

6. If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to this section which are inconsistent with the provisions of this section, the state department of education shall adopt rules to comply with the requirements of the federal rules or regulations.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 20, 1998

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## CHAPTER 1131

### TRANSPORTATION OF PRISONERS AND SHARING HABILITATIVE SERVICES AND TREATMENT RESOURCES FOR OFFENDERS

S.F. 2331

**AN ACT** relating to agreements for the provision of services, by excluding persons who provide transportation of prisoners from statutory requirements pertaining to private investigators or security agents and the carrying of weapons, and providing for the sharing of certain habilitative and treatment resources by the department of corrections with the department of human services and providing for certain contractual requirements and the adoption of rules by the department of corrections.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 80A.2, Code 1997, is amended by adding the following new subsection:

**NEW SUBSECTION.** 9. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

Sec. 2. **NEW SECTION.** 356.50 PRIVATE TRANSPORTATION OF PRISONERS.

If a county sheriff contracts with a private person or entity for the transportation of prisoners to or from a county jail, the contract shall include provisions which require the following:

1. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

a. A felony.

b. Within the three-year period immediately preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

c. Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

d. A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

2. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

3. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

4. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

5. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

Sec. 3. Section 724.4, subsection 4, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

Sec. 4. Section 904.108, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, "habilitative services and treatment" means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to utilize mental health institutions and share staff and resources for purposes of providing habilitative and treatment services, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative and treatment services shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative and treatment services, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

Sec. 5. NEW SECTION. 904.320 PRIVATE TRANSPORTATION OF PRISONERS.

1. If the director contracts with a private person or entity for the transportation of inmates to or from an institution, the contract shall include provisions which require the following:

a. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

(1) A felony.

(2) Within the three-year period immediately preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

(3) Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

(4) A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

b. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

c. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

d. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

e. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

2. The department shall adopt rules pertaining to contracts with private persons or entities providing transportation of inmates of institutions under the control of the department.

Approved April 21, 1998

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## CHAPTER 1132

### PAYMENT OF COSTS OF POSTCONVICTION PROCEEDINGS

S.F. 2339

**AN ACT** relating to an inmate's right to counsel in a postconviction proceeding pertaining to a forfeiture of a reduction in sentence or the unlawful holding of a person in custody or restraint.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 822.5, Code 1997, is amended to read as follows:

822.5 PAYMENT OF COSTS.

1. If the applicant is unable to pay court costs and ~~expenses of legal representation, including stenographic, and printing, or other legal services or consultation expenses~~, these costs and expenses shall be made available to the applicant ~~in the preparation of the application, in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsections 5 and 6, the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay.~~ However, nothing in this section shall be interpreted to require payment of expenses of legal representation, including stenographic, printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

2. ~~If an applicant confined in a state institution seeks relief under section 822.2, subsection 6, and the court finds in favor of the applicant, or when relief is denied and costs and expenses referred to in subsection 1 cannot be collected from the applicant, these costs and expenses initially shall be paid by the county in which the application was filed. The facts of payment and the proceedings on which it is based, with a statement of the amount of costs and expenses incurred, shall be submitted to the county in a timely manner with approval in writing by the presiding or district judge appended to the statement or endorsed on it, and shall be certified by the clerk of the district court under seal to the state executive council. The executive council shall review the proceedings and authorize reimbursement for the~~