

107TH CONGRESS
1ST SESSION

S. 842

To ensure that the incarceration of inmates is not provided by private contractors or vendors and that persons charged or convicted of an offense against the United States shall be housed in facilities managed and maintained by Federal, State, or local governments.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2001

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure that the incarceration of inmates is not provided by private contractors or vendors and that persons charged or convicted of an offense against the United States shall be housed in facilities managed and maintained by Federal, State, or local governments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Safety Act”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

1 (1) The issues of safety, liability, accountability,
2 and cost are the paramount issues in running cor-
3 rections facilities.

4 (2) In recent years, the privatization of facili-
5 ties for persons previously incarcerated by govern-
6 mental entities has resulted in frequent escapes by
7 violent criminals, riots resulting in extensive dam-
8 age, prisoner violence, and incidents of prisoner
9 abuse by staff.

10 (3) In some instances, the courts have prohib-
11 ited the transfer of additional convicts to private
12 prisons because of the danger to prisoners and the
13 community.

14 (4) Frequent escapes and riots at private facili-
15 ties result in expensive law enforcement costs for
16 State and local governments.

17 (5) The need to make profits creates incentives
18 for private contractors to underfund mechanisms
19 that provide for the security of the facility and the
20 safety of the inmates, corrections staff, and neigh-
21 boring community.

22 (6) The 1997 Supreme Court ruling in Richard-
23 son v. McKnight that the qualified immunity that
24 shields State and local correctional officers does not
25 apply to private prison personnel, and therefore ex-

1 poses State and local governments to liability for the
2 actions of private corporations.

3 (7) Additional liability issues arise when in-
4 mates are transferred outside the jurisdiction of the
5 contracting State.

6 (8) Studies on private correctional facilities
7 have been unable to demonstrate any significant cost
8 savings in the privatization of corrections facilities.

9 (9) The imposition of punishment on errant
10 citizens through incarceration requires State and
11 local governments to exercise their coercive police
12 powers over individuals. These powers, including the
13 authority to use force over a private citizen, should
14 not be delegated to another private party.

15 **SEC. 3. ELIGIBILITY FOR GRANTS.**

16 (a) IN GENERAL.—To be eligible to receive a grant
17 under subtitle A of title II of the Violent Crime Control
18 and Law Enforcement Act of 1994, an applicant shall pro-
19 vide assurances to the Attorney General that if selected
20 to receive funds under such subtitle the applicant shall not
21 contract with a private contractor or vendor to provide
22 core correctional services related to the incarceration of
23 an inmate.

1 (b) EFFECTIVE DATE.—Subsection (a) shall apply to
2 grant funds received after the date of enactment of this
3 Act.

4 (c) EFFECT ON EXISTING CONTRACTS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), subsection (a) shall not apply to a con-
7 tract in effect on the date of the enactment of this
8 Act between a grantee and a private contractor or
9 vendor to provide core correctional services related
10 to correctional facilities or the incarceration of in-
11 mates.

12 (2) RENEWALS AND EXTENSIONS.—Subsection
13 (a) shall apply to renewals or extensions of an exist-
14 ing contract entered into after the date of the enact-
15 ment of this Act.

16 (d) DEFINITION.—For purposes of this section, the
17 term “core correctional service” means the housing, safe-
18 guarding, protecting, and disciplining of persons charged
19 or convicted of an offense.

20 **SEC. 4. ENHANCING PUBLIC SAFETY AND SECURITY IN THE**
21 **DUTIES OF THE BUREAU OF PRISONS.**

22 Section 4042(a) of title 18, United States Code, is
23 amended—

24 (1) by redesignating paragraph (5) as para-
25 graph (7);

1 (2) by striking “and” at the end of paragraph
2 (4); and

3 (3) by inserting after paragraph (4) the fol-
4 lowing:

5 “(5) provide that any penal or correctional fa-
6 cility or institution except for nonprofit community
7 correctional confinement, such as halfway houses,
8 confining any person convicted of offenses against
9 the United States, shall be under the direction of the
10 Director of the Bureau of Prisons and shall be man-
11 aged and maintained by employees of Federal, State,
12 or local governments;

13 “(6) provide that the housing, safeguarding,
14 protection, and disciplining of any person charged
15 with or convicted of any offense against the United
16 States, except such persons in community correc-
17 tional confinement such as halfway houses, will be
18 conducted and carried out by individuals who are
19 employees of Federal, State, or local governments;
20 and”.

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