Prepared by the North Dakota Legislative Council
staff for the Criminal Justice Committee
December 1999

INTERSTATE TRANSPORTING OF PRISONERS - STATUTES OF OTHER STATES

This memorandum summarizes the statutes of several states regarding the transporting of prisoners between states. The states' statutes included in the memorandum are Colorado, Iowa, and Florida. In addition, a bill relating to the issue was introduced in the United States Senate late in 1999. That bill is also discussed in this memorandum.

STATUTES OF OTHER STATES

Colorado

Colorado Revised Statutes Section 16-3-107.5 (Appendix A) provides for the transportation of prisoners. The legislative history for this statute, which was passed in 1998, indicates that the legislation was introduced in response to a prisoner escape that occurred in Colorado. According to the testimony, a private transport company was transporting a van of eight inmates when one inmate seized a gun from a guard and was able to escape. Under Section 16-3-107.5, a prisoner being transported by a contracting entity must be, at a minimum, shackled and placed in a transport belt or chains with handcuffs and must be under the observation of at least one supervising individual who must remain awake. The statute also provides the conditions under which a prisoner being transported by a contracting entity must be transported. According to the statute, the prisoner must have attire appropriate for the season; at least once every 24 hours the prisoner must be housed unshackled in a cell at a secure facility for not less than six hours; and during that time must be permitted to shower and sleep. The statute also requires that whenever a vehicle transporting prisoners stops for more than two hours, the supervising individual must promptly notify local law enforcement and all prisoners must be housed in a secure facility. In addition, if the vehicle transporting prisoners enters the state of Colorado, the supervising individual must promptly notify the Colorado Bureau of Investigation of the number of prisoners and the locations within the state where the vehicle is scheduled to stop. The statute makes it a misdemeanor for a violation of the section. Finally, the section provides that if any prisoner escapes during transport due to the negligence of the contracting entity or a supervising individual, the contracting entity is liable for all actual costs incurred by any governmental entity in recapturing the escaped prisoner and all actual damages caused by the escaped prisoner while at large.

Iowa

Iowa Code Section 904.320 (Appendix B) provides for the private transportation of prisoners. The statute, which was also passed in 1998, includes the requirements for a contract with a private person or entity for the transportation of prisoners. The section provides that the persons who transport the prisoners may not have been convicted of:

- A felony;
- Within the three preceding years, a violation of motor vehicle laws for which the penalty is a serious misdemeanor or greater offense;
- Domestic abuse assault in which bodily injury was inflicted; or
- A crime involving the illegal manufacture, use, possession, or sale of alcohol or a controlled substance.

The statute also contains the training requirements for the persons who transport prisoners, including training and proficiency in the safe use of firearms and appropriate transportation procedures. Finally, the statute requires the Corrections Department to adopt rules pertaining to contracts with private persons or entities providing transportation of prisoners.

Florida

A Florida statute regarding the transportation of prisoners by private transport companies was passed in 1997. The statute, Florida Statutes Section 944.597 (Appendix C), authorizes the state's Department of Corrections to contract with private transport companies for the transportation of the state's prisoners both within and outside the state. The statute further provides that the transport company is to be considered an independent contractor and is solely liable for the prisoner while the prisoner is in the custody of the company. The statute also provides that the contract with the company is to contain the following requirements:

- The transport company must carry adequate liability coverage with respect to the transportation of prisoners;
- The transport company's personnel must meet the minimum standards for law enforcement or correctional officers in Florida;
- The transport company must adhere to standards that provide for humane treatment of prisoners while in the company's custody; and
- The transport company must submit reports to the department regarding incidents of escape, use of force, and accidents involving prisoners in the company's custody.

The Florida statute requires the transport company and its employees to possess certain private investigative and private security licenses. Finally, the statute requires the Department of Corrections to advertise for and receive competitive bids for the transportation of prisoners and to award the contract to the lowest and best bidder.

PENDING FEDERAL LEGISLATION

On November 9, 1999, Senators Dorgan, Ashcroft, and Leahy introduced S.1898 (Appendix D) in the United States Senate. The bill, known as the "Interstate Transportation of Dangerous Criminals Act of 1999" or "Jeanna's Act," is intended to "provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners." The bill provides that the Attorney General is to adopt regulations relating to the transportation of violent prisoners in or affecting interstate commerce. The bill provides that the regulations must include minimum standards for persons involved in the transporting of prisoners including:

- Background checks and preemployment drug testing for potential employees;
- Minimum standards for factors that disqualify employees similar to standards required of federal correction officers;
- Minimum standards for the length and type of training that employees must undergo before they can perform this service;
- Restrictions on the number of hours that employees can be on duty during a given time period;
- Minimum standards for the number of personnel that must supervise violent prisoners;
- Minimum standards for employee uniforms and identification;
- Standards requiring that violent prisoners wear brightly colored clothing clearly identifying them as prisoners;
- Minimum requirements for restraints used when transporting violent offenders;
- Notification of local law enforcement of stops within their jurisdiction;
- Minimum standards for the markings on conveyance vehicles;
- Notification requirements upon the escape of a prisoner;
- Minimum standards for the safety of violent prisoners; and
- Any other requirement the Attorney General deems necessary to prevent the escape of violent prisoners and to ensure public safety.

The bill provides for a civil penalty of $10,000 plus the costs of prosecution for each violation of the regulations. The bill has been referred to the Senate Committee on the Judiciary.

ATTACH:4

16-3-107.5 - Transportation of prisoners.

(1) As used in this section, unless the context otherwise requires:

(a) "**Contracting entity**" means any person or **entity contracting** with this state, another state, or a political subdivision of this or another state to transport a **prisoner**; except that "**contracting entity**" shall not include the department of corrections, any community corrections program operated pursuant to this title, or a county sheriff of a county located within the state of **Colorado**.

(b) "**Prisoner**" means any person convicted of an offense in **Colorado** or any other state or any person under arrest for suspicion of the commission of a crime in **Colorado** or any other state.

(c) "Secure facility" means a county, city and county, or municipal jail or a nonstate-owned prison facility, as defined in section 17-24-125 (1) (b), C.R.S.

(d) "Supervising individual" means a person employed by a **contracting entity** to transport **prisoners** from one location to another.

(e) "Transport" means to move a **prisoner** within, into, out of, or through the state of **Colorado**.

(2) (a) A supervising individual in each vehicle in which one or more **prisoners** are being transported by a **contracting entity** shall maintain a log book that documents for each **prisoner**:

(I) His or her name, date of birth, social security number, and any prescribed medication;

(II) The name of the jurisdictional authority authorizing the transportation, the date and time that the **prisoner** was first picked up, and the date and time that the **prisoner** was released to the jurisdictional authority;

(III) The date, time, length, and purpose of any stop made by the vehicle transporting any **prisoner**; and

(IV) Information concerning any injuries suffered by the **prisoner** while being transported.

(b) Upon request, a supervising individual shall surrender for inspection the log book required by paragraph (a) of this subsection (2) to any federal, state, county, or municipal law enforcement officer.

(3) Whenever a **prisoner** is transported by a **contracting entity**, the **prisoner**:

(a) At a minimum, shall be shackled and placed in a transport belt or chains with handcuffs

and shall be under the observation of at least one supervising individual who shall remain awake;

(b) Shall wear a seat belt;

(c) Shall not be shackled to another **prisoner**; and

(d) Shall have available in the vehicle in which the **prisoner** is being transported appropriate attire for the season, including footwear.

(4) (a) At least once every twenty-four hours that a **prisoner** is being transported by a **contracting entity**, the **prisoner** shall be housed unshackled in a cell at a secure facility for a period of not less than six hours and permitted to shower and sleep.

(b) The **contracting entity** or the supervising individual shall, if practicable, notify the chief law enforcement officer in charge of the secure facility in which the **prisoner** is to be housed, at least twenty-four hours prior to the delivery of the **prisoner** to the secure facility, of each **prisoner**'s name, date of birth, criminal history, and any special medical needs.

(5) Whenever a vehicle transporting one or more **prisoners** for a **contracting entity** stops for more than two hours for any reason:

(a) The supervising individual shall promptly notify, if practicable, the law enforcement agency of the local jurisdiction in which the vehicle is stopped; and

(b) All **prisoners** shall be housed in a secure facility unless, according to the chief law enforcement officer of the secure facility, it would be impractical to do so.

(6) Whenever a vehicle transporting **prisoners** for a **contracting entity** enters the state, a supervising individual shall promptly notify the **Colorado** bureau of investigation of the number of **prisoners** and the location or locations within the state where the vehicle is scheduled to stop.

(7) Whenever a **prisoner** is housed in a secure facility, the **contracting entity** shall pay to the operator of the secure facility providing the housing the actual cost of housing the **prisoner**.

(8) Any individual or **entity** who violates any provision of subsections (2) to (5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars.

(9) If any **prisoner** being transported escapes due to the negligence of the **contracting entity** or a supervising individual, the **contracting entity** shall be held liable for all actual costs incurred by any governmental **entity** in recapturing the escaped **prisoner** and all actual damages caused by the escaped **prisoner** while at large.

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.

Section History: Recent form

98 Acts, ch 1131, §5

Previous Section 904.319

Next Section 904.401

The 1999 Florida Statutes

944.597 Transportation and return of prisoners by private transport company.--

(1) The department is authorized to contract with private transport companies for the transportation of prisoners both within and beyond the limits of this state. Each prisoner shall be taken into custody by the transport company for the purpose of transportation and then delivered by the same transport company to the proper law enforcement official upon arriving at the point of destination. Any private transport company transporting a prisoner pursuant to this section shall be considered an independent contractor and shall be solely liable for the prisoner while she or he is in the custody of such company.

(2) The department shall include, but shall not be limited to, the following requirements in any contract with any transport company:

(a) That the transport company shall maintain adequate liability coverage with respect to the transportation of prisoners;

(b) That personnel employed with the transport company who are based in the state shall meet the minimum standards in accordance with s. 943.13 and that personnel employed with the transport company based outside of Florida shall meet the minimum standards for a correctional officer or law enforcement officer in the state where the employee is based;

(c) That the transport company shall adhere to standards which provide for humane treatment of prisoners while in the custody of the transport company;

(d) That the transport company shall submit reports to the department regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

(3) Any company providing transport of inmates, pursuant to this section shall hold a Class "B" license pursuant to chapter 493, and any employee of such a company shall hold a Class "D" and Class "G" license pursuant to chapter 493.

(4) The department shall advertise for and receive competitive bids for the transportation of prisoners and award the contract to the lowest and best bidder.

History.--s. 7, ch. 85-340; s. 1656, ch. 97-102.

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Jeanna's Act (Introduced in the Senate)

S 1898 IS

106th CONGRESS

1st Session

S. 1898

To provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners.

IN THE SENATE OF THE UNITED STATES

November 9, 1999

Mr. DORGAN (for himself, Mr. ASHCROFT, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Interstate Transportation of Dangerous Criminals Act of 1999' or `Jeanna's Act'.

SEC. 2. FINDINGS.

Congress finds that--

(1) increasingly, States are turning to private prisoner transport companies as an alternative to their own personnel or the United States Marshals Service when transporting violent prisoners;

(2) often times, these trips can last for days if not weeks, as violent prisoners are dropped off and picked up at a network of hubs across the country;

(3) escapes by violent prisoners during transport by private prisoner transport companies have not been uncommon; and

(4) oversight by the Attorney General is required to address these problems.

SEC. 3. DEFINITIONS.

In this Act:

(1) CRIME OF VIOLENCE- The term `crime of violence' has the same meaning as provided in section 924(c)(3) of title 18, United States Code.

(2) DRUG TRAFFICKING CRIME- The term `drug trafficking crime' has the same meaning as provided in section 924(c)(2) of title 18, United States Code.

(3) PRIVATE PRISONER TRANSPORT COMPANY- The term `private prisoner transport company' means any entity other than the United States, a State or the inferior political subdivisions of a State which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of the inferior political subdivisions of a State, or any attempt thereof.

(4) VIOLENT PRISONER- The term `violent prisoner' means any individual in the custody of a State or the inferior political subdivisions of a State who has previously been convicted of or is currently charged with a crime of violence, a drug trafficking crime, or a violation of the Gun Control Act of 1968, or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

SEC. 4. FEDERAL REGULATION OF PRISONER TRANSPORT COMPANIES.

(a) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.

(b) STANDARDS AND REQUIREMENTS- The regulations shall include, at a minimum--

(1) minimum standards for background checks and preemployment drug testing for potential employees;

(2) minimum standards for factors that disqualify employees or potential employees similar to standards required of Federal correction officers;

(3) minimum standards for the length and type of training that employees must undergo before they can perform this service;

(4) restrictions on the number of hours that employees can be on duty during a given time period;

(5) minimum standards for the number of personnel that must supervise violent prisoners;

(6) minimum standards for employee uniforms and identification, when appropriate;

(7) standards requiring that violent prisoners wear brightly colored clothing clearly identifying them as prisoners, when appropriate;

(8) minimum requirements for the restraints that must be used when transporting violent prisoners, to include leg shackles and double-locked handcuffs, when appropriate;

(9) a requirement that when transporting violent prisoners, private prisoner transport companies notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction and that if unscheduled stops are made, local law enforcement should be notified in a timely manner, when appropriate;

(10) minimum standards for the markings on conveyance vehicles, when appropriate;

(11) a requirement that in the event of an escape by a violent prisoner, private prisoner transport company officials shall immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, and the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner;

(12) minimum standards for the safety of violent prisoners; and

(13) any other requirement the Attorney General deems to be necessary to prevent escape of violent prisoners and ensure public safety.

(c) FEDERAL STANDARDS- Except for the requirements of subsection (b)(7), the regulations promulgated under this Act shall not provide stricter standards with respect to private prisoner transport companies than are applicable to Federal prisoner transport entities.

SEC. 5. ENFORCEMENT.

Any person who is found in violation of the regulations established by this Act shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation and, in addition, to the United States for the costs of prosecution. In addition, such person shall make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, which expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of regulations promulgated pursuant to section 4(a).