

House Bill 742

By: Representative Sims of the 130<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,  
2 so as to authorize, restrict, and regulate the operation of private prisons in this state; to define  
3 terms; to provide for conditions for the location of private prisons; to provide standards for  
4 the operation of such private prisons; to provide for authorization for and limitations on the  
5 use of firearms by certain personnel; to provide for duties of the Department of Corrections;  
6 to require that private prisons achieve and maintain accreditation; to provide for enforcement  
7 and remedies; to provide for the promulgation of rules and regulations; to provide for related  
8 matters; to provide for severability and construction; to provide an effective date; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
13 by adding a new Chapter 14 to read as follows:

14 "CHAPTER 14

15 42-14-1.

16 As used in this chapter, the term:

17 (1) 'Private prison' or 'prison' means any prison which is not operated by the State of  
18 Georgia or any of its political subdivisions and which is used for the incarceration of  
19 adults charged with or convicted of a crime under the laws of the State of Georgia.

20 (2) 'Private prison operator' or 'operator' means any person engaged in the operation of  
21 a private prison.

1 42-14-2.

2 No private prison may be operated in this state except in compliance with the provisions  
3 of this chapter.

4 42-14-3.

5 A private prison operator may not house within this state inmates from any other state of  
6 the United States, any political subdivision of any other state of the United States, or any  
7 jurisdiction outside the United States.

8 42-14-4.

9 Nothing in this chapter shall prohibit or affect in any manner the operation of a private  
10 prison which is operated pursuant to a contract with any agency or arm of the United States  
11 government, so long as such operation is authorized under and is in compliance with  
12 federal law and is in compliance with all applicable standards and regulations of the  
13 Federal Bureau of Prisons.

14

15 42-14-5.

16 (a) All private prisons shall meet standards for operations promulgated by the Department  
17 of Corrections which standards shall be the same as those applicable to state prisons as  
18 specified by rule or regulation of the Department of Corrections.

19 (b) A private prison operator shall attain accreditation by the American Correctional  
20 Association within three years after commencing operation of the prison and thereafter  
21 shall maintain such accreditation.

22 42-14-6.

23 A plan prescribing the procedures to be followed and the contracting parties' duties and  
24 responsibilities in the event of bankruptcy, receivership, prison shutdown, or other  
25 foreseeable contingencies shall be submitted by the private prison operator and accepted  
26 by the State of Georgia or any of its political subdivisions as a condition of entering into  
27 a contract with a private prison operator.

28 42-14-7.

29 (a) The governing authority of a municipal corporation or county of this state is authorized  
30 to contract with a private prison operator to provide for the housing, securing, care, and  
31 control of inmates within the respective local jurisdiction.

32 (b) The compensation provision of a contract between a local governing authority and a  
33 private prison operator shall not exceed the compensation agreed upon between the

1 Department of Corrections and the private prison operator for the housing, securing, care,  
2 and control of inmates.

3 42-14-8.

4 A private prison operator shall prior to commencing operation of a private prison and  
5 thereafter as specified by rules of the Department of Corrections:

6 (1) Obtain from the Department of Corrections approval of the internal and perimeter  
7 security of the prison of the private prison operator. Such approval shall be given only  
8 if the commissioner of corrections determines that the security is adequate to protect the  
9 public;

10 (2) Show, to the satisfaction of the Department of Corrections, that adequate food,  
11 housing, and medical care shall be available for inmates, that the prison will have the  
12 necessary qualified personnel to operate the prison, that the financial condition of the  
13 private prison operator is such that the prison can be operated adequately, and that the  
14 prison has the ability to comply with applicable court orders and American Correctional  
15 Association standards; and

16 (3) Furnish to the Department of Corrections satisfactory proof that the private prison  
17 operator has obtained insurance or is self-insured in such a manner and form and in such  
18 an amount as the Department of Corrections may deem necessary and adequate to  
19 reimburse this state or a political subdivision of this state for expenses arising from any  
20 incident which occurs at said prison or which requires intervention by this state or a  
21 political subdivision of this state. Such insurance, in addition, shall be in an amount  
22 sufficient to indemnify this state and its officers and employees for any liability or other  
23 loss, including property damage, judgments, costs, attorney's fees, or other expenses  
24 arising from the operation of the prison, and such prison shall in any event and regardless  
25 of the amount of insurance available indemnify and hold harmless this state and its  
26 officers and employees for any and all acts of prison inmates and all officers, employees,  
27 and stockholders of such private prison operator for any liability arising out of acts of  
28 said inmates, officers, employees, and stockholders of such private prison operator in  
29 relation to the operation of the prison. The insurance required by this paragraph shall not  
30 provide coverage for more than one prison. If the private prison operator owns or  
31 operates more than one prison, separate insurance coverage shall be obtained or provided  
32 for each prison.

33 42-14-9.

34 (a) The Department of Corrections shall have assigned to each private prison in the state  
35 a full-time monitor employed by the department who shall observe and review the

1 performance of the private prison operator and the continued compliance of the private  
2 prison operator with the provisions of this chapter and the regulations of the department.  
3 If at any time a private prison operator fails to comply with any of said provisions, the  
4 commissioner of corrections may order the private prison to cease operations. If a private  
5 prison operator fails to attain or maintain the accreditation required by subsection (b) of  
6 Code Section 42-14-3, the Department of Corrections shall order the prison to cease  
7 operations. Any order to cease operations may be enforced by injunction issued by a  
8 superior court of this state.

9 (b) Each private prison operator shall pay to the Department of Corrections an amount  
10 established by the department to compensate the department for the direct and indirect  
11 costs incurred in providing a monitor or monitors for that operator, as provided in  
12 subsection (a) of this Code section.

13 42-14-10.

14 (a) All personnel employed in a private prison shall meet standards promulgated by the  
15 Department of Corrections which shall set qualifications for initial and continued  
16 employment substantially similar to those applicable to eligibility for employment in a state  
17 prison.

18 (b) Any personnel of a private prison owned or operated by a private prison operator shall  
19 be authorized to carry and use firearms while in the performance of their official duties  
20 only in the manner provided in this subsection and only after completing training approved  
21 under rules adopted by the Department of Corrections. Private prison personnel shall only  
22 be authorized to use firearms for the following purposes:

23 (1) To prevent escape from the prison or from custody while being transported to or from  
24 the prison; or

25 (2) To prevent an act which would cause death or serious bodily injury to any person.

26 The Department of Corrections is authorized to provide training to personnel of the private  
27 prison operator, pursuant to contract. The Department of Corrections shall charge a  
28 reasonable fee for the training, not to exceed the cost of such training. The provisions of  
29 this subsection shall not be construed to confer peace officer status upon any employee of  
30 the private prison operator or to authorize the use of firearms, except as provided in this  
31 subsection.

32 (c) If an inmate escapes from the prison, or in the event of any riot or other serious  
33 disturbance, personnel from the prison immediately shall inform the Department of Public  
34 Safety, the county sheriff, and, if the prison is located within the boundaries of a  
35 municipality, the police department of the municipality. Any emergency response provided  
36 by any state or local law enforcement agency shall be at the sole expense of the private

1 prison operator. Each responding agency shall submit a written invoice detailing costs  
2 incurred which shall be paid within 30 days of receipt by the private prison operator.

3 (d) A private prison operator housing federal inmates shall not accept any maximum  
4 security level inmate.

5 (e) Any offense which would be a crime if committed within a state correctional institution  
6 of this state shall be a crime if committed in a prison owned or operated by a private prison  
7 operator.

8 42-14-11.

9 (a) If an inmate is to be released or discharged from incarceration, is released or  
10 discharged by any court order, is to be placed on probation, or is paroled, or if the federal  
11 government requests transfer or the return of the inmate, the private prison operator  
12 immediately shall transfer or return the inmate to the closest federal prison or to the federal  
13 authority of the state in which federal custody over the inmate originated.

14 (b) A private prison operator shall not allow any inmate to leave the premises of the  
15 prison, except to comply with an order to appear in a court of competent jurisdiction or to  
16 receive medical care not available at the prison.

17 (c) A private prison operator shall be responsible for the reimbursement of all reasonable  
18 costs and expenses incurred by this state or a political subdivision of this state for legal  
19 actions brought in this state by or on behalf of any inmate incarcerated in the prison,  
20 including court costs, sheriff mileage fees, witness fees, district attorney expenses,  
21 expenses of the office of Attorney General, indigent or public defender fees and costs,  
22 judicial expenses, court reporter expenses, and any other costs, fees, or expenses associated  
23 with the proceedings or actions.

24 (d) The State of Georgia shall not assume jurisdiction or custody of any federal inmate  
25 housed in a private prison owned or operated by a private prison operator. Federal inmates  
26 shall at all times be subject to federal jurisdiction. This state shall not be liable for loss  
27 resulting from the acts of such inmates nor shall this state be liable for any injuries to the  
28 inmates.

29 42-12-12.

30 As a solution to a problem of a prison overcrowding in this state, the Department of  
31 Corrections shall give priority in consideration to contracting with a private prison operator  
32 over construction of new prison facilities.

1 42-14-13.

2 No private prison operator shall enter into an employment contract with an employee or  
3 official of this state for services as a lobbyist, a consultant, or any similar professional  
4 position. A violation of this Code section shall constitute a misdemeanor of a high and  
5 aggravated nature and shall, upon conviction, be punished by a fine of not less than  
6 \$5,000.00 and by 12 months' imprisonment.

7 42-14-14.

8 The Department of Corrections shall promulgate and adopt rules for the implementation  
9 of this chapter."

10

## **SECTION 2.**

11 (a) In the event any part of this Act is declared or adjudged to be invalid or unconstitutional,  
12 such declaration or adjudication shall not affect the remaining portions of this Act, which  
13 shall remain of full force and effect. The General Assembly declares that it would have  
14 enacted the remaining parts of this Act if it had known that such portion thereof would be  
15 declared or adjudged invalid or unconstitutional.

16 (b) In the event any provision of federal law supersedes or makes unenforceable any part of  
17 this Act, such event shall not affect the remaining portions of this Act, which shall remain  
18 of full force and effect. The General Assembly declares that it would have enacted the  
19 remaining parts of this Act if it had known that such portion thereof would be superseded or  
20 made unenforceable.

21

## **SECTION 3.**

22 This Act shall become effective on July 1, 2003.

23

## **SECTION 4.**

24 All laws and parts of laws in conflict with this Act are repealed.