT DRUG SCREEN FOR EMPLOYEES WHO WOULD ACTUALLY ENGAGE IN THE RETURN OF PRISONERS, AND SHALL NOT HIRE AN INDIVIDUAL WHO TESTS POSITIVE FOR A CONTROLLED SUBSTANCE. THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL HAVE A WRITTEN POLICY FOR, AND MAINTAIN A PRACTICE OF RANDOM DRUG TESTING OF EMPLOYEES IN ACCORDANCE WITH APPLICABLE STATE LAWS.

(H) OPERATIONAL STANDARDS:

(1) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL HAVE TWENTY-FOUR HOUR OPERATIONAL STAFF AND EQUIPMENT TO CONSTANTLY MONITOR ACTIVITIES IN THE FIELD AND HAVE ON-BOARD, CONSTANT COMMUNICATION CAPABILITY WITH VEHICLES IN THE FIELD.

(2) THE PRIVATE PERSON OR ENTITY WITH WHOM THE ADULT PAROLE AUTHORITY CONTRACTS FOR THE RETURN OF OHIO PRISONERS SHALL REQUIRE THAT OFFICERS AND EMPLOYEES THAT ACTUALLY ENGAGE IN THE RETURN OF PRISONERS TO BE CERTIFIED BY AN APPROPRIATE CERTIFICATION ENTITY IN CARDIO-PULMONARY RESUSCITATION (CPR) AND FIRST AID.

(I) CONTRACT STANDARDS: ANY CONTRACT ENTERED INTO UNDER THIS RULE SHALL INCORPORATE THE MANDATORY STANDARDS EXPRESSED IN THIS RULE AND SHALL INCLUDE THE FOLLOWING PROVISIONS:

(1) SPECIFIC PROVISIONS THAT ASSIGN THE RESPONSIBILITY FOR COSTS RELATED TO MEDICAL CARE OF PRISONERS WHILE THEY ARE BEING RETURNED THAT IS NOT COVERED BY INSURANCE OF THE PRIVATE PERSON OR ENTITY.

(2) SPECIFIC PROVISIONS THAT SET FORTH THE NUMBER OF DAYS, NOT EXCEEDING TEN, WITHIN WHICH THE PRIVATE PERSON OR ENTITY, AFTER IT RECEIVES THE PRISONER IN THE OTHER STATE, MUST DELIVER THE PRISONER TO THE LOCATION IN THIS STATE SPECIFIED BY THE ADULT PAROLE AUTHORITY, SUBJECT TO THE EXCEPTIONS ADOPTED AS DESCRIBED IN PARAGRAPH (I)(3) OF THIS RULE.

(3) SPECIFIC PROVISIONS THAT SET FORTH ANY EXCEPTIONS TO THE SPECIFIED NUMBER OF DAYS FOR DELIVERY SPECIFIED AS DESCRIBED IN PARAGRAPH (I)(2) OF THIS RULE.

(4) A REQUIREMENT THAT THE PRIVATE PERSON OR ENTITY IMMEDIATELY REPORT ALL ESCAPES OF PRISONERS WHO ARE BEING RETURNED TO THIS STATE, AND THE APPREHENSION OF ALL PRISONERS WHO ARE BEING RETURNED AND WHO HAVE ESCAPED, TO THE ADULT PAROLE AUTHORITY AND TO THE LOCAL LAW ENFORCEMENT AGENCY OF THIS STATE OR ANOTHER STATE THAT HAS JURISDICTION OVER THE PLACE AT WHICH THE ESCAPE OCCURS;

(5) A SCHEDULE OF FINES THAT THE ADULT PAROLE AUTHORITY SHALL IMPOSE UPON THE PRIVATE PERSON OR ENTITY IF THE PRIVATE PERSON OR ENTITY FAILS TO PERFORM ITS CONTRACTUAL DUTIES, AND A REQUIREMENT THAT, IF THE PRIVATE PERSON OR ENTITY FAILS TO PERFORM ITS CONTRACTUAL DUTIES, THE ADULT PAROLE AUTHORITY SHALL IMPOSE A FINE ON THE PRIVATE

PERSON OR ENTITY FROM THE SCHEDULE OF FINES AND, IN ADDITION, MAY EXERCISE ANY OTHER RIGHTS IT HAS UNDER THE CONTRACT.

(6) TWO AGENTS PER VEHICLE WITH AN AGENT TO PRISONER RATIO OF NO MORE THAT ONE TO SIX.

(7) THE PRESENCE OF AT LEAST ONE FEMALE OFFICER WHEN TRANSPORTING FEMALE PRISONERS.

(8) A REQUIREMENT THAT PRISONERS ARE APPROPRIATELY SECURED DURING TRANSPORT, WHICH INCLUDES LEG RESTRAINTS AND DOUBLE-LOCKED HANCUFFS.

(9) A REQUIREMENT THAT THE PRIVATE PERSON OR ENTITY NOTIFY LOCAL LAW ENFORCEMENT OFFICIALS WITHIN TWENTY-FOUR HOURS IN ADVANCE OF ANY SCHEDULED STOPS WITHIN THEIR JURISDICTION.

(10) A REQUIREMENT THAT OFFICERS OR AGENTS ENGAGED IN THE RETURN OF PRISONERS WEAR A UNIFORM WITH AN IDENTIFYING INSIGNIA OR BADGE IDENTIFYING THE OFFICER OR AGENT AS A TRANSPORT OFFICER.

(11) A REQUIREMENT THAT PRISONERS BEING TRANSPORTED WEAR UNIFORMS THAT MAKE THEM READILY IDENTIFIABLE AS PRISONERS.

(12) A REQUIREMENT THAT, IF COMMERCIAL AIR TRANSPORTATION IS USED TO TRANSPORT PRISONERS, THAT THE ENTITY COMPLY WITH ALL APPLICABLE FAA REGULATIONS CONCERNING THE TRANSPORTATION OF PRISONERS.

(J) IF THE PRIVATE PERSON OR ENTITY THAT ENTERS INTO THE CONTRACT FAILS TO PERFORM ITS CONTRACTUAL DUTIES, THE ADULT PAROLE AUTHORITY SHALL IMPOSE UPON THE PRIVATE PERSON OR ENTITY A FINE FROM THE SCHEDULE DESCRIBED IN PARAGRAPH (I)(5) OF THIS RULE. THE MONEY PAID IN SATISFACTION OF THE FINE SHALL BE PAID INTO THE STATE TREASURY, AND THE ADULT PAROLE AUTHORITY MAY EXERCISE ANY OTHER RIGHTS IT HAS UNDER THE CONTRACT. IF A FINE IS IMPOSED UNDER THE CONTRACT ENTERED INTO PURSUANT TO THIS RULE, THE

ADULT PAROLE AUTHORITY MAY REDUCE THE PAYMENT OWED TO THE PRIVATE PERSON OR ENTITY PURSUANT TO ANY INVOICE IN THE AMOUNT OF THE FINE.

- (K) THIS RULE DOES NOT APPLY TO ANY OUT-OF-STATE PRISONER WHO IS BROUGHT INTO THIS STATE TO BE HOUSED PURSUANT TO SECTION 9.07 OF THE REVISED CODE IN A CORRECTIONAL FACILITY IN THIS STATE THAT IS MANAGED AND OPERATED BY A PRIVATE CONTRACTOR.

EFFECTIVE: July 13, 2001

“Exhibit B” State of Ohio Bid Specifications for Transportation for offender(s) and prisoner(s) [inmate(s)] <http://www.gsd.das.state.oh.us/purch/pdfs/drc36.pdf>.

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