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Research in Brief

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# The Private Sector and Prison Industries

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## I. The background

Private enterprise is no stranger to the American prison. When the United States replaced corporal punishment

with confinement as the primary punishment for criminals in the early 19th century, the private sector was the most frequent employer of convict labor. Prisoners were typically either

leased to private companies that set up shop in the prison, or were used by prison officials to produce finished goods for a manufacturer who supplied the raw materials to the prison.

From the Director

The expenditure of public funds on prison costs has increased 400 percent in the past 15 years. The escalating costs of maintaining a largely idle prison population are a serious concern to both policymakers and the public. Instead of paying their "debt" to society, prisoners are adding to the debt of each American by consuming tax dollars without offsetting the expense of their incarceration, which this year alone averages \$20,000 per inmate.

Will these costs continue their dramatic spiral upward or is it possible to defray some of this expense? The concept of prison industries managed or operated by the private sector holds the promise of productive jobs for prisoners. Actual wages earned through profits would allow working prisoners to contribute toward the cost of their imprisonment, make restitution to victims of their crimes, and help support their families while they serve their sentence.

The Chief Justice of the United States, Warren E. Burger, has long championed the concept of "factories with fences" rather than "warehouses with walls" as the model for correctional institutions. Not only does the concept of "factories with fences" offer a means of lowering maintenance costs, but it can provide opportunities for more efficient operation of prisons, at the same time introducing prisoners to job skills.

As part of its focus on policy-relevant research, the National Institute of Justice commissioned Criminal Justice Associates (CJA) to conduct a national survey and identify elements conducive to private sector involvement in prison industry. This *Research in Brief* describes what the CJA survey found.

The results of the survey show there is strong interest on the part of corrections administrators, governors, and legislators in this issue. Paralleling their strong interest is continued growth in the number and variety of private sector work programs, with participants ranging from small proprietorships to multinational corporations.

Since 1980, private sector involvement in prison industries has been growing. More than half the States have now adopted legislation to provide for some form of private sector involvement in their prison work programs. The Justice Assistance Act of 1984 increased the accessibility to interstate markets necessary for the success of prison industries managed or operated by private business.

This *Research in Brief* outlines several examples of how private firms are participating in prison industries. In addition to these practical examples, the *Brief* offers recommendations that corrections officials should consider in planning for private sector prison industry programs. It also outlines key

issues that private businesses should consider in moving toward development of such programs.

Private sector involvement with prison industry still needs to be assessed at several levels. Both State and Federal administrators need to examine proposals for enabling legislation. In fact, private sector employment, contracting, and open market sales are specifically addressed by some States in their legislation and not at all by others.

Private industry should be fully aware of the real costs of operating in prisons, with high worker turnover and a lack of experience and skills on the part of inmates.

The overall objectives of business and prisons are basically different. Yet, through careful planning and negotiation of key issues such as security and production, those goals can coalesce to create a workplace environment operating at a profit for business while offsetting prison costs and providing work experience for inmates.

The momentum for change in prison industries is growing. The National Institute of Justice is committed to identifying and assessing new trends in corrections to help policymakers and practitioners as they choose the course for the future in this important area of criminal justice.

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The former arrangement was called the "contract system," while the latter came to be known as the "piece-price" system. In both instances, a private company paid for the use of prison labor through a fee, which was used to partially offset the expense of operating the prison. Blatant exploitation of prisoners often developed as a consequence of these systems, since neither correctional officials nor private contractors were especially concerned with the convicts' well-being.

Opposition to the use of prison labor from rival manufacturers and from the growing organized labor movement began to emerge in the latter part of the 19th century, as more and more prisoners were put to work for the private sector. This opposition reached its peak during the Great Depression, when Congress passed a series of laws designed to prohibit the movement of prison-made goods in interstate commerce, thus ensuring that prison-made goods would not compete with products made by free world labor.

Many State Legislatures forbade the open market sale or importation of prison-made goods within their borders, effectively barring the private sector from the prison. As a result, prison-based manufacturing operations became State-owned and operated businesses, selling goods in a highly restricted market.

This situation continued well into the 1970's, when a shift in thinking about prison industries began to occur. Viewed for many years as rehabilitative programs designed to teach prisoners specific vocational skills, prison industries now began to be seen by public officials as a way to generate revenue for the State, while combating the ever-growing problem of prisoner idleness.

This redefinition led to renewed interest in the business aspects of prison industries. That interest has in turn led to a rethinking of the private sector's potential role in the operation of prison industries.

By 1980, many States had replaced restrictive legislation that barred the private sector from using prison labor with legislation that encouraged the private sector to participate in prison

industries. The Federal Government likewise modified its stance on the use of prison labor by the private sector, creating a Federal pilot program designed to test the feasibility of private sector involvement in prison industries.

Under this program, both the "contract" and the "piece-price" systems of convict labor have been recreated in modified form, accompanied by strong safeguards to protect the interests of competitors, free labor, and the prisoner workers themselves.

Since 1980, there has been a significant increase in the private sector's involvement in prison industries. In 1983, the National Institute of Justice commissioned Criminal Justice Associates (CJA) to survey and assess this development.<sup>1</sup>

This paper is based on the findings of that national survey. The survey identified the following conditions as being important in creating a climate favorable to private sector involvement in prison industries:

- interest of correctional administrators and elected public officials;
- willingness of private companies to become involved with a prison;
- availability of prison labor; and
- legislation authorizing private sector involvement.

The study found that, to at least some extent, all of these conditions have now been met by several projects. Specifically, the survey found that:

- There is a strong interest on the part of correctional administrators, governors, and State legislators in the concept of private sector employment of prisoners.
- As of January 1985, there were 26 projects in which the private sector was involved with State-level prison industries. There has been a gradual growth in the number of such projects, beginning in 1976 and continuing until 1980, when a marked increase occurred at a rate that continues to grow today.

1. Criminal Justice Associates, *Private Sector Involvement in Prison-Based Businesses: A National Assessment*, forthcoming 1985. For information, call 800-851-3420 (from Washington, D.C., area and Maryland, call 301-251-5500.

• With the crowding and idleness problems currently plaguing prisons, there is no question that prison labor is available for employment.

• Over the past 10 years, almost half of the States have adopted legislation calling for some form of private sector involvement in their prison work programs. The Federal Government likewise has relaxed some of the barriers to this type of activity: In 1984, legislation was passed authorizing up to 20 projects to sell goods in interstate commerce, providing that certain safeguards are in place.<sup>2</sup> These safeguards include consultation with labor unions before initiating a project and assurance that projects will not displace employed workers or create a labor glut in a skill or trade area.

From analysis of the above and other factors, the CJA study concluded that private sector involvement in the employment of prisoners is a trend in the making.

## II. Models for private sector involvement

There are several possible relationships the private sector may have with a prison industry. Six basic models were formulated to represent possible roles that the private sector might play in influencing the operation of a prison industry:

### 1. The employer model

The private sector owns and operates a business that uses inmate labor to produce goods or services. The business has control of the hiring, firing, and supervision of the inmate labor force.

### 2. The investor model

The private sector capitalizes, or invests in, a business operated by a State correctional agency, but has no other role in the business.

### 3. The customer model

The private sector purchases a significant portion of the output of a State-owned and operated business, but has no other role in the business.

2. The Justice Assistance Act of 1984 (P.L. 98-473, Sec. 819).

#### 4. *The manager model*

The private sector manages a business owned by a correctional agency, but has no other role in the business.

These four models are "pure" types in that they correspond directly to specific roles.

It is also possible for the private sector to play a *combination* of roles in relation to a prison industry. Examination of possible role combinations reveals two "hybrid" models:

#### 5. *The joint venture model*

The private sector manages or helps to manage a business in which it has jointly invested with a correctional agency.

#### 6. *The controlling customer model*

The private sector is the dominant customer of a business that it owns or has helped to capitalize and which it may help to operate. In this role, control of the business by the private sector customer is much more extensive than is the case in the previously defined customer model.

The roles the private sector plays in each model are important because they involve both operational and economic relationships: the private sector both influences the way the business operates and derives direct economic benefit from the influence.

### Examples of the models

#### *The employer model*

Best Western International, headquartered in Phoenix, needed a readily available work force to process phone calls for reservations during peak-call periods, and also needed trained reservation agents who were willing to work on holidays and weekends. In August 1981, Best Western established a telephone reservation center inside the nearby Arizona Correctional Institution for Women in Phoenix, and began hiring female prisoners.

Because of the prison's proximity to Best Western headquarters, the firm was able to install trunk lines at a reasonable cost and take advantage of a willing work force. Best Western currently employs 12 to 35 women prisoners full-time.

The operation is supervised by a Best Western manager and two supervisors. The women employees are paid the same rate as other reservation agents at Best Western. A similar industry operated by Howard Johnson's, Inc., is located inside a women's prison in Oklahoma.

#### *The investor model*

The Wahlers Company, a Phoenix-based manufacturer of office furniture, has invested in a furniture plant that is owned and operated by ARCOR (Arizona Correctional Industries) in the Arizona Correctional Facility at Perryville. Wahlers provided the plant's equipment in exchange for a share of the plant's financial returns; ARCOR built the plant. Fifteen male prisoners are employed in the plant, which produces office partitions, computer tables, and other office furniture. The products are marketed in both the State-use and open markets within Arizona.

#### *The customer model*

The Utah Printing and Graphics Shop, which employs 30 workers in the State Prison at Draper, is operated by Utah Correctional Industries and sells to both the public and private sectors. However, because a significant portion of the shop's output (more than 40 percent) is purchased by the private sector, the marketplace has influenced the shop to operate like a private sector shop.

The two principal private sector companies involved—Walker Safety Sign Company and Pace Industries—buy signs from the shop for resale to customers throughout the Northwest. The shop also provides printing services to various small private sector firms.

#### *The controlling customer model*

The electrical/mechanical assembly shop operated by Minnesota Correctional Industries in the State Prison at Stillwater employs 100 male prisoners in the assembly of disk drives and wiring harnesses for Magnetic Peripherals, Inc., a subsidiary of Control Data Corporation.

Supervisors in the shop are employees of Minnesota Correctional Industries. Control Data Corporation (CDC) is

the sole customer. CDC provided technical assistance to the Department of Corrections in plant layout and also trained the supervisors. CDC also provides production schedules and quality control standards.

#### *The manager model*

There is no existing example of the manager model. In this model, the State would replace civil service employees with an outside professional team, usually to take advantage of management and technical expertise not typically available through the civil service. A form of this model was implemented in the 1970's by the Connecticut Department of Corrections, when it contracted with the Hartford Economic Development Corporation to manage the State's correctional industry program. The contract was not renewed at the expiration of its initial period, but the reasons were unrelated to the merits of the model.

PRIDE Inc., which operates all prison industries in Florida, resembles the manager model in some respects; however, because it employs the prisoner workers and controls the assets of prison industries, it is more readily classified as an example of the employer model.

#### *The joint venture model*

No current examples exist of the joint venture model either. In this model, a prison industry is jointly owned and operated by a private firm and a State correctional agency that have entered into a partnership sharing financial risks and rewards and management responsibilities.

The Wahlers project mentioned above was initiated as a joint venture (Wahlers initially placed a full-time supervisor in the plant). Wahlers has since terminated its involvement in the plant's management because of limited return from that aspect of the project, and now acts solely as an investor in the business.

### III. The role of State and Federal laws

Federal and State laws dramatically influence the policy, procedural, and organizational frameworks within which private sector involvement in prison industries can occur.

The *State* statutes underlying and supporting private sector interaction with prison industries are in many respects more complex than those authorizing traditional State-use prison industries, and a number of new legal questions have been raised by the entry of the private sector into prison industries. Among the more important questions are the following:

- What forms may the relationship between a prison industry and the private sector take?

- Who may act as the employer of prisoners? Can prisoners be employees?
- What are the rights of prisoner workers with respect to wages, benefits, and the various legal protections provided to workers generally?
- To what extent are markets regulated by Federal and State law?
- What protections exist for competitors and labor outside the prison?

Table 1 depicts how State laws address these questions, within the framework of 12 key operational issues for private sector involvement in prison industries.

An analysis of legislative activity in the States reveals several different patterns. As is evident from Table 1, there are States that are silent on almost all of the issues identified as relevant to private sector involvement in prison industries. Two States have

Table 1 Prison industry statute analysis

| States        | Issues                               |                                       |                              |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | States        |
|---------------|--------------------------------------|---------------------------------------|------------------------------|------------------------------------------|------------------------------------------|--------------------------------------|----------------------------------|---------------------------------|------------------------------------------------|------------------------------------|----------------------------|----------------------------------------|---------------|
|               | Private sector employment authorized | Private sector contracting authorized | Open market sales authorized | Incentives for private sector authorized | Prevailing and/or minimum wages mandated | Unemployment Compensation authorized | Workers' Compensation authorized | Prisoner voluntarism authorized | Prisoner's impact on free world labor mandated | Rent / lease of property addressed | Wage deductions authorized | Employee status of prisoners addressed |               |
| Alabama       |                                      |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Alabama       |
| Alaska        |                                      | Yes                                   | Yes                          |                                          |                                          |                                      | No                               | Yes                             | Yes                                            |                                    | Yes                        | Yes                                    | Alaska        |
| Arizona       | Yes                                  | Yes                                   | Yes                          |                                          | Yes                                      |                                      |                                  |                                 |                                                | Yes                                | Yes                        |                                        | Arizona       |
| Arkansas      |                                      |                                       |                              |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Arkansas      |
| California    | No                                   | No                                    | No                           |                                          | Yes                                      | Yes                                  |                                  |                                 |                                                |                                    |                            |                                        | California    |
| Colorado      | Yes                                  | Yes                                   |                              |                                          |                                          |                                      |                                  |                                 |                                                | Yes                                |                            |                                        | Colorado      |
| Connecticut   |                                      | Yes                                   | No                           |                                          |                                          | Yes                                  |                                  |                                 |                                                |                                    |                            |                                        | Connecticut   |
| Delaware      |                                      |                                       |                              |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Delaware      |
| Florida       | Yes                                  |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                | Yes                                | Yes                        | Yes                                    | Florida       |
| Georgia       |                                      | No                                    | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Georgia       |
| Hawaii        |                                      |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Hawaii        |
| Idaho         |                                      |                                       | Yes                          |                                          |                                          |                                      | No                               |                                 |                                                |                                    |                            | Yes                                    | Idaho         |
| Illinois      | No                                   | No                                    | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Illinois      |
| Indiana       | Yes                                  | Yes                                   | Yes                          | Yes                                      | Yes                                      | No                                   |                                  |                                 | Yes                                            | Yes                                | Yes                        |                                        | Indiana       |
| Iowa          | Yes                                  | Yes                                   | Yes                          |                                          | Yes                                      | Yes                                  | Yes                              |                                 | Yes                                            | Yes                                |                            | Yes                                    | Iowa          |
| Kansas        | Yes                                  |                                       | Yes                          |                                          | Yes                                      |                                      | Yes                              | Yes                             |                                                |                                    | Yes                        |                                        | Kansas        |
| Kentucky      |                                      |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    | Yes                        |                                        | Kentucky      |
| Louisiana     | Yes                                  |                                       | Yes                          |                                          | Yes                                      | No                                   | Yes                              | Yes                             |                                                |                                    | Yes                        |                                        | Louisiana     |
| Maine         |                                      |                                       | Yes                          |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Maine         |
| Maryland      |                                      |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Maryland      |
| Massachusetts |                                      | No                                    |                              |                                          |                                          |                                      | Yes                              |                                 |                                                |                                    |                            |                                        | Massachusetts |
| Michigan      | No                                   | No                                    | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Michigan      |
| Minnesota     | Yes                                  | Yes                                   | Yes                          |                                          | Yes                                      |                                      | Yes                              |                                 |                                                | Yes                                | Yes                        |                                        | Minnesota     |
| Mississippi   | No                                   | Yes                                   | Yes                          |                                          | No                                       |                                      |                                  | Yes                             |                                                | Yes                                |                            | Yes                                    | Mississippi   |
| Missouri      |                                      |                                       | No                           |                                          |                                          |                                      |                                  |                                 |                                                |                                    |                            |                                        | Missouri      |

Yes = Legislative Authorization Exists

No = Legislative Prohibition Exists

Blank space indicates that legislation neither specifically authorizes nor prohibits.

no statutes addressing any of these issues. More common are those States that address only the question of open market sales (generally to prohibit them), or deal with open market sales and one or two other issues. Typical combinations are prohibitions against both open market sales and private employment, or contracting with the private sector.

At the other end of the scale of legislative activity are those States that are vocal on half or more of these

issues. Most of these active States have authorized open market sales, plus either private sector employment, contracting, or both. Most have also authorized payment of prevailing or minimum wages and workers' compensation benefits to prisoner workers.

The first three issues—private sector employment, private sector contracting, and open market sales—are the most fundamental of the 12 operational issues in respect to the implementation of private sector prison

industries. Ten States have legislation specifically permitting private sector employment, contracting, and open market sales. Six States have legislation specifically prohibiting such activity. The remaining States have legislation falling somewhere between, or are silent on the issues.

Federal statutes govern access to interstate markets, which is one of the crucial requirements of most private sector manufacturers, since today's markets tend to be regional or na-

Table 1 Prison industry statute analysis

| States         | Issues                               |                                       |                              |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | States         |
|----------------|--------------------------------------|---------------------------------------|------------------------------|-------------------------------|--------------------------------------------|------------------------------------|----------------------------------|---------------------------------|-----------------------------------------------|-------------------------------------|----------------------------|----------------------------------------|----------------|
|                | Private sector employment authorized | Private sector contracting authorized | Open market sales authorized | Incentives for private sector | Prevailing and/or minimum wages authorized | Unemployment compensation mandated | Workers' compensation authorized | Prisoner voluntarism authorized | Project's impact on free world labor mandated | Rent / lease of property authorized | Wage deductions authorized | Employee status of prisoners addressed |                |
| Montana        |                                      |                                       | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | Montana        |
| Nebraska       | Yes                                  |                                       | Yes                          |                               | Yes                                        | Yes                                |                                  |                                 | Yes                                           | Yes                                 |                            |                                        | Nebraska       |
| Nevada         | Yes                                  | Yes                                   | Yes                          |                               |                                            |                                    |                                  | Yes                             | Yes                                           | Yes                                 |                            |                                        | Nevada         |
| New Hampshire  |                                      |                                       | Yes                          |                               |                                            |                                    |                                  |                                 |                                               | Yes                                 |                            |                                        | New Hampshire  |
| New Jersey     | No                                   | No                                    | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | New Jersey     |
| New Mexico     | Yes                                  | Yes                                   | Yes                          |                               | No                                         |                                    | Yes                              |                                 |                                               | Yes                                 |                            |                                        | New Mexico     |
| New York       |                                      | No                                    | No                           |                               |                                            | No                                 |                                  |                                 |                                               |                                     | Yes                        |                                        | New York       |
| North Carolina |                                      |                                       | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | North Carolina |
| North Dakota   | No                                   | No                                    | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | North Dakota   |
| Ohio           | Yes                                  | Yes                                   | Yes                          |                               |                                            |                                    |                                  |                                 |                                               | Yes                                 |                            |                                        | Ohio           |
| Oklahoma       | Yes                                  | Yes                                   |                              |                               | Yes                                        | Yes                                |                                  |                                 | Yes                                           | Yes                                 |                            |                                        | Oklahoma       |
| Oregon         | Yes                                  | Yes                                   | Yes                          |                               | Yes                                        | Yes                                |                                  | Yes                             | Yes                                           | Yes                                 |                            |                                        | Oregon         |
| Pennsylvania   | No                                   | No                                    | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | Pennsylvania   |
| Rhode Island   |                                      |                                       | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | Rhode Island   |
| South Carolina |                                      |                                       | Yes                          |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | South Carolina |
| South Dakota   |                                      | No                                    | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | South Dakota   |
| Tennessee      | Yes                                  | Yes                                   | No                           |                               | Yes                                        | No                                 | Yes                              | Yes                             |                                               | Yes                                 | Yes                        |                                        | Tennessee      |
| Texas          |                                      | No                                    | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | Texas          |
| Utah           | Yes                                  | Yes                                   | Yes                          |                               | Yes                                        |                                    | Yes                              | Yes                             |                                               |                                     | Yes                        |                                        | Utah           |
| Vermont        |                                      | No                                    | Yes                          |                               |                                            |                                    |                                  |                                 | Yes                                           |                                     | Yes                        |                                        | Vermont        |
| Virginia       |                                      |                                       | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | Virginia       |
| Washington     | Yes                                  |                                       | Yes                          | Yes                           | Yes                                        | Yes                                | Yes                              | Yes                             |                                               | Yes                                 | Yes                        |                                        | Washington     |
| West Virginia  |                                      | Yes                                   | No                           |                               |                                            |                                    |                                  |                                 |                                               |                                     |                            |                                        | West Virginia  |
| Wisconsin      |                                      |                                       | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | Wisconsin      |
| Wyoming        |                                      | No                                    | No                           |                               |                                            | Yes                                |                                  |                                 |                                               |                                     |                            |                                        | Wyoming        |

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tional. The interstate power is an exclusively Federal power and one that has been interpreted broadly by the courts over the years. Restrictive legislation continued from the 1930's until the 1980's, when Congress authorized the Prison Industries Enhancement Program (administered by the Bureau of Justice Assistance), which allows up to 20 States to experiment in the interstate market.

#### IV. What the research shows

The study drew nine main conclusions from the data collected:

**1. In January 1985, there were 26 private sector prison industries in existence.** Table 2 lists these projects, categorizes them according to model type, and lists the States in which they operate. Summary highlights include:

- 19 private sector firms, ranging from small proprietorships to multinational corporations involved with the prison industries.
- 14 distinct product lines and 5 distinct service activities, covering a spectrum representative of the mainstream American economy.

- 17 different minimum, medium, and maximum security prisons ranging from small, community-based facilities to large, rural, walled institutions hosting the projects.

- A total initial private sector investment of more than \$2 million in 26 industries.

- Nearly 1,000 prisoners employed (approximately 0.2 percent of the total U.S. prison population).

- Wages ranging from \$.25 to \$7.75 per hour.

- 1983 total gross sales in excess of \$21 million.

- \$4.4 million in wages paid to prisoner workers between 1976 and 1984, and more than \$775,000 paid in taxes and \$470,000 in room and board charges.

**2. There is no one ideal form of private sector involvement in prison industries.** The diversity among the 26 private sector prison industries operating as of January 1985 suggests that there is no one ideal form of private sector involvement in prison industries. Fifteen represent the employer model, with the private sector both owning and operating the projects.

The other 11 projects are operated by corrections agencies, and represent the customer, controlling customer, or investor models.

**3. Small businesses are more likely to prefer the employer model, while large corporations tend to favor the controlling customer or customer model.** With the exception of Best Western in Arizona, and PRIDE in Florida, all of the identified examples of the employer model are small businesses. Conversely, while some of the larger corporations acknowledge the same motivations for using prison labor as their small business counterparts, corporate managers seem to feel these objectives can be achieved without owning and operating the plant themselves. Thus, the large corporation often seems content to contract for business, while the small business generally wants to control the business.

This finding is probably more illustrative of the differing business philosophies of small entrepreneurs and large corporations than of conditions inherent in the correctional setting. It does, however, have implications for a corrections agency attempting to design a strategy to involve the private sector in its industry operations.

Table 2 Number of private-sector projects representing various model types

| State         | Employer  | Investor | Customer | Manager  | Joint venture | Controlling customer |
|---------------|-----------|----------|----------|----------|---------------|----------------------|
| Arizona       | 1         | 1        |          |          |               | 1                    |
| Florida       | 2         |          |          |          |               |                      |
| Kansas        | 1         |          |          |          |               |                      |
| Minnesota     | 2         |          | 4        |          |               | 3                    |
| Mississippi   |           |          |          |          |               | 1                    |
| Nevada        | 3         |          |          |          |               |                      |
| Oklahoma      | 1         |          |          |          |               |                      |
| Utah          |           |          | 1        |          |               |                      |
| Washington    | 5         |          |          |          |               |                      |
| <b>Totals</b> | <b>15</b> | <b>1</b> | <b>5</b> | <b>0</b> | <b>0</b>      | <b>5</b>             |

**4. Private sector prison industries require extra resources from the prison and the business.** Private sector businesses based in prisons will be successful only if both the department of corrections and the private company devote talented professional staff full-time to the project.

An onsite production supervisor is usually a necessity for the company, especially during the initial operational period, because the work force must be trained in production processes, quality control standards, and inspection procedures. A full-time project coordinator is usually a necessity for the correctional agency, given the continuous need for coordination and communication between the prison and the company, and because of the politically sensitive nature of private sector work projects.

The correctional agency must have the professional resources to keep organized labor and competitor manufacturers informed about its private

sector projects, and whenever possible should attempt to involve them in the project's development.

**5. Communication and cooperation between the business and the prison will not guarantee success, but their absence may guarantee failure.**

Businesses and prisons are fundamentally different in nature: Businesses require constant flexibility for success, prisons demand predictable routines. This basic difference between the two primary organizational partners in a private sector prison industry is often aggravated by a mutual lack of understanding of each partner's purposes and needs.

This lack of understanding, coupled with an inability to communicate clearly, has contributed directly to the failure of some projects.

**6. Wage disparities do not lead to friction among prisoners.** Private sector involvement in prison industries often introduces significant wage disparity into the prison environment, since in most cases prisoners who work in private sector projects are paid much more than those who do not. For example, the average State prisoner assigned to an institutional service crew or a traditional State-use industry receives 35 to 60 cents per hour, while most prisoners working in private sector projects earn about \$3.35 per hour.

There has been considerable speculation about the practical implications for prison administrators of such income differentials, with much concern centering on the possibility that wage disparities may cause hostility among prisoners. However, every prison superintendent interviewed in the CJA study indicated that this has not been a significant or widespread problem. The reasons they cited include:

- Many prisoners do not want to work.
- Others receive supplements to the low wage of State-run projects through such mechanisms as veterans' benefits; thus, the higher pay of private projects is not a significant incentive.
- In some States, prisoners employed in private-sector industries are required to pay into the victims' fund; thus the

difference in wages becomes less significant.

- Finally, some inmates are unwilling to face the higher performance and quality standards demanded by the private sector.

**7. Private sector involvement in prison-based businesses offers specific advantages to companies with specific labor needs.** Some general benefits can accrue to virtually any company that agrees to employ prisoners. The principal economic benefit is free use of space and utilities. Some personnel cost savings can be realized by employing prison labor, primarily because employer-paid health insurance coverage is not required. These projects typically provide some public relations benefits for at least the larger companies involved and, for some organizations, fill philanthropic goals.

There are also some specific benefits that can help companies with special labor needs. For example, prison labor is attractive to employers with seasonal labor needs because it allows them to fine-tune labor costs precisely and run a low risk of losing workers. Prison labor is also attractive to companies with shift demands that are difficult to fill consistently (e.g., weekend or night work), and to companies with short-term product manufacturing cycles followed by long idle periods.

**8. There are hidden business costs inherent in prison-based businesses.** Businesses that make use of a prisoner work force are confronted with a set of personnel costs unique to the prison setting. These hidden costs of doing business inside prison revolve around four factors:

- turnover
- training
- mobility
- manipulation.<sup>3</sup>

It is a widespread misconception that prisoners remain in the same institution for years on end. The average length of incarceration in the United States is approximately 2 years and, in

many States, a prisoner will spend that time in more than one facility. Such movement through the prison system contributes to high turnover rates among the prisoner work force.

The combination of high worker turnover and the general lack of both work experience and skills inherent in most prison work forces results in high training costs for many prison-based businesses. These costs may be further inflated by the fact that, unlike businesses outside the prison that encourage upward mobility within the work force as a means of developing leadmen and supervisors, the prison industry is faced with outward mobility as prisoners leave the facility.

Finally, the manager of a prison industry is often confronted with the problem of manipulation by prisoners. Many prisoners devote considerable time and effort to "con games," both on the job and elsewhere, and the time spent by private sector managers and supervisors in learning to deal with such behavior is costly.

This could lead to growing disenchantment of private business with prisoners as a work force, and could slow or even end their participation in such ventures.

**9. Private sector involvement in prison industries has created problems in defining the legal status of inmate workers.** Inmates employed by State-owned and operated prison industries in the past have not been considered employees in the strict legal sense of that term. With the private sector now becoming involved in prison industries, the status of inmate workers has become more complex. The issue is critical in the area of wage policy, for its resolution will determine whether the Fair Labor Standards Act (FLSA) is applicable to prisoners involved in privately owned and operated businesses.

The courts have consistently rejected prisoners' claims to minimum wages and benefits under the FLSA, but have not rejected such claims out of hand. Instead, the courts have based their decisions on whether or not prisoners come within the coverage of minimum wage laws.

3. These four points were identified by Fred Braun of Zephyr Products, Inc., in June 1984 at the "Factories With Fences" conference hosted by George Washington University, Washington, D.C.

The changing nature of prison work programs—especially the increased involvement of the private sector in operating such programs—may change the courts' conclusions.

## V. Next steps

### Recommendations for correctional agencies

Correctional officials interested in developing private sector prison industries should heed the following recommendations:

1. Before beginning, ensure that appropriate State enabling statutes exist, and that the project meets Federal legislative and administrative requirements for shipment in interstate commerce, if appropriate.
2. Develop a plan for recruiting the private sector, and for maintaining the businesses once they are operational. The plan should address internal organizational development, targeted public education, and organized private sector recruiting.
3. Identify groups likely to react adversely to the private sector initiative, and consult with them early in the planning phase.

4. Clearly state, in a formal contract, the responsibilities and obligations of both the private sector business and the correctional agency.

5. If the correctional agency has a strong correctional industry program, it should seriously consider implementing either the customer or controlling customer model. Larger corporations would be good candidates to approach regarding possible interest in these models.

6. If the agency has no correctional industry program, or has a weak program, it should seriously consider implementing the employer model. Smaller businesses or entrepreneurs would be good candidates to approach regarding possible interest in these models.

7. Note that there are models other than the three mentioned above. An agency with a weak correctional industry program might benefit, for example, from the manager model or the joint venture model.

### Recommendations for private businesses

Private sector firms interested in becoming involved with prison industries should heed the following recommendations:

1. Obtain the active support of key corrections officials (in both the central office and the institutions) before attempting to implement a project.

2. A private business without a standard product line should be cautious about participation in a prison-based operation, because of the high cost of retraining prisoner workers each time a new product or production process is introduced.

3. Examine the relevance of the Fair Labor Standards Act to the proposed project. If a genuine employer-employee relationship will exist between the private business and the prisoner worker, then the minimum wage provisions of the FLSA may apply to that business.

4. Consider staffing the project with specially trained production supervisors. Private sector production management personnel should receive special training from the correctional agency in security and safety procedures.

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