

HOUSE BILL No. 1383

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8; IC 34-4-33-15; IC 34-4-45; IC 35-41-1-21; IC 35-41-3-3.

Synopsis: Department of correction; civil action. Authorizes the department of correction to enter into contracts with private vendors for the operation, management, and maintenance of correctional facilities and for the provision of certain correctional programs and services. Requires the department to use a request for proposals process before awarding a contract to a vendor. Prescribes the terms of, and restrictions on, a contract for private vendor operation of a correctional facility. Establishes a rebuttable presumption that: (1) an injury involving the use of force or deadly force suffered while a person is committing a crime on the property of another person is the fault of the offender or was caused by the offender; and (2) the offender waived
(Continued next page)

Effective: July 1, 1998.

M. Smith

January 13, 1998, read first time and referred to Committee on Ways and Means.

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Digest Continued

any right to recover damages from the property owner. Establishes an affirmative defense available to the property owner in such actions.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1383



A BILL FOR AN ACT to amend the Indiana Code concerning corrections and civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-8-1-6.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
- 3 1, 1998]: **Sec. 6.5. "Correctional facility" means a facility for the**
- 4 **custody, care, and confinement of committed offenders under this**
- 5 **title.**
- 6 SECTION 2. IC 11-8-2-3 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) The board shall:
- 8 (1) adopt rules for the conduct of its own business;
- 9 (2) approve or disapprove, before adoption, any rule to be
- 10 adopted by the department under IC 4-22-2;
- 11 (3) approve or disapprove, before implementation, any resolution
- 12 or directive of the department relating to departmental
- 13 organization or policy, **including a contract under:**
- 14 (A) **IC 11-8-3.5; or**
- 15 (B) **both IC 11-8-3.5 and IC 11-8-3.6; and**



- 1 (4) keep records of ~~an~~ its official actions and make them
 2 accessible according to law.
- 3 (b) The board may:
- 4 (1) appoint temporary advisory committees for any purpose;
- 5 (2) visit and inspect, without notice, any facility or program of
 6 the department, either individually or collectively, to examine
 7 the affairs and condition of the department; and
- 8 (3) exercise any other power reasonably necessary in discharging
 9 its duties and powers.
- 10 (c) The board has no direct administrative or executive powers
 11 other than those granted by this section.
- 12 (d) For purposes of IC 4-22-2, ~~the term~~ "rule" as used in
 13 subsection (a)(1) relates solely to internal policy, organization, and
 14 procedure not having the force of law.
- 15 SECTION 3. IC 11-8-3.5 IS ADDED TO THE INDIANA CODE
 16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 1998]:
- 18 **Chapter 3.5. Contracts for Providing Correctional Facilities,
 19 Programs, or Services**
- 20 **Sec. 1. (a) As used in this chapter, "contract" refers to a
 21 contract to provide any of the following:**
- 22 (1) Residential and nonresidential accommodations or
 23 services for committed offenders.
- 24 (2) Programs and services to aid committed offenders to do
 25 any of the following:
- 26 (A) Obtain and hold regular employment.
- 27 (B) Enroll in and maintain academic courses.
- 28 (C) Participate in vocational training.
- 29 (D) Use the resources of the community in meeting
 30 personal and family needs.
- 31 (E) Participate in specialized treatment programs.
- 32 (3) Supervision and surveillance of committed offenders.
- 33 (b) The term does not include any of the following:
- 34 (1) A contract under IC 11-10-4-2 for providing care and
 35 treatment of mentally ill committed offenders.
- 36 (2) A contract under IC 11-10-6-11 for the management of an
 37 industry and farm program or activity operated for the
 38 employment of offenders.
- 39 (3) An agreement under IC 11-10-7-2 with a private person
 40 to establish a facility within a state adult correctional facility.
- 41 (4) A contract under IC 11-12-3-1 for providing community
 42 based services to committed persons.



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- 1 (5) A contract under IC 11-12-3-2 to acquire premises and
2 facilities for community corrections.
- 3 Sec. 2. A contract may be awarded only in the manner
4 provided by this chapter.
- 5 Sec. 3. A private vendor may submit a proposal for a contract
6 under this chapter only if the vendor has done both of the
7 following:
- 8 (1) Demonstrated to the department:
- 9 (A) the qualifications and the operations and
10 management experience necessary to carry out the
11 terms of the contract; and
- 12 (B) the ability to comply with applicable correctional
13 standards and specific court orders.
- 14 (2) Provided audited financial statements and other financial
15 information upon the request of the department.
- 16 Sec. 4. (a) The department may award a contract under this
17 chapter only if the department requests proposals and receives a
18 proposal that meets or exceeds the requirements specified in:
- 19 (1) the request for proposals;
- 20 (2) this chapter; and
- 21 (3) IC 11-8-3.6, if applicable.
- 22 (b) The request for proposals shall be solicited under
23 IC 4-13.4-5-4.
- 24 Sec. 5. A contract under this chapter may not delegate to a
25 private vendor the department's responsibility or authority for any
26 of the following functions:
- 27 (1) Evaluation, classification, or assignment of criminal
28 offenders under IC 11-10-1.
- 29 (2) Evaluation or assignment of delinquent offenders under
30 IC 11-10-2.
- 31 (3) Transfer of mentally ill offenders to a state facility or a
32 mental health facility under IC 11-10-4.
- 33 (4) Assignment of criminal offenders to a minimum security
34 release program under IC 11-10-8.
- 35 (5) Grant of a temporary leave to a criminal offender under
36 IC 11-10-9.
- 37 (6) Grant of a temporary release to a delinquent offender
38 under IC 11-10-10.
- 39 (7) Establishment of grievance procedures under IC 11-11-1.
- 40 (8) Determination of the type of property that a confined
41 person may possess under IC 11-11-2.
- 42 (9) Establishment of disciplinary procedures and imposition

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1 of disciplinary actions under IC 11-11-5.

2 (10) Adoption of policies and procedures for the protection
3 of committed persons under IC 11-11-6.

4 (11) Supervision and revocation of parole of criminal
5 offenders under IC 11-13-3.

6 (12) Supervision and revocation of parole of delinquent
7 offenders under IC 11-13-6.

8 (13) Assignment of persons to credit time classes or
9 deprivation of credit time under IC 35-50-6.

10 SECTION 4. IC 11-8-3.6 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 1998]:

13 **Chapter 3.6. Contracts for Operation, Management, and**
14 **Maintenance of Correctional Facilities**

15 **Sec. 1. This chapter applies to a contract:**

16 (1) awarded under IC 11-8-3.5; and

17 (2) for the operation, management, and maintenance of a
18 correctional facility.

19 **Sec. 2. The definitions in IC 11-8-3.5 apply throughout this**
20 **chapter.**

21 **Sec. 3. A contract under this chapter must provide for all of**
22 **the following:**

23 (1) Regular, onsite monitoring.

24 (2) Appointment of a contract monitor who is responsible for
25 documenting adherence to the contract and compliance with
26 the rules, policies, procedures, and performance standards
27 of the department.

28 (3) The powers and duties of the private vendor.

29 (4) Comprehensive standards for conditions of confinement
30 at least equal to those required in correctional facilities
31 operated by the department.

32 (5) Conditions of confinement and services at least equal to
33 those required in correctional facilities operated by the
34 department.

35 (6) A level and quality of programs for inmates at least equal
36 to that provided by state operated facilities that house
37 similar types of inmates.

38 (7) A requirement that the private vendor provide the
39 vendor's employees and correctional officers with training
40 programs that are at least the equivalent of training
41 programs maintained by the department under IC 11-8-2-8.

42 (8) An option for the department to cancel the contract at

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1 any time after the first year of operation, without penalty to
2 the state, upon giving ninety (90) days written notice.

3 (9) A requirement that cost adjustments may be made only
4 one (1) time in each state fiscal year to take effect at the
5 beginning of the state fiscal year.

6 (10) Assumption of liability by the private vendor for all
7 claims arising from the services performed under the
8 contract by the private vendor.

9 (11) An adequate plan of insurance for the private vendor
10 and the private vendor's officers, guards, employees, and
11 agents against all claims, including claims based on
12 violations of civil rights, arising from services performed
13 under the contract.

14 (12) An adequate plan of insurance to protect the state from
15 the following:

16 (A) Claims arising from services performed under the
17 contract.

18 (B) Actions by a third party against the private vendor
19 and the private vendor's officers, guards, employees,
20 and agents as a result of the contract.

21 (13) Plans for the assumption of operation of the facility by
22 the state upon contract termination, a default by the private
23 vendor, or a work stoppage by the private vendor's
24 employees.

25 (14) Notwithstanding any other law, an initial contract term
26 of not more than five (5) years with an option to renew for
27 additional periods of not more than three (3) years.

28 **Sec. 4. A private vendor operating a correctional facility under
29 a contract is not entitled to claim sovereign immunity in an action
30 arising from services performed under the contract.**

31 **Sec. 5. A contract may be renewed only if the department
32 determines that the private vendor is providing:**

33 (1) at least the same quality of services as the department
34 provides, but at a lower cost; or

35 (2) services superior to those provided by the department at
36 essentially the same cost.

37 **Sec. 6. The department shall compare the quality of services
38 provided by the private vendor and by the department at similar
39 facilities and shall determine whether the services provided by the
40 private vendor are superior, essentially equal, or poorer than
41 services provided by the department. In making the determination,
42 the department shall consider the following:**

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- 1 (1) The nature of the inmates in the facilities.
- 2 (2) Whether the facilities meet professional standards.
- 3 (3) The level of training provided to the staff and the level of
- 4 training accomplished by the staff.
- 5 (4) The number and nature of complaints against the staff.
- 6 (5) The number and nature of violent or other disruptive
- 7 incidents among the inmates or against the staff.
- 8 (6) The number of escapes and attempted escapes.
- 9 (7) The number and nature of disciplinary actions against
- 10 the inmates and the staff.
- 11 (8) The number of inmates productively active, the level of
- 12 production, and the nature of activity provided for inmates.
- 13 (9) The rate at which inmates successfully complete
- 14 programs.
- 15 (10) Other matters related to the quality of services
- 16 provided.

17 **Sec. 7.** The department shall compare the full costs of the
 18 private vendor to the department's full costs of operating similar
 19 facilities. The department shall determine whether the private
 20 vendor is providing services at a greater, essentially equal, or lower
 21 cost than the department. In making the determination, the
 22 department shall consider all relevant costs of operation, including
 23 direct and indirect costs, that should be allocated or assigned to the
 24 operations. The costs attributable to the private vendor must
 25 include the costs of monitoring the contract incurred by the
 26 department or any other state agency.

27 **Sec. 8.** A contract may not be renewed until the Indiana
 28 department of administration completes a review of the
 29 determinations made by the department of correction under
 30 sections 5 through 7 of this chapter.

31 SECTION 5. IC 34-4-33-15 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 1998]: **Sec. 15.** (a) This section applies only
 34 to:

- 35 (1) a cause of action brought by a claimant or a claimant's
- 36 representative; or
- 37 (2) a counterclaim made by a claimant or a claimant's
- 38 representative.
- 39 (b) As used in this section, "claimant" refers to a person who
- 40 is injured while committing a crime on the real property of another
- 41 person.
- 42 (c) As used in this section, "claimant's representative" includes



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- 1 a person who is:
- 2 (1) the spouse;
- 3 (2) a child;
- 4 (3) a dependent; or
- 5 (4) the personal representative;
- 6 of a claimant.
- 7 (d) As used in this section, "crime" means a felony or
- 8 misdemeanor.
- 9 (e) In an action based on fault, if any part of an injury suffered
- 10 by a claimant occurred while the claimant was committing a crime
- 11 and resulted from another person's use of force or deadly force
- 12 while the claimant was on real property owned, leased, or
- 13 otherwise legally occupied by at least one (1) of the defendants:
- 14 (1) the finder of fact shall presume that:
- 15 (A) the claimant's contributory fault is greater than the
- 16 fault of all other persons whose fault proximately
- 17 contributed to the claimant's damages; and
- 18 (B) the claimant, in taking the first step toward the
- 19 commission of the crime, knowingly and voluntarily
- 20 waived the right of the claimant, or the right of the
- 21 claimant's representative, to recover damages sustained
- 22 by the claimant during the commission of the crime; and
- 23 (2) the claimant's conduct in committing the crime bars any
- 24 recovery by the claimant or the claimant's representative for
- 25 damages arising from a defendant's use of force or deadly
- 26 force.
- 27 (f) A presumption under subsection (e)(1) is rebuttable.
- 28 (g) The finder of fact shall attribute a claimant's contributory
- 29 fault under subsection (e)(1)(A) to any claimant's representative.
- 30 SECTION 6. IC 34-4-45 IS ADDED TO THE INDIANA CODE
- 31 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 32 JULY 1, 1998]:
- 33 **Chapter 45. Presumptions and Affirmative Defense in**
- 34 **Wrongful Use of Force Actions**
- 35 **Sec. 1. This chapter applies only to:**
- 36 (1) a cause of action brought by a claimant or a claimant's
- 37 representative; or
- 38 (2) a counterclaim made by a claimant or a claimant's
- 39 representative.
- 40 **Sec. 2. As used in this chapter, "claimant" refers to a person**
- 41 **who is injured while committing a crime on the real property of**
- 42 **another person.**



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1 **Sec. 3. As used in this chapter, "claimant's representative"**
 2 **includes a person who is:**

- 3 **(1) the spouse;**
 4 **(2) a child;**
 5 **(3) a dependent; or**
 6 **(4) the personal representative;**

7 **of a claimant.**

8 **Sec. 4. As used in this chapter, "crime" means a felony or**
 9 **misdemeanor.**

10 **Sec. 5. In an action based on an intentional act of a defendant,**
 11 **if any part of an injury suffered by a claimant occurred while the**
 12 **claimant was committing a crime and resulted from another**
 13 **person's use of force or deadly force while the claimant was on real**
 14 **property owned, leased, or otherwise legally occupied by at least**
 15 **one (1) of the defendants:**

- 16 **(1) the finder of fact shall presume that:**
 17 **(A) the claimant's conduct caused the injury; and**
 18 **(B) the claimant, in taking the first step toward the**
 19 **commission of the crime, knowingly and voluntarily**
 20 **waived the right of the claimant and the right of the**
 21 **claimant's representative to recover damages sustained**
 22 **by the claimant during the commission of the crime; and**
 23 **(2) the claimant's conduct in committing the crime bars any**
 24 **recovery by the claimant or the claimant's representative for**
 25 **damages arising from a defendant's use of force or deadly**
 26 **force.**

27 **Sec. 6. A presumption under section 5(1) of this chapter is**
 28 **rebuttable.**

29 SECTION 7. IC 35-41-1-21, AS AMENDED BY P.L.12-1996,
 30 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 1998]: Sec. 21. "Penal facility" means a state prison,
 32 correctional facility, county jail, penitentiary, house of correction, or
 33 any other facility for confinement of persons under sentence, or
 34 awaiting trial or sentence, for offenses. The term includes a
 35 correctional facility constructed under IC 4-13.5. **The term includes**
 36 **a correctional facility operated by a private vendor under**
 37 **IC 11-8-3.5, or IC 11-8-3.6, or both.**

38 SECTION 8. IC 35-41-3-3 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) A person other
 40 than a law enforcement officer is justified in using reasonable force
 41 against another person to effect an arrest or prevent the other person's
 42 escape if:



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- 1 (1) a felony has been committed; and
 2 (2) there is probable cause to believe the other person committed
 3 that felony.

4 However, such a person is not justified in using deadly force unless that
 5 force is justified under section 2 of this chapter.

6 (b) A law enforcement officer is justified in using reasonable force
 7 if the officer reasonably believes that the force is necessary to effect a
 8 lawful arrest. However, an officer is justified in using deadly force only
 9 if the officer:

10 (1) has probable cause to believe that ~~that~~ deadly force is
 11 necessary:

- 12 (A) to prevent the commission of a forcible felony; or
 13 (B) to effect an arrest of a person who the officer has
 14 probable cause to believe poses a threat of serious bodily
 15 injury to the officer or a third person; and

16 (2) has given a warning, if feasible, to the person against whom
 17 the deadly force is to be used.

18 (c) A law enforcement officer making an arrest under an invalid
 19 warrant is justified in using force as if the warrant was valid, unless the
 20 officer knows that the warrant is invalid.

21 (d) A law enforcement officer who has an arrested person in
 22 custody is justified in using the same force to prevent the escape of the
 23 arrested person from custody that the officer would be justified in using
 24 if the officer was arresting that person. However, an officer is justified
 25 in using deadly force only if the officer:

26 (1) has probable cause to believe that deadly force is necessary
 27 to prevent the escape from custody of a person who the officer
 28 has probable cause to believe poses a threat of serious bodily
 29 injury to the officer or a third person; and

30 (2) has given a warning, if feasible, to the person against whom
 31 the deadly force is to be used.

32 (e) A guard or other official in a penal facility, **including an**
 33 **employee of a private vendor operating a correctional facility**
 34 **under IC 11-8-3.5, or IC 11-8-3.6, or both,** or a law enforcement
 35 officer is justified in using reasonable force, including deadly force, if
 36 the officer has probable cause to believe that the force is necessary to
 37 prevent the escape of a person who is detained in the penal facility.

38 (f) Notwithstanding subsection (b), (d), or (e), a law enforcement
 39 officer who is a defendant in a criminal prosecution has the same right
 40 as a person who is not a law enforcement officer to assert self-defense
 41 under ~~IC 35-41-3-2~~ **section 2 of this chapter.**

42 SECTION 9. [EFFECTIVE JULY 1, 1998] **IC 34-4-33-15 and**



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1 **IC 34-4-45, both as added by this act, apply to a cause of action**
2 **that accrues after June 30, 1998.**

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