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Issues and Practices

The Privatization of Corrections

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- Reducing violent crime and apprehending the career criminal
- Reducing delay and improving the effectiveness of the adjudication process
- Providing better and more cost-effective methods for managing the criminal justice system
- Assessing the impact of probation and parole on subsequent criminal behavior
- Enhancing Federal, State, and local cooperation in crime control

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The Privatization of Corrections

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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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Foreword

Crowding and the escalating costs of American prisons and jails are among the factors prompting public officials and the private sector to experiment with new alliances in the field of corrections. Corrections departments have long relied on private vendors to furnish specific institutional services or to operate aftercare facilities and programs. But some now are now turning to the private sector for help in expanding prison industries, financing new construction, and managing primary confinement facilities.

Some of the controversial issues of such arrangements--quality, accountability, security, and cost--have been hotly debated by policymakers and widely reported in both the print and television news media. Only fragments of experience, however, have been documented, and no comprehensive discussion of the issues has been available.

To respond to this need and to inform the debate, the National Institute of Justice commissioned a special Issues and Practices report. The task was to identify the major trends in the privatization movement through a review of the literature, expert opinion, and field practice. Corrections departments in all 50 states were contacted as well as many private vendors involved in correctional operations or construction financing. The objective was not to conduct an extended research project but to provide decisionmakers with timely information and to lay the foundation for future experimentation and evaluation.

The Privatization of Corrections outlines the issues surrounding the new proposals for private financing, construction, and operation of prisons and jails. The National Institute of Justice believes this information will be valuable to both policy officials and corrections professionals as they assess the private sector's potential for contributing to corrections management.

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Chapter 1: Introduction

The New Emphasis on Privatizing the Public Sector

The national elections of 1978 and 1980 and the changes in public attitudes they revealed hold a clear message for the future: the pendulum is swinging toward a greater role for the private sector in American life. The American people have raised fundamental questions about the relations between the public and private sectors, and their changing views will inevitably be reflected in public policy.¹

Over the last several years, traditional notions of the role of government have undergone a gradual evolution. At both the federal and local levels, governments are moving to curtail expenses, while investigating new ways of maintaining services. For many, emulating private sector operations and transferring certain functions to private organizations offer one means of responding to the growing need for more efficient public service.

The federal government itself has spearheaded much of the current move toward privatization. President Reagan's "Reform '88" initiative has as one goal the restructuring of present government operations to resemble more closely the procedures and principles embodied in contemporary business management.² The President has also named a Task Force on Private Sector Initiatives, designed to identify promising efforts and to promote private sector involvement in government operations.

Within state and local governments, reduced levels of federal assistance coupled with "taxpayer revolts" such as Proposition 13 in California have also led to increased concern for containing the costs of public service. While cutting non-essential services has been one common response, governments also must contend with the public's increasing demand for improvements in the quality of services. Faced with these competing demands, many have turned to private contractors to manage specific public functions, including trash removal, sewage treatment, fire protection, and even educational services.

At the same time, the private sector itself has recognized the new government climate, responding

to both the social responsibilities and new market opportunities posed by this shift. Both responses are clearly evident in reviewing recent trends in the privatization of corrections facilities and services. Private nonprofit service providers have entered the field more directly than ever before, hoping to bring innovation with their autonomy from direct government control. Commercial organizations, too, have seen new opportunities to apply the concepts and profit motivation of business practice to a field laboring under the burden of outmoded facilities, declining resources, increasing executive and judicial demands for improved services, and public calls for holding more prisoners at half the price.

The Questions Addressed in This Report

This document presents the results of a rapid review of current issues and practices associated with the privatization of adult corrections at the state level. Four questions guided the inquiry:

- 1) What are the most recent developments in the trend toward private sector participation in prison work programs? In the early 1970s, LEAA made a major investment in this area through a series of projects designed to improve the economic and rehabilitative potential of prison industries by simulating private industry practices. Subsequent projects have tried to encourage actual private sector participation. The extent to which prison industries and work programs are now allied with the private sector was the primary focus of the current inquiry.
- 2) Have the pressures of crowding and public refusals to approve bond issues to construct new facilities led states to consider financing alternatives in the private sector? In addition to so-called straight lease arrangements with private vendors, the extent to which lease/purchasing financing packages were being considered or adopted as a vehicle for financing and constructing prison facilities was of particular interest.
- 3) In addition to calling on the private sector for assistance in financing and constructing facilities, to what extent are states planning to contract with private vendors for the actual operation of state

facilities for sentenced adults? Although the corrections field has a long history of contracting for the operations of "secondary" facilities for pre-release and half-way house placements, the interest here was in plans to contract any primary or "first" placement facilities.

4) What are the issues to be considered as activity in each of these areas gains momentum? Drawing on experience in other fields and the judgments of informed respondents, this question asked for an analysis of the key political, administrative, legal and financial implications of the emerging trend toward the privatization of public corrections functions.

Note that the practice of contracting for specific correctional services was not a primary focus of this assessment. Because this topic has been thoroughly considered by other researchers (most recently by Camille and George Camp in a study sponsored by the National Institute of Corrections³), attention was confined to the newer forms of private sector involvement in corrections. Note also that the inquiry focused on the contracting practices and plans of state adult corrections agencies. In order to characterize the full scope of the market, information on contracts for the confinement of juveniles and offenders under local jurisdiction is included but should be considered only a partial view of activity and interest in these areas.

A review of the literature, telephone contacts with all state departments of correction, and discussions with cognizant researchers and private contractors formed the basis for an initial six-week data collection effort that occurred between January and mid-February 1984. Where possible, developments in the field that occurred up to the publication date of this report (January 1985) have been included. The formal data collection effort, however, concluded in early 1984. Given the duration of the formal inquiry, it is not offered as an exhaustive assessment, but rather as a foundation on which to base continuing research in this area.

Following a brief summary of the survey results, Chapters Two through Four discuss private sector participation in prison work programs and corrections facility financing and operations. Chapter Five concludes with a summary outline of the key issues that surround these private sector initiatives and a discussion of future prospects in each area.

The Answers in Brief

Because all three areas of private sector participation are relatively new, all have operated on a fairly limited scale and none has yet been rigorously evaluated. Thus, we cannot provide any conclusive answers to questions regarding the effects and consequences of the private sector's new interest in corrections. We can, however, provide a snapshot of recent developments and emerging issues in order to lay the foundation for more comprehensive program development and evaluation efforts. Outlined below are summary responses to the four questions that guided the development of this report.

1) What are the most recent developments in the trend toward private sector participation in prison work programs? Table 1.1 highlights the activity in this area as reported by survey respondents in early 1984. As indicated, while the movement is gaining momentum, thus far private sector involvement in prison industries has been narrowly focused and has yet to involve significant numbers of inmates. At the time of our survey, about 34,000 state prison inmates were involved in prison industry programs; fewer than 1400 of these inmates were participating in industries established or operated by the private sector.

The most common model of private sector participation has involved the use of inmates who remain under the supervision of the Department of Corrections, but produce goods or services for private industries. Another model (used in Florida and under consideration in Oregon) has turned prison industries into private industries by asking private managers to take over the responsibility for operating existing industry programs. Both models assume that prison industries can provide more productive "real world" work opportunities and are more likely to function as economically viable enterprises if they are affiliated with the private sector.

While no single venture has gained sufficient experience to validate these assumptions, in many respects this area of private sector participation may hold the greatest promise for the development of new models of institutional corrections practice--models where the prison does not run an industry; the industry runs the prison. Thus far, however, while the prospects are encouraging, the experience is isolated and it remains unclear whether private

Table 1.1

PRIVATE SECTOR PARTICIPATION IN PRISON WORK PROGRAMS

Prison-Based Private Industries

- In 8 states, the private sector is involved in 13 different types of DOC-operated prison industries:
 - In Minnesota, 45 inmates manufacture disc drives for Control Data Corporation; another 140 inmates will reportedly manufacture light metal products for a private firm.
 - Computer terminals have been installed by Best Western in an Arizona women's facility where 30 inmates make reservations for the hotel chain;
 - In Mississippi, 20 inmates manufacture condensing units for KOOLMIST.
 - In Iowa, Kansas, Nevada and Utah and Washington, private sector firms also employ inmates for a variety of small enterprises.

Privately Managed Prison Industries

- In Florida, PRIDE (a non-profit corporation) operates 50 percent of all state prison industries and plans to take over the balance by October 1984.
- In Oregon, Senate Bill 780 will create a privately managed prison industry arrangement similar to Florida's.
- In Minnesota, Stillwater Data Processing Systems Inc. employs 10 inmates as computer programmers in its independently managed company at Stillwater prison.
- In Michigan, City Ventures Corporation is building a model industries program for the Huron Valley Correctional facility.
- A unique privately managed prison industry operates outside the walls of Kansas State Penitentiary. Staffed almost entirely by prison inmates who are bused to and from work, Zephyr Products Inc. is a sheet metal company developed specifically to reduce prisoner idleness.

Source: As reported by representatives of state departments of corrections in January 1984.

sector participation in industries might one day evolve to fulfill Chief Justice Warren Burger's ideal of prisons as factories with fences rather than warehouses with walls.

2) To what extent are states considering private sector financing alternatives for prison construction? Faced with continually escalating prison and jail populations, it is hardly surprising to find state and local governments searching for alternatives to the traditional ways of meeting the needs for prisoner housing. As Chapter Three will indicate, over 77,000 beds have been added over the past five years and states reported plans to expend more than \$5 billion over the next ten years to increase their prison capacities by another 105,688 beds.

Recognizing the new market opportunities presented by these expansion plans, the private sector has become increasingly active in marketing financing packages for prison and jail construction. The most widely discussed are lease contracts, in the form of lease/purchase agreements, which are used to purchase a facility over time, much like an installment sale. Depending on the length and type of lease, prevailing interest rates, and other factors, leasing may be less expensive than buying, but the most significant advantage is the ability to evade debt limits by insisting on an annually renewable lease subject to non-appropriation. Private investors underwrite lease arrangements because they gain tax advantages, a steady cash flow from periodic lease payments, and the opportunity to transfer some of the risks of ownership to the lessee (for instance, buying insurance against accidental damage or loss). As a result, the costs may be competitive with bond financing.

Promoted by investment bankers and brokerage houses, lease/purchase arrangements are being seriously considered in a growing number of states:

- In early 1984, enabling legislation had been introduced in Arizona and Missouri and had passed in Illinois, states where lease/purchase was under active consideration.
- California, Kentucky and Minnesota had or were then evaluating proposals for lease/purchase financing of state facilities.
- While Alaska and Ohio were the only states that had acquired beds through lease/purchase, some of the major sponsors of lease/purchase agree-

ments (Merrill Lynch Capital Markets, E.F. Hutton and Shearson Lehman/American Express) reported significant activity at the local level: a \$30.2 million jail and sheriff's facility in Colorado, a \$50 million jail project in Philadelphia, a \$5 million jail project in Rutherford County, Tennessee, and a large project in Los Angeles County for a jail and criminal justice training center.

This area of privatization is no more or less than a straightforward market opportunity for the private sector that may allow the government to move more certainly or rapidly than it might by following traditional public sector financing routes. There is no single answer to the question of relative cost. Private financing may be more or less expensive than a public bond issue depending on the circumstances in a given state. In some states, cost questions may not even be paramount, for private financing may be the only option available if bond referenda fail and construction is still considered essential.

3) To what extent are states planning to contract with private vendors for the actual operation of state facilities for sentenced adults? Confinement service contracts are another way of expanding corrections capacity--without assuming ownership of the required facilities. In these arrangements, vendors are responsible for locating a suitable site, leasing or constructing an appropriate building, and providing all the staff and services necessary to operate the facility. Much like the business of running a full-service hotel, room rates are established based on capital investments, operating costs and expected occupancy and the government is often charged by the day for each (unwilling) guest. Table 1.2 highlights some of the major developments in this area.

-Federal Experience

The most active new market for confinement service contracting has clearly emerged at the federal level in response to growing demands for housing illegal alien populations. In 1983, roughly 1.2 million aliens were apprehended; in early 1984, the rate of apprehensions had risen by approximately 17 percent. At the same time, crowding problems in local jails had significantly reduced the space available to house this growing population. In response, three federal agencies have elected to develop contracted facilities:

TABLE 1.2

FACILITY MANAGEMENT CONTRACTING ACTIVITY
IN EARLY 1984^a

Federal Contracts	State Corrections Contracts	Local Jail Contracts
<p>Immigration & Naturalization Service</p> <ul style="list-style-type: none"> 4 facility contracts for aliens awaiting deportation were operating (in San Deigo, Los Angeles, Houston, Denver), providing a total capacity of 625 beds. 3 facility contracts were nearing award (in Las Vegas, Phoenix, San Francisco), providing another 225 beds. 2 additional facility contracts offering a total of 270 beds were planned in the near term (Laredo and El Paso, Texas). <p>U.S. Marshals Service</p> <ul style="list-style-type: none"> 2 small (30-bed) facilities operated under contract in California. Plans to open a larger (100- to 150-bed) contracted facility in Los Angeles for alien material witnesses. <p>Federal Bureau of Prisons</p> <ul style="list-style-type: none"> Plans to operate a 400- to 600-bed contracted facility for sentenced aliens in the Southwest region. (Project delayed due to siting difficulties.) A 60-bed facility in La Honda, California operated under contract for offenders under the federal Youth Corrections Act. 	<p>Secondary Adult Facilities</p> <ul style="list-style-type: none"> 28 States reported the use of privately operated prerelease, work-release, or halfway house facilities. Largest private facility networks found in California, Massachusetts, Michigan, New York, Ohio, Texas, and Washington. <p>Primary Adult Facilities</p> <ul style="list-style-type: none"> No contracts reported for the confinement of mainstream adult populations; however, the Kentucky Corrections Cabinet issued an RFP in late 1984 to contract for minimum security housing for 200 sentenced felons. Two interstate facilities for protective custody prisoners planned by private contractor. <p>Juvenile Facilities</p> <ul style="list-style-type: none"> A 1982/83 survey of private juvenile facilities found 1,877 privately operated residential programs holding a total of 31,390 juveniles, 10,712 of whom were held for delinquency. Only 47 institutions were classified as strict security and 426 as medium security. Departing from the small, less secure settings characteristic of contracted juvenile facilities, a private contractor operates the Okeechobee (FL) Training School for 400 to 500 serious juvenile offenders. 	<ul style="list-style-type: none"> Legislation enabling private jail operations was pending in Colorado and had passed in New Mexico and Texas. While the National Sheriff's Association registered formal opposition to privately operated jail facilities, corporate providers reported significant interest and a number of pending proposals for jail operations in the Southern and Western regions. In Hamilton County, Tennessee a private contractor took over the operations of a local work house holding 300 males and females awaiting trial or serving sentences up to 6 years in length. <p>Shared Facilities</p> <ul style="list-style-type: none"> One private organization in Texas planning to construct and operate a facility that would serve local detention needs as well as the needs of Federal agencies responsible for confining illegal aliens. Other proposals have called for the development of regional jail facilities that would serve multi-county detention needs.

^a Reported in phone contacts made in January/February 1984 with additional follow-up at later points in 1984.

^b Unpublished tables from Children in Custody: Advance Report on the 1982/83 Census of Private Facilities, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C.

1) The Immigration and Naturalization Service, responsible for the apprehension and confinement of immigration law violators pending deportation, had four contracted facilities on-line; five additional facilities were at various stages in the solicitation process;

2) The U.S. Marshals Service, responsible for the custody of alien material witnesses (essentially smuggled aliens held to testify against their smugglers), planned to expand its contracting ventures by 100-150 beds; and

3) The Federal Bureau of Prisons, which has jurisdiction over sentenced aliens (generally violators who have reentered the country following deportation), had issued a solicitation for 400-600 beds. While community opposition to the proposed site of the facility caused the cancellation of that particular project, the agency still planned to proceed with privately operated facilities elsewhere. (As noted in Table 1.2, at least one such facility for a non-alien population began operation in 1984.)

All of these facilities are basically intended to provide decent "warehousing" or holding space for aliens whose terms of confinement are relatively short (often a matter of days). Security requirements are minimal and treatment activities are normally confined to efforts to arrange the return of detainees to their countries of origin.

While the practice of contracting for the detention of illegal aliens is not new, the magnitude of current efforts is a relatively recent development that has attracted a new type of private provider. The nonprofit, voluntary or religious organizations that have typically cared for small numbers of illegal aliens and their accompanying children can no longer satisfy the demand for housing, opening the market to new proprietary providers--organizations that have recognized the profit potential of confinement service contracting and are equipped to respond fairly rapidly to the growing federal need for confinement services.

--State Adult Experience

Although the publicity that has surrounded federal facility management contracts has led many to infer the emergence of a national trend toward "prisons for profit," little actual change was found in the contracting practices of state adult corrections agencies. Although new corporate providers

had entered the field more aggressively than ever before, their most immediate prospects appeared to be confined to contracts for community-based facilities, closely resembling the halfway house or pre-release model that has been a standard feature of state corrections for many years. Much like the situation at the federal level, the population pressures that have required states to respond fairly rapidly to the need for larger facility networks, may simply be prompting a shift in the characteristics of providers--from voluntary groups to corporate providers specifically organized to deliver confinement services.

Whether this apparent trend will lead to contracts for the management of more secure adult facilities remains unclear. A recent survey by the Criminal Justice Institute reported that "only 22 percent of the correctional agencies surveyed indicated that they would consider contracting the management of an entire facility, while 74 percent said that they would not and 4 percent were not sure."⁴ As this report was published, only two primary adult facilities were under discussion at the state level. A number of states had reportedly expressed interest in an institution slated for construction in Pennsylvania that would specialize in protective custody prisoners drawn from the populations of a number of state prisons. And, in late 1984, the Kentucky Corrections Cabinet issued an RFP to contract for minimum security housing for 200 sentenced felons.

--Juvenile Facility Contracting

In the juvenile field, where primary placement facilities often resemble secondary adult facilities in their community treatment emphasis, facility management contracts have been far more prevalent. The development of juvenile courts in the early 1900s was marked by the birth of privately operated facilities for juveniles. Over the past two decades, the movement to deinstitutionalize larger state facilities has further stimulated the growth of small, privately operated alternatives. A notable example is Massachusetts where a large proportion of the state's juvenile confinement needs is met by private providers.

While most privately operated juvenile facilities operate in small, residential settings without the problems of scale and security that are more typical of primary adult institutions, one facility in Florida

offers an interesting exception. One of that state's major juvenile institutions, the Okeechobee Juvenile Training Facility, is operated by the Eckerd Foundation, the nonprofit arm of a major U.S. drug manufacturer. Awarded in the fall of 1982, the contract called for Eckerd to take over the operations of an existing facility serving between 400 and 450 committed delinquents. Currently the subject of an evaluation by the American Correctional Association, the Eckerd experience is certain to offer valuable lessons to contracting agencies in both juvenile and adult corrections.

--Local Jail Contracting

In many respects, the more limited fiscal and management capabilities at the local level provide a climate that may be most conducive to the development of private facilities. As Table 1.2 indicates, while opposition is high, so too may be the interest of local governments--particularly in arrangements that will permit the costs of jail construction and management to be shared across jurisdictions. In order to proceed with the construction of a local jail in Texas, one private contractor sought federal guarantees for the use of a portion of the space to detain aliens; the balance of the facility would serve moderate risk county prisoners. Another contractor was aggressively marketing regional jail facilities that would be shared by two to four counties.

In October 1984, a private contractor took over the operations of the Silverdale Work Farm Facility located in Hamilton County, Tennessee. This local work house holds approximately 300 male and female offenders sentenced or awaiting trial in the Hamilton County Courts.

--The National Picture

In short, by early 1984 there was an active and somewhat specialized federal market for facility management contracting, and a developing market at the local level--both focusing on the provision of fairly straightforward detention services for populations with relatively short terms of confinement. At the level of state adult corrections, where terms are longer, security requirements are more stringent, and service needs are more elaborate, interest was far more restrained and actual practice was generally reserved for secondary placement facilities.

4) What are the key political, administrative, legal, and financial implications of the emerging trend toward the privatization of public corrections functions? Few proposals in the field of corrections have stimulated as sharply divided opinions as the prospect of enlarging the role of the private sector in corrections management. The key political questions are both conceptual (Is it appropriate?) and strategic (Is it feasible?):

- Conceptual. Whether any part of the administration of justice is an appropriate market for economic enterprise is an issue that pervades all three areas of private sector involvement. To what extent will the pursuit of economically viable industries compromise or contribute to the correctional objectives of minimizing idleness and maximizing inmates' training experiences? Under what circumstances can the use of private financing arrangements to avoid bond elections be considered a responsible exercise of state power? Applied to the business of total facility management, are functions that may involve inmate classification and control (including the use of deadly force) properly delegated to the private sector? Reaching answers to any of these questions clearly requires carefully considering and explicitly defining the appropriate role of the private sector in light of the correctional needs and circumstances that may exist in different jurisdictions.
- Strategic. Organized labor resistance to the expansion of prison industry markets, correctional staff and management opposition to privately operated facilities, and potential public opposition to private financing alternatives are the key strategic issues to be considered. Again, while no one of these issues suggests that greater private sector participation is infeasible, all suggest that thoughtful planning and implementation efforts are well-advised.

Among the range of administrative issues discussed in subsequent chapters, perhaps the most important is the issue of ensuring the accountability of private providers. Whether it is the operation of a single prison industry or the construction or management of an entire facility, corrections departments will be faced with the need to adapt their monitoring and inspection practices in order to create an effective public-private alliance.

Questions of authority and liability are legal issues of paramount concern. Legislative amendments will frequently be required to authorize and define the nature of private sector participation in any of the areas discussed in this report. Understanding the extent to which the private sector may share the liability for the actions of private providers is also critical in designing contractor selection and staff training standards as well as contract supervisory practices.

Finally, the relative costs and benefits of private vs. public management is the key financial issue that surrounds the privatization debate. Here again, there is no single answer. Private sector alternatives may be more or less costly than their public sector counterparts depending on a variety of local circumstances. Even within a single jurisdiction, cost comparisons may be confounded by the difficulties involved in isolating the true costs of public sector functions. Despite the difficulties, rigorous assessments of the cost issue are clearly needed in order to weigh the benefits of using the private sector to enhance public corrections capabilities.

We turn now to more detailed discussions of the issues and practices associated with each of the three areas of private sector participation.

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1. William J. Barody, Jr., preface to Jack A. Meyer, Meeting Human Needs: Toward a New Public Philosophy (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1982).
2. See, for instance, revised OMB Circular A-76, an effort to apply the concept of competition to government operations.
3. Camille G. Camp and George M. Camp, Private Sector Involvement in Prison Services and Operations (Washington, D.C.: Criminal Justice Institute for the National Institute of Corrections, February 1984).
4. *Ibid.*, p. 33.

Chapter 2: Trends in Private Sector Involvement with Prison Industries

The association of prison industries with the private sector has followed a fully circular course over the history of the American prison—first flourishing, then declining, and now reemerging in more contemporary forms. This chapter summarizes some of the major trends in the privatization of prison industries, concluding with a brief overview of the extent to which the private sector is involved in current prison industry operations.

As the preceding chapter has indicated, the news to be reported is hardly revolutionary. For the most part, prison industries continue to labor under a variety of legal and administrative barriers that inhibit the widespread participation of free enterprise. At the same time, however, this area of private sector participation may hold the greatest promise for changing current confinement practices. The notion of a prison as a total work-like environment that might operate on a profitable basis, contribute to the costs of confinement, and provide useful training and productive work opportunities to confined inmates is an extremely appealing vision that has been widely discussed as a model for American prisons of the future. As Chief Justice Warren Burger has asked,

Will we continue building warehouses for convicted criminals or will we build prisons that are factories with fences . . . Do we want prisoners to return to society as predators or producers?¹

No single experience reported in this chapter has come close to this vision. While many may be viewed as the first steps toward the development of the industrial prison of the future, the involvement of the private sector has not yet approached the point where private industries have become involved in total facility management. Readers primarily interested in the concept of contracting for facility construction and management may wish to turn directly to Chapters Three and Four, which consider contemporary trends in these areas.

The Historical Development of Prison Industries

The emphasis on inmate work has a diverse philosophical and economic foundation.² The earliest penologists stressed the complementary notions of

the "reformatory potential of hard labor" and the importance of combating prisoner idleness. Profit was also an important early consideration in prison industries. As wardens attempted to make their institutions self-sufficient—even profit-making—operations, prison work became a source of free labor for industry. The Industrial Revolution speeded this process and, all over the nation, inmates became involved in large-scale prison industries. The most common prison industry systems in the early and mid-nineteenth century were the contract labor, lease, and public account systems. Under the contract and lease systems, private firms contracted with the state for prisoners' labor. The state was paid stipulated amounts for the inmates' labor, the inmate received no compensation, and conditions of work were often highly exploitative, since the contractors supervised the operations and had an obvious interest in maximizing their production. Under the "public account system," the state operated the industries and sold the goods—usually handiwork products, textiles, or farm products—on the open market.

Free labor organizations feared and resented the competition from inmate labor and mounted opposition to the contract labor, lease, and public account systems from a very early date. Reform organizations also voiced opposition to the contract and lease systems. By the 1870s, this combined resistance began to show effects, as wardens were dismissed, production goals were reduced, equipment purchases were blocked, and restrictive legislation was passed. The legislative assault on the involvement of prison industries with the private economy was evidenced primarily in the passage of so-called "state use laws," which restricted sales of prisoner-produced goods to state government agencies. By 1899, 35 states had implemented the state-use system in whole or in part, and by 1940 the vast majority of all employed prisoners were working in state-use industries. The rise of state-use industries led to the development and dominance of the industries most commonly associated with prison work: manufacture of license plates, highway signs, furniture, clothing, soap, brushes, dentures, and eyeglasses. In rural states of the South, where there were few penitentiaries, the state-use system was modified in that prisoners performed public

works such as road construction and maintenance, rather than working in industrial shops. This was known as the "Public Works and Ways System."

Federal legislation restricting prisoner-made goods in interstate commerce was first introduced in 1888, with the support of the American Federation of Labor. However, opposition from contract labor states led to the measure's defeat. In 1905, President Theodore Roosevelt issued an executive order prohibiting convict labor on federal projects. In 1929, the Hawes-Cooper Act was passed by Congress. This legislation permitted states to ban importation of prison-made goods from other states. In 1936 Congress enacted the Walsh-Healey Act, a provision which prohibited the use of convict labor in the performance of government contracts over \$100,000 (41 U.S.C. 35(d)). As the depression devastated the private economy, resistance to competition from prison industries intensified, and during the 1930s and 1940s business joined labor in supporting restrictive legislation. In 1940 the Sumner-Ashurst Act forbade interstate shipments of prison-made goods, whether or not the receiving state banned inmate-produced goods from private sale.

These strict federal and state legislative barriers, together with the emergence of the "medical model" of corrections with its emphasis on training, education and counseling, rather than work for its own sake, resulted in the relegation of prison industries to a secondary role in American prisons from 1940 to the early 1970s. Not even a temporary removal of restrictions during World War II could reverse the trend. Prisoner idleness was a growing problem in those years. Federal government statistics reveal that only about 45 percent of prisoners were productively employed during the 1940s and 1950s (as opposed to 75 percent in 1888), and these figures are considered to be overestimates.

In the late 1960s and early 1970s, however, changes in correctional philosophy and growing economic pressures rekindled interest in prison industries. Disappointment with the results of traditional strategies of behavioral change (the so-called "death of the rehabilitative ideal") intensified interest in the more practical goal of supporting the offender's community readjustment. Prison industries were seen as a logical place to create work experiences that might more closely resemble those on the outside. At the same time, concern that

prisoner idleness bred unrest and contributed to major prison uprisings (most notably the Attica tragedy of 1971) drew attention to the possible management rewards of expanded industry programs. Finally, rising prison populations and costs of confinement, coupled with increasing federal and state fiscal restraint, revived interest in the economic potential of prison industries. As potential profit makers, they could reduce the costs of corrections. All of these factors contributed to the resurgence of interest in prison industries in the 1970s and 1980s, this time with an increasingly private-sector tone.

Federal Initiatives to Revitalize State Prison Industries

Developments over the last decade or so reveal a trend toward "privatization" of prison industries--in tone and atmosphere, if not yet in full operation. In response to the complex of pressures and changes outlined above, the Law Enforcement Assistance Administration undertook a major research and demonstration program in prison industries, beginning in the mid-1970s. The objective of the original study was to examine existing industries and suggest ways to develop programs that would not only solve the problem of prisoner idleness, but also provide prisoners with a work experience as much like private employment as possible.³

The study concluded that it is possible to operate profit-making business ventures inside a prison with a staff of trained, motivated, and highly productive prisoner employees. The study proposed a set of concepts--collectively known as the "Free Venture" model--to guide the development of such industries. The following principles formed the key elements of this model:

- a full working day;
- wages based on productivity, which would be much higher than those paid in traditional prison industries;
- productivity standards comparable to those in private industry;
- final hiring and firing decisions to rest with industrial management;
- enterprises to be self-sufficient or profitable within a reasonable time after start-up;

- active coordination between prison employment and post-release job placement; and
- (optional) partial reimbursement by offenders for room and board and restitution payments to victims.

The Free Venture model was implemented in diverse ways in the seven states which participated in the project.⁴ LEAA initially funded three demonstration states: Connecticut, Illinois, and Minnesota. Connecticut concentrated on upgrading virtually all of the state-use operations in one of its maximum-security institutions. Illinois used its grant to develop industries in a maximum security prison that previously had no such programs. In Minnesota, the major programs involved a school bus repair shop and, later, computer programming and the manufacturing of computer disc drives in a maximum security prison. Subsequent to the original awards, LEAA funded the implementation of Free Venture industries in four additional states: Colorado, Iowa, South Carolina and Washington. Again, a variety of enterprises was developed, including an industrial park with auto repair and printing operations, furniture manufacturing and repair shops, and a logging venture.

It should be noted that the Free Venture model did not explicitly recommend private-sector involvement in the actual operation of prison industries. Rather, it simply argued for the development of prison industries--whether publicly or privately run--that would be operated as much as possible like private enterprises. Interestingly, in only two of the seven Free Venture states has the private sector become involved in prison industries. These efforts (in Minnesota and Washington) are described in the final section of this chapter.

The results of the Free Venture programs have been mixed. On the one hand, Free Venture prison industries were found to have become an important part of the correctional environment, allowing inmates to develop skills, to support themselves, and to prepare for release. However, for many reasons, programs were generally slow to become self-sufficient or profit-making.⁵ Traditional attitudes and practical logistics pose troublesome barriers to productive full-time work in the prison setting. Labor union resistance continues to be strong, particularly in times of recession, and legislative restrictions are slow to change.

Recognizing that changes in legislation are needed in order for prison industries to reap the benefits of privatization and become profitable, Chief Justice Burger and others have begun to speak strongly in favor of repealing state-use laws and other restrictions on prison-made goods entering the private economy. In 1979, the Percy Amendment was passed, thus marking the first major change in federal laws concerning prison industries since 1940. Under the Percy Amendment, pilot programs in five states were exempted from both the ban prohibiting interstate commerce of prison-produced goods and the ban on the use of inmate labor in government contracts for \$10,000 or more.⁶ However, to qualify for the exemption, the programs must pay inmates wages comparable to those prevailing in private industry in order to reduce the competitive advantage of less expensively produced prison goods. Currently, there are several legislative proposals pending that would extend the exemption to many other programs or lift the ban altogether.

With the interstate commerce exemption, private entrepreneurs are free to become actively involved in the selected pilot prison industry programs in Arizona, Kansas, Minnesota, Nevada, and Utah. Technical assistance to the industries in these states is provided by Criminal Justice Associates (formerly the American Justice Institute) under a grant from the Office of Justice Assistance, Research and Statistics (OJARS).⁷

With the exception of Arizona and Utah, all of these programs have involved private enterprise. In Arizona, the program encouraged inmate-operated business enterprises by allowing inmates to employ other inmates in the manufacture of various handicrafts sold primarily to state markets. Since this project has not capitalized on the interstate commerce exception, and the program has also encountered management difficulties, it has been de-certified to permit additions to or expansions of other programs that are more directly linked to private enterprise.

Table 2.1, which summarizes the role of the private sector in all 50 states' industry programs, notes the states that have participated in the two federally sponsored initiatives discussed in this section. Details on the private sector's involvement in prison industries in these states and others are presented in the following section.

Table 2.1

INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ²
ALABAMA	(12)	11+ License tags, farming, metal fabrication, printing, office furniture, cat- fish operation	\$3.9 Million+ 300-400 inmates	
ALASKA	(1)	2 Body fender ser- vice; farming	\$40,000 11 inmates	Current market: DOC & other state agencies only. Planning commercial laundry, bakery, furniture upholstery that would use private vendors & sell to private market. Attorney General reviewing legislation to ensure no prohibition on joint ventures.
ARIZONA	(1)	3+ Road signs, auto tags, furniture	\$3.5 Million 642 inmates	Primary markets state & local governments, but sales to private sector permitted. Two joint ventures with private sector: Best Western employs 30 inmates in satellite reservation center; Wahlers furniture, room-dividers, employs 12 inmates.
ARKANSAS	(7)	5 School bus repair, printshop, garment factories, desk- top signs, furni- ture refurbishing	\$1.5 Million Approximately 200 inmates	Farming industry benefits from an advisory board from private sector.
CALIFORNIA	(10)	20-30: License plates, metal fur- niture, wood prod- ucts, dairies, textile/knitting, flags, laundry, orchard, bindery, lens grinding, shoes, gloves, specialty print- ing (validation stickers), mat- tresses	\$25 Million 2,700 inmates	
COLORADO	(9)	15: farming, feed lot, pigs, dairy, wood furniture, 2 paint shops, sew- ing, sign shop, metal shop, lumber mill, auto refin- ishing, auto body, construction, gen- eral maintenance	\$5 Million 400 inmates	Proposals for furniture, stained glass, and sign programs with private industries.
CONNECTICUT	(4)	22: Printing, marker plates, re- upholstery, high- way signs, office furniture	\$3 Million 5,251 inmates	The state has a franchise with Oliver Rubber, Inc. to purchase supplies for its tire recapping industry.
DELAWARE	(2)	5: Furniture re- finishing & manu- facturing, metal shop, auto main- tenance, farm program, printing shop	\$2.5 Million DK inmates	Sales to both state and private markets. At least 2 private industrial programs were proposed in the past; neither materialized.
FLORIDA	(16)	62 industries programs, 22 ser- vices, incl.: butcher, garments, tags, wood furni- ture, sanitary supplies, fores- try, beef, poul- try, feed mill, dairy	\$30 Million 2,000 inmates	Market: State & local agencies. Only raw agricultural products can be sold to private market. PRIDE, a non-profit, legislatively established corporation, leases state DOC facilities & runs prison industry programs. Currently operates 100% state prison industries.

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Table 2.1

INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ¹
GEORGIA	(5)	6+	Revenues not available 600-700 inmates	
HAWAII	(2) (1 planned)	1 Printing	\$135,000 15 inmates	
IDAHO	(1)	13: Signs, metal, wood/carpentry, upholstery, data entry, microfilm, auto body, auto tag, dairy, pigs, cropland, meat	\$1.8 Million 175-200 inmates	
ILLINOIS	(11) (3 more anticipated) Participated in Free Venture prison industry program.	13+ (Not incl. agricultural): sign shop & metal, furniture, clothing, knitted goods	\$9.2 Million (incl. farms) 640 inmates	State use law prohibits sales to private sector except surplus agricultural products. Private industry representatives on Advisory Board for adult division in general.
INDIANA	(5) (Will expand to 6 or 8 within next 2 years.)	About 30: License plates, signs, furniture, refurbishing heavy equipment, etc.	> \$10 Million 1,000 inmates	Some sales to private market. Hope to explore having prison produce specific items for marketing by private firms as their own products. City Venture exploring developing private sector initiatives.
IOWA	(5) (Hope to add 2 more.)	6+ Printing signs, furniture, mens' wear, linens, adult diapers, wood finishing, etc.	\$5.8 Million 316 inmates	2 new contracts with private sector: salvage yard hires inmates to sort old motors for copper & aluminum. Inmates also sort out-of-season cards for greeting card company. City Venture exploring developing private sector initiatives.
KANSAS	(3) Certified under OJARS Prison Industry Enhancement Program.	7: Furniture refinishing, sign factory, furniture upholstery, soap factory, clothing factory, farm	\$3 Million 180 inmates	Cannot sell on open market by state law. Zephyr Indus. has 2 programs: 1 inside prison, & 1 outside. Just starting up new engineering drafting program inside walls. Proposal before legislature to provide tax incentives to private industries operation in prisons. Active Advisory Committee lobbies for private involvement.
KENTUCKY	(8)	8+ Metal fabrications (lockers, shelves), farming, license plates, chemical soap, road signs, clothing, furniture, printing	\$3.5-\$7 M 400 inmates	80% of all goods and services to state markets; 20% sold to general public, mostly from furniture sales through showroom at Frankfort institution.
LOUISIANA	(4) (Industries proposed in 3 other institutions)	8+ Metal fabrications (beds, lockers), license plates, mattresses, brooms, silk-screening, printshop, garments, chemical plant	\$6.5 M 365 inmates	
MAINE	(1) (Another by year end)	3: Woodshop, upholstery, printing	Revenues unknown Approx. 60 inmates	Products retailed through private firms to general public.

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Table 2.1
INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ¹
MARYLAND	(10)	23: Auto/body work; graphics/printing; paint shop; mattress; tags/metal signs; woodworking; upholstery; sewing; optical; clipping service; data operations; meat plant; janitorial; metal shop, etc.	\$7.2 Million 632 inmates	
MASSACHUSETTS	(7)	28 industries: tags, wood furniture; 3-ring binders, mattresses, etc.	±\$5 Million 400 inmates	Some sales to private markets, but primarily state-use. No involvement in actual operations.
MICHIGAN	(3)	6 industries: tags, wood/metal furniture, textiles, shoes & clothing, highway signs, laundry	\$11 Million 900 inmates	Sales to private non-profits permitted (hospitals/universities). Rapid increase in private sector sales. No other private involvement due to the economy and a law prohibiting private industry within the prisons (law is currently being amended). In January 1983, City Venture Corp., a private consortium began planning a model industrial program for the Huron Valley Correctional Facility in Ypsilanti. The program is expected to be operational in 1985.
MINNESOTA	(5) Participated in Free Venture prison industry program. Certified under OJARS Prison Industry Enhancement Program.	21 industries: machine assembly, printing, furniture, reupholstering, office products, etc.	\$4.5 Million 417 inmates	Sales split 30% state and local government and 60% private sector. Control Data started disk drive assembly at Stillwater Data Processing Inc. Stillwater Data Processing Inc. hires inmates to perform computer programming. New private sector light metal products fabrication began in January 1984. Western Electric and Toronto provide quality control at Lino Lakes Prison.
MISSISSIPPI	(1)	7+ Industrial chemicals, garbage container repair, desk top supplies, silkscreened T-shirts, book-binding. All prison industries are only 6 yrs. old.	Revenues not available. 600 inmates	Mostly public sector markets. However, some sales to private, e.g., industrial chemicals, T-shirts, & desk top supplies. DOC hires traveling salesmen. • KOOLMIST, an air conditioning corp., has contract with DOC. Inmates work inside walls in DOC facilities under DOC supervision using KOOLMIST-supplied materials and equipment to manufacture condensers. This venture is about 9 months old, and about 20 inmates are employed on a full-time basis. KOOLMIST was a young company which sought to expand its small manufacturing base. • YAZOO INDUSTRIES, a division of Package Electric, had planned to build a small manufacturing plant inside the walls and employ 50 inmates to make wiring harnesses for cars. However, due to union problems the project was abandoned. New negotiations with a furniture manufacturer have begun, and if successful, the prison plant will employ 75 inmates initially and expand it to employ 200 within 2 years.
MISSOURI	(4)	15: Tags, validation stickers, clothing, shoes, printing, wood/metal furniture, laundry, print shop, chemical products, data entry, custodial service	\$6 Million 800 inmates	Blood plasma processing program proposed as private enterprise inside, but never materialized.
MONTANA	(1)	6 (Not incl. ranch operations): Furniture, upholstery, logging, printing, signs, license plates	\$225,000 100-150 inmates	Current markets: State and non-profit agencies only. However, legislation which established prison industries also allows sales to private sector.

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Table 4.1

INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ¹
NEBRASKA	(2) (One more will start up in 1984)	9: Sewing, license plates, metal/wood furniture, signs, printing, refurbishing school desks, soaps/waxes	\$2.2 Million 150 inmates	Planning and Research Department looking for private firms interested in inside-prison programs.
NEVADA	(2) Certified under OJARS Prison Industry Enhancement Program.	4 Print shop, mattresses, soap, furniture	Revenues unknown 44 inmates	Sales restricted to govt. & non-profit agencies. Private firms involved in running broom factory and frozen food programs within prisons. Proposal pending for shoe manufacturing program.
NEW HAMPSHIRE	(1) (only institution)	10 shops, 25-30 products: farm, sign, wood, print, plates, computer	\$1 Million 135 inmates	May sell to private market.
NEW JERSEY	(6)	8 industries: tags, clothing, mattresses, road signs, soap/brushes, dental lab, printing, farming (10,000 acres, largest farming operation in state)	\$5.1 Million 187 inmates	
NEW MEXICO	(3) (2 more planned)	18: Tailor, auto tag, signs, office furniture, print shop, auto body, furniture upholstery, micrographics, farm, dairy, poultry, hogs, beef, slaughtering	N/A 430 inmates	Sales restricted to government and non-profit agencies. Have enabling legislation, but presently no private sector involvement.
NEW YORK	(13)	5 industries: metal furniture, highway signs, eyeglasses, foundry, maintenance/cleaning products	\$30 Million 3,000 inmates	
NORTH CAROLINA	(22)	12+ Sign manuf., license plates, print shop, paints, laundries, sewing, mattresses, tailoring, soap, furniture, meat processing	\$29.9M 2,000 inmates	
NORTH DAKOTA	(2)	7: Furniture, janitorial products, metal products, sign factory, upholstery, agriculture, manpower services	\$2 Million 150-200 inmates	Most sales to government agencies and non-profit organizations. Can sell to private wholesalers, but not to private individuals.
OHIO	(8)	11 industries: tags, highway signs, wood/metal furniture, mattresses, vehicle modification/repair shops, tire retreading, soap, janitorial supplies	\$13.5 Million 1650-1800 inmates	Small volume of sales to private market through regional showrooms (100K of 13.5M); primarily state use, law permits other involvement—e.g., outside work, production of computer parts, but not started yet, due to economy.

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Table 2.1

INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ¹
OKLAHOMA	(5)	17, incl.: meat processing, furniture manuf., data entry, metal fabrication	\$6 Million 540 inmates	Markets: State & non-profits. Have 1 person assigned full-time exclusively to encourage private sector involvement, & state has advisory board on same topic. No results yet.
OREGON	(1) Will add industries at new facility in 1985	3+ Laundry, furniture manufacturing & repair, auto re-conditioning, upholstery, storm windows. etc.	\$2.9 Million 300 inmates	SB780 just passed in Legislature in summer of 1983 will create a private enterprise to manage all state prison industries, similar to the scheme in FLA. The Governor has appointed f Advisory Board members. Sales of current prison industry goods mostly to government, but private sector sales also permitted.
PENNSYLVANIA	(7)	10 industries: tags, wood/metal furniture, clothing, cardboard boxes, farming, paper/printing, shoes, dentures, coffee/tea, upholstery	\$12 Million 1,400 inmates	Sales to private sector prohibited by law. Only private involvement: purchase of raw materials on competitive basis.
RHODE ISLAND	(7) (all)	8-10: Printshops, signs, carpentry, furniture repair, auto body, garments, woodcutting	Revenues unknown 300 inmates	Indirect, as advisors.
SOUTH CAROLINA	(9) Participated in Free Venture prison Industries program.	10+ Janitorial cleaning products, license plates, wood furniture refurbishing, metal products, reupholstering, signs, mattresses	\$4 Million 2,000 inmates	
SOUTH DAKOTA	(1)	6: Tag plant, book-binding, furniture shop, upholstery shop, print shop, farm	\$2 Million 110 inmates	May sell agricultural products on open market; all others restricted to state use. Pursuing programs for free enterprise within the walls. Recent proposal held up by legal complications.
TENNESSEE	(4) (But plan to consolidate all industries under 1 roof)	5+ Sewing, tag plant, wood shop, signs, metal fabrication	Revenues unknown 750 inmates	
TEXAS	(11)	10+ Furniture, bus repair, microfilm documents, soap factory, metal fabrication, tire retreading, garment factory, dental lab	\$37 Million 4,000 inmates	
UTAH	(1) Certified under OJARS Prison Industry Enhancement Program.	10 Auto tags, metal shop, carpentry, upholstery, print shop, signs, agriculture, dairy, meat, hogs	\$3 Million 200-250 inmates	Sales restricted to government and non-profit agencies. Sewing operations with Osborne Industries (outside) with openings for 30 inmates who are paid piece rate to equal minimum wage. Graphics company employs inmates who work in print shop at prison.

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Table 2.1

INVOLVEMENT OF THE PRIVATE SECTOR IN STATE PRISON INDUSTRIES

State	(# Involved Institutions)	# Industries/ Major Products	Annual Revenues/ No. Employees	Private Sector Roles in Industries ¹
VERMONT	(2) (2 more by end of 1984)	6: Printing, furniture, plates, signs, dairy farm, sawmill	\$1.25 M 45-50 inmates	Legislation has been introduced to relax market constraints and allow contracts with private sector.
VIRGINIA	(11)	14+ Wood shops, office furniture, clothing, printshop; metal shop, laundries, bus repair, shoe factory, license plates	\$12 Million 1,051 inmates	
WASHINGTON	(5) Participated in Free Venture prison industries program.	10 traditional industries: metal shop, tags, signs, concrete, printing, laundry, furniture, beet farms	\$4.5 Million 420 inmates	Traditional prison industry products restricted to state market & non-profit organizations. Joint venture industries involving private sector can sell products to all markets. 3 private sector ventures: Inside/Out, Redwood Inc. (handbags), & Madrona Inc. (wood stoves).
WEST VIRGINIA	(2)	Primarily license tags	Information unavailable	
WISCONSIN	(4) (3 planned)	7: Sewing, laundry, license plates, signs, metal & wood furniture	\$6 Million 265 inmates	Negotiating with "City Ventures," Minnesota corporation doing feasibility study.
WYOMING	(3)	9 Mattresses, shoes, garments, signs, tags, dressmaking, meat, dairy	Revenues unknown 310 inmates	

¹Unless otherwise indicated, markets are state and local government and non-profit agencies only, and there is no other private sector involvement in prison industries.

Prison Industries and the Private Sector in 1984

As Table 2.1 indicates, all 50 states have industry programs in one or more prisons. Industries are currently operating in 270 prisons, slightly over half of all state correctional institutions in the nation. In addition, industries are planned in another 22 prisons scattered throughout the country. However, only about 9 percent (33,977) of all state inmates are employed in prison industries.⁸ State revenues from prison industries average about \$8,000,000 per year,⁹ with Texas, Florida, New York, and North Carolina reporting the highest annual revenues in excess of approximately \$30,000,000 each. The most common industries include manufacture of license plates (tags), furniture and upholstery, metal products, printing, and agriculture. Environment also plays a role in determining the selection of types of prison industries; for example, catfishing is one of Alabama's industries and logging one of Montana's.

The vast majority of states adheres to the traditional model of DOC operation and management of prison industries, with no outside involvement--although the private sector serves in an advisory capacity to prison industries in a number of states. Generally, products and services are sold exclusively to state and local government markets and to nonprofit organizations, restrictions that limit the markets available to private entrepreneurs who might otherwise find prison-based operations more attractive. Nonetheless, private sector involvement in prison industries is slowly gaining popularity. According to our survey, the following states are exploring private sector involvement in prison industries:

- Alaska. Pending the results of its Attorney General's review of state legislation, Alaska plans to engage private vendors in three new prison industries (commercial laundry, bakery, and upholstery).
- Colorado. Proposals from the private sector to become involved in its furniture, stained glass, and sign manufacturing industries are being considered.
- Indiana and Iowa. City Venture Corporation, the consortium now building a model industries program in Michigan (described below), is working on developing similar programs in Indiana and Iowa.

- Nebraska. DOC's Planning and Research Department is looking for private firms interested in operating prison industries.
- Oklahoma. The Department of Corrections has assigned one person full time to the task of developing private sector initiatives.
- South Dakota. DOC was interested in private sector operation of prison industries. However, the Attorney General raised concerns about the practice of garnishing wages and plans are being re-evaluated.
- Wisconsin. City Ventures is being considered to conduct a feasibility study on joint ventures.

In two other states, plans to involve the private sector in prison industries had been considered in the past, but did not materialize. In Delaware, market shrinkage and higher than anticipated equipment costs discouraged private sector involvement in the mattress and metal fabrications industries. A blood-plasma donation center had been proposed, but never implemented, in Missouri.

Private sector involvements that have reached the implementation stage have generally taken two forms: the use of inmate labor by private industries that develop prison-based operations managed by DOC; and the development of prison industries wholly owned or operated by the private sector. These types of participation are described in the next two sections.

--The Use of Inmate Labor by Private Industry

Most private enterprises do not play an active role in managing or operating prison industries. Rather, they contract with the Department of Corrections for inmate labor, and supply raw materials and equipment while DOC furnishes space and supervision. Private enterprises are then typically responsible for selling goods and services. They may sell to the private sector within their own states or to state markets. Of the states described below, the only ones permitted to sell to other states, as specified by the Percy Amendment, are CDC's disc drive manufacturers, Nevada's broom factory, and Utah's printshop.

- Arizona. Best Western has installed computer terminals at a women's pre-release center, where 30 inmates make reservations for the

hotel chain nationwide. Wahlers, a furniture and room divider manufacturer, has contracted for 12 inmates, who are paid a per-piece rate.

- Iowa. Two private sector ventures have been launched recently. A salvage yard employs inmates to demolish and sort old motors into copper and aluminum products for recycling. Inmates also sort and repackage out-of-season cards for a greeting card firm.
- Kansas. Zephyr Products Inc. employs inmates who work in the state's sign shop facility to make printline products. (Zephyr's sheet metal operation, a separate initiative, is described in a later section.) Recently an engineering firm hired two inmates to do drafting and plans to expand to 5-10 inmates.
- Mississippi. Koolmist, a relatively new, small air conditioning corporation which sought to expand its manufacturing base, entered into a contract with the Department of Corrections nine months ago. Koolmist supplies raw materials and equipment to 20 inmates who work inside the walls of DOC facilities manufacturing condensing units under DOC supervision.
- Minnesota. Control Data Corporation launched a computer component assembly line at the Stillwater state prison in 1981. CDC initially supplied raw materials and equipment and provided training for 45 inmates to manufacture disc drives. Once operations were underway, DOC took over operations and management, and CDC's role is now limited to purchasing finished products, which they then sell. Another initiative at Stillwater is the light metal manufacturing foundry which makes "short line farm equipment" such as gravity boxes and manure spreaders. This industry was certified in the fall of 1983 for out-of-state sales, and now sells its products to about 260 private distributors in four states. The program employs 116 inmates and is unique because it began with an existing industry and expanded, rather than creating a new industry subsequent to the certification. (A third initiative, Stillwater Data Processing, is discussed in the next section.)
- Nevada. The General Household Items Company employs 15 inmates at the South Desert Prison to make brooms, and a frozen food plant hires 20 inmates at the same facility.

- Utah. A graphic arts company contracted for 26 inmates who work in the state's print shop. In addition, Osborne Industries, a sewing operation, is scheduled to engage about 30 inmates to work inside prison walls.

Prison industries may also procure materials and equipment from the private sector under franchising arrangements. By franchising, prison industries obtain a license to use a trade name, a unique technology or format, and may also obtain technical assistance from the franchisor (operation manuals, staff training, quality control checks). For example, Connecticut purchased a franchise from Haroldson, Inc. for a tire recapping industry. Haroldson set up operations, which were turned over to DOC once the industry was fully underway. From that point on, DOC purchased all its supplies for its tire recapping industry exclusively from Haroldson. After Haroldson went out of business last year, the state purchased another franchise from Oliver Rubber Inc. Connecticut's tire recapping industry is quite small, generating only about \$90,000 in revenues with a staff of 18-20 inmates. The industry's representative cited the up-front costs of franchising as one of the reasons the tire recapping operation was not as profitable as other prison industries. Thus, the Department is considering discontinuing the franchise and closing the shop.

In fact, according to a recent study on franchising in prison industries, private operation of franchises was not generally supported by correction officials, nor was it deemed feasible for widescale implementation. However, researchers concluded that the concepts of franchising are applicable among state prison industries. Specifically, they identified three types of franchise-like arrangements which are viable: integrated production (where one state's prison industry manufactures a product which another state then assembles or finishes), cooperative purchasing of raw materials, and cross-state marketing either through another prison industry's offices or directly to government agencies.¹⁰

—Private Operation of Prison-Based Industries

In other states, the private sector plays a considerably larger role in prison industries. Rather than simply contracting with DOC for inmate labor and having no involvement in industry operations, in some states, private entrepreneurs build or lease DOC property and actually operate industries.

Sometimes DOC has a joint management role. Examples of private businesses leasing or building on DOC property to operate prison industries can be found in Florida and Minnesota and are planned in Michigan, Mississippi, and Oregon.

Florida. Private sector involvement in Florida's prison industries was established in 1981 with Section 945.135, legislation which was passed in response to the alarming state corrections budget increases and based on the notion that prison industries should be profitable. Thus, the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)--a nonprofit corporation whose express mission is to operate and manage prison industries--was founded. To get PRIDE launched, Florida businesses donated \$200,000. PRIDE's goals are to reduce the costs of incarceration to the state while still serving its rehabilitative and security needs.

The legislation establishing PRIDE provided that the Board of Directors would be selected by the Governor and confirmed by the Senate. The current board is comprised of four senior private sector managers, a former attorney general, three state level educators, two correctional superintendents, a representative from labor, and an attorney, among others. The top level managers of PRIDE are former senior corporate executives; the four regional field managers have correctional and industrial experience. Managers at the industry level are former private sector managers from the relevant industrial sector; for example, PRIDE recently hired a canning plant manager from Wisconsin to run their prison canning concern.

PRIDE manages over 22 types of prison industries in Florida, including an optical lab, print shops, furniture manufacturers, metal fabrications, numerous agricultural industries, and many others. By July 1984, PRIDE had assumed control over 100 percent of Florida's prison industries--one year ahead of its legislative deadline of July 1985. It has been likened to a medium-size conglomerate. While the corporation leases facilities from the state, it purchases and holds title to all new equipment. PRIDE provides vocational training to inmates who work in the industries it operates. With its own marketing division and corps of professional salesmen, PRIDE sells exclusively to state and local governments in Florida and in other states as well. The legislation which created PRIDE stipulated that Florida state agencies must purchase from the corporation any needed goods available from

PRIDE. At the same time, however, PRIDE is restricted from engaging in undue competition with the private sector. Thus, only its raw agricultural products can be sold to private markets. All profits from PRIDE are reinvested in the corporation. As an indicator of its success, PRIDE has been asked by the Governor to request a \$9 million appropriation to establish programs in Florida prisons which do not currently operate any industries.

Many of PRIDE's recent efforts have been directed toward securing management expertise from private industry and stopping the cash bleed from the state system. Managers have made major modifications in the state industries which PRIDE has acquired, particularly in the areas of quality control, marketing accounting, restructuring, and computerizing. For example, each industry now gets its own monthly profit and loss statement. These efforts have begun to pay off: out-of-state monies totalled over \$1 million in the last 10 months; their optical operation has doubled its volume; and their canning production is up from 6,000 cases a month to 100,000 a month in less than 18 months. At the same time, PRIDE has also begun to pay inmates. Inmates receive between \$0.50 and \$1.00 an hour, 70 percent of which goes to the state for room and board. The current employment level is 1700-1800 inmates, which is 7-8 percent of the prison population.

In addition to acquiring existing state industries, PRIDE has established new industries. For example, the state was using 4,000 acres near Okeechobee for a cattle ranch at an annual profit of \$52,000. After a profitability analysis, PRIDE borrowed \$3,000,000 and converted the land into a sugar cane farm--the first harvest in November 1984 has a projected value of \$1,000,000 in net profit. They are also investigating wheelchair manufacturing, light metal fabrication, and government vehicle rehabilitation.

Minnesota. Unlike the disc drive plant that operates under DOC supervision (with CDC collaboration), Stillwater Data Processing Systems Inc. (SDPS) is an independently managed prison industry. In 1976, three years after state legislation permitting private entrepreneurs to set up shop inside prison walls was passed, SDPS, a nonprofit organization, got its start with \$55,000 in grants from private foundations. Inmates were first trained in computer programming in prison vocational education classes before being assigned to programming projects for Stillwater clients. The

state is the largest SDPS client, although contracts are also held with Control Data, 3M and a St. Paul insurance company. SDPS leases space from the state, but operates and manages the company independent of the Minnesota Department of Corrections. Its 10-12 inmates can reportedly earn starting salaries of \$15,000-\$22,000 in computer programming once they have been released.

Michigan. In Ypsilanti, Michigan, at the Huron Valley Correctional facility, City Venture Corporation (CVC) is building a model industries program for the Huron Valley Project. Founded in 1978, City Venture Corporation (CVC) is a Minneapolis-based, for-profit consortium of 10 corporations (including CDC) and two religious organizations. The corporation works in partnership with public, private and community sectors to initiate, plan, and manage job creation and urban revitalization programs in economically distressed inner cities. Planning for the Huron Valley Project began in January 1983 with a first year grant award from the Edna McConnell Clark Foundation. CVC aims to create a business in the prison which provides marketable skills in computer occupations and competitive wages that will allow inmates to contribute to the institution, make restitution, and save for release. The project will ultimately employ 150 inmates--75 from the men's portion of the facility and 75 from the women's portion. Year 1 of the project was dedicated to tasks such as establishing job descriptions and grievance practices, developing aptitude testing, writing a private prison personnel manual, and qualifying 140 inmates via small group workshops. Year 2 of the project (implementation) has been delayed because Michigan has a law prohibiting private industry in its prisons, and the bill to change this law has not yet passed the state Senate. Once this law has been changed, CVC will apply for federal certification for exemption from interstate transportation restrictions.

Mississippi. Yazoo Motors, a division of Packard Electric, recently had plans to build a small manufacturing plant inside one of Mississippi's state prisons where 50 inmates would produce wiring harnesses for cars. However, union problems arose and the project never materialized. New negotiations have begun with a western manufacturer of wooden water bed furniture to establish a prison plant which would employ 75 inmates initially and expand over a period of two years to an employment level of 200.

Oregon. Senate Bill 780, which was passed by the Oregon legislature in the summer of 1983, will create a prison industry management scheme similar to Florida's. The Oregon Governor has appointed a board of directors from the private sector which will run the state's prison industries. The Department of Corrections wanted to move its industries programs from the red into the black and turn it into a profit-making business. However, it also wanted to avoid accusations of unfair competition with the private sector and inappropriate delegation of authority. Thus, a private enterprise will be responsible for the business management of Oregon's prison industries, while DOC will retain security-related responsibility. They are currently in the process of assessing the industry production, and awaiting clarification of some pending legal questions by the Attorney General.

-Private Operation of External Prison Industries

In addition to examining private sector participation in prison-based industries, our survey asked for information on private sector involvement in training inmates (inside or outside the institution) or providing jobs in industries that operated outside the walls. Standard work release programs were not included, as the extent to which state prisoners were being used as a source of labor for the private sector during their primary terms of confinement was of primary interest.

Few innovative arrangements for employing inmates outside the walls of state institutions were uncovered by this portion of the survey (summarized in Table 2-A in the Appendix). For the most part, outside work programs remain limited to traditional work release, in which individual offenders are matched with receptive employers who rarely hire more than one or two inmates at a time. In some cases, a particular industry has proven to be a useful source for work-release placements, even though no single firm has used the prisoner workforce as a primary source of labor. In New Jersey, for example, approximately 100 inmates are employed by fast food restaurants statewide. In Virginia, a meat packing plant and a peanut plant regularly employ 10-15 inmates on work release.

The most widely publicized--in fact, the only--non-traditional work-release venture operates outside the grounds of Leavenworth Prison in Kansas, and is staffed almost entirely by Leavenworth inmates. This is Zephyr Products, Inc., a sheet metal com-

pany boasting more than \$1 million in sales in 1980. Zephyr Products was deliberately built only a few miles from the Kansas State Penitentiary to employ idle prisoners. In April 1981, Zephyr employed nine civilians and 30 inmates who were bussed, at their own expense, to and from work every day on a Zephyr-owned bus with an unarmed prison guard.

Zephyr was the brainchild of a Harvard MBA, Fred Braun, in 1979. During the course of his work on the Kansas Governor's Task Force to study management practices in the state government, Braun was appalled by prisoner idleness. After carefully selecting a business in which he had prior experience and which was not yet operating in Kansas, he got backing from the state legislature and convinced the city of Leavenworth to issue bonds for the business, using his own money as collateral.

Although the company operated at a loss its first two years, largely due to the overall economy, Braun expects to turn a profit. He claims that inmates are more productive than their real world counterparts, and of course they lack the option to leave for other jobs. Corrections officials believe that the experience is beneficial for inmates as well. They earn minimum wage, from which they pay room and board to the state, family expenses, and contributions to savings. Although they must leave Zephyr Products when they are paroled, many inmate-workers have found jobs in other machine shops.¹¹

All of the remaining private sector work opportunities noted on Table 2-A are reminiscent of the system of "Public Works and Ways" instituted during the early history of American prisons. In its contemporary form, prisoners are used to defray the costs of private contracts for facility construction.

Issues in the Privatization of Prison Work Programs

The political, administrative, legal and financial issues involved in privatizing prison work programs provide a list of clear and compelling reasons why the privatization experiences reported in this chapter have been fairly limited in scope and modest in scale.

Political Issues of Private Industry Participation in Prison Work Programs

--Union and Public Attitudes

Union resistance and adverse public reaction gave rise to the early shift away from employing prison workers in competition with free labor and toward the use of prison labor for public works and state-use industries. These attitudes have shaped the organization of prison industries over much of this century. The resulting state and federal legislative controls imposed on prison industries (and described under "legal issues") continue today to constrain more aggressive involvement of the private sector. Easing these statutory limitations is generally considered a pre-condition for industries to expand their markets and thereby attract more active private sector participation. As an intermediate step, however, many note that even within a state-use system there may be substantial opportunities for the development of new product and service industries. Such efforts to work within the constraints of a state-use system may be necessary for some time to come. Reportedly, the AFL-CIO will oppose a current Congressional plan to expand private sector industry initiatives, claiming that the proposed projects would penalize union members. As an economist for the Federation commented, "we tread a pretty thin line when we have this plan but protest slave labor in the Soviet Union."¹²

--Prisoner Labor Unions

Another area of potential political concern has been expressed by some observers who suggest that private sector operations may stimulate inmates to organize and bargain collectively for improved working conditions. To the extent that former union members are confined in a given prison, there may, in fact, be a base of support for the development of prisoner labor unions. There are, however, a number of legal obstacles. While prisoners working for private employers may be protected by the National Labor Relations Act, which gives workers the right to organize, states are allowed to prohibit collective bargaining and other union activity of prisoners, and federal law prohibits convicted felons from holding union office. These restrictions are likely to withstand constitutional challenge, since the 13th Amendment allows involuntary servitude as a punishment for crime and may thus attach some of the characteristics of slavery to prisoners--including prohibitions on slave organizations.

--Correctional Staff Attitudes

A final source of potential discontent may be found among public corrections employees. Opposition from correctional staff may come in many forms--from resentment that inmates have access to salary opportunities in private sector occupations to opposition to the inconvenience of scheduling other prison activities to accommodate inmates' work assignments. While strong industry leadership may diffuse this source of opposition, the coordination issue may pose significant ongoing administrative problems.

Administrative Issues in Privatizing Prison Work Programs

--Industry/Institution Coordination

Tension between the economic objectives of industries and the correctional purposes of their host institutions has accompanied many recent efforts to revitalize prison industries. Particularly in maximum security institutions, eight-hour production days are generally infeasible; even more modest schedules are frequently interrupted by inmate callouts (to participate in various treatment activities that can only be scheduled during the workday when the relevant staff are on duty) and other disruptions, including inmate counts and in-and-out processing activities. If reconciling the needs of industries with those of the larger correctional environment can be difficult even when both are under DOC supervision, one can argue that independent private sector operations will face a considerably larger challenge. On the other hand, it is entirely possible that a private industry operation might be perceived as a business enterprise more readily than the traditional DOC industry model. And if the perceived benefit of this business orientation were largely positive, the result might be greater efforts from correctional management to shift custodial staff schedules, minimize programming interruptions, and tailor security procedures to the mutual benefit of industry and institution.

--Conflicts in Purpose

In addition to the need to accommodate the security, programming and maintenance activities of the institution, the scale of any single industry operation is likely to be limited by the differential skills and abilities of the prisoner workforce and the high rate of turnover typically experienced due to in-

mate transfer and release. If a goal of industries is to achieve the full and productive employment of a majority of the prisoner labor force, a range of industry opportunities are likely to be required. Reducing idleness may, however, conflict with the goals of minimizing the costs of confinement, for as the number of shops increase, so too do the needs for space, supervisory staff, and overall management coordination. Moreover, a shop that succeeds in reducing idleness may not return a significant profit to the state or contribute to inmates' needs for basic skills training. Balancing the objectives of training, cost-containment and reduced idleness has always been a significant problem for DOC-operated industries. Most observers will generally agree that until a dominant purpose is clearly articulated, industries may continue to flounder in the attempt to satisfy all three objectives.

--Wage Disparities

At least 12 states authorize private employers to use inmate employees, provided they are paid prevailing wages. Seven states have been exempted from Federal legislative restrictions--again, provided that prevailing wages are paid. This stipulation addresses the issues (unfair competition and inmate exploitation) that might otherwise hamper or preclude private sector participation in prison work programs. At the same time, as Table 2.2 demonstrates, wage disparities between public and private industry programs within the same facility are almost inevitable and may create significant management problems unless state-operated programs are upgraded to provide comparable opportunities. It is also possible that private operations may attract the most highly motivated or skilled workers, reducing the performance capacity of state-run programs. Both issues clearly suggest that a state might be wise to consider private sector operations as one step in a larger plan to restructure the organization and incentives of all industry programs.

--Encouraging and Controlling Inmate Entrepreneurial Activity

In addition to bringing outside entrepreneurs into the prison environment, the concept of encouraging the entrepreneurial talents of inmates themselves has received some attention as another way of providing inmates with work opportunities that can contribute to their families' support and reduce the costs of their confinement. Typically, however,

inmate handicraft or novelty operations are constrained by lack of space and sales outlets as well as stringent regulations limiting the employment of inmates by other inmates, restricting their gross sales or earnings or limiting the amount of time they can devote to their own business operations. These regulations are generally intended to control the potential consequences of an overly active prison economy--in particular the danger that inmate bosses will exploit inmate workers or that the most successful entrepreneurs will assume control over prison services and amenities.

The experience with the novelty program at Maine's State Prison provides an example of the benefits and disadvantages of giving capitalism free rein in a prison setting. A substantial portion of inmates was employed in the manufacture of various handicrafts sold through a large store adjacent to the prison. Idleness was rarely a problem (in fact, since earnings were geared to productivity, many inmates had the incentive to put in extremely long days); funds were used to buy furniture and equipment not otherwise available to the prison; and many inmates were able to accrue significant profits to send to their families or save for release. On a less positive note, "capitalism became so successful," according

to the former Warden, "that it drove itself right out of business. It kept expanding and expanding, and we didn't have any antitrust laws to contain it."¹³ After a major lockdown, the program was restructured, and tighter controls were imposed in order to constrain the extent to which inmates could build excessively powerful novelty enterprises.

This experience offers two important lessons to more traditional industry operations. First, it is clear that there are potentially substantial advantages to using wage incentive plans to foster inmate entrepreneurial activity, provided the productivity incentives are carefully controlled. The second and most obvious lesson is the importance of choosing industries well matched to inmates' interests and skills, as well as the needs of the local economy. In Maine, there was both market interest in novelty products and inmate interest in their production. The result was a flourishing industry.

Legal Issues in Privatizing Prison Work Programs

-Defining the Legal Status

State legislation aimed at encouraging private industry within prisons should address two con-

Table 2.2
REPORTED WAGE RATE BY TYPE OF INDUSTRY

State	DOC Prison Industry Wage	Private Enterprise Wages
Arizona:	\$0-.50/hr.; average \$.30/hr.	\$3.50-\$4.00 or minimum wage*
Florida:	0: Inmates are not paid by the state	\$.50/hr. (Unskilled) \$1.00/hr. (Skilled)
Kansas:	\$.65-1.05/day	\$3.35/hr.
Minnesota:	\$1.30/hr. (average)	\$3.57-\$4.00/hr.*
Nevada:	\$.20-\$.80/hr.	\$6.00/hr. or minimum wage*

*Depending on which industry inmates work in.

cerns. The law must first authorize the private operations, but it also must establish the parameters of those operations. This second point is important for the protection of the firm, the inmates, and the community. The Model Sentencing and Corrections Act provides for both on- and off-premises employment of inmates and is more detailed and complete than any existing state legislation.¹⁴ The authorizing provisions of the Act carefully address several important concerns and may be a useful reference for states considering private work programs.

--State-use Restrictions

Where restraints on the markets for prison-made goods exist, they may limit sales to use within the correctional facility, to use by government and, perhaps, nonprofit organizations, or they may require that sales be made first to government and only then allow the surplus to be sold on the open market. While private vendors may become profitably involved in state-use product or service markets, these restrictions obviously limit the interest of large segments of the private sector and will generally require modification if aggressive private sector participation is sought.

--Restrictions on Interstate Transport

Under federal law, "whoever knowingly transports interstate commerce . . . any goods, wares, or merchandise manufactured, produced, or mined . . . by convicts or prisoners . . . or in any penal or reformatory institution, shall be fined not more than \$1,000 or imprisoned not more than one year, or both." This law exempts certain products from its purview--agricultural commodities, parts for the repair of farm machinery, and goods made for sale to federal, state, and local government, including the District of Columbia. In 1979, Congress added an additional exemption (the Percy Amendment) which also exempted seven pilot projects provided that inmates were paid the locally prevailing wage, were not eligible for federal employment benefits, and agreed to deductions for taxes, room and board, family support, and contributions to victim compensation funds--not to exceed 80 percent of gross wages. While union resistance is high, Congress is considering the exemption of other states, a move generally believed essential to the growth of privately operated prison-based industries.

--Rights and Benefits Under Relevant Labor Laws

When private industry begins operation within the prison confines, a number of important labor-related issues must have already been addressed. Because the inmates are working for a private employer, they may be entitled to certain benefits available to other employees of private firms. On the other hand, some labor protections and benefits may not be available to the inmate-laborer because of his or her status as a prisoner. The lack of legislation and case law in this area often precludes a definitive answer as to whether or not prisoners are included in a given area of labor law. Each issue must therefore be examined individually in light of what law does exist. Establishing wage rates, determining wage deductions, providing inmate-workers with Workers' Compensation, determining pension eligibility, establishing compliance with relevant OSHA requirements and dealing with issues of unemployment insurance are some of the most pertinent labor issues to be considered. Again, the Model Act addresses many of these issues, providing a useful reference to laws that may need to be modified or created.

Financial Issues in Privatizing Prison Work Programs

Whether a privately operated prison industry can operate profitably in the prison environment is an issue open to debate. Transport costs, the difficulties of attracting regular staff, the quality of the prison labor force, a volatile work environment and high turnover, add costs that might be avoided or diminished in real-world operations.

To counteract these disincentives, some states have considered providing--or already provide--subsidies in the form of low-cost space and utilities, absorption of some administrative and transportation costs, or tax and capitalization incentives. Obviously, the use of these incentives and subsidies may reduce the cost advantages of private sector participation. On the other hand, to the extent that the productive employment of prisoners is a higher priority than cost containment, the adjustments may be amply justified.

Summary

The private sector has become involved in the actual operations and management of prison industries in very few states; in only one state has an "external" prison industry been developed. When the private sector has employed inmates, it has done so on a modest scale, generally hiring no more than a total of 50 inmates. Legal restrictions are an obvious disincentive to greater private industry participation. Similarly, public and union opposition to hiring inmates is likely to be a strong deterrent. In the prison environment, private enterprise also must contend with the costs of transporting materials and equipment to and from isolated areas, possible difficulties in recruiting skilled supervisors willing to work with prison inmates, and the training and scheduling problems imposed by the inherent instability of the prison workforce. (The latter constraint may explain why small operations are the norm and seem generally preferred by industry observers.)

What, then, has motivated the organizations that have taken a lead in collaborating with prison industries? Thus far, a major incentive seems to have been a strong sense of public responsibility on the part of the private entrepreneurs. CDC's President, William Norris, exemplifies this quality. According to a reporter for the Wall Street Journal, Mr. Norris has said he would rather be remembered as an executive who got corporate America involved in solving the nation's social problems than an entrepreneur who started a computer company. "Naysayers simply don't see the long-term profit potential of success in these ventures. I don't think in terms of 10 years. I think in terms of 20 years."¹⁵

Many observers believe that reliance on this kind of commitment is unlikely to prompt widespread corporate involvement in prison industry and work programs--nor will the involvement that occurs effectively simulate real-world conditions. In this view, only if prison-based operations are perceived and operated as viable economic enterprises will industries ever become coherent features of the prison environment. In the absence of the attraction of bargain-basement wage rates for inmate labor, a variety of incentives may need to be considered to attract industry, including subsidies (in the form of low-cost space and utilities), tax and capitalization incentives, and formal arrangements for preferred access to state-use markets.

Are state corrections authorities eager to become involved with private enterprise? While no systematic opinion research was conducted, among those states with no active or proposed affiliations with the private sector, the commitments were mixed:

- "We're doing the same thing ourselves."
- "I can assure you that nothing like that will ever happen in this state."
- "The idea is promising, but legal restrictions preclude any active planning."
- "We'd welcome anyone who would be foolish enough to do it."
- "Paying some inmates higher wages than others is an invitation to riot."

Respondents were generally prison industry managers, and some comments clearly reflected the strongly entrenched tradition and pride of DOC ownership and operation. (Had corrections administrators been asked, more enthusiasm might have been evident. In fact, in the Camp's survey of private sector involvement, corrections administrators frequently suggested that they would consider initiating or expanding contracts for prison industries.¹⁶) Where interest was expressed by industry managers who pointed with resignation to the legislative barriers, it seemed clear that the concept had yet to gain sufficient executive backing to generate legislative attention. The inequities that would occur with differential wage opportunities troubled a number of respondents who felt that a dual wage structure would inevitably foster inmate resentment.

In some respects, wage disparities are only a symptom of the larger conflicts that may result from the different orientations of private and public industry programs. If private industries move from a model reliant on a certain amount of corporate paternalism to one motivated by economic opportunity, can they also satisfy the correctional goals normally attached to prison work? Or, are the goals of making industries economically viable, reducing idleness, and preparing inmates for release through training and real world work experience fundamentally incompatible?

In 1972, West envisioned a future that would see industries move from state-use to open marketing; from primarily state to primarily private financing; from outmoded to automated technologies; and from prison-based operations to plants located external to prison facilities.¹⁷ In 1982, Funke, Wayson and Miller noted the considerable movement of industries toward such a model and suggested that if economically viable prison industries are a goal, private ownership and operations may be a logical course. Based on the Free Venture experience, they caution, however, that for industries

to transcend the present state in which only the components of a model, rather than its essence, are implemented, greater attention must be given to assessing and defining the role of industries in the larger business of correctional agencies. It may be that industries cannot be economically viable, or that correctional administrators may wish to maximize other goals, or that industries are best regarded as supported workshops. Whatever the goals, they need to be explicit and consistent.¹⁸

A clear sense of purpose is particularly important in view of the disparate array of opportunities likely to be required in order to satisfy the employment needs of any major portion of the prisoner population. Because the scale of many options is necessarily limited by the skills of the prison workforce and the logistical demands of the prison environment, a major challenge appears to be the development and integration of a variety of schemes for the productive employment of inmates--ranging from encouraging individual and corporate entrepreneurs to stimulating the development of inmate-operated enterprises, expanding opportunities for inmates' employment in outside industries and upgrading prison-based industry or contract labor programs. With such an array of disparate opportunities it will become even more crucial to establish consistent goals--uniting these efforts with a common purpose, comparable wage incentive systems and clearly defined relationships with ongoing basic education and vocational training curricula.

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6. Note that the exemption applies only to authorized programs, although the private sector may be involved in other prison industries in the same states. For example, while the computer disc manufacturing industry at Stillwater, Minnesota, founded by Control Data, is an authorized program and is exempt from the Interstate Commerce ban, Stillwater Data Processing, a private prison industry program at the same facility, does not enjoy the same privilege.
7. The grant was initially awarded by LEAA; no materials are currently available for public distribution.
8. Based on the number of state inmates reported by the Bureau of Justice Statistics as of 12/31/82 (382,630) and the number of inmates employed in prison industries as reported by survey respondents in January 1984. The percentage reported is imprecise, due to the discrepancy in reporting dates and the absence of information from Delaware on the number of inmates employed in industries. Previous surveys have suggested that industries can only profitably employ 15-25 percent of the inmate population (c.f. Miller et al., 1983).
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Chapter 3: Financing Alternatives for Prison and Jail Construction

In addition to their involvement in correctional work programs and facility operations, private sector firms are becoming increasingly involved in financing prison and jail construction, due to the overcrowding problem. The facts of prison and jail overcrowding need little elaboration in this report. Between 1978 and 1982 alone, the nation's prison population increased by a third to 400,000. Inmates have been reported to be sleeping on floors in at least 18 states and 31 states are operating under court orders to relieve prison overcrowding.¹ A national survey of over 1,400 criminal justice leaders conducted by NIJ in 1984 revealed that prison and jail overcrowding was their biggest concern. This view was held not only by corrections officials, but also by judges, court administrators, prosecutors, probation and parole officials, and the police.²

Among the range of state responses to the problem documented in another NIJ study, the most ambitious and costly efforts have focused on increasing the supply of space.³ As Table 3.1 reveals, state prison systems have reportedly added 77,476 beds over the past five years and planned to expend about \$5 billion over the next ten years to add another 104,688 beds. A number of states have undertaken significant building programs:

- Texas has added 6,280 beds to its prison system since 1978 and plans to add another 3,140 beds by 1993 at a cost of \$73 million.
- Although Louisiana has added 5,096 beds over the last five years, over 2,400 state prisoners still must be housed in local jails.
- New York State plans to expend about \$570 million over the next ten years to add 5,619 beds through new construction or conversions and 2,818 beds through renovations of existing facilities.
- Minnesota recently opened a 400-bed facility at a cost of \$15 million, although they have a slight surplus of 200 beds statewide which are being rented to Wisconsin.

After a jurisdiction decides that it needs a new or expanded correctional facilities, the next step is

deciding how to pay for it. Traditionally, state and local governments have financed capital improvements with current operating revenues (also known as the "pay-as-you-go" approach) and general obligation bonds. Table 3.1 indicates that, of the corrections departments participating in the 50-state survey, almost all are using current revenues and/or bonds to fund their additional beds. Yet, state and local governments are finding it more difficult to raise capital for prison and jail construction due to federal aid cutbacks, economic recession, and tax and debt limitations imposed by the voters. Increasingly, they are turning to the private sector for help and are exploring a variety of lease and lease/purchase arrangements for corrections facilities. All involve the acquisition of facilities rather than actually turning operations over to a private contractor.

The purposes of this chapter are to examine each of these financing alternatives, discuss their comparative advantages and limitations, and cite where and how they have been used.

Current Revenues

Pay-as-you-go is a method of financing capital projects with current revenues--paying cash instead of borrowing against future revenues. It works best where capital needs are steady and modest and financial capability is adequate. The method involves appropriations in the budgets of two or more years to pay for projects that take that long to build without borrowing. Table 3.1 suggests that about forty percent of the state prison systems surveyed will rely exclusively on the pay-as-you-go method to fund planned facilities construction or renovation, including Alabama, Arkansas, Florida, Georgia, Tennessee, and Texas. Alaska, Nevada, New York, and Ohio combine current revenues with bond proceeds in financing most of their prisons and jails.

Formerly, pay-as-you-go was widely used to accumulate funds in a capital reserve or sinking fund until the balance was large enough to undertake the capital improvement. Unfortunately, the temptation to raid such funds, or to alter the terms, was often irresistible to hard-pressed state and local governments.⁴

Table 3.1
STATE CONSTRUCTION PLANS, ESTIMATED COSTS AND FINANCING AND LEASING ARRANGEMENTS
IN EARLY 1984¹

State	Beds Added Over Past 5 Years	Beds Planned Over Next 10 Years						Lease Arrangements		Leasing Alternatives
		Number		Estimated Cost		Financing Method for Funded Beds		No. of Beds	Type of Lease	
		Funded	Proposed	Funded \$	Proposed \$	Current Revenues	Bonds			
ALABAMA	2,246	1,000	1,400	30.0M	42.0M	X	--	--	--	--
ALASKA	416	476	750	*	*	X	X	--	--	LP studied but rejected
ARIZONA	4,560	--	2,412	--	72.0M	--	--	136	SL	Bill to permit LP pending in Legislature
ARKANSAS	1,454	1,100	--	27.5M	--	X	--	--	--	--
CALIFORNIA	1,000 +	7,500	20,000	495.0M	1,347.0M	--	X	*	*	Bill to permit LP pending in Legislature; Los Angeles County financing training ctr/jail expansion with LP
COLORADO	760	--	639	--	37.0M	--	--	156	SL	Jefferson Co. financing jail with LP at \$30.2M
CONNECTICUT	300	400	500	*	*	--	X	*	SL	--
DELAWARE	1,130	--	--	--	--	--	--	--	--	--
FLORIDA	5,647	--	800	--	12.0M	X	--	--	--	Lee County used L/P for jail
GEORGIA	696	550	550	24.3M	24.3M	X	--	--	--	--
HAWAII	226	611	386	61.0M	*	--	X	--	--	--
IDAHO	334	96	240	4.0M	2.7M	--	X	--	--	--
ILLINOIS	4,264	4,565	750	155.0M	40.0M	--	X	88	SL	Bill to permit LP passed in Legislature
INDIANA	2,121	1,942	--	60.9M	--	X	--	30	SL	--
IOWA	1,108	--	500	--	*	--	--	--	--	--
KANSAS	114	865	137	27.2M	1.7M	X	--	75	SL	--
KENTUCKY	1,090	--	1,300	--	77.2M	--	X	--	--	LP under study
LOUISIANA	5,096	3,200	1,270	105.1M	36.0M	--	X	--	--	LP under study
MAINE	175	--	175	--	7.0M	--	--	--	--	--
MARYLAND	1,774	970	1,500	38.0M	86.0M	--	X	--	--	--
MASSACHUSETTS	1,355	625	--	48.2M	--	--	X	300	SL	--
MICHIGAN	520	1,000	1,000	70.0M	55.0M	X	--	1,000	SL	--
MINNESOTA	600	106	--	15.0M	--	--	X	--	--	--
MISSISSIPPI	949	2,162	--	51.0M	--	--	X	--	--	--
MISSOURI	1,846	--	1,430	--	55.0M	--	X	300	SL and SL/B	Bill to permit LP pending in Legislature

SL = Straight Lease
 SL/B = Straight Lease with Option to Buy
 LP = Lease/Purchase
 * = Don't Know/Refused to Answer

¹ Reported in phone contacts made in January/February 1984.

Table 3.1 (continued)

STATE CONSTRUCTION PLANS, ESTIMATED COSTS AND FINANCING AND LEASING ARRANGEMENTS

State	Beds Added Over Past 5 Years	Beds Planned Over Next 10 Years						Lease Arrangements		Leasing Alternatives
		Number		Estimated Cost		Financing Method for Funded Beds		No. of Beds	Type of Lease	
		Funded	Proposed	Funded \$	Proposed \$	Current Revenues	Bonds			
MONTANA	--	160	--	14.0M	--	X	--	--	--	--
NEBRASKA	508	40	--	16.0M	--	X	--	190	SL	--
NEVADA	1,150	362	--	2.0M	--	X	X	60	SL	Beds leased from motels
NEW HAMPSHIRE	166	300	--	28.0M	--	--	X	--	--	--
NEW JERSEY	3,206	2,898	--	192.6M	--	--	X	--	--	--
NEW MEXICO	1,288	--	194	--	14.0M	--	--	40	*	--
NEW YORK	6,515	8,437	--	570.0M	--	X	X	--	--	--
NORTH CAROLINA	2,384	--	1,110	--	60.0M	X	--	32	SL	Beds leased from private vendors
NORTH DAKOTA	80	--	270	--	*	X	--	--	--	--
OHIO	1,420	11,800	--	382.5M	--	X	X	--	--	Used L/P for state prison projects through Ohio Bldg. Authority
OKLAHOMA	2,374	1,000	180	12.8M	2.0M	X	--	--	--	--
OREGON	140	350	--	--	--	--	--	--	--	Portland financing jail w/LP at \$15M
PENNSYLVANIA	864	2,880	--	129.0M	--	--	X	796	SL	Philadelphia financing jail w/LP at \$50.0M
RHODE ISLAND	801	--	208	--	13.0M	--	X	--	--	--
SOUTH CAROLINA	1,526	576	1,632	24.0M	64.0M	--	X	380	SL	LP under study
SOUTH DAKOTA	400	550	--	9.65M	--	X	--	--	--	--
TENNESSEE	3,720	550	--	*	--	X	--	--	--	Rutherford County financing jail facility LP at \$5.0 M
TEXAS	6,280	3,140	--	73.0M	--	X	--	--	--	--
UTAH	420	--	172	--	87.0M	--	--	360	SL	--
VERMONT	180	50	50	1.6M	2.5M	--	X	*	SL	--
VIRGINIA	2,340	1,024	--	*	--	*	*	--	--	--
WASHINGTON	100	1,420	--	89.0M	--	--	X	*	SL	--
WEST VIRGINIA	--	--	--	--	--	--	--	*	SL	Beds leased from private vendors
WISCONSIN	1,099	1,420	12	135.7M	.24M	--	X	93	*	--
WYOMING	734	--	996	--	2.0M	--	--	--	--	Nat'l Corr. Corp. developing 2 regional jails for SL/B
TOTALS	77,476	64,125	40,563	2,892M	2,140M	19	24	4,131	--	--

SL = Straight Lease
 SL/E = Straight Lease with Option to Buy
 LP = Lease/Purchase
 * = Don't Know/Refused to Answer

Note that reported totals probably underestimate actual totals due to Don't Know/Refused to Answer responses (*) in several states.

The use of current revenues to fund prison and jail construction has several advantages. First, it saves interest costs. Interest on long-term bonds can match or exceed the original capital cost, depending on interest rates and repayment schedules. Second, pay-as-you-go affords greater flexibility to meet emergencies by avoiding annual, fixed debt costs. Third, it protects borrowing capacity and fosters favorable bond ratings when long-term financing is sought.

Finally, pay-as-you-go avoids the substantial costs often associated with bond issues--financial advisors, legal counsel, printing, advertising, etc. Until recently, the involvement of private sector firms in construction financing has been limited largely to underwriting bond issues in which they assist in the development of a financial plan, coordinate presentations to bond rating services, and endeavor to market the bonds at favorable rates of interest.⁵ For example, E.F. Hutton and Company has served as a fiscal advisor and underwriter to several western states in their bond issues and charged a fee of 2.5 to 3.5 percent of the value of the bonds sold.

Despite its widespread use and popular favor, the pay-as-you-go method has major limitations:

- Capital construction projects are large in amount and have irregular cash outlays. Pay-as-you-go puts a heavy burden on the budgets of the years in which the facility is being built. It creates awkward, fluctuating expenditure swings that do not occur with extended bond financing. Bonds almost always mature serially, i.e., a percentage of the issue comes due every year.
- A project that yields services over many years should be paid for by its users throughout its normal life, rather than all at once by current taxpayers who may not have the use of it for the full term. This traditional principle, according to Richard Musgrave, is particularly important in municipal finance "where the composition of the resident group is subject to more or less frequent change."⁶
- In periods of high inflation, construction using the pay-as-you-go method may be considerably more costly than the actual dollars paid in principal and interest charges on long term debt (after discounting for inflation).

- Perhaps most importantly, in an era of scarce resources, pay-as-you-go financing often cannot generate the large sums needed to fund the construction of a new prison or jail.

General Obligation Bonds

The use of bond issues, or long term borrowing, has been the major alternative to financing prison and jail construction with current revenues. Table 3.1 reveals that about fifty percent of the states will finance all of their funded construction with bonds, while an additional ten percent will use bonds in combination with current revenues. A bond is a written promise to pay a specified sum of money or principal at a specified future date along with periodic interest paid at a specified percentage of the principal. Most bonds are rated for creditworthiness by Standard & Poor's or Moody's Investors Services before being sold on the open market.⁷ The interest payments to investors on bonds issued by or on behalf of a state or municipality are exempt from federal and, in some cases, state income taxes. Bonds can be categorized as either general obligation or revenue bonds.⁸

- With general obligation debt, the general taxing power of the jurisdiction is pledged to pay both principal and interest. General obligation bonds are commonly referred to as "full-faith-and-credit" bonds because they are based on the unconditional promise of the governmental unit to pay the interest and retire the principal. To sell such debt, voter approval may be required and various tax and debt limitations usually restrict its use.
- Various types of limited liability obligations, also known as revenue bonds, are sold for purposes that produce revenues, such as airports or sewer systems. Such bonds usually are not included in debt limits, as are general obligation bonds, nor do they usually require voter approval because they are not backed by the full faith and credit of the local jurisdiction, but rather are repaid from various service charges or fees. For example, the backing for correctional facility revenue bonds is usually annual or biennial appropriations of rent payments.

To date, general obligation bonds have been the most common instruments for the long-term financing of prison and jail construction. Kentucky,

Missouri, New Jersey, and Rhode Island are among the states that use general obligation bonds for this purpose. In June 1984, California passed a general obligation bond issue involving \$200 million for county jails and \$300 million for expanded state prison facilities. Revenue bonds have become closely associated with lease/purchase financing and will be discussed at a later point in this chapter.

General obligation bonds have been considered a superior form of debt by investors because such bonds are secured by the full faith and general tax revenues of the governmental unit. Less risk invariably meant that general obligation bonds incurred lower interest rates than revenue bonds, which made the former very attractive to cost-conscious public officials. However, Karen K. Gifford, a vice president with Merrill Lynch, observes that there has been a trend away from general obligation bonds and toward revenue bonds in the past six years.⁹ In fact, the trend started much earlier, with full-faith-and-credit debt as a percentage of total state and local debt declining from 87.6 percent in 1949 to 59.6 percent in 1973.¹⁰ To some analysts, the decreasing use of general obligation bonds shows that public debt has increased to such an extent that the government's full faith and credit is not always enough to ensure that borrowed money will be paid back and that general obligation bonds will carry a lower interest rate.

Constitutional and statutory debt limitations have also been significant factors explaining the shift away from general obligation bonds. Debt limitations were designed to protect taxpayers, and the credit of governments, against public officials incurring too much debt in relation to available resources. One type of debt limitation is a ceiling on the level of debt outstanding (frequently expressed as a percentage of the taxable real property in the jurisdiction). For example, Colorado limits the amount of bonds that counties can issue to 1.5 percent of their assessed property valuation.¹¹ Another debt limitation is the requirement of a public referendum to authorize the issuance of bonds. The Municipal Finance Officers Association reported that 36 states require voter approval of general obligation bond issues.¹²

Several problems have arisen with the use of legal controls on governmental debt activity, especially as they affect construction financing:

- The referendum requirement has proven to be an obstacle to financing projects that public officials and many voters—if not a majority—thought necessary. Detention facilities have not enjoyed popular support at the polls. Despite the rising levels of tension and danger for staff and inmates, overcrowded and dilapidated housing has been widely viewed as justifiable punishment and bond issues for prison and jail construction have been adversely affected. (Attempting to finance construction through tax increases has not been successful either; a proposal by Jefferson County, Colorado to build a new jail by raising the sales tax one-half of one percent was defeated overwhelmingly in a 1979 referendum.)
- Even if voter approval is assumed, referendum requirements delay prison construction programs. The California Department of Corrections estimated that its state referendum requirement delays construction by eight to ten months—four months elapse between legislative authorization of a prison construction bond issue initiative and the election and an additional four to six months before any construction funds are available for encumbrance/obligation.¹³
- Delay increases construction costs. California needs about \$1.3 billion for new prison construction. Assuming a modest five percent inflation rate, the estimated eight to ten months delay associated with the use of general obligation bonds would increase the total cost by \$43 to \$54 million.
- Major consequences of debt limitations have been the development of nonguaranteed bonds and the birth of special districts and authorities that have been empowered to issue debt outside of the legal constraints. As a result, the use of general obligation bonds seems to have had little effect in restraining total government borrowing.¹⁴

Lease Financing Alternatives

A lease is a contract whereby the owner of an asset (the lessor) grants to another party (the lessee) the exclusive right to use the asset, usually for an agreed period of time, in return for the payment of rent.¹⁵ Most people are familiar with leases of apartments, offices, or telephones. Lease con-

tracts, in the form of lease/purchase agreements, are used to purchase the asset over time, as in an installment sale. Other leases, called straight or true leases, allow the lessee to use the asset without having to buy it. Neither lease requires a cash down payment. The lessor gains tax advantages, a steady cash flow from periodic lease payments, and the opportunity to transfer some of the burdens and risks of ownership to the lessee, e.g., repair and maintenance, buying insurance against accidental damage or loss. In fact, the tax shield afforded by energy and investment tax credits, accelerated depreciation charges, and interest paid on borrowings may be more valuable to the lessor than the asset itself.

For many years, government units have used leases to finance everything from fire trucks and computers to office buildings and schools. Because the leases are subject to annual appropriation (typically over a three- to five-year period), they are often not considered a debt of the state or municipality and, therefore, do not have to comply with debt ceilings and referenda requirements. Investors are protected in the event that the government fails to appropriate the lease payments by the right to foreclose upon the property and then to re-lease or sell it.

The private sector has long been involved in straight leasing through brokerage houses and investment banks that earn commissions by getting their clients to invest in property that other private firms, such as real estate agencies and leasing companies, can then market to potential government lessors. In lease/purchase arrangements, investment banks have often helped governments to create legal entities, such as nonprofit corporations, that can issue the revenue bonds needed to finance construction, hold title to the completed facility, and receive lease payments (in order to avoid the legal restrictions that would apply if the government tried to perform these functions on its own). And, given the increasing credibility and use of revenue bonds, the role of private sector firms in issuing or marketing them has not been very different than their role in issuing or marketing general obligation bonds. In both cases, investment banks and brokerage houses act mainly as bond underwriters and legal counsel. Governments remain responsible for financing the lease payments, and ultimately the bonds, with tax dollars.

Leasing is now being seriously considered as an alternative to current revenues and general obligation bonds in financing prison construction. New leasing arrangements have the potential for generating the millions of dollars needed for correctional plant and equipment. An innovative aspect of private sector involvement in leasing has been the emergence of consortia or teams of private firms that offer not only to arrange financing but also to design and build the facility. For example, The Wall Street Journal reports that:

With so many counties and states financially strapped and facing court orders to expand overcrowded jails, three companies have devised a plan to build jails and lease them to counties and states. The money would be raised through bond issues secured by the lease payments. The team--Merrill Lynch Capital Markets, Turner Construction Co. and Hellmuth, Obata and Kassabaum Inc., an architectural firm--hasn't signed any lease agreements yet but has high hopes for California.¹⁶

The team approach has the potential for significant time (and therefore dollar) savings, but may face a court challenge from competing firms over compliance with public bidding laws. The legal questions center on whether public bidding laws apply if a private corporation, as opposed to a unit of government, owns the building.

The challenge in leasing has been to provide the government with an adequate correctional facility at a competitive rate while, at the same time, allowing lessors to gain a fair return on their investment and avoid undue risk of default and foreclosure. This is not easy. From the government's viewpoint, there are many issues to consider before leasing can be identified as the preferred financing alternative:

Cost of Leasing. The real cost of leasing versus debt financing can only be determined by an analysis of cash flows, using present value techniques and other measurement of cost. Additionally, the analysis should include all aspects of the financing: issuance costs, discounts, arbitrage earnings, timing advantages and the effects on construction costs, and the length and type of lease.¹⁷ A government may find bond financing more economical one year and leasing more economical the next, due to changes in its bond rating and prevailing interest rates. Among the factors that increase the relative cost of lease financing are:

- Profit for the Lessor. The leasing company must pay for its money at rates comparable to other market rates and then must charge a premium to the lessee. This premium represents the profit to the lessor for arranging the financing.
- Payment for Expertise. The lessor must have employees who are thoroughly knowledgeable on all aspects of the equipment or real estate being leased. The cost of expert advice to draw up the lease agreement must be included in the lease payments.
- Cost of Related Services. Frequently, a lease agreement includes services related to the equipment. The lessee must bear the cost of such services in the lease payments.¹⁸
- Interest Rates. Due to its ability to offer tax exempt interest on its bonds, a government is able to borrow funds at lower rates than private investors.¹⁹ Thus, a private developer who borrows funds to build a prison or jail which is leased to a government may incur millions of dollars in interest payments that a government could avoid. However, a developer who issues bonds through a nonprofit corporation or public building authority "on behalf of" a government entity in order to fund a lease/purchase arrangement is able to reduce interest costs. Such a lease is called a tax exempt or municipal lease and, because of the federal tax exemption, "lessors are able to charge lower interest rates on such leases than on the conditional sales leases or on true leases of comparable risk and term."²⁰ But while tax exempt lease/purchase financing is less costly than private taxable financing, it is more costly than government bonds because bond rating services feel that the possibility of nonappropriation and the use of leasing to avoid debt limitations increases the risk of default. This increased risk typically translates into a drop of one rating grade and an increase in annual interest costs of as much as one percent over what the government would merit on its own. For example, Minnesota opted for general obligation financing when it discovered that its own bonds could be sold at less than nine percent annual interest in contrast to the ten or eleven percent charges on proposed lease/purchase arrangements.

There are countervailing factors that decrease the relative cost of lease financing. First, the costs of

a bond election can be avoided. Second, there is a reserve requirement in lease/purchase financing that compels the lessor to set aside from the bond proceeds a sum equal to the first year's principal and interest payments as collateral. This sum is typically eleven to fifteen percent of the total cost and can be invested in guaranteed market instruments in order to earn interest and help meet payments on the debt. Minnesota discovered that the interest it could earn on its nondisbursed proceeds and reserves from a proposed leasing arrangement was about double what it would earn on cash balances in the debt service fund from a state bond issue (\$8.5 million vs. \$4.4 million). Third, leasing takes less time to arrange than general obligation bonding. For example, in contrast to the eight to ten months delay that California encounters in its bond financing, a lease/purchase arrangement could be closed in as few as ninety days, thereby saving most of the \$43 to \$54 million that bond financing delays add to total construction costs. Fourth, the lessors' specialized knowledge of creative financing alternatives, construction innovations, and bulk purchasing opportunities may allow a lower lease cost.

Effect on Borrowing Capacity. A government's borrowing capacity may be defined as the additional long-term debt that could be added to its capital fund without seriously damaging its bond rating or increasing the interest costs of its bonds. As previously discussed, leasing allows the governmental unit to acquire facilities without incurring debt subject to debt limitations or to costly and cumbersome voter referenda. However, as leasing becomes more common, this advantage may be reduced. Large financial institutions are already becoming increasingly aware of the risk in leased assets and the public may become more critical of increasing borrowing capacity through the use of leasing. In addition, the Financial Accounting Standards Board ruled in 1976 that "capital leases," such as lease/purchase agreements where title to the asset transfers to the lessee at the end of the lease period, must be shown on the balance sheet.²¹ This ruling is officially applicable only to commercial enterprises and government financial officers are not required to conform. However, the Municipal Finance Officers Association has urged compliance in the interests of full disclosure of governmental obligations.

Right of Nonappropriation. The right to insist on an annually renewable lease subject to nonappropria-

tion of lease payments in any given year allows the government not to classify the lease as "debt" and thereby avoids debt limitations and referenda requirements. It has also been claimed that the right of nonappropriation puts pressure on the lessor to provide good facilities and services at competitive prices. On the other hand, nonappropriation is a risk to the lessor and is often reflected in higher lease payments. What happens to the lessor's investment if the government decides to "walk away" from the lease?

In the short term, the risk to investors is minimal. It would be highly unlikely that a corrections system in desperate need of corrections space would fail to renew the lease. Moreover, in a lease/purchase arrangement, nonappropriation is discouraged by the government's rapid accumulation of equity in the property and by the fact that the nominal lessor is usually a nonprofit corporation or other legal entity that the government itself created to finance construction.

However, the risks of nonappropriation and default may increase in the long term if inmate populations decrease and excess prison and jail capacity becomes available. To a private developer who must incur large capital outlays in constructing a prison in a secure but inconvenient location, nonappropriation may be a factor that influences whether to build and how much rent to charge. Even lessors with minimum security facilities that are easily adaptable to other uses are concerned about nonappropriation. A case in point is the detention center that the Corrections Corporation of America has built at a cost of \$4-\$5 million to house illegal aliens on a per diem basis for the Immigration and Naturalization Service. As an office-like structure located near an industrial park in Houston, the facility is both amenable to conversion and accessible to other markets. But CCA's Tom Beasley pointed out that "It'll take several years to recover the construction cost. If we blow it . . . we'd have to look for alternative uses of the facility. So there is risk."²²

To protect themselves, many lessors insert non-substitution clauses in the lease agreement in which the government lessee agrees not to replace for a stated period of time the leased property with property performing the same function. This clause encourages the continued use of leased facilities subject only to a genuine lack of appropriated funds rather than a better offer from a competing

lessor.²³ Another protection for lessors may emerge if other states follow New Mexico's lead in exempting jail leases from the right of nonappropriation, provided that such exemptions are not construed as redefining the lease as debt and thereby making debt limitations applicable.

Risk of Obsolescence. When a government builds a prison or jail, it undertakes a risk that the facility will be obsolete before its service life is completed. Advocates of leasing argue that it shifts the risk of obsolescence from the user to the owner, i.e., from the lessee to the lessor. If the government owns the facility, it bears the risk. If it leases the facility, the lessor bears the risk. However, this risk is likely to be reflected in higher lease payments and does not really apply to lease/purchase arrangements where title, and the risk of obsolescence, transfers from the lessor to the government after a definite number of years. Furthermore, the right of nonappropriation does not fully protect the government from this risk due to the high demand for correctional space and the inclusion of nonsubstitution clauses in the lease agreements.

Facility Siting. A final consideration in comparing leasing alternatives with traditional financing methods is essentially the same potential problem raised in discussing facility management contracts. While prison construction often raises local controversy at the site selected, a state government can enforce its right to build on a proposed location--but a private contractor will need to convince a zoning board and this may pose a serious obstacle. Moreover, a contractor will most likely prefer a more urban/suburban site than a state might choose (for political reasons) since the contractor may need to find an alternative use for the facility if the government fails to make the appropriations to continue the lease. Obviously, the more desirable locations may not be anxious to have a corrections facility located in their jurisdiction--so the contractor's job before the zoning board is likely to be even tougher at the better sites.

In examining the feasibility of using leasing as a means of securing additional detention facilities, it is important that corrections officials consult independent legal counsel and financial analysts who are experienced in lease financing. The cost issues alone are very complex and require sophisticated investigation of construction costs, bond interest rates and expenses, cash flows, and other technical

matters. Moreover, professional judgement is needed to assess the potential impact on tax exempt bonds and leasing schemes of proposed federal tax reforms, particularly the so-called "flat tax," which threaten to eliminate many of the tax incentives for real estate investment. Only large jurisdictions usually have an in-house capability for this level of analysis but others may contract for it from a professional association like the Municipal Finance Officers Association, a financial services firm precluded from bidding, or a major accounting firm. All too often, however, the principal sources of such data are the investment bankers or real estate agents who are attempting to sell public officials on the merits of a proposed leasing arrangement.

In considering leasing, it is also important to differentiate between straight leases and lease/purchase agreements.

- A straight or true lease is "an agreement in which the lessee acquires use, but not ownership of leased property and the lease term is shorter than the asset's useful life."²⁴ Lessors typically include banks, life insurance companies, real estate investment trusts, and other private developers, although nonprofit organizations have been known to lease facilities for juvenile and minimum security offenders.
- A lease/purchase agreement is the "financing and acquisition of a public improvement by a third party who then enters into a Lease/Purchase Agreement with a political subdivision. It is a purchase agreement in the sense that the political subdivision receives title to the facility at the end of the lease period. The political subdivision generally retains control of the design, construction, operation and maintenance of the facility."²⁵ For correctional facilities, lessors are usually nonprofit entities--such as public authorities, joint powers authorities, and nonprofit corporations--in order to take advantage of tax exempt financing.

Both types of leasing require private sector involvement in financing most, if not all, of the required investment. Investment banks and brokerage firms act as underwriters in marketing and selling the bond issues needed to raise construction capital. Venture capital firms and real estate companies often own or manage the leased facilities. The motivation may vary greatly with the

type of lease. Some leasing arrangements are structured to take advantage of an investor's need for tax exempt income (lease/purchase agreements) while others rely primarily on federal income tax investment incentives (straight leases).²⁶

--Straight Leases

In exchange for an equity investment of as little as twenty percent of the purchase amount, the lessor (the private owner) in a straight lease arrangement is able to claim tax benefits of ownership, such as depreciation, and, in the case of significantly renovated historic or older structures, an investment tax credit.²⁷ Due to federal income tax restrictions, the lease term must be less than the asset's useful life. A straight lease is frequently the most expensive financing alternative to the governmental lessee. This is due to the fact that ownership of the facility remains with the lessor during and after the lease period. During the lease period, the lessor, if a private developer, must include costs in the rent that governments and other nonprofit entities can avoid, such as taxes, insurance, and higher interest charges on borrowed capital. Another factor increasing the costs of a straight lease is that, after the lease period, the asset's cash salvage value belongs to the lessor and not to the lessee as would be the case under other financing alternatives. This is a particular disincentive to straight leasing in the case of minimum security facilities which are more easily converted to other uses and thus have a higher market value. In straight leasing, the private developer reaps this profit and the government cannot use the salvage value to reduce the overall costs of the lease arrangement.

Nonetheless, straight leases are being used by eighteen of the corrections departments contacted in the 50-state survey. Table 3.1 shows that about 4,000 total beds are being leased in modular units, community service centers, and half-way houses in states such as Arizona, Colorado, Indiana, Kansas, North Carolina, South Carolina, and Utah. Michigan (1,000 beds) and Pennsylvania (796 beds) alone account for over forty percent of the national total. No state is leasing a maximum or medium security facility. The flexibility which leasing offers for shifting between vendors and correctional approaches and for responding to fluctuating inmate populations was frequently cited to justify the use of straight leases. Some states have enhanced the cost competitiveness of straight leasing by permitting private vendors to finance up to eighty percent

of the purchase price through tax exempt debt, such as an industrial development revenue bond. (It should be noted that industrial development bonds are not available for facilities over \$10 million, or up to \$20 million if UDAG grant funding is included.) Straight leasing was also justified by survey respondents in terms of the lessee's ability to avoid building obsolescence, although most lessors consider this risk when deciding how much rent to charge. On the other hand, the California Department of Corrections has taken an opposite view:

While the increased flexibility may, on occasion, justify the cost as it relates to obtaining office space, the Department of Corrections is interested in long term placement of facilities at given sites. Ultimate ownership of the facility is in the best interest of the State given the more or less 'permanent' nature of correctional facilities and the high cost of leasing.²⁸

The straight lease concept is the basis for at least two other leasing arrangements: leasing with option to buy and sale-leaseback.

An option to buy gives the lessee the right to purchase the asset after each year of the lease period. In most cases, the rental payments are neither increased nor accelerated. Rather, the option's cost is realized when the lessee exercises it. The longer the lessee waits before exercising the option, the greater the total cash outlay for the asset in that the optional purchase price decreases at a slower rate than the rentals accumulate.²⁹ For a state that may need time to negotiate with the legislature before purchasing a facility, the additional cost of leasing with option to buy may be tolerable. Leasing with an option to buy allows the state to hedge its bets: the state buys much the same flexibility offered by straight leasing arrangements, but acknowledges future possibilities by applying a predetermined portion of the lease payment to the purchase option. Missouri currently has this option on some of its straight leasing arrangements. And, the National Corrections Corporation has built jails in Wyoming and New Mexico which local governments have leased with an option to buy.

A sale-leaseback involves government property that is sold to private investors and simultaneously leased back by the government for its use. It has been used mainly by governments to finance the renovation of older or historic structures. The

arrangement allows the government to regain its capital investment while providing the investors with capital appreciation and federal income tax investment incentives such as depreciation. The value of these tax benefits is shared by the private lessor with the public lessee through lower lease payments.³⁰ However, recent federal legislation (the "Pickle Bill," named after its author, Congressman J.J. Pickle) has been introduced to reduce the benefits by requiring the use of straight line depreciation over an extended period. The twenty percent minimum equity investment required by the tax law may be difficult to obtain due to the lowered return to investors. The Minnesota Department of Corrections reports that since the "effective date of the legislation is the introduction date, the interest in sale-leasebacks has diminished."³¹

-Lease/Purchase Financing

Lease/purchase financing is the newest and least tested option for expanding state and local corrections capacity. Because ownership technically rests with the governmental lessee, the lessor cannot depreciate the asset or receive tax benefits other than tax-exempt income from the lease payments. Unlike most straight leases, lease/purchase allows title to the property to pass to the lessee upon payment of the final lease installment and can offer tax-exempt interest on the bonds used to finance the prison or jail, provided that the third party or nominal owner issues the lease "on behalf of" the political subdivision.³²

Lease/purchase financing has been promoted in recent years by leasing companies, brokerage houses and investment banking firms (e.g., E.F. Hutton, Shearson Lehman/American Express, and Merrill Lynch) as prison and jail overcrowding has mounted and public officials have become increasingly unable to finance new construction through general obligation bonds. The volume of construction funded by this mechanism is still very small and largely concentrated at the local level. For example, E.F. Hutton was able to claim only two local corrections projects that will use substantial lease/purchase financing: (1) a \$30.2 million issue for a jail and sheriff's facility in Jefferson County, Colorado and (2) a \$50 million jail project for the City of Philadelphia.³³ Another isolated example of lease/purchase can be found in Portland, Oregon, where Dean Witter is the lead firm in a \$15 million financing package for a new jail. At the state level, Table 3.1 reports that only Ohio currently uses

lease/purchase financing. Many other states are, however, actively considering lease/purchase financing of prison and jail facilities:

- In California, the state department of corrections was directed by the legislature to "investigate the advisability of using lease or lease-purchase arrangements to finance the acquisition, construction and the under-writing of prison facilities . . ." ³⁴ The department recently recommended that the legislature authorize "financing prison construction through lease/purchase arrangements." ³⁵
- Lease/purchase options have been under review in Louisiana, South Carolina, Kentucky and Minnesota, although the latter recently rejected all private bids for the lease/purchase of a new womens' prison because its excellent bond rating made bond financing more cost effective. The Minnesota Department of Finance estimated that the net cost of issuing general obligation bonds for the prison would be \$9 million less than utilizing one of the proposals received for lease/purchase financing (\$19.5 million vs. \$28.5 million). ³⁶
- Lease/purchase financing is permitted in many states but not in all. Legislation has been introduced in Arizona, California, and Missouri and has passed in Illinois which would permit lease/purchase financing by corrections officials. In Missouri's case, the legislation is intended to clarify a current statute which specifically authorizes the state department of corrections to contract for services, but does not address the issue of contracting for construction. In the meantime, Missouri is going ahead with plans to arrange lease/purchase financing and has been considering a proposal from a Grace Smith Pennington to build a state prison at the site of a former iron mine she owns and lease it back to the state. (The iron mine is now used to store Ms. Pennington's extensive collection of antiques.) In Illinois, the state is considering the use of lease/purchase to finance the proposed Galesburg Correctional Center.

Lease/purchase financing in corrections has been stimulated by successful experiences in other fields. Examples include: office buildings in Los Angeles, San Francisco, and Sacramento; port construction in Portland, Oregon; school buildings in Jefferson County, Colorado; telecommunications

systems in Montana and Ohio; and a police station in Los Angeles. The volume of leasing by government units is estimated by various investment banking firms to have exceeded \$1 billion since 1981. ³⁷ Tax exempt lease/purchase contracts tend to be shorter than taxable alternatives and frequently involve monthly payments of principal and interest to investors (in contrast to public bonds where investors receive interest payments semi-annually and return of principal only at maturity). Under these circumstances, the investor in a lease/purchase arrangement can achieve a steady cash flow and early return of invested capital. ³⁸ In response to the growing use of tax exempt leasing in municipal finance, Standard & Poor's Corporation issued revised criteria for evaluating municipal lease transactions during 1982. ³⁹

The following steps are required to complete a lease/purchase transaction:

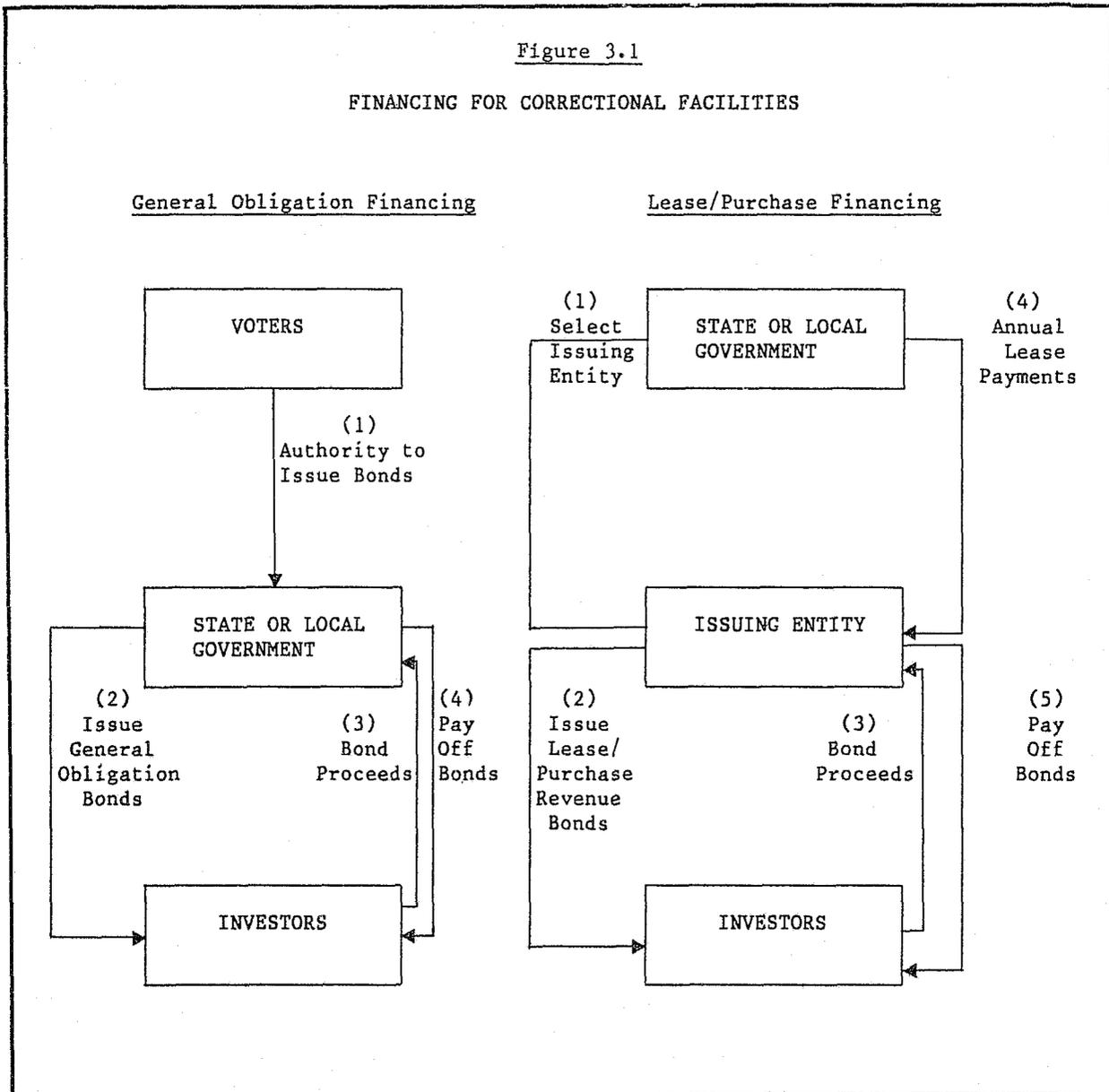
- 1) Government identifies a legal entity such as a public building authority or nonprofit corporation to issue revenue bonds (or certificates of participation) and act as lessor of the correctional facility.
- 2) Government enters into a lease agreement with lessor.
- 3) Lessor raises capital in the tax-exempt bond market through issuance of bonds.
- 4) Government provides for construction and operation of facility and annually appropriates funds for lease payments.
- 5) Finally, government obtains title to facility when bonds are fully paid.

Figure 3.1 compares these steps to the typical general obligation bond process. ⁴⁰

Because a lease/purchase agreement is essentially an installment sale that restricts the government's ability to avoid completing the purchase, it is not an option that states are considering in order to maintain their flexibility to respond to changing correctional needs. Its only flexibility lies in permitting the government to acquire new facilities without following traditional public financing routes. It is often assumed that lease/purchasing necessarily involves the developer in the management and operations of the facility. Fundamentally, however, it is simply a method for financing and constructing

Figure 3.1

FINANCING FOR CORRECTIONAL FACILITIES



a facility that is turned over to the state or county to be managed as it may see fit. At this point, the lessor's role is frequently confined to administering the annual financial transactions. Since interest in lease/purchase financing is growing at the same time that the concept of contracting for facility management has achieved some prominence, combined construction and management packages may, however, emerge over the next few years.

Already there are indications that developers may also become involved in facility management, just as management contractors may become involved in facility development. The National Corrections Corporation, for instance, is an organization that has been involved in constructing jail facilities for the past ten years. Some of its current proposals not only involve financing and constructing jails, but also assuming the responsibility for management and operations. The Corrections Corporation of America, on the other hand, was specifically organized to manage corrections facilities, but has also become involved in the financing and construction aspects. CCA and Shearson Lehman/American Express have pioneered the first tax exempt financing for a private county jail in Rutherford County, Tennessee. The \$5 million industrial development bond issue will finance private sector ownership and operation of a county jail through CCA. The county will make payments on a per diem basis only for the inmates using the facility.

One of the concerns of government units considering lease/purchase financing has been the ability to maintain control of both the construction of the prison or jail and the ultimate operation of the facility. California found that a "high degree of project control can be maintained by funding land acquisition and planning using traditional Capital Outlay funding and then going to bid on the financial underwriting and construction." Controlling the operation of the facility prior to ownership by the state could be incorporated in the lease agreement.⁴¹ Mr. Don Hutto of the Corrections Corporation of America advises careful monitoring of building design and construction to ensure that it meets correctional standards and building codes since lessors may try to economize in unacceptable ways in order to keep costs down.⁴² Another governmental concern has been the many legal considerations in lease/purchase financing, including: compliance with public bidding laws for property and equipment; compliance with usury laws with respect to the interest charged; liability for

loss or damage; and what remedies are available to the holder of a lease/purchase contract upon nonappropriation.⁴³

Two critical elements of lease/purchase arrangements are (1) the legal entities used to finance and acquire the property and (2) the market instruments sold to raise the necessary funds.

Legal Entities. Three common legal entities are a joint powers authority, public works board, and nonprofit corporation. In many states, specific legislation is needed to authorize the establishment or use of such entities for prison and jail construction.

- A joint powers authority requires two or more governmental entities to join together for the purpose of building, owning, and operating a building that serves common statutory functions. California used such an authority in funding the San Francisco State Office Building in 1983.
- A public works board (also known as a facilities authority) may already exist to finance the construction of state office buildings and other capital improvements by the sale of revenue bonds.
- Government units can create a nonprofit corporation for the sole purpose of issuing lease/purchase revenue bonds to finance prison and jail construction.

In addition, E.F. Hutton managed to secure tax exempt status from the Colorado Attorney General's Office for lease/purchase bonds issued by Imperial Municipal Services Group Inc., a private corporation, for a jail and sheriff facility project in Jefferson County, Colorado.⁴⁴ Finally, several states are experimenting with allowing financial institutions or municipalities to act as the legal entity, e.g., a city issues bonds on behalf of the state.

The legal entity acts in the role of lessor or nominal owner from which the government unit leases the facility. After the bonds are sold, the lessor conveys all rights and interests to a trustee and its ongoing role is very limited. The lessor is not responsible for any ownership functions, such as operation, maintenance, or inspections. No tax benefits, such as depreciation, are available to the

lessor, although the property is not subject to real estate taxes since a state or municipality is the lessee and ultimate buyer. The trustee disperses construction advances, receives lease payments, forwards debt service payments to the bond or certificate holders, and accounts for all revenues and expenditures connected with the transaction. The trustee (or trustee bank) is usually paid an initial fee out of bond or lease proceeds and an annual fee out of lease payments.⁴⁵

Roger Grimshaw of the architectural firm of Phillips Swager Associates provided an example of the proposed use of a nonprofit corporation in lease/purchase financing at the 1984 ACA Winter Conference in Denver. His example was drawn from Canton, Illinois. The State of Illinois needed a new 750-bed medium security prison, despite the fact that 3,000 beds had been added over the past three years. Canton was plagued with high unemployment and was very attracted by the estimated 400 jobs that the facility would create. The city established a nonprofit corporation to finance and build the facility using private capital, a federal UDAG grant, and the sale of industrial development bonds. One incentive for building the facility in Canton was that the city is located in a state-designated enterprise zone which exempts from the state sales tax all construction materials sold to the corporation. In addition, the facility would be close to the local community college and its vocational training programs. Enabling legislation to authorize this public-private partnership was introduced in the Illinois House of Representatives. Mr. Grimshaw remarked that a key feature of the project was that once the facility was built, the state could operate the facility or turn it over to a private vendor on a contract basis. Subsequent to the conference, it was learned that although state law was changed to permit lease/purchase financing of this type, Illinois decided instead to use state funds to expand its prison capacity and not to build in Canton.

Market Instruments. Each of the three financing structures mentioned can, or could with legislative authorization, raise funds for prison and jail construction by the issue and sale of two types of market instruments: revenue bonds and certificates of participation.

- As discussed previously, revenue bonds are those to which the income from some specific enterprise is pledged to pay interest and reduce principal. These bonds are not backed by the

government's general tax revenues and, therefore, are usually not included in debt limits nor do they require voter approval. When used in lease/purchase financing, the bonds are backed by the rents paid under the lease agreement.

- Certificates of participation are used to split the financing of the lease into \$5,000 pieces. These certificates constitute, in essence, a tax exempt real estate investment trust and are handled like municipal tax exempt bonds by the investment community. Certificates of participation mature serially, pay interest semi-annually, and have prior redemption options much like the typical municipal bond. This is how the facility in Jefferson County, Colorado was financed; its entire issue worth \$30.2 million was sold in three days at a very favorable interest rate of 8.629 percent.

Both instruments can receive investment grade ratings from both Standard & Poor's Corporation and Moody's Investors Services. In addition, if participation interests in the lease/purchase contract are to be offered to the public, disclosure requirements under Federal securities laws must be met and an official statement circulated to potential investors. A limited institutional offering will normally involve the preparation of a placement memorandum for prospective investors.⁴⁶ Given underwriting fees and marketing expenses, E. F. Hutton has found that issuing bonds or certificates to finance a lease/purchase arrangement is "most cost effective on projects of 5 million dollars or more."⁴⁷

Shearson Lehman/American Express has modified the traditional fixed rate bond or certificate with its "Daily Floating/Fixed Rate Certificate of Participation" which is issued by a nonprofit corporation acting on behalf of a government. In summary, this is a long-term instrument which is priced daily at 30-day tax exempt commercial paper rates and which can be fixed at long term rates at a time picked by the government in order to lock in the most favorable market conditions.⁴⁸ For example, on a 30-year certificate of participation, the government could allow the interest rate to float for three years and then fix the rate for the remaining twenty-seven years. If prevailing interest rates rise during the fixed rate period, the government saves money. However, if interest rates fall, the government loses by being locked into a higher rate. Because the government is willing to share some of

the risks associated with interest rate volatility, investors are willing to charge less interest for the use of their money. This is confirmed by comparing the approximate interest costs of variable rate and fixed rate debt.⁴⁹ (See Table 3.2)

Los Angeles County recently contracted with Shearson Lehman to use this mechanism in financing the expansion of its jail facilities. This \$18.4 million issue will permit the creation of 700 additional beds at an initial interest cost of less than six percent. Another interesting feature of this arrangement is that the county has set the rental payments assuming a higher interest rate of twelve percent, and will use the excess rental payments over the actual six percent rate to prepay some of the certificates. The excess should allow the county to retire the debt in about fifteen years, although the bonds do not mature until 2014. Richard Dixon, Los Angeles County Treasurer, claimed that the county got two advantages from this structure: "... a very good rate and, associated with that, the economic savings from being able to retire our debt relatively early and lower our total debt service." The county's alternative, he added, would have been to sell 20-year fixed-rate lease/purchase bonds with a net interest cost of about ten percent.⁵⁰

Using revenue bonds and certificates to circumvent debt limitations has been challenged as stimulating imprudent fiscal practices, especially when they are sold for purposes that are not self-financing. A participant at the 1984 ACA Winter Conference took issue with the proposition that rents paid under an annually renewable lease arrangement for the government's use of a privately financed corrections facility constituted the kind of secure revenue base typically required for the issuance of limited liability revenue bonds. Even if the government is not technically liable for the debts of the independent entity that issued the bonds or certificates and built the prison, a default by the entity on its obligations would discredit the government and might shake investor confidence in the creditworthiness of future bond issues.

In addition, the avoidance of public referenda and debate through the issuance of revenue bonds and certificates has been said to conceal or obscure what governments are doing. Critics charge that the practice violates the spirit if not the letter of the law and the intended participation of the citizenry in decisions related to the policy choices and long-term obligations of their government. In New York, a taxpayers' suit was filed against the state's Urban Development Corporation to prevent it from issuing revenue bonds after a general obligation bond issue for correctional facilities failed at the

Table 3.2

INTEREST COSTS OF VARIABLE RATE AND FIXED RATE DEBT

	<u>January 1982</u>	<u>January 1983</u>	<u>January 1984</u>
Bond Buyer 30-Year Revenue Index (Fixed)	14.4%	10.8%	10.2%
Three Month Treasury Bill (Fixed)	12.2%	8.0%	9.0%
Floating/Fixed Rate Bond (Variable)	7.0%	5.4%	6.0%

polls. Ominously for lease/purchase advocates, the taxpayers won on the trial court level, but the state's highest court, the Court of Appeals, dismissed the complaint for lack of jurisdiction and allowed the Urban Development Corp. to proceed with the \$600 million bond issue. It is impossible to estimate the generalizability of this New York precedent to other states now considering leasing alternatives.

Overview of Major Financing Issues

Table 3.3 summarizes the major issues related to financing alternatives for prison and jail construction. Its most important point is that there is no single best way to acquire additional space for burgeoning inmate populations. Depending on local needs and individual circumstances (including prevailing interest rates and bond ratings), public officials may find lease financing more cost effective one year, and prefer bond financing or pay-as-you-go the next. The advice of independent legal counsel and financial analysts is critical in examining these issues and deciding which alternative is best. In addition, the information in the table, as well as throughout this chapter, refutes a few of the current myths about construction financing. It is not necessarily true, for example, that lease arrangements:

- have no effect on a government's capacity to assume additional debt;
- treat the governmental lessee as a renter by not permitting the accumulation of equity in the property; or
- encourage governments to use the right of nonappropriation to escape inconvenient or unsatisfactory facilities.

What is true is that leasing alternatives, especially variations on straight leasing and lease/purchase, are relatively new and untested in corrections but are being given increasingly serious consideration by state and local governments. Such financing innovations can offer an expedient way of increasing prison and jail capacity in an environment generally hostile to bond elections and new government initiatives.

Table 3.3

OVERVIEW OF ISSUES RELATED TO CONSTRUCTION FINANCING⁵¹

<u>TOPIC</u>	<u>ISSUE</u>	<u>COMMENT</u>
Use of Current Revenue	Why don't more governments use current revenues to finance prison and jail construction on a pay-as-you-go basis?	Although pay-as-you-go avoids interest charges on debt and protects a government's credit rating, capital assets like prisons and jails are usually too expensive to fund from current operating revenues, especially in an era of economic scarcity and tax limitations. There is also a fairness issue in that the pay-as-you-go approach compels current taxpayers to bear the full costs of construction while new taxpayers in succeeding years bear none of the construction costs but nonetheless reap a share of the benefits. Both lease and bond financing spread out the costs and benefits over multi-year periods.
Use of Bond Financing	When does it make most sense for governments to finance prison and jail construction by issuing bonds?	Governments with high bond ratings pay lower interest charges on debt than is usually possible with lease financing. Bonds may also be preferred when local laws prohibit lease arrangements or political opposition exists to leasing as a financing alternative.
Use of Lease Financing	What conditions might support the option to lease or lease/purchase?	Leasing should be most seriously considered when a government's debt limit has been approached or already reached and/or passage of a bond referendum is judged unlikely. Annually renewable leases may allow governments slightly more flexibility to respond to changing technology or inmate populations.
Cost	Is leasing more costly than bond financing?	Not necessarily. Lease payments do reflect a profit margin for the lessor and higher interest costs on funds borrowed to finance construction due to the perceived risk of nonappropriation but these costs may be offset by interest income on funds reserved as collateral for the lease as well as the cost savings of avoiding bond referenda and related financing delays.
	Is straight leasing more expensive than lease/purchase?	Usually. Straight leasing allows no equity accumulation and payments include lessor costs for taxes and insurance that the government can avoid with lease/purchase.
Citizen Participation	How does the increasing use of limited liability bonds and lease/purchase agreements affect citizen participation in government?	Using either financing approach, the government is assuming long-term obligations without voter approval even though, technically speaking, neither approach increases the public debt and the government, in the case of lease/purchase, has an annually renewable lease.
Legal Barriers	Do legal barriers exist to the use of lease/purchase financing?	Yes. Many states either forbid the use of lease/purchase for public construction or fail to authorize it explicitly.
Debt Capacity	Does leasing increase the government's debt capacity?	Yes, in most cases. Both straight leases and lease/purchase allow governments to acquire equipment and facilities without having to define the cost as debt. However, that may change with respect to lease/purchase where accounting authorities consider that an installment sale has been made and recommend that the transaction should be reflected on the government's balance sheet and thereby affect debt capacity.

Table 3.3

OVERVIEW OF ISSUES RELATED TO CONSTRUCTION FINANCING⁵¹
(Continued)

<u>TOPIC</u>	<u>ISSUE</u>	<u>COMMENT</u>
Obsoles- cense	Does leasing shift the risk of ob- solescence from the lessee to the lessor?	Not entirely. In most cases, obsolescence and the risk of lease termination is considered in the lease agreement and the lessee is charged accordingly. Moreover, with lease/purchase, the lessee must assume title after a fixed number of years.
Right of Non- appropriation	How much should the right of non- appropriation affect whether or not a government decides to utilize lease financing?	Not much. Lack of housing alternatives and inclu- sion of nonsubstitution clauses in lease agreements make it highly unlikely in the short-term that term that governments will fail to renew their lease agreements. In fact, the right of nonappropriation increases the perceived risk to investors and results in higher lease costs although having this right allows governments not to classify the lease as debt subject to debt limitations.
Benefits to Investors	What financial benefits accrue to private lessors and investors in lease arrangements for prisons and jails?	Straight leasing provides investors with capi- tal appreciation and non-cash losses with which to offset cash income for tax purposes, including depreciation and investment tax credits. Lease/purchase arrangements allow investors to deduct from their taxes the interest component associated with periodic lease payments. Both straight leasing and lease purchase offer the investor a steady cash flow and early return of invested capital.

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Other tax law restrictions on the use of tax exempt lease financing include provisions that (a) the obligation of the government unit must be structured as an installment sale rather than as a straight lease, (b) the term of the lease contract must equal or exceed the estimated useful life of the facility, (c) the lessee must have the right to purchase the property for a nominal sum at the end of the contract, (d) the payments under the contract must reflect the accumulation of equity in the property over the life of the contract, (e) the interest component of the payments must be separately stated in the contract in order for that amount to be treated as interest for tax purposes, and (f) the lease-purchase contract must qualify as an obligation of the government unit within the meaning of Section 103(a) of the Internal Revenue Code.

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Chapter 4: Contracting for Correctional Services and Facility Operations

Private sector involvement in providing specific institutional services and operating programs is a long-standing feature of many states' correctional operations. As early as the 19th century, independent treatment-oriented programs were established as an alternative to state prison confinement for adult offenders. The development of the juvenile courts was marked by the birth of privately operated facilities for juveniles, a tradition which extends to this day. While contracting for specific services within an institution offers a more recent example of private sector involvement, this too has been a standard feature of many state systems for a number of years.

Private sector participation in correctional programs is thus a relatively old idea which is being expanded and reconsidered in the face of modern needs and pressures. The sections which follow examine some of the rationales for this participation, explore the current use of contracting for services and facilities, and examine the issues which surround recent proposals to contract the operations of state or local adult facilities.

Standard Contracting Approaches

Like most state or municipal services, the traditional approach to correctional services such as medical care, food preparation, maintenance, or security has been public operation--that is, the state or locality assumes the sole responsibility for financing and providing the service. However, in some jurisdictions, cost pressures, combined with issues about service availability and adequacy, have led to consideration of other models--most notably, contracting with private organizations. Paralleling the arguments for service contracting in general,¹ it has been suggested that:

- Private operators can provide specific services at a much lower cost than public agencies, since they can realize economies of scale and have the incentive to maintain lower salary and overhead costs.
- Certain services are required on an intermittent basis only, making public provision more costly and less easy to obtain. Contracting for services

such as staff training or transportation can ensure that the service is available when needed without incurring the expense of maintaining staff and/or equipment which will not be used on a full-time basis. Private contracts provide governments the flexibility to obtain services without making major commitments of a long-term nature. If client characteristics change or funding levels are reduced, the government can modify or eliminate the privately contracted service.²

- Adequacy of the service may be enhanced by using private contractors. Because private agencies compete with other firms and have the flexibility to obtain (and retain) only highly qualified employees, the quality of service may be improved. This is particularly important for services such as medical care, which can be the subject of inmate lawsuits.³

As shown in Table 4.1, current correctional contracting practices vary substantially from state to state. While respondents in nine states indicated no private service contracts, 41 states make use of at least one privately contracted service. Of these, medical/psychiatric and food services are most commonly used and constitute the largest contracting operations. Based on a mail survey of correctional institutions and statewide departments of corrections, Steinberg, Keating and Dahl noted similar results, reporting that "only in the areas of medical services and food service are there indications of a developing awareness of the rich variety and potential available to correctional administrators in the form of private contracting."⁴ As might be expected, this survey also showed that services which are less related to basic needs or which are used only on a part-time basis tend to be classified as minor contracting operations.

In addition to service contracts, correctional systems at both the adult and juvenile levels have long been involved in contracting for specific kinds of correctional programs. In the adult field, these facilities often include treatment-oriented programs operated as part of the probation system.⁵ In addition, as shown in Table 4.1, privately operated pre-release, work release, or halfway house pro-

Table 4.1

NATURE OF STATE CONTRACTS FOR ADULT CORRECTIONAL SERVICES AND FACILITIES OPERATIONS IN EARLY 1984¹

State	Contracted Services							Secondary Housing Contracts		Primary Housing Contracts	
	Med/Psych	Food	Security	Transportation	Maintenance	Staff &/or Inmate Training	Other	Type of Facility	Total Number of Beds	Institutional Placements For Adults Under State Jurisdiction	Other Institutional Placements Described By DOC Personnel. Includes Local Detention & Juvenile Institutions ²
ALABAMA	1	(a)	—	—	—	—	—	—	—	None	—
ALASKA	1	—	—	2	—	—	—	* 3 Halfway houses * Drug treatment center	125	None	—
ARIZONA	1	1	—	—	—	—	—	—	—	None	—
ARKANSAS	1	—	—	—	—	—	—	—	—	None	—
CALIFORNIA	1	—	3(b)	1	1	2(c)	—	* Re-entry program	980	None	—
COLORADO	3(d)	—	—	—	—	—	—	* 16 Privately-operated community corrections facilities	204	None	—
CONNECTICUT	—	1	—	—	—	—	—	* Halfway houses	*	None	—
DELAWARE	1	—	—	—	—	—	—	—	—	None	—
FLORIDA	3	—	—	3	—	1	—	* Work release * Mental health * Drug treatment	275	None	Juvenile training camp run by Eckerd Foundation
GEORGIA	2	3	—	—	—	—	—	—	—	None	—
HAWAII	3	—	—	—	—	—	—	* Halfway house	10	None	—
IDAHO	2	1	—	3	—	—	—	—	—	None	—
ILLINOIS	1	1	—	3	—	3	—	* Pre-release	200	None(e)	*
INDIANA	2	3	—	—	3	1	(f)	* Work release	80-100	25 beds at 2 facilities in Marion County	—
IOWA	2	2(g)	—	—	—	—	—	* Alcohol treatment * Halfway houses	25-30	None	—
KANSAS	—	—	—	—	—	—	—	* Halfway house * Work release center	21	None	—
KENTUCKY	—	—	—	—	—	—	—	* Halfway house	117	None	—
LOUISIANA	—	3	—	—	—	—	—	* Work release centers	18	None	—
MAINE	2	—	—	2	3	3	—	* Pre-release and/or halfway houses	25	None	—
MARYLAND	1	—	—	—	—	—	—	* 3 Halfway houses	123	None	—
MASSACHUSETTS	1	—	—	—	—	—	—	* Pre-release	300	None	—

KEY: 1 = Major Program
2 = Modest Program
3 = Minor Program
* = Don't Know/Refused to Answer

¹ Reported in phone contacts made in January/February 1984 with additional follow-up in mid-May 1984.

² Does not include facilities operated at federal level, such as the INS detention centers located in California, Texas, and Louisiana.

^a Currently considering use of private vendors.

^b Contract with private firm to provide technical assistance in upgrading and updating security system.

^c Training for correctional personnel is contracted when not available through the state.

^d Psychiatric services only.

^e State contracts with local jails, State of Nevada, and Federal Bureau of Prisons for bed space.

^f Construction over \$50,000 is contracted.

^g Contract is being planned for cafeteria at penitentiary.

Table 4.1
(continued)

NATURE OF STATE CONTRACTS FOR ADULT CORRECTIONAL SERVICES AND FACILITIES OPERATIONS

State	Contracted Services							Secondary Housing Contracts		Primary Housing Contracts	
	Med/Psych	Food	Security	Transportation	Maintenance	Staff &/or In-mate Training	Other	Type of Facility	Total Number of Beds	Institutional Placements For Adults Under State Jurisdiction	Other Institutional Placements Described By DOC Personnel. Includes Local Detention & Juvenile Institutions ¹
MICHIGAN	1	2	—	3	2	2	—	• Halfway houses	425-430	None	—
MINNESOTA	—	1	—	—	—	—	—	• Work release • Halfway houses	280	None	—
MISSISSIPPI	—	—	—	—	—	—	—	—	—	None	—
MISSOURI	—	—	—	—	2	—	1(b)	—	—	None	—
MONTANA	—	—	—	—	—	—	—	• 2 Pre-release	40	None	—
NEBRASKA	1(i)	—	—	—	3	—	—	—	—	None	—
NEVADA	2	—	—	3(j)	—	—	—	• Halfway house	100	None	—
NEW HAMPSHIRE	3	(k)	—	—	—	—	—	—	—	None	—
NEW JERSEY	1	—	—	2	3	1	—	• 3 Pre-release centers	68	None	—
NEW MEXICO	3	3	—	3(l)	—	—	—	• Community-based facilities • Pre-release centers with drug/alcohol treatment	50	None	—
NEW YORK	1	—	—	—	—	—	2(m)	• Pre-release centers with drug/alcohol treatment	350(n)	None	—
NO. CAROLINA	—	—	—	—	—	—	—	—	—	Pilot Project for 6 inmates at Re-entry, Inc.	—
NO. DAKOTA	1	—	—	—	3	—	—	• Halfway house	5	None (o)	—
OHIO	2	—	—	—	—	—	—	• 17 Halfway houses	550	None	—
OKLAHOMA	—	3	—	—	—	—	—	• Halfway houses	*	None	—
OREGON	—	—	—	—	—	—	—	—	—	None	—
PENNSYLVANIA	1	3	3	2	2	2	3(p)	• Group home	1-5	None	RCA operates facility for juveniles
RHODE ISLAND	3	—	—	—	3	3	—	—	—	None	RCA operates facility for juveniles
SO. CAROLINA	—	—	—	—	—	—	—	• Halfway houses	*	None	—
SO. DAKOTA	1	(q)	—	3	2	—	1(r)	• Work or study release	*	None (s)	—

KEY: 1 = Major Program
2 = Modest Program
3 = Minor Program
* = Don't Know/Refused to Answer

¹ Does not include facilities operated at federal level, such as the INS detention centers located in California, Texas, and Louisiana.

^h Dentist and optometrist.

^o State contracts with Federal government to house some prisoners.

ⁱ Psychiatric services only.

^p Chaplain services.

^j Interstate transportation only.

^q Accepted bids one month ago on food service contracts; all rejected because they were over budget. May reassess specifications and put out another request for bids in June.

^k Currently reviewing proposals for food service contracting.

^l Interstate transportation only.

^r Dentist and optometrist.

^m Drug/alcohol treatment.

^s A proposal for private construction and operation of a medium-security institution was submitted to the state.

ⁿ Although 350 beds are authorized, only 17 currently used.

Table 4.1
(continued)

NATURE OF STATE CONTRACTS FOR ADULT CORRECTIONAL SERVICES AND FACILITIES OPERATIONS

State	Contracted Services							Secondary Housing Contracts		Primary Housing Contracts	
	Med/Psych	Food	Security	Transportation	Maintenance	Staff &/or In-mate Training	Other	Type of Facility	Total Number of Beds	Institutional Placements For Adults Under State Jurisdiction	Other Institutional Placements Described By DOC Personnel. Includes Local Detention & Juvenile Institutions ¹
TENNESSEE	—	—	—	—	—	—	—	—	—	None	Correctional Corp. of Amer. operates Memphis juvenile facility
TEXAS	—	—	—	—	—	—	—	• 55 Halfway houses	2,000	None	— (t)
UTAH	*	1	1	—	1	—	3(u)	• 4 Community-based facilities	80	Experimental med/min. security "restitution" facility, 34 beds	—
VERMONT	—	3	—	—	—	—	3(v)	—	—	None	—
WASHINGTON	1	3	3	2	2	—	—	• Work/training release centers	427	None	—
W. VIRGINIA	3	3	—	—	—	—	—	—	—	None	—
WISCONSIN	2	—	—	3	3	3	—	• Pre-release • Halfway houses	144	None	—
WYOMING	2	3(w)	—	—	—	—	—	—	—	None	—

KEY: 1 = Major Program
2 = Modest Program
3 = Minor Program
* = Don't Know/Refused to Answer

¹Does not include facilities operated at federal level, such as the INS detention centers located in California, Texas, and Louisiana.

^tPossibility of a privately operated juvenile detention facility.

^vDrug/alcohol/sex offender treatment.

^uArchitectural services and equipment.

^wDieticians only.

grams for adults are also used by a number of states, although the extent of use ranges from just a few beds (for example, Hawaii, Iowa, Kansas, Louisiana, Maine, North Dakota, and Pennsylvania) to hundreds or even thousands of inmates (as in California, Massachusetts, Michigan, New York, Ohio, Texas, and Washington).

In many ways, the rationales for private contracting of these specialized facilities mirror those for service contracting--that is, that privately operated facilities may cost less, offer improved service, or offer greater access to specialized programs. In addition, because these programs are often designed to operate on a small scale and to provide community-oriented placements, local vendors are ideally suited for this kind of service. (It is interesting to note, however, that with the advent of reduced correctional budgets, larger statewide or interstate companies have made significant gains in this market.⁶) In states such as Florida, California, Texas, and Massachusetts, the benefits of employing private vendors have been specifically recognized in legislation requiring their use as a means to conserve funds. This points out yet another advantage of these programs: by offering less expensive and more flexible alternatives to long-term prison construction, privately operated facilities can help states to deal with burgeoning correctional populations.

The Emergence of Facility Management Contracts

Given the considerable private sector involvement in operating secondary placement community-based facilities, a logical extension would seem to be the operation of primary placement facilities for adults. Yet, while many proposals were pending at the time of this survey, no primary state facilities for adults were fully operational. Instead, as shown in Table 4.1, most experience in the adult field is limited to small, special purpose facilities closely resembling the halfway house or pre-release facility common in many states. For example, in the Indianapolis area, the Marion County Community Corrections Board recently contracted for custodial placement of 25 offenders in two privately operated facilities. These placements are intended for non-serious offenders who might otherwise have been sent to state correctional facilities. In addition, a pilot project in North Carolina involves housing six inmates in a facility operated by Re-Entry Inc., a private operation. Other contracts appear to be limited to arrangements made with other state or

local jurisdictions for bedspace in their correctional institutions.

This lack of major activity should not be construed as a lack of interest, however. As noted below, government agencies and private firms around the country are actively exploring opportunities for contracting adult correctional facilities.

State Adult Facility Proposals. As a result of the emerging trend toward contracting for the detention of illegal aliens (discussed later in this chapter) a number of corporate providers have entered the market and are aggressively pursuing contracts to operate adult facilities. One of the most widely publicized providers is the Corrections Corporation of America (CCA), an organization based in Nashville, Tennessee, that was incorporated in January 1983 to take advantage of opportunities for private operation of correctional and detention facilities. Unlike the typical nonprofit service organization offering community-based correctional programs, CCA is a profit-making corporation. According to a recent media account,

the company was founded by Thomas Beasley, a 41-year-old entrepreneur and Tennessee Republican politician whose other businesses include real estate and insurance ventures. CCA is backed with money from Nashville's Massey Birch Investment Group, the same firm that started the now giant Hospital Corporation of America . . . Beasley plans to run Corrections Corporation's prison much like the Hospital Corporation runs its hospitals--with large purchase orders and centralized accounting and management, and by hiring experienced professionals from public agencies to run the day-to-day affairs of the institutions.⁷

In early 1984, CCA reported working on approximately 18 projects involving contracts for adult facilities. These projects ranged from preliminary contacts with interested governments to full proposals under active consideration. Based on its current prospects, CCA estimated that within one year it would be operating at least one, and possibly three, adult institutions.⁸ For the most part, however, the most immediate prospects appeared to be confined to local facilities or state-sponsored community-based facilities. However, the Kentucky Corrections Cabinet issued an RFP in late 1984 to contract for minimum security housing for 200 sentenced felons.

Federal Facility Experience and Proposals. In late 1983, the Federal Bureau of Prisons (BOP) issued a solicitation calling for the private development and operation of a 400- to 600-bed adult facility in the Southwest United States. Four firms, including CCA, responded; two of the bidders proposed substantial renovation or reconstruction, while the other two proposed to activate existing facilities. Although a number of sites was considered, an existing facility in Mineral Wells, Texas (near Dallas/Fort Worth) was finally chosen. Subsequent to the selection, however, the program was cancelled, largely due to local opposition to the facility.⁹ The institution would have been used primarily for immigration law violators falling under the jurisdiction of the Bureau of Prisons--that is, aliens who had committed the felonies of returning to the United States after deportation or helping other aliens to return. Since the facility was expected to house minimum custody detainees, security requirements would have been relatively modest, consisting of two fences and razor barbed wire.¹⁰ Despite the cancellation of this program, the Bureau of Prisons has issued another site-specific solicitation in the San Diego area for a 100-bed facility similar to that proposed in Mineral Wells, and will continue to look for other sites suitable for this type of privately contracted detention facility.¹¹

The Federal Bureau of Prisons currently has a 3-year contract with Eclectic Communications, Inc. (ECI), to house federal prisoners at Hidden Valley Ranch, a facility operated by ECI in La Honda, California.¹² The contract provides for the housing of up to sixty offenders sentenced under the Youth Corrections Act (YCA) with low security needs. Individuals placed at La Honda have generally completed all mandatory YCA programming, are within two years of release, and have a release destination in the western United States. Prior to its conversion to a YCA facility in June and July 1984, the facility was an ECI-operated contract institution for federal juvenile offenders. La Honda provides dormitory housing with thirty individuals in each dorm and is surrounded by a fence. Under the contractual agreement, ECI provides for the overall operation of the institution. ECI is required to adhere to a Statement of Work which generally follows BOP policies and procedures including special requirements related to YCA offenders. In addition to the Statement of Work, ECI is provided assistance by a BOP technical liaison at the facility, and by the BOP's Western Regional Office. The FY

1985 budget request for the La Honda contract was approximately \$1,000,000. Because the contract began in July 1984 and the facility is only now close to its sixty-person capacity, programming at the institution is limited at this time. It has begun a computer vocational education program and has a limited recreation and leisure-time program. Several programs have been approved for the facility and are currently in the process of development and implementation. These include vocational education programs in carpentry, building rehabilitation and maintenance, basic photography, and a larger scale recreation and leisure-time program. Eclectic Communications, Inc. has also proposed a printing vocational education program which is pending approval by the BOP's Western Regional Office.

Local Facility Experience and Proposals. In many respects, the local level--where fiscal capabilities are extremely limited and the options for dealing with crowding pressures are highly constrained--may prove to be the most fertile ground for facility management contracting. Responding to the pressures faced by local governments, a number of providers have organized to develop the market for jail operations. One of the most active market entrants has been the National Corrections Corporation. Formerly called South/West Detention Facilities, the National Corrections Corporation (NCC) has been involved in jail construction since 1972. Based in Denver, Colorado, this profit-making corporation has expanded over the years to its current complement of 15 professional staff. To date, NCC has been involved primarily in the construction of jail facilities through leasing arrangements with local governments; recently, however, it has expanded its interests to cover jail operations.

Although private operation of a jail facility is not yet legal in many of the states NCC services (Colorado, Wyoming, New Mexico, Oklahoma, and Iowa), it has submitted proposals to operate one facility in Colorado and four jails in New Mexico. In March, the New Mexico legislature passed a bill legalizing the concept. Under the new authorizing legislation, NCC proposes to develop and operate regional jail facilities shared by two to four counties. NCC would build, staff, and operate the jail, although the individual counties may retain responsibility for certain functions such as bookings. Certain treatment-oriented programs would also be provided by the Corporation. According to O. Wesley Box, President and owner of NCC, these

proposals would answer the long-standing conflicts surrounding regional jail operations. Although many jurisdictions are interested in this regional concept, "territorial" considerations often preclude their involvement. However, under the NCC proposal, the private corporation would take over most of the jail functions, easing member counties' concerns that one jurisdiction gets to "call the shots."¹³

On October 15, 1984, the Correction Corporation of America (CCA) began operation of Silverdale Work Farm Facility, located in Hamilton County, Tennessee (near Chatanooga), a local workhouse for 300 male and female offenders from Hamilton County Courts.¹⁴ The firm has a four-year management contract with the Hamilton County Court (essentially the county board of supervisors), to operate the facility at a cost of \$21 per inmate, per day. The facility was previously operated by the county and houses a mix of inmates including local, state and federal prisoners, sentenced persons, female inmates awaiting trial and some persons serving weekend-only sentences. While the majority of persons housed at the facility are sentenced males serving one year or less, CCA is contractually responsible for the housing of whomever Hamilton County places in the facility. Inmates at the facility are currently serving sentences up to six years in length. Persons needing special care such as medical or psychiatric treatment are referred to other facilities.

The Silverdale physical plant includes: (1) a womens dormitory unit which is 25 years old; (2) a mens compound consisting of two single occupancy housing units built in the last five years; (3) a new internal guard tower; (4) a new administration building; (5) a trustee building; and (6) a food service facility. Security includes a perimeter fence complete with razor wire around the mens compound and internal and external guard towers. The womens unit has no fence and provides less security than the mens unit. As part of the management contract, CCA is to renovate or construct new trustee and food service facilities at a cost of approximately \$1,000,000. The full contract was negotiated at approximately \$1.9 million.

The contract incorporates a Statement of Work which includes clauses requiring CCA to meet or exceed ACA Standards for Prisons and Jails within two years, and minimal procedural requirements related to staffing, food service, financial affairs and other areas. The Silverdale facility provides

institution and county work programs. Persons in the county work program work for Hamilton County performing road maintenance, vehicle maintenance or work in other county facilities such as nursing homes. Persons in the institution work program work in food service, maintenance and other jobs related to institution operations. The facility provides G.E.D., religious and recreation programs. Silverdale has a sewing program for women, is in the process of expanding the education program, and is creating a certified food service program. The institution has an A.A. program for substance abuse problems and has a medical department consisting of one LPN, and two full-time registered nurses, in addition to the doctor and emergency medical treatment previously provided by the county.

Inter-state Prison Proposal. Buckingham Security Ltd. has announced plans to design, construct and operate two maximum security prisons for adult offenders, specializing in protective custody prisoners drawn from the populations of a number of state prisons. The company is based in Lewisburg, Pennsylvania and is run by Charles Fenton, a former federal prisons warden. The first facility—a \$15 million, 720-bed prison—will be located in Beaver County, Pennsylvania and will be begun in March 1985, pending passage of enabling legislation in Pennsylvania. The site was originally industrial and the plan is to renovate existing buildings in addition to constructing some new facilities, with a scheduled completion date of March 1986. The company already has letters of intent from a number of states for 1,200 spaces, in excess of the 720 available beds. A second facility is planned in Idaho, on a site originally used as a hospital. This facility will be constructed in similar fashion, incorporating conversion of existing buildings and new construction, though completion will be at least six months behind the Pennsylvania facility. Buckingham plans to offer programming in both prisons and hope to involve about 30 percent of the inmates in industrial programs in each.¹⁵

Although none of these contracts has become fully operational, some insights into the potential benefits and pitfalls of facility contracting may be found in other fields where such contracts are in operation. Three types of contracting experiences are relevant:

1) Non-corrections Facility Contracting

Appendix B discusses examples of contracting in such fields as sewage treatment, public housing and air traffic control (all of which involve facility construction and management) as well as the fields of education, employment, and health (which involve the delivery of fairly complex human services). Although the scope of the current project precluded a detailed examination of the issues and practices in each of these areas, it is clear that sufficient experience is accumulating to warrant careful assessment of the lessons learned. At the very least, experience to date suggests that the concept of facility management contracting is a feasible alternative to public management, particularly in those areas with fairly straightforward technological requirements. Where contracted services have involved the delivery of more intangible human services, success is less easily defined and clearly requires more thoughtful attention to the key planning, implementation, and monitoring issues. Appendix B highlights some of the issues that have been encountered in other fields. Issues relevant to corrections contracting are discussed at the conclusion of this chapter.

2) Juvenile Correctional Facilities Contracting

Additional insight into the benefits and hazards of privately operated adult facilities can be drawn from the juvenile corrections field where deinstitutionalization initiatives have often prompted the development of a broad array of privately managed programs and facilities. Massachusetts is the leading example of a state that took radical action in the early 1970s to reduce the number of youth held in traditional incarcerative settings. In 1983, roughly a decade after the closing of the state's five juvenile institutions, 60 percent of the \$38 million budget of the state Division of Youth Services (DYS) was designated for the "purchase of services" from private agencies.¹⁶ These services range from providing street counseling to operating small locked treatment facilities. One hundred percent of the community-based residential facilities are contracted for, as are 50 percent of the secure treatment programs in the state. DYS contracts with more than 50 individual agencies, and also purchases services from an additional 30 agencies on a non-contractual basis.¹⁷ All contracting agencies are nonprofit. State regulation stipulates that community-based programs must be contracted out only to nonprofits; secure treatment programs

are not legally prohibited from contracting with for-profit corporations, but refrain from doing so nonetheless. DYS officials assert, however, that there would be little opposition to allowing for-profit contractors.¹⁸

Managing this system of private contracts has required the development of a number of support systems, including:

- 1) the creation of an administrative unit to monitor contracts and to provide technical assistance to problematic private programs;
- 2) the definition of a specific classification system and standards for the care of juveniles in detention; and
- 3) the implementation of procedures for regularly assessing contract compliance.¹⁹

Examples of contracting ventures in other states are described briefly below. While this is far from a comprehensive review of private contracting in the juvenile field, these selected examples are instructive of the potential and problems of contracting for the management of correctional facilities, whether juvenile or adult.

--Florida and the Eckerd Foundation

The largest of these efforts, and the one most analogous to adult facility operations, is the Okeechobee Juvenile Training Facility operated in Florida by the Eckerd Foundation. Originally operated by the state of Florida, this facility was slated to be closed as part of a general move to eliminate the state's large, run-down juvenile facilities. However, given the general fiscal climate of the state, it became clear that outright closure would not be possible. As a result, the governor sought alternatives--among them, private operation of the facility.

Since the Eckerd Foundation, the nonprofit arm of the profit-making Eckerd Corporation (a major U.S. drug manufacturer), had a long-standing reputation for operating juvenile programs for emotionally handicapped youths and delinquents, state officials originally approached Eckerd with the idea. After bidding on the state's Request for Proposals (RFP), Eckerd was awarded the child care contract with the Division of Youth Services in the fall of 1982. Eckerd also bid for and won a second contract for

the facility's educational programs, which started in July 1982. Thus, Eckerd is responsible for all program and facility operations at Okeechobee. The size of these contracts is fairly substantial: the fiscal year 1983 budget for operations was \$4.8 million, while the educational budget was \$1.1 million.²⁰

The Okeechobee facility serves between 400 and 450 committed delinquents, aged 14 to 18. Most of these juveniles are "hard core," having committed "prison quality" felonies. Basically, as stipulated in the state's RFP, Okeechobee operates under the same standards as the other state training schools. The average stay for juveniles is about six months, and the school provides both educational services and vocational training for its youths. Security is handled by staff supervision and an external fence. In January 1983, shortly after the Eckerd takeover, a class-action suit was filed in the Federal District Court alleging cruel and abusive conditions of confinement at Okeechobee and two other Florida training schools. Eckerd is not named in the suit, nor do most of the school's critics blame the foundation for the alleged conditions there. "Critics say that Eckerd has inherited the fruits of the state's antiquated and harsh policies toward delinquents--policies that make it difficult for anyone to run a decent facility."²¹

According to Wesley Brazell, former Superintendent of the school, many mistakes were made during the transition period. Perhaps the biggest was the failure of the state and Eckerd to plan the transition fully and allow adequate time for the change-over. With only thirty days allowed for the transition, Eckerd was caught without the funds or time to ensure continuity of staffing, while having to face extremely serious problems of staff resentment.

Before the Eckerd takeover, all training camp staff were employees of the state. With the change, Eckerd essentially fired all the camp's employees, and then rehired those that passed the screening criteria established by the Foundation. One of the first rehires was the former Superintendent, Brazell, who then participated on the committee of institutional and Foundation staff established for the rehiring task. The number of supervisory positions was generally reduced and the salaries of some of the remaining positions were reportedly raised. Although this process should have enabled Eckerd to streamline the staff and weed out less productive

employees, many valuable staff members were lost when they opted for the continued security of state employment. It was reported that up to 50 percent of the staff chose to continue as state employees, leaving Eckerd extremely short-staffed. To compensate, Eckerd temporarily imported staff from their wilderness camp operations.

A second mistake was Eckerd's initial decision to try to operate with fewer staff than the state in an attempt to become more efficient. This venture did not succeed, and Eckerd was forced to add more staff over time. Brazell added that Eckerd now employs more people than the state had, especially in the educational area.

In addition, Eckerd originally thought they could reduce operating costs by having counselors work a 16-hour shift and live inside the compound. Salaries were reduced, but the counselors were provided free room and board on the premises. Because of difficulties in attracting and retaining qualified counselors under this arrangement, they have recently gone back to an 8½-hour day, increased the salaries, and eliminated the requirement that counselors live "on campus."²²

There have been several management changes in late 1984 at both Okeechobee and the Foundation which have had an impact on the administration of the school, according to state Department of Health and Rehabilitative Services (HRS) staff. The school's Superintendent resigned and has been replaced by an attorney with a strong background in child advocacy, but little or no management experience. The Assistant Superintendent resigned in August 1984 and the position has been given to the school's former Business Manager. Within the Eckerd Foundation, the person responsible for overseeing Okeechobee left for work in the private sector and has been replaced by a staff person formerly working on Eckerd's drug-related activities. There are now monthly meetings between state HRS personnel and the Okeechobee management group to deal the ongoing management problems. Also, HRS staff are now providing technical assistance because many of the Okeechobee management group lack institutional experience.

Despite these problems, Eckerd appears to have made improvements in the school's facilities and services, especially its educational programs. Most of the programs provided by the Foundation are similar to those under state operation, although the

Eckerd staff claim that they are now able to provide better service and add new programs. For example, program management reported that Eckerd had added a vocational program in baking, added a "ranger-type" physical training course, started new work projects for the youths, improved the educational service (doubling the number of GEDs awarded during the first year and increasing the school year operations from 9 to 12 months per year), and upgraded the therapy and counseling services. They have hired a recreation coordinator to also begin to improve programming in that area. In addition, they reported that services--food, health care, and the like--were also upgraded. Perhaps most notable were the reported improvements in the facilities themselves. Unlike the state, which had had no budget for facility improvement in years, Eckerd was able to upgrade and renovate the boys' cottages. According to the Eckerd staff, this was accomplished without the addition of extra funds in the contract.²³ (However, Eckerd did put \$250,000 of its own funds into the school during the first year of operations.²⁴) This increased responsiveness and flexibility has also been noted by the American Correctional Association staff charged with evaluating the Eckerd Foundation experience for the National Institute of Corrections.²⁵

Cost, of course, is one of the major considerations in private operation of a facility. Eckerd claims that it is able to operate the facility less expensively than the state. Eckerd staff note with pride that their yearly budget is \$600,000 less than other training schools', even though the others serve only two-thirds the number of youths.²⁶ In part, this is because of new staffing patterns which eliminated higher priced supervisory staff performing lower-level staff functions. In addition, medical costs were controlled by adding medical personnel to the staff, enabling Eckerd to treat many cases on the premises rather than transporting all youth needing medical attention to nearby hospitals. Further savings were realized by such measures as having the youth bake their own bread as part of a vocational service and by receiving in-kind donations from the Eckerd Corporation and other groups and individuals in the community. As an example, Brazell cited the school's cattleherd, which was donated by local ranchers.

Under its contracts with the state, Eckerd manages the facility, providing the necessary staff, services, materials, and programs, while the property remains

in the hands of the state. Included in the contract is a provision concerning the maximum and minimum number of youths per year to be handled in the facility. Every 30 days, the Foundation is reimbursed by the state for the costs incurred during that period--another financial benefit for the state since Eckerd Foundation covers these costs itself until reimbursement is received. According to Brazell, this alone allowed the state to reduce the facility's budget by \$400,000 per year.

HRS staff report, however, that the costs of Okeechobee were, as of late 1984, comparable to those at the other state training schools. When Eckerd went to the legislature for funds for the second year of operations, there was a \$300,000 deficit between Eckerd's projected costs and the funds appropriated. Attempts to lobby for additional funds were unsuccessful, and HRS is now trying to make up for the shortfall out of its own appropriation.

While the Eckerd Foundation is not the only private organization involved in juvenile corrections, it is certainly the only one handling such a large-scale operation. Others, such as RCA, Correctional Corporation of America, and the Associated Marine Institutes, manage programs which are much more akin to the "traditional" juvenile group home. Still, these too offer some insights into contracting for facility operation.

--Pennsylvania and RCA

Unlike the Eckerd Foundation, RCA Service Corporation is a profit-making company. However, like Eckerd, RCA is involved in a variety of service programs for youths in a number of states. In 1976, the Commonwealth of Pennsylvania asked RCA to take over the operation and management of the Weaversville facility, which had previously been operated by a private organization established and funded by the Commonwealth. Weaversville is a relatively small facility (22 beds) for hard-core delinquents, and it serves youths from throughout the state, although most of its population is drawn from the northeast and central areas. The program is treatment- and education-oriented.

Although this facility is roughly the equivalent of an adult medium security institution (considering the types of offenders confined) there are no special security measures taken aside from fencing and locked doors. According to Henry Gursky, Director

of the Weaversville Unit, RCA follows the Department of Public Welfare guidelines on security, and the DPW inspects the facility periodically, holding RCA accountable for maintaining these standards.²⁷

As in the Okeechobee school, the state continues to hold title to the property. RCA manages the facility, hires the staff, and provides all the necessary programming. Originally, the contract operated on a yearly basis, though recently it was changed to a three-year contract, providing RCA with a great deal more stability. Costs are reimbursed by the state on a monthly basis, and are figured on a per-diem amount for each juvenile. Currently, the per-diem figure is approximately \$110, which includes a seven percent fee. Costs are high compared to the Okeechobee facility, partly due to geographic differences and partly to programmatic differences that may reflect Pennsylvania's commitment to running small, adequately funded institutions.

Although the state contract specifies an annual budget, Henry Gursky noted that RCA generally "comes in under budget," never billing the state for the full amount possible. Since the contracts are issued competitively, RCA feels that this helps to "keep the customer satisfied." Gursky could not compare the cost of this facility to similar institutions operated by the state, but he estimated that state operation would be more expensive, since staff salaries at Weaversville are often lower than equivalent state positions, and the RCA medical and pension benefits are also more modest. Even so, Gursky pointed to the high quality of the staff, noting that three-quarters of the staff have graduate degrees.

--Tennessee and the Corrections Corporation of America

Yet a third privately operated juvenile facility is in Shelby County, Tennessee, run by the Corrections Corporation of America. Opened in early 1984, the facility provides a multi-phased residential treatment program for 35 adjudicated juvenile property offenders aged 16 to 18. The average stay is five to six months, and the program stresses vocational education and attendance at local public schools. In July 1984 the program graduated its first class, all with high school equivalencies and guaranteed jobs.

The impetus for this program was the combined influence of the Tennessee law restricting juvenile

commitments to jails, the lack of appropriate juvenile facilities in the state, and considerable overcrowding pressure at the adult level. Given the current state pressure to keep juveniles out of state commitments, the Shelby County juvenile court asked CCA to submit a proposal for the development of a new juvenile facility. Under this arrangement, the state pays Shelby County \$33.75 per day to maintain juveniles under local, rather than state, control. Shelby County then pays CCA a per-diem fee of \$33.25 for each juvenile it houses. CCA administration reports that the program's operations have been smoother in the first six months than either CCA or the court had expected.²⁸

As in the other facilities described above, the government continues to hold title to the property, but issues a management contract in which CCA leases the facility and provides all the equipment, supplies, materials, and programs. Security is provided primarily through staff supervision. No special perimeter security is planned, although the doors and windows of the facility can be locked.²⁹

--Florida and the Associated Marine Institutes

As a final example, the Associated Marine Institutes operates the Florida Environmental Institute, a program for serious juvenile offenders. Associated Marine Institutes is a nonprofit corporation which operates several rehabilitative programs for juvenile offenders in Florida and Texas. The Florida Environmental Institute program (FEI) was initiated approximately one year ago, and is funded through a contract with the Florida Department of Health and Rehabilitative Services.³⁰ FEI serves youths from Dade and Broward Counties, and involves a two-year program with three distinct phases. The first two phases are operated in a residential setting in central Florida. Conditions are primitive, and security is provided by the program's rural setting (the middle of a rather extensive swamp). No institutional housing is provided--rather, the youths sleep in tents or trailers. The first six-month phase involves intensive work projects, coupled with vocational, educational and values training. During the second six-month phase, the youths continue at the central Florida location but are accorded more privileges and less arduous work assignments. Finally, during the third one-year phase of the program, the youths return to the Dade/Broward County area and participate in non-residential "marine biology" institutes. Again, but for the serious nature of the offenses committed by parti-

icipating juveniles, this program is similar in many respects to the general "juvenile alternative" programs operated in many states. It is considered to be primarily rehabilitative and non-institutional.³¹

-The Perceived Pros and Cons of Contracting Juvenile Facilities

In all these programs, several advantages to the government were reported. Among the most appealing is certainly cost. Because they generally operate on a contractually fixed per-diem rate, the government faces very little risk of cost overruns. In addition, there is some evidence that privately operated facilities may be less costly to the government, as suggested in the Okeechobee Training School. Certainly, private operation allows the facility directors to staff on the basis of applicants' qualifications and to set salaries on this basis rather than on civil service standards, which can often be more expensive and less flexible. In addition, the state saves pension and benefits costs which may well be more than the prevailing rates for private employees.

Flexibility was an advantage reported by many survey respondents. Not only is the state able to avoid long-term commitments through the use of short-term contracts, but programs can be started up much more rapidly by private organizations since they are not bound, for example, by civil service and state procurement regulations. Though difficult, the transition to private contracting in Okeechobee was made in only one month;³² the juvenile program established by CCA took only six months from planning to inception.³³

Arguments concerning improved service are more difficult to document, given the limited experience with this approach. However, the fact that the Weaversville facility was able to provide more professional staff at the same cost suggests some service improvement, as does the upgrading of the physical facilities at Okeechobee.

Disadvantages to the government appear to be relatively limited, perhaps because these facilities are primarily an extension of the private juvenile treatment programs operated for years. The most substantial problem was opposition of state employees, at least for facilities which had previously been operated by the state. At the Okeechobee school, for example, privatization resulted in serious staff shortfalls and disruptions at the school itself when

disgruntled state employees voiced their dissatisfaction to the Foundation and the youths at the school.³⁴ While RCA experienced no such problems in beginning the program at Weaversville, Gursky noted that another planned juvenile facility in San Diego, California, was effectively blocked when state employees protested the takeover.³⁵

Other potential disadvantages include liability and enforcement of standards. However, at least in the facilities examined in this study, the liability problems appear to be minimal: on the one hand, contractors carry insurance for many kinds of liability, easing the burden of the state somewhat; on the other hand, because juveniles are wards of the court no matter where they are placed, the state legally retains much of its liability whether the youths are placed in state or private facilities.³⁶ However, because the contractor is responsible for maintaining certain standards of care and has a strong financial incentive to minimize incidents where it or the state incurs liability, those interviewed claimed that problems with both standards and liability would be rare.

Finally, one concern raised by a government official was the potential disruption in facility operations should the government decide to change contractors.³⁷ Under this scenario, fear of service disruptions might "box in" the government, causing it to pay more than necessary or to put up with services it views as inadequate. Again, this would seem to be less of a problem for small institutions resembling group homes, since many contractors have experience in this field and few beds would be lost in the event that the facility closes. However, for larger institutions such as that run by Eckerd this problem might indeed be serious.

Operating a juvenile facility appears to offer private organizations a fairly stable source of revenue, although the business of facility contracting does entail some significant disadvantages for contractors. Most notably, the need to rely on short-term contracts was cited as a continuing problem, both in retaining qualified staff, planning revenues, and maintaining competitive costs. (For example, one contractor stated that the risks associated with short-term contracts are inevitably built into the operational costs charged to the government, causing the government to pay higher rates and the contractor to appear less cost-efficient.)³⁸ It was also noted that insurance costs tend to be quite high—a potential problem for smaller contractors

but one which larger organizations such as Eckerd, CCA, or RCA are generally equipped to handle. Finally, local opposition to facility siting can be a major consideration regardless of whether it is publicly or privately operated. While not insurmountable, it was noted that this problem requires constant public relations work by both the contractor and the government, especially for larger programs intended for serious delinquents.³⁹

3) Detention of Illegal Aliens by the INS

A third type of relevant contracting activity can be found in the recent experiences of the Immigration and Naturalization Service (INS), which has engaged a number of private firms in the development and operation of facilities for some of the more than a quarter million detainees held annually by immigration authorities. In FY 1983, for example, INS detained a total of 235,000. Of these aliens, 150,000 were housed in INS-operated facilities, while the remaining 85,000 were divided up among private programs, state and local jails, Bureau of Prison facilities and halfway houses.⁴⁰ Typically, detainees are held by INS pending deportation by the Federal Bureau of Prisons if they have reentered the country following deportation. (The U.S. Marshal's Service is also involved with the custody of aliens who are held as material witnesses in alien smuggling cases.)

As of early 1984, the INS operated four contracted facilities, three additional facility contracts were nearing award, and two more were planned in the near term. Brief descriptions of three of the operating facilities are provided below.

--San Diego and Pasadena (California) INS Facilities

Behavioral Systems Southwest (BSS) operates facilities under contract to the INS in Pasadena (the Los Angeles metropolitan area) and in San Diego. For BSS, the opportunity to work with the INS arose because of jail overcrowding in California.⁴¹ County facilities could no longer hold detained aliens, whose numbers were growing steadily at the same time that the state court caseload was skyrocketing.

Ted Nissen, a retired parole officer and co-owner of Behavioral Systems Southwest,⁴² first worked with the INS through a nonprofit entity named SPAN.⁴³ It was a sole-source arrangement, modeled on the

Service's experience with the Salvation Army in Florida. In mid-1980, Nissen and the INS began to discuss a minimum security facility for families. However, when Nissen moved to a profit-making corporation the contract for this facility went out for competitive bid. Nissen's Behavioral Systems Southwest was ultimately awarded the contract.⁴⁴ A former convalescent home in Pasadena--a building with private sleeping rooms and a common eating area--was converted to house 125 men, women and children; in the past, families would have been split up for detention in county facilities. A new facility in San Diego was also established by BSS after it won a second competitive procurement from the INS. Also housing 125, the San Diego facility uses a former motel, with catered meals because there are no cooking facilities. The buildings have been upgraded to meet fire and health department requirements, but little other investment in the structures was reported necessary. BSS leases them both on a 10-year basis and operates them for the INS under an annual, renewable contract.⁴⁵

Security at the facilities consists of locked doors and razor wire on the roof; none of the staff is armed.⁴⁶ Indeed, BSS emphasizes that the detainees are not criminals, but people who come to the United States out of economic need and who should be treated humanely. Even so, these facilities are more secure than the ones BSS runs for the California Department of Corrections and the Federal Bureau of Prisons--prisoner re-entry, work furlough and community treatment centers.⁴⁷

--Houston INS Facility

An industrial park near Houston's Intercontinental Airport is the site of a facility built by the Corrections Corporation of America (CCA) to house 300 detainees for the INS.⁴⁸ Houston, which has many consulates of Latin American countries, functions as a major deportation point. The new facility satisfies short-term holding requirements, as the INS collects detainees from around the country and sends them home.

CCA has an annually renewable contract with the INS to operate the facility; the construction was financed with venture capital and resembles an office building, including landscaping.⁴⁹ CCA decided to build the facility itself when it determined that no appropriate structure was available for lease in the right location. Inside, the configu-

ration is dormitory style, because of the very short stays anticipated.⁵⁰

This facility serves a slightly different population than the BSS operations in San Diego and Pasadena: it is meant for adults rather than families, and for collection rather than for pre-hearing detention. Even so, there is still the feeling that these people are not criminals and do not need to be in jail. The building has only perimeter security, basically locked doors. INS staff will not be able to bring weapons inside. There is no special language in CCA's contract concerning escapes; any liability would come under ordinary negligence, and escapes would also be considered as a performance issue at contract renewal time. CCA officers label this a "normal business risk." There was also some risk involved in bidding to use a new building. Due to INS's detention needs and minor construction delays beyond the contractor's control, CCA had to make interim holding arrangements to meet its contract responsibilities.⁵¹ A former motel on the edge of a residential neighborhood was leased to provide temporary housing for about 140 illegal aliens for four months while the new structure was built. Even so, observers generally agree that the new building was completed far more quickly than might have been possible under public management.

Although it was not related to any incidents at the CCA facility, the American Civil Liberties Union in Houston has filed a suit challenging the practice of contracting for private incarceration. The suit "grew out of an incident in 1981 in which 16 Columbian stowaways were held by a private security agency pending deportation. They attempted to escape, and after they were recaptured, a guard's shotgun discharged, killing one man and seriously wounding another."⁵² At the least, the ACLU reportedly hopes for a ruling that will insure contractor adherence to minimum standards—a matter the INS has already addressed in drafting its new contracts which include detailed specification of standards and conditions of confinement.

--The Perceived Pros and Cons of INS Facility Contracts

There are several advantages to the Immigration Service in arrangements like those with Behavioral Systems Southwest and Corrections Corporation of America. While the INS has six major detention facilities, which handle nearly two-thirds of the caseload, use of contracted facilities allows expan-

sion of holding capacity without construction costs or delays and without the problem of running up against the agency's personnel cap.⁵³ The Service saves its own facilities for more difficult cases, screening for escape risks before assigning aliens to the Pasadena and San Diego facilities.⁵⁴ In addition, it gains assured access through contracting, unlike the current situation in certain key county jails.

Costs are a second major advantage to the INS. The current average per diem paid to BSS for holding an illegal alien in Pasadena is only about half of what the Los Angeles County Jail charged two years ago.⁵⁵ Some jails now cost as much as \$80 per person per day plus booking charges, in contrast to per diems in the mid- to upper \$20's for private operators. The annual contracts do not lock the agency into long-term expenditures, as would construction or adding personnel. Further, the per diem reimbursement formula (even when combined with some guaranteed minimum per month) lets the agency pay less when the flow of cases decreases in a particular location.⁵⁶

Overall, contracting for detention facilities gives the INS substantial flexibility. The time commitment is short, the fixed costs low. It is possible to adjust the size and location of holding capacity relatively quickly. And this can all be done within the language of existing budget authority and regulations, which authorize "man-day costs" as necessary to provide housing for arrestees. The only drawback the Service sees in this procedure is a certain loss of control, in comparison with the facilities it operates directly. Even so, INS managers regularly monitor contractor operations, and the INS contract monitor is permanently assigned to the Houston center.⁵⁷

From the standpoint of the private sector, running detention facilities for the INS is a business opportunity with a reasonable profit potential and limited risk. Personnel and supply costs are fully chargeable in the per diem, with an added percent profit. The rate is renegotiated annually, so that exposure by virtue of cost increases is limited. On the other hand, competition is increasing, and the INS is required to award contracts to the lowest responsive bidder. This requirement, plus an INS history of early contracting with low-cost nonprofits, appears to provide little opportunity for the provider to include substantial cost increases in the contract.

By and large, requirements about the condition and features of these facilities do not seem difficult to meet. The INS initially referenced ACA standards, but is now in the process of drafting its own explicit contract language based on ACA standards. The new contracts will incorporate standards covering such items as space, light, air circulation, and plumbing, as well as privacy, recreation space, and health services.⁵⁸ Judging by the adaptability of a convalescent home and a motel to this purpose with limited investment in physical changes (no need for capital financing), meeting the standards does not now represent a significant cost of doing business. However, should there be substantial upgrading of standards or detainee legal action on them, it could do so in the future.

One source of risk to private contractors is the time gap between annual INS contracts and facility leases or construction. BSS has 10-year leases;⁵⁹ CCA's construction financing is also long-term. Were the INS to cancel the contracts due to non-performance or diminished need, both private organizations would have some financial exposure.⁶⁰ It is likely that, in the case of CCA's construction, the building is being planned so that it would be usable for corrections by other jurisdictions or convertible to other uses, such as for warehouse space.⁶¹

A second source of financial risk to the contractors is the per diem reimbursement format. Although both BSS and CCA have fixed components to their contracts (either a flat amount per month or a minimum percent of capacity filled),⁶² contractors report that it can be difficult to adjust the level of service--such as food preparation--to the wide fluctuations in number of aliens being sheltered.⁶³ Staffing levels are even less amenable to alteration, especially when the INS itself cannot predict flows (except to say the facilities will be kept as full as possible). The INS central office has been gathering data on the daily populations of its contract programs only since May 1984, so it is not possible to draw firm conclusions from their statistics.

Nonetheless, the figures in Table 4.2 suggest that, at least in some facilities, there are significant fluctuations in population over the course of a month. Thus, the contractors may be forced to incur expenses not covered by the caseload on a particular day.

Table 4.2

INS FACILITIES DAILY POPULATION RANGE⁶⁴

Facility	May	June
Houston	215-312	237-304
San Diego	71-162	82-145
Los Angeles (Pasadena)	59-121	46-112

An additional set of costs encountered at least by BSS results from local opposition to facility siting. The company has been denied zoning or other local approvals for facilities in four or five jurisdictions, and it has incurred legal costs to fight its cases in and out of court.⁶⁵

The Federal Bureau of Prisons has also encountered difficulties in getting approval for contract facilities to house aliens, most notably in Mineral Well, Texas, where they had to abandon plans to locate a 400-600 bed facility in an existing building. An official with the BOP still contends that there is "every reason to pursue privatization," warning that the "difficulty is in knowing what to ask for and how to ask for it" in the RFP.⁶⁶ He also stressed the importance of specifying operating standards in the management contract.

The Feasibility of Adult Facility Contracts

Although still a relatively new concept, facility contracting thus appears to be feasible, at least under the conditions prevailing in the juvenile and INS fields. What exactly are these conditions, and how well do they relate to the needs of adult corrections?

Perhaps the most salient characteristic of the private institutions established to date is their security level. The INS facilities described above were generally minimum security, while the facilities for serious juveniles ranged from minimum to medium security. No armed guards or elaborate security precautions were required, easing both the operational and facility costs and making compliance with security needs more feasible.

The relatively short term of confinement is another condition typical of both INS and juvenile facilities. Programming concerns are absolutely minimal at the INS centers, where the average stay is just a few days. Even at the juvenile level, where confinement can range up to six months or more, the special problems of long-term commitments are avoided. In addition, the juvenile and INS facilities are specialized in their focus--one treatment-oriented, the other aimed at simple detention.

Finally, the political climate surrounding use of INS and juvenile facilities is a consideration which should not be overlooked. Private operation of juvenile and INS facilities is not a new idea, although operating large and relatively secure institutions like the Okeechobee facility is certainly an innovative extension of an old concept. Though proposals for the establishment of private juvenile and INS facilities have faced significant opposition in some cases, private contractors in these fields have a fair amount of experience in overcoming opposition from employees, corrections system management, and the community.

To the extent that adult facilities can mirror these same conditions, it is conceivable that privately operated institutions will face no more difficulty than the existing juvenile and INS facilities. However, with the exception of some small minimum security institutions or community-based adult correctional centers, it seems unlikely that state or local facilities for adults will be operating with minimal security requirements, short terms of confinement, specialized functions, and few public or governmental roadblocks to private involvement. What, then, are the kinds of considerations likely to be faced by private operators and governments when adult correctional facilities are contracted? The next section considers the variety of political, legal, administrative, and financial issues that may arise as states consider contracting the operations of primary facilities for sentenced adults.

Issues in Contracting for Adult Corrections Facilities Operations

Figure 4.1 outlines the key issues to be considered in planning the development of proprietary institutions. Some of these issues have been revealed through the experiences of the INS and juvenile facility contracts described above. Others simply reflect an effort to anticipate what might be the

issues of consequence if larger, more secure facilities for less transient populations were operated by private vendors.

The Political Issues of Private Facility Operations

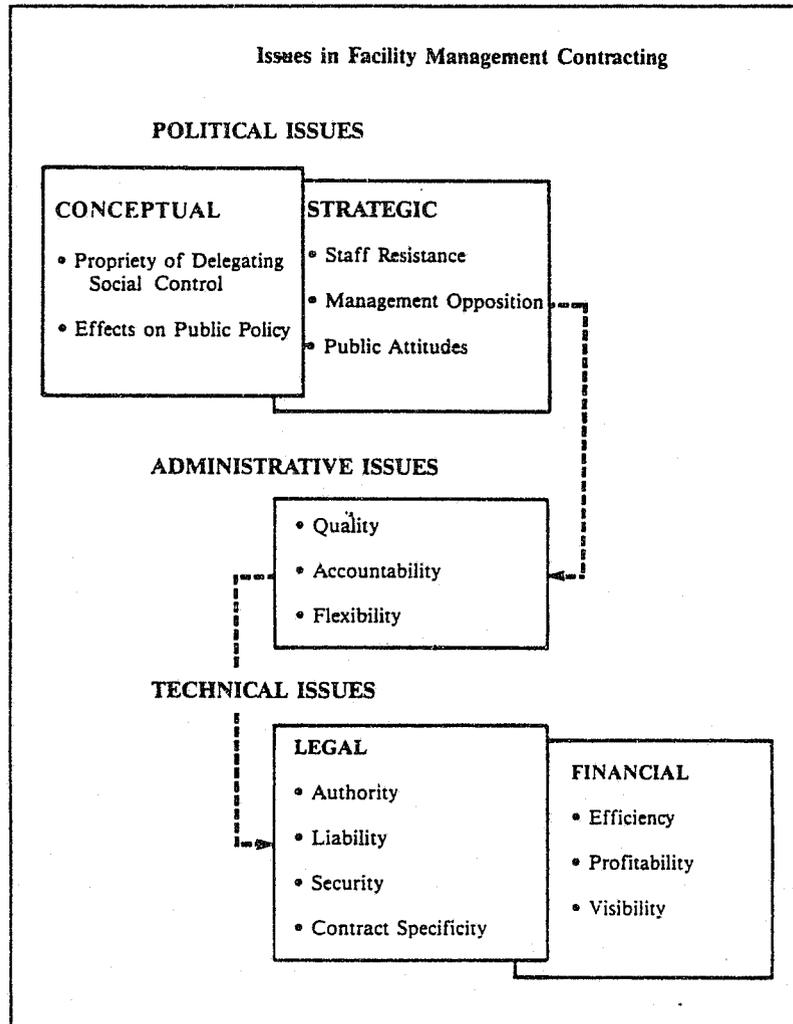
--Delegating Social Control Functions to the Private Sector

The most fundamental issue in the political debate touches on a core question of political philosophy. Correctional facilities represent a powerful exercise of state power, as they are the means used to deprive persons in custody of liberties otherwise granted to all citizens (the most notable of which is freedom of movement). The delegation of this authority to private providers raises issues not encountered in contracting for more mundane services such as bus transportation or solid waste disposal. In a facility entirely operated by the private sector, a range of management functions involving the classification and control of inmates (including the use of deadly force) might be delegated to the private contractor. Quite apart from any legal constraints on the delegation of these functions, some observers have questioned the fundamental propriety of such a shift.

In considering the use of privately commissioned pre-sentence reports, a recent article in Federal Probation argues that the private sector has no legitimate role in such a "quasi-judicial function as sentencing recommendations." The point is made by analogy to police services: "It is one thing for the private sector to maintain the fleet of police cars; it is another where private practitioners start making arrests." According to the author, because the administration of justice relies on social value judgments, not scientific prognoses, it is not an appropriate market for economic enterprise.⁶⁷

Arguably, the discretion available to corrections practitioners is far more circumscribed than that available to arresting and sentencing authorities. There are, nonetheless, parallel opportunities to exercise social controls. The most obvious arise in considering the order maintenance functions of institutional personnel--specifically their authority to administer discipline and prohibit escape through the exercise of police power. Some have suggested that any arguments regarding the legitimacy of contracting these functions are resolved if custodial personnel within private institutions are retained as state employees. This may, however, merely satisfy

FIGURE 4.1



the letter and not necessarily the spirit of the objection, at the same time diminishing the management control and efficiency of the contractor, and inciting friction between private and public employees.

A second area where corrections decisions have an even broader "quasi-judicial" flavor is the area of classification and parole release. As a crucial determinant of time served, parole release is an integral part of the sentencing process in most states. Classification procedures are less intimately connected to the duration of confinement but still play a role in providing inmates with access to greater degrees of freedom and in accelerating or constraining final release. "Good time" decisions made by the contractor could also have a significant impact on the time served, and might be more difficult for the state to retain control over than general classifications and/or parole release decisions.

Regardless of the strategies employed to minimize or eliminate contractor involvement in the actual decisionmaking, some argue that any rigorous separation is a practical impossibility, and even an indirect private sector role is inappropriate. In the final analysis, the issue is grounds for lively ideological debate that can only be settled with reference to state values and preferences. There are those who argue that some functions are the raison d'etre of government and cannot or should not be delegated. In this view, "the administration of justice" is one of these defining functions and it applies not only to legislative and judicial activities but to decisions made at many other stages in the criminal justice process. With equal vigor, others argue that there is a legitimate and necessary role for private enterprise in corrections management and the level of individual decisions that may be required to manage the flow of inmates through a facility hardly constitutes an abrogation of the broader role of government in forming system policy.

--The Political Power of the Private Sector

There is consensus in the general literature on the privatization of public services that contracting increases the political power of the private sector. Unlike government personnel who are prohibited from lobbying, private organizations with large interests in public sources of support have often developed considerable lobbying skills. Those who

fear this new political influence point to the ease with which it might be used to continue unneeded or excessively costly programs. Others see advantages in expanding the political power of the private sector--particularly in the corrections field. As one author has commented, "Probably one of the greatest contributions of private organizations is the political influence they can bring to bear in a field generally devoid of political advantage in appropriations, program improvement and resources."⁶⁸ Depending on the circumstances, either position may have logical merit. To realize the best possibilities, contracting agencies can only rely on judicious contractor selection and monitoring procedures.

--Private Sector Influence on Public Policy

Another level of conceptual, political issues relates to the general concern that privatization may have unintended effects on public policy. The ability of private contractors to lobby for the continuation of marginal programs is one expression of the more general concern that the interests of self-preservation or profit maximization may conflict with the interests of public policy. The opportunities for conflict can take a number of forms:

"Skimming" the Market. Some analysts have pointed to the tendency of correctional agencies to become dependent on a limited number of contractors who are simply more effective in responding to requests for proposals or able to deliver high quality services due to experience or economies of scale. In this context, the ability of government to cancel a contract or even to shift its emphasis may be severely constrained, and contractors may virtually dictate policies such as intake and termination criteria. The resulting tendency to skim off the "cream of the crop" has been seen in many community corrections endeavors where private providers (in all good faith) are able to restrict eligibility standards and to terminate or violate any cases who may subsequently pose performance problems. As Lloyd Ohlin of Harvard Law School has observed, this has the unfortunate consequence of leaving the public correctional system with "the dregs" refused by the private sector.⁶⁹ The problem is parallel to that noted in the privatization of health care facilities and programs where critics have suggested that "private health care practitioners funnel off the relatively healthy cases for whom minimal treatment can be profitably provided; but the less profitable chronically ill cases are left for the

public sector."⁷⁰ Care in defining admission criteria and restraining the discretion of private providers in making transfer decisions may be the best defense available to contracting correctional agencies.

The "Hilton Inn Mentality." What is known in the health care field as the "Hilton Inn Mentality" (referring to the pressure to maintain high occupancy rates) is also applicable to the business of providing correctional services. Since privately operated institutions may be reimbursed by means of per diem fees, their financial interest lies in maintaining maximum population levels. This may, however, conflict with the state's interest in maximizing parole or pre-release opportunities. Once again, the role to be assumed by the private contractor in making release and transfer decisions is clearly an important implementation issue. In the health care field, efforts to avoid contractor tendencies "to keep beds full when patient care demand may not justify census capacity" have generally rested on contracts that provide incentives for reduced costs and less than 100 percent occupancy.⁷¹ Even if private corrections contracts have no formal role in inmate release and transfer decisions, similar incentives may be useful to mediate any indirect influence they may bring to bear on the movement of inmates across or out of state institutions.

A Better Class of Institutions? While private contractors may have an incentive to keep their institutions at maximum capacity, there are visible disincentives for them to allow population levels to rise substantially in excess of capacity. In public corrections facilities, the latter practice has all too frequently resulted in prison disorders, media investigations of prison conditions, external inspections and federal court intervention--risks unlikely to be welcomed by a private contractor. In this respect, the influence of privatization on public policy may be extremely positive in the long term. If private institutions operate under contracts that define capacity limits and specify minimum standards governing the conditions of confinement, sooner or later it may become clear that public institutions must do the same if they are to avoid legal and managerial chaos. The problem in the short run is, of course, that the conditions of confinement among facilities that remain in the public sector may deteriorate as long as they have no comparable rules governing capacity and conditions. Just as those facilities may be forced to deal with the

tougher cases, they may also be left with a disproportionate share of any crowding burden. In that case, there will be two classes of institutions--one based on rational management principles, the other operating at the mercy of the courts.

Political Corruption. The problems of graft and corruption are ethical issues frequently raised in the privatization debate:

The Defense Department, and more recently, the Environmental Protection Agency, have had numerous scandals concerning officials who have used the revolving door to the private sector and profited from their government service, sometimes apparently exploiting the public trust. . . . Clearly, the appearance of impropriety is as damaging as actual misconduct.⁷²

According to this argument, the risks of political corruption should certainly lead to caution in contracting. As one account has suggested, corrections professionals "are worried that companies will begin meddling in state and local politics in order to secure contracts," citing a Texas law authorizing counties to contract for private jails that has been termed strictly "a 'private-interest' bill put through by former lawmen interested in getting into business."⁷³ Others have suggested that the solution is more careful and scrupulous monitoring of government action across the board, and not a diminution of legitimate efforts to stimulate free enterprise. In fact, should the movement to privatize corrections facilities gain momentum, one might expect--even hope--to see any number of corrections professionals joining the ranks of private organizations to provide a more knowledgeable perspective on the nature of the corrections business. Constraining the "revolving door" syndrome is probably best accomplished by the typical means of conflict-of-interest provisions attached to public employment, openly competitive procurement procedures, and broadly composed contractor selection committees.

Public Participation. The effects of privatization on the visibility of corrections is another issue of political concern. Some have argued that privatization will decrease public input into the delivery of correctional services and will shift accountability to faceless private providers. Others suggest that the system will become more accountable to the public. Michael Keating, Special Master of Rhode Island's state facilities, has observed that the use of private providers "opens up the process to outsid-

ers," offering more opportunities to bring facility operations closer to public view. On balance, it is entirely likely that private institutions will receive fairly intense scrutiny, in the short term. The concept is relatively new, and there are both high expectations and deep reservations in many quarters. Certainly in the near term, then, any developments will be closely watched. Whether this interest will be sustained in the long term remains unclear.

--Attitudes of Public Employee Unions

Another potentially volatile political issue that may accompany efforts to convert facilities to private sector management involves the reduced power of public employee unions. The American Federation of State, County and Municipal Employees (AFSCME), which represents a large number of corrections employees, argues that contracting "means fewer and poorer quality services for the sake of profits." In 1976, AFSCME passed a resolution condemning contracts for services. In 1977, the union produced a book entitled Government for Sale that attempts to document the dangers of privatization.⁷⁴ While corrections commentators have noted that considerable privatization of juvenile corrections has occurred in some states without significant union opposition, this may reflect the longer tradition of contracting for services in the juvenile area. As the privatization movement enters newer territories, stronger opposition may be encountered. As noted above, a proposed contract for the operations of a juvenile facility in California was effectively blocked when state employees protested the takeover. Public employee resentment also led to difficulties in implementing the Okeechobee takeover in Florida. To avoid these problems one respondent suggested that private management only be considered for new facilities. At the very least, if a takeover is planned, it is certain to require carefully planning for the transition, thoroughly calculating and communicating the anticipated benefits to the state, and actively lobbying to diffuse this source of opposition.

--Attitudes of Corrections Management

Corrections management may not be uniformly supportive of private operations that may threaten a loss of agency control. As a recent survey by the National Institute of Corrections has noted, "loss of turf" may, in fact, be more of an inhibitor to expanding the role of the private sector than the

actual loss of employment for state workers.⁷⁵ Once again, careful planning and communication are the keys to overcoming the objections of public corrections manager to private facility operation.

--Public Attitudes

Finally, general public attitudes may also constrain the development of private facilities. Fear about their security may combine with traditional public reluctance to host a corrections facility in the community, whether publicly or privately operated. Without the override powers of a government agency, private contractors must face the delays, costs, and possibly unsuccessful results of efforts to secure local zoning approval. Providers often emphasized the critical need to counter public resistance with systematic attention to public relations activities.

Administrative Issues of Private Facility Operations

Issues of quality, accountability, and flexibility dominate discussions of the managerial consequences of privatization.

--Public vs. Private Quality of Service

For a number of reasons, many contend that the quality of privately provided services is likely to be superior--once again, at least in the short term. The elimination of civil service restrictions allows the private provider to control performance and to tailor staff to changing program needs. Independence from the bureaucracy also gives the private provider greater freedom to innovate and to deal more rapidly with problems in the management or delivery of services. Finally, unlike government providers, the private sector is under competitive pressure to perform--pressure that can provide a significant incentive to deliver high quality services.

The long-term prospects for improvement are more uncertain. If the ability to respond to corrections needs becomes concentrated in a small number of corporate providers (as many believe it will be), the danger exists that reduced competitive pressures may erode any short-term gains in quality, as private providers come to resemble the monopolies they have replaced. This concern suggests that the market for correctional services may be unable to support a sufficient number of providers to realize the benefits of active market competition. In many

respects, it tends to be a difficult and somewhat unattractive market; it is also relatively small (since states now seem unlikely to relinquish the dominant share of their responsibility for operating institutions); and many of its needs (for relatively large capital reserves, sufficient cash flow, substantial insurance coverage, and access to specialized support personnel), favor the aggregation of services in a few large providers. Thus, despite the current surge of interest from the private sector, a real market test may be infeasible in the short term.

If this is true, it suggests that contracts in the corrections field may best be used when a government simply lacks the capability to satisfy a particular need--not because commercially motivated services will necessarily produce qualitative improvement. Only time will tell how much credence can be attached to this speculation. It is entirely possible that there are simply greater natural incentives to "satisfy the customer" built into the work ethic of private enterprise--in contrast to government service, where pleasing the customer can be a highly political exercise. As long as there is even a single alternative, the fact that the private organization's reputation is on the line may motivate continued performance.

--Monitoring and Staffing Issues

In contracting for facility operations, the government relinquishes the burden of providing direct services and assumes the responsibility for monitoring private providers. As preceding sections have implied, the importance and the difficulties of the monitoring function cannot be overestimated. Even where a structure for monitoring public institutions is already available, substantial re-direction is likely to be needed. Quality control is inherently more difficult when the government is dealing with an independent provider and can only exert indirect control. Efforts to strengthen public control can, in turn, lead to the development of two parallel bureaucracies (the government monitoring apparatus and the management structure of the private agency), an arrangement that may serve more to diffuse than to clarify public vs. private missions. Unless care is taken to define the respective roles of public and private managers, two organizations are responsible, but neither may be clearly accountable.

Adding to the administrative burden of the state is the possibility that the management problems of publicly operated institutions may increase if the state can only distribute any excess or problem prisoners among publicly operated institutions. In addition to the general strain on resources, the relations between public and private corrections staff may become an issue if private staff are perceived as higher-salaried, less-burdened employees.

Shifting government responsibility from operations to oversight also means a shift in the government's capabilities. The state's own capacity to operate facilities will shrink, making it more difficult to revert to public management or limiting the personnel pool available to meet future corrections management needs. Private operation of selected facilities may also reduce the opportunities to shift staff among facilities or to use the less secure, privately managed facilities as a training ground for public corrections employees.

The degree to which any of these issues may constrain corrections management will obviously depend on the particular jurisdiction and organization of the corrections function. If any generalization can be offered, it is only that even short-range plans for the private management of a single facility may have longer-range, system-wide implications, and therefore should be considered in the context of future corrections management needs.

--Short-Term Flexibility vs. Longer-Term Constraints

Just as there may be different short- and long-range implications for the quality of service, facility contracting may provide the government with an ability to move quickly in the short term at the possible cost of constraints on the ability to change course over the long term. The immediacy of the crowding problem lends a great deal of appeal to any strategy that will permit state government to avoid the delays involved in getting a new public facility on-line. At the same time, because the facility is contracted, any long-term obligations are, at least in theory, avoided.

In practice, if population pressures ease, and the facility is no longer needed to house inmates, operations can indeed be suspended--probably with more ease than would be the case if the facility remained under public management. And, if the private

provider is responsible for the property, that vendor--and not the state--will be left with the burden of converting the facility to another use. This scenario is obviously highly advantageous to the state. While closure may involve some--even substantial--negotiated costs, these may be gladly incurred when viewed against future operating costs. It is probably also true that there is a great deal of inertia built into state-owned facilities that may stay on-line merely because they exist and no other state use is compelling. In short, if a government believes that its need for additional space is likely to be short-lived, private contracts generally offer more flexibility than government operations.

If, on the other hand, the government wishes only to change contractors and not to shut down the facility, it may be significantly constrained. Transferring a contract for a support service can be relatively simple. Transferring the operations of an entire facility can be a costly, disruptive break in the continuity of service. Moreover, if the scenario outlined in the previous point holds true, there may not be a ready supply of qualified bidders; institutional operations cannot simply be suspended or put on hold while the search is underway; and if the current contractor's performance has been less than satisfactory, it may only get worse in the process.

Any effort to reduce this risk to the government is likely to increase the contractor's risk to a degree that might virtually eliminate private sector participation or increase its cost to an unaffordable level. Once again, the only reasonable defense appears to be extremely careful contractor selection and monitoring, and perhaps some consideration of performance incentives in the contract itself.

Legal Issues in Contracting for Facility Operations

Turning to the more technical matters, at least four legal issues require careful consideration in the course of planning the development of proprietary facilities: authority, liability, security, and contract specificity.

--Legal Authority to Contract

The first legal issue to be considered is whether states and counties have specific statutory authority to contract with private firms. While states may authorize contracting of various forms, contracts for facility management may be implicitly prohibited or, in the more likely case, merely ex-

cluded by omission. Many states, for instance, authorize service contracting, but it may not be clear that an entire service function can be managed by a private provider. Similarly, a few states have laws requiring the use of private vendors for community-based corrections. Even here, however, amendments may be required to permit contracts for primary facility operations. A state law that directs counties to provide and operate jail facilities is an example of an implicit prohibition that would require amendment. In some states specific statutory language may also be needed to open contracting opportunities to for-profit organizations.

Because the concept of privatization is relatively new, it is not yet clear whether proposals to remove any of these legal barriers will stimulate aggressive debate. While the National Sheriffs' Association has passed a resolution expressing its "disapproval and opposition to the concept of the private sector operating and managing jail facilities for profit,"⁷⁶ the American Correctional Association is apparently supportive of private operations. This division of opinion seems to characterize much of the early reaction to the concept in the field. Thus, it is only clear at this point that contracting for facility operations is not an option that could be exercised in most states without advance planning.

--Liability of Contractors and Contracting Agencies

To what extent does contracting transfer the government's liability to the private vendor? The area of law controlling tort liability for injury or death is highly complex. Cases will often turn on their facts, existing contract provisions, state statutes, and case law. Because private facility management contracts are a recent innovation, no body of case law has yet emerged to clarify the respective liabilities of public and private agencies. There is, however, no legal principle to support the premise that public agencies will be able to avoid or diminish their liability merely because services have been delegated to a private vendor. Liability will be limited only to the extent that it might already be constrained by the (rapidly disappearing) defense of sovereign immunity or statutes establishing specific monetary limits on claims against the state. By itself, private contracting offers no new protections. Just as juveniles are wards of the court, inmates can be considered wards of the state, and a private contractor essentially acts as an extension

of the state. Thus, if the contractor errs, the state has retained its authority and may share the liability.

In this context, it becomes crucial for public agencies to ensure that contractors observe appropriate staff selection and training standards, as well as adequately maintain the facilities and observe the necessary security precautions. The contractor can insure against problems of legal liability by purchasing a comprehensive insurance package to cover such eventualities.⁷⁷

--Security Considerations

Related to the liability issue is the question of facility security. In jail operations, for example, maximum security conditions are generally required, since the facility is likely to hold both serious and non-serious offenders. State adult facilities--even those at the minimum security level--are characterized by strict perimeter security and armed guards, while at higher levels of security there must be at least the capability for lockdowns and other measures for inmate control. These requirements raise a number of potential concerns for the government and the contractor alike.

Can a government delegate its authority to use force if necessary to maintain public safety? Provided the contractor meets any standards adopted to regulate the performance of public correctional officers, there are no apparent constraints to the use of private employees in this role. Private citizens have limited arrest powers, and any private citizen who meets state and local regulatory requirements may carry a weapon. To diminish the contractor's liability for discharging that weapon (or, in the more likely case, using restraining force) while performing the duties of a correctional officer, a state might permit "deputization," or the delegation of special police powers to corrections employees. If applied to a private contractor, this would essentially provide private corrections employees with the same qualified protection from civil action granted to police officers. The alternative is, of course, an adequately insured contractor.

While security can be contracted, whether and how to contract for this function may be more pertinent questions. Some contractors attempt to deal with security by mixing private employees with publicly paid guards or by hiring ex-correctional staff as

security consultants. In the absence of any practical experience, it remains unclear whether these practices are sufficient, whether states and localities should retain the security function, or whether they can establish criteria that will yield the same level of experience enjoyed by the public sector in supervising an uncooperative clientele.

--Specific Contract Provisions

Compliance with standards has long been an issue in the field of adult corrections, based both on pressures brought about by litigation and federal court involvement and the recent moves toward correctional accreditation. While contractors and the government itself may have some justifiable concern about the potential costs of imposing correctional standards as part of a contracting agreement, the benefits of this practice are likely to be substantial. Governments may gain a new and welcome ability to enforce correctional standards, since they can hold the contractor accountable for deterioration in prison operations or conditions. Private vendors may also benefit: it is certainly no more than sound business judgment to make sure that all requirements and conditions for performance are stated explicitly in the contract itself, thus protecting the vendor from changes in requirements and liability from lawsuits. Finally, explicit statements of expectations allow for more accurate costing of services--another advantage for government and contractor alike.

What are the issues to be considered in developing the solicitation and subsequent contract between the government and the private vendor? Six general issues are mentioned below; others will undoubtedly emerge as states gain more experience in drafting confinement service contracts.

(1) One of the most basic is the duration of the contract. In counties and states, contract length is usually constrained by statute to one to three years so that an existing government does not bind a future one or funds are not obligated beyond a state's fiscal period. This also provides the government with the flexibility to change vendors and to renegotiate contracts to reflect changing needs. Not surprisingly, the absence of long-term contract commitments poses considerable risks to the private vendor, making it difficult to plan revenues, retain qualified staff, and maintain competitive costs. To some extent this may constrain private sector participation in government markets or force pri-

vate vendors to increase costs to cover the risk of non-renewal. These, however, may be tolerable alternatives to the difficulties involved in trying to exempt large facilities operations from statutory constraints.

(2) Appropriate payment provisions are another key contracting issue. Most of the facilities reviewed above operate under per diem arrangements. Because the per diem rate is fixed, the government faces little risk of cost overruns. It also allows the government to pay only for space it has used in a given month (although the rate will generally include the fixed costs of all space). While per diem arrangements pose some risk to the contractor if its occupancy projections are in error (and it has established a rate that cannot cover costs during periods of low occupancy), at least one respondent commented that the risk "should not be too great if the company has done its homework."

(3) While government-operated facilities frequently operate with no maximum capacity constraints, it is hard to see how a contract with a private vendor could avoid setting both minimum and maximum occupancy levels. The former provides some minimal guarantee to the contractor operating on a per diem basis; the latter gives the government assurance that a certain amount of capacity will be available and protects the contractor from the liabilities of crowding.

(4) The types of inmates who will be eligible for placement in the facility will need to be established, as well as procedures defining the contractor's role in making transfer and release decisions. As preceding sections have indicated, this is a sensitive issue that deserves careful consideration, since contractors may be naturally inclined to avoid troublesome cases, and if payment is conditioned on occupancy, may also face a conflict of interest in discharging any granted release authority.

(5) To protect both parties, standards of performance must also be established. Without explicit standards, the goals of profit maximization may well conflict with the state's interest in avoiding litigation and maintaining safe, secure, humane facilities. The private vendor is also protected from ad hoc changes in requirements without comparable budget adjustments. Unlike the standards that exist for many schools and hospitals, no states have enacted specific laws governing the operation of prison and jail facilities. The standards of the

Commission on Accreditation can, however, provide a useful point of reference in drafting this aspect of the contract. Among the areas to be considered are personnel selection and conduct standards; standards governing the allocation of space and staff; safety and sanitation requirements; procedures for security and control; supervisory and disciplinary practices; food and medical service requirements; as well as standards governing the availability and structure of vocational, educational, and recreational programs and the use of inmate labor. In addition to standards governing the provision of confinement services, as in any contracted operation, administrative rules and monitoring and reporting provisions are also essential.

(6) In developing appropriate standards of performance, a related question that may be considered is whether performance incentives should be incorporated in the contract and, if so, whether penalty clauses for non-performance may also be appropriate.

Again, this list of potential contracting issues is not exhaustive, but merely illustrative of the types of decisions to be addressed in developing contracts to govern facility operations.

Financial Issues in Contracting for Facility Operations

Last, but among the foremost issues of technical concern, are questions regarding the efficiency, profitability, and cost visibility of privately operated facilities.

—Private vs. Public Cost Efficiency

The relative costs of private vs. public management of public service functions are a highly controversial aspect of the privatization debate. Advocates suggest that private vendors can operate equivalent facilities at lower cost than public agencies due largely to the greater staffing efficiencies that may be realized in the absence of civil service regulation, lower private sector pension and benefits costs, and greater market incentives to increase productivity. Less enthusiastic observers suggest that costs will rise as soon as private providers become established in a facility and begin to negotiate add-ons for services that were overlooked in the effort to establish a competitive advantage. In this more pessimistic view, costs will also escalate as the expenses of monitoring private providers

grow to offset any savings that might have been realized by transferring direct service responsibilities to the private sector.

In the corrections field, no rigorous cost analyses have yet emerged from the experiences reported above, and the available anecdotal evidence is incomplete. Table 4.3 displays the approximate per diem costs of confinement reported by the private agencies contracted in the course of our assessment. Given the different locations, population, and service expectations represented by these figures, comparisons among facilities are clearly inappropriate. Comparing these figures with the costs of publicly provided services is equally difficult.

- The Eckerd Foundation asserts that its yearly budget to run the Okeechobee facility is \$600,000 less than the other training facilities in the state that serve fewer youths. It is difficult to determine, however, whether these facilities are strictly comparable. State HRS staff suggest that, as of late 1984, Okeechobee's costs are comparable with those of other similar training schools in Florida. Also, they point out that the foundation put \$250,000 of its own funds into the school's operations during its first year, and their projected expenses for the second year of operations exceed the appropriated amount by approximately \$300,000. The results of efforts to improve the staffing efficiency of this facility have been mixed. After attempting to operate with fewer staff than the state had, the facility now reportedly employs more. On the other hand, the staff mix has apparently changed in order to permit higher salaries for fewer supervisory personnel, an organizational improvement that has reportedly reduced personnel costs. But, staff salaries have been increased in recent months because of an inability to attract and retain experienced, qualified staff under their original plans to have all counselors live on the premises and work long hours. One potentially significant cost advantage has clearly been realized as a result of Eckerd's status. As the nonprofit foundation of a large drug company, Eckerd was able to obtain substantial donations from outside organizations as well as in-kind contributions from its corporate parent. This advantage makes the Eckerd experience somewhat less comparable to both government operations or the operations of more independent contractors.

- In many respects, the Weaversville facility in Pennsylvania is closer to the model now under consideration in many states, as the organization managing the facility is a self-supporting arm of RCA. Staff salaries at the RCA-operated facility are generally lower than equivalent state positions, and RCA medical and pension benefits are also more modest. Apart from these comparisons, however, it is difficult to relate overall costs to those that might be incurred if the state operated the facility.
- Finally, the current average per diem paid to Behavioral Systems Southwest for holding an illegal alien at its facility in Pasadena, California, is reportedly half of what the Los Angeles County jail charged two years ago. Again, however, the comparison is not exactly relevant, since jails are necessarily designed and equipped to meet broader needs than those posed by illegal aliens.

In fact, most of the examples discussed above did not involve any direct tradeoff between the costs of private and public management, as the appropriate public management resources were generally unavailable. INS has typically used local resources in preference to expanding its own facility network. Here, the use of special purpose contracts was bound to offer an advantage over contracts with the more general-purpose facilities.

In Florida, the state's plans to deinstitutionalize the Okeechobee facility were thwarted by shortfalls in federal funds and state tax revenues which made closing the facility and developing alternatives fiscally impractical. In this case, retaining the existing facility was clearly the least costly option. Similarly, in Pennsylvania, the need to deinstitutionalize the infamous Camp Hill facility and the absence of any viable state alternatives led to the development of the privately managed Weaversville facility. Finally, the Shelbyville, Tennessee juvenile facility was also motivated by laws restricting the confinement of juveniles in local jails, the absence of other local options for juveniles, and the desire of the state to free space in state facilities for adults. In each case, then, comparisons between the costs of government and private operations were not highly relevant, as the government was faced with needs that it simply was not equipped to address.

Table 4.3

COSTS OF CONFINEMENT

FACILITY	PER DIEM RATE	365 CONFINEMENT DAYS
<u>Juvenile Facilities</u> ^a		
(facility development costs are excluded in each case)		
Okeechobee (FL) ^b	\$ 30.67	\$11,194.55
Weaversville (PA)	110.00	40,150.00
Shelby County (TN)	33.25	12,136.25
<u>INS Facilities</u> ^c (facility costs are included in each case)		
San Diego (CA) ^d	28.00	10,220.00
Pasadena (CA) ^d	23.00	8,395.00
Houston (TX) ^e	23.50	8,577.00

a Reported by facility personnel in telephone conversations during January- February 1984.

b Eckerd does not seek reimbursement on a per diem basis but rather has a fixed contract value of \$4,701,363 paid in 12 monthly increments. The average daily population is roughly 420 youths, yielding the per diem rate noted.

c INS per diem rates represent an average rather than fixed rate. Generally, a fixed per diem rate is established for a certain minimum number of residents. A variable is then charged for each resident over and above the fixed minimum level. The figures cited here combine the fixed and variable rates for each facility to show its average per diem.

d Reported by INS personnel in telephone conversations during January-February 1984.

e Figure obtained from "Tennessee Businessman Hopes to Run Prisons for Profit," The Boston Globe, 2 January 1984, p. 21.

The same difficulties are likely to prevail in making appropriate comparisons between private and public operation of state adult facilities. The volume and composition of prison populations is changing rapidly, and governments are unable to respond to the need for alternatives. In this context, the relevant question may not be whether the private sector can do it more efficiently, but whether the public sector can do it at all, given the pressure for immediate action. Once the immediate need is met by the private sector, it is then reasonable to ask whether the same ongoing operation could be managed more efficiently by the public sector. Even if a comparable facility exists, however, cost comparisons can be difficult, since the costs of public facilities are often hard to isolate. A more useful exercise might be to calculate the costs that would be incurred by the government to run the private facility. While these calculations will be necessarily hypothetical, they will certainly reveal any major distinctions in personnel costs and may be useful in highlighting any aspects of the operation that could not have been achieved at any cost.

--Profitability

The question of whether private providers should profit from providing a public service is an issue of both conceptual and financial concern. Some are offended by the concept of corrections as a business enterprise and fear that profit may be taken at the expense of sound corrections practice. Others point to the equivalent financial motivation of nonprofit organizations, the small and highly regulated opportunities for accruing profit, and the management and fiscal advantages of for-profit status. In the final analysis, choosing a private provider is no more or less than a decision to hire additional staff and is best made by evaluating the provider's history of performance, staff competence, and correctional philosophy, rather than its organizational classification.

--Cost Visibility

Governmental accounting systems are generally incapable of isolating the full costs of a public activity or service. For a specific function such as prison security or standards compliance, the direct costs are usually buried in the expenditure records of several agencies, and the indirect costs are particularly elusive. One of the advantages typically ascribed to contracting in other fields is its ability to reveal the true costs of public service.

Corrections is no exception. Under a contract system, the costs of confining particular numbers of clients under specified conditions will be clearly visible and more difficult to avoid through crowding and substandard conditions. While corrections authorities might welcome the opportunity to demonstrate clearly that more prisoners require more resources, it remains unclear whether legislators and voters will be prepared to accept the real costs of confinement practices that meet professional standards.

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Chapter 5: Future Directions

Table 5.1 summarizes the issues (discussed throughout this report) that have been encountered or may arise as federal, state and local governments expand their private sector initiatives in corrections. No one of these issues suggests that greater private participation is either inappropriate or infeasible. Many, however, suggest that care is well-advised. Particularly in the area of facility operations, the territory is largely uncharted and thereby deserves the most thorough planning and implementation efforts.

In a field often pressed to do something or just about anything--on the assumption that it would be hard to do worse than the present state of affairs--there are large incentives to inflate the promise of new initiatives and to give them "a life of their own," without carefully considering how to use the innovation to contribute to more basic reforms of existing practice.

The danger of creating parallel and not always compatible systems of corrections practice is particularly evident in considering the implications of the concurrent operation of public and private sector institutions and programs. As private entrepreneurs begin to develop prison-based industries, will these industries thrive at the expense of public sector programs? Will they attract the most highly skilled and motivated employees leaving public work programs with the most troublesome employment problems? Will wage disparities cause tension between publicly and privately employed inmates? Will private industries detract from the space and management resources available to meet overall institutional needs? Alternatively, will the private sector's involvement provide an example that can help to revitalize existing public sector programs?

Similarly, as the private sector begins to operate entire institutions, will the result be two parallel corrections systems--a private sector system for handling offenders with low security and service needs, and a public sector system reserved for the more difficult, less profitable inmate management problems? Will this dual structure impose a disproportionate burden on the public corrections system that would then have direct access to fewer facilities and staff, and unlike the private system, would

have no "contract" with the state to ensure that facilities observe their capacity limits and satisfy minimum standards governing the conditions of confinement? Or, will a true collaborative effort be mounted that would allow the public sector to share its most troublesome management burdens?

Planning efforts that consider privatization in the context of long-range correctional needs may be the first step toward resolving any potential problems. To the extent that private sector participation in industries is viewed as one part of a larger effort to upgrade all industry and work programs, internal competition and conflict may be minimized. Similarly, if facility management contracts are viewed not as an isolated phenomenon but as one part of a larger effort to develop and maintain operating standards for all facilities, there will be less danger that privatization will create a two-class corrections system. Instead, collaboration with the private sector may prove to be an important catalyst for changing current confinement practices.

Which models of private sector participation appear to hold the greatest promise? Outlined below are several areas where further experimentation and evaluation might prove fruitful.

Private Sector Participation in Prison Industries

To date, private facility management and private participation in prison industries have developed as independent trends. No links have been forged since no contracts to operate major state facilities for adult offenders have been implemented. In theory, a private facility operator could take over the industries function as well as any other by subcontracting to relevant private industries just as the government might. In many respects, however, the most interesting prospects for the corrections facilities of the future may lie not in continuing to deal with industries as an ancillary function of institutional management, but in organizing entire institutions around various industrial activities--creating true "factories with fences"--operated by major corporations already established in private sector product or service markets. In this model, the prison does not run an industry; the industry

Table 5.1

ISSUES OF PRIVATE SECTOR PARTICIPATION IN PRISON WORK PROGRAMS AND CORRECTIONS FACILITY FINANCING AND OPERATIONS

AREAS ISSUES	PRISON WORK PROGRAMS	FACILITY OPERATIONS	FACILITY FINANCING ALTERNATIVES
POLITICAL	<ul style="list-style-type: none"> • Attitudes of Organized Labor • Public attitudes toward prison goods and competition with prison labor • Inmates' organized labor interests • Attitudes of corrections staff 	<ul style="list-style-type: none"> • Shifting the balance of private/public power • Influence on public policy objectives • Delegating social control to the private sector • Attitudes of public employee unions • Public attitudes toward facility siting • Political corruption • Public participation 	<ul style="list-style-type: none"> • Circumventing debt limitations and referenda requirements • Zoning considerations of private developers
ADMINISTRATIVE	<ul style="list-style-type: none"> • Coordination between private entrepreneurial assignments and institutional activities • Conflicts in purpose • Management consequences of wage disparities between private and public work programs • Encouraging and controlling the effects of inmate entrepreneurial activity 	<ul style="list-style-type: none"> • Relationship between profit maximization and quality of service • Trade-off's between short-term flexibility & longer-term constraints on government options • Monitoring and Staffing Issues 	<ul style="list-style-type: none"> • Maximizing government control over facility construction and operation • Implicit constraints on government's option to exercise right of non-appropriation
LEGAL	<ul style="list-style-type: none"> • Defining legal status • State-Use restrictions • Restrictions on Inter-state transport • Rights and benefits under relevant laws 	<ul style="list-style-type: none"> • Legal authority to contract operations • Liability of contractor & contractor agency • Security considerations • Contract provisions 	<ul style="list-style-type: none"> • Statutory authority to lease/purchase • Creation of legal entity to hold property • Compliance with procurement regulations • Liability of lessor and lessee
FINANCIAL	<ul style="list-style-type: none"> • Economic viability of industry operations • Fiscal incentives for private sector participation 	<ul style="list-style-type: none"> • Comparative costs of private vs. public operations • Cost visibility • Profitability 	<ul style="list-style-type: none"> • Comparative costs of lease vs. bond financing • Tax incentives available to private developers

runs the prison. There are fewer opportunities for conflicts between custodial functions and work requirements because the work program is the prison.

The only proposals to date that may come close to this vision have come from Control Data Corporation (CDC). Already involved in the prison industries of one state, CDC has reportedly become interested in taking over the operations of entire facilities. "The prospects are so encouraging," says Deputy Chairman Norbert R. Berg, that "if 10 governors (each) guaranteed me 40 prisoners, I'd build a prison."¹ Whether CDC will develop this industrial prison model, and whether any other major corporations will follow suit remains unclear. Much remains to be done to eliminate the legislative barriers that have persistently inhibited the aggressive participation of free enterprise. Even in the absence of these restrictions, the population pressures faced by so many state prison systems hardly yield an environment conducive to the development of prison factory experiments.

A prison factory model that is frequently cited by advocates of more meaningful prison work programs is the Tillberga institution in Sweden where inmates earn competitive wages manufacturing pre-fabricated houses. Idleness is not a factor at Tillberga, for prison administrators refuse to accept more applicants than can be usefully employed (roughly 80). A controlled population policy is only one expression of the differences that distinguish Swedish prisons from their American counterparts. Commenting on the likelihood that Swedish practice might be replicated in the U.S., one observer of Sweden's "special" prisons has suggested that it is best to prepare ourselves for the likelihood that something gets lost in the translation:

... Swedish prisons are smaller, more personal, more manageable, more heavily staffed, and more generously financed. The Swedish prison population is smaller in both absolute and relative numbers. Swedish prisoners are ethnically more homogeneous, are less prone to violent crime . . . and they are serving markedly shorter sentences. There is a relatively stronger link between prisons and the general community in Sweden because of a broader base of citizen participation in post-release supervision of offenders; a longer tradition of adult education; a lower rate of unemployment; a lower level of protectionism among Swedish labor unions and

private industry; and a broader and more stable base of political support for prison reform.²

Despite the significant differences in social and political traditions, the concept of a prison as a total work-like environment is clearly worth emulating in carefully controlled tests in the United States. Contracting these experiments may, in fact, provide a useful avenue for avoiding many of the constraints typically placed on similar ventures that operate in the public corrections sector. Funding might be more realistically geared to recognize the investment required to mount a meaningful industry program; capacity limitations might be more rigorously maintained; and a more accommodating balance might be achieved between the custodial and industrial objectives of the institution.

Many of the operations described in Chapter Two (perhaps most notably, the Control Data ventures in Minnesota and Zephyr Products in Kansas) have demonstrated the feasibility of private sector collaboration. To implement a true prison factory experiment, there remains the difficult task of adapting these models to serve the employment and facility management needs of a small state institution.

For larger state institutions, the private management arrangement adopted in Florida (and planned in Oregon) is a model that appears to warrant more detailed exploration. Placing all public sector industry programs under private management may stimulate more aggressive entrepreneurial behavior by liberating industries from the multiple and often conflicting goals typically associated with publicly managed industry programs. Careful assessments of the experience in states that are now implementing this strategy might go far toward enhancing our understanding of the benefits and limitations of this form of private sector alliance.

Private Financing Alternatives for Facility Construction

Speculating on the useful or likely directions of the movement toward the use of private financing alternatives is an exercise fraught with uncertainty. To be sure, if obstacles to public funding mechanisms (in particular, voter opposition) continue to constrain state and local plans to build new facilities, private financiers are likely to see an increasingly active market for lease purchase

arrangements. Depending on prevailing interest rates and other local circumstances, however, in some states even this route may not prove to be a viable strategy for meeting the capital requirements of new construction. In other jurisdictions, it is certainly possible that organized opposition to the evasive nature of private financing may be mounted. Debt limitations and referenda requirements are intended to have more than cosmetic value in regulating public expenditures. Systematic efforts to circumvent these constraints may ultimately produce a new generation of regulatory constraints that might significantly dilute the attraction of private financing to state and local governments. These uncertainties, combined with increasing legislative moves to diminish the tax advantages of financing public projects may also reduce the appeal of this market to the private financier.

At this point, however, no long-term directions can be discerned. In the short term, some growth seems virtually assured and suggests that continuing efforts to track the political and financial consequences of this new privatization trend are clearly warranted.

Facility Management

In the politically charged environment of corrections, the concept of privately managed facilities raises a host of questions that range from relatively simple matters of legal feasibility to more complex issues of political philosophy. No definitive answers to the central questions posed in Chapter Four are provided by the limited contracting ventures seen to date. Far more testing and evaluation are required before the ideological debate can be waged in more practical terms.

When is it likely to be most advantageous for corrections agencies to turn to the private sector for assistance in facility management? There are at least five circumstances under which further experimentation with privately managed facilities may prove fruitful:

1) The first and most obvious circumstance arises whenever the public sector is unable to respond to the need for the rapid mobilization of additional facilities and manpower that may be required to accommodate sudden but relatively transient confinement needs. The INS contracts, for instance, were motivated at least in part by the fluctuating and somewhat unpredictable needs of the agency for

confinement services. Because there are fairly large seasonal, even daily, fluctuations in the requirements for detaining illegal aliens, contracts provide INS with expanded holding capacity without imposing long-term financial commitments. Similar contract arrangements may be useful at the state level to avoid permanent facility expansion and still accommodate the population shifts that may occur as a result of the rapidly changing legal environment in many states.

2) The need for experimentation with new methods of corrections service delivery provides another rationale for turning to the private sector. An agency can try a new approach without making a permanent commitment or laboring under the constraints to innovation typically present in traditional corrections bureaucracies. Community acceptance may also be more easily achieved if the new approach is allied with reputable private sector organizations. The prison factory model is a prime example of an experimental approach that might be more effectively launched under private rather than public sector leadership.

3) Decentralization is a third goal that may be more readily satisfied by involving private sector organizations. As the community corrections experience has demonstrated, the demand for smaller, community-oriented facilities has often been satisfied by calling on local contractors rather than trying to provide the same geographic and programmatic diversity under the direct control of a centralized agency. An expansion of the community corrections model that might be usefully tested would call for the decentralization of minimum security confinement services among smaller, privately operated facilities more closely tied to local community resources and employment opportunities.

4) The ability to achieve greater specialization is also often cited as a prime advantage of contracting. Private contractors often have greater access to a wide range of specialist practitioners and the flexibility to deliver unique services that could not otherwise be provided by a state unless the demand were sufficient to justify added positions. The prevalence of contracting for health and mental health services is a clear example of the recognized advantages of using the private sector to satisfy specialized needs. Applied to the business of facility management, this benefit suggests that special purpose facilities may be prime candidates for

contracted management. Many institutions are frequently presented with behavioral problems that cannot be adequately handled in the course of managing their mainstream populations. Contracting for the confinement of offenders with special needs (sex and drug offenders, for instance) may offer significant relief to general purpose institutions as well as more opportunities for the successful treatment of problem groups.

5) Finally, regionalization needs may be more effectively addressed by private organizations since the private sector is not typically bound by the jurisdictional politics that often impede collaborative efforts among states or counties within a state. As Chapter Four has described, the National Corrections Corporation has proposed to operate regional jail facilities, noting that private operations are one answer to the territorial conflicts that often surround the concept of regional operations. NCC would take over most of the jail functions, easing member counties' concerns that any one jurisdiction would call the shots. Applied to the state level, private management might also help to resolve many of the problems cited as impediments to the development of inter-state correctional facilities. In the past, both the New England and Western regions have considered developing regional prisons for maximum security special management inmates in order to provide each state with access to a special purpose facility without imposing the full costs on any one state. To date, the concept has not been implemented largely due to "difficulties in resolving the legal issues associated with shared facilities; difficulties in reaching agreements on operational and management issues; and inability to resolve the political problems associated with such an endeavor."³

Private management might be particularly suitable in this context since it would not only provide a "neutral" management apparatus but would also draw on the advantage of specialization that the private sector might bring to a facility designed for special management inmates. While this type of facility is significantly different from the fairly low security facility currently considered most amenable to privatization, arguably, it is this "far end" of the market that is most troubled and might benefit more substantially by the successful introduction of private sector management. Undeniably, however, while the rewards might be high, so too are the risks and the corresponding need for careful planning and implementation.

As this list suggests, there are a number of opportunities for fruitful collaboration with the private sector--opportunities where the loss of direct control over institutional operations may be more than adequately compensated by the ability to pursue objectives that might be difficult if not impossible to achieve in the public sector. The notion that private organizations can do the same job at lower cost is an attractive promise that may or may not prove to be realistic. The greatest promise of the private sector may instead lie in its capacity to develop facilities that can satisfy unique demands or provide the grounds for testing new models of institutional corrections practice--models that might then be adopted by public sector facilities. In this perspective, the task is not to replace public corrections functions with private equivalents but to develop a corrections system that uses both sectors to their best advantage.

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Appendix A: Private Sector Involvement in Vocational Training and Work Programs, Table 2-A

TABLE 2-A
PRIVATE SECTOR INVOLVEMENT IN VOCATIONAL TRAINING AND WORK PROGRAMS

State	Training Contracts	Employment Contracts*
ALABAMA	None	None
ALASKA	None	None
ARIZONA	None	None
ARKANSAS	None	Use of inmate labor for construction reportedly saves 40% of cost.
CALIFORNIA	None	Proposal to build modular housing with private financing and inmate labor.
COLORADO	None	Inmates do modifications and renovations on prison facilities.
CONNECTICUT	Corporations sometimes donate equipment for vocational training.	None
DELAWARE	None	Inmate labor is used for construction and renovation of prison facilities.
FLORIDA	PRIDE offers vocational training linked to the industries it operates (see Table 2.2)	Private contractors involved in prison construction employ inmates for unskilled labor.
GEORGIA	None	None
HAWAII	None	None
IDAHO	None	None
ILLINOIS	None	None
INDIANA	None	None
IOWA	Vocational training is provided by local community colleges under contract to DOC.	None
KANSAS	None	Zephyr Industries employs 30 inmates in sheet metal work located off the grounds of Leavenworth Prison.
KENTUCKY	None	None
LOUISIANA	None	None
MAINE	None	None
MARYLAND	Apprenticeship programs are designed jointly with trade unions; inmates are placed in private industry during their final year of incarceration (on work release).	Tentative plans to begin cooperation with private industry to manufacture modular units.
MASSACHUSETTS	Honeywell provided vocational training in computer occupations for 7 years. The program was terminated due to population instability. Contracts with private vocational schools are now used.	None
MICHIGAN	Colleges and universities provide some vocational training.	None
MINNESOTA	At the Stillwater facility, Control Data's "Fair Break" program allows inmates to access canned computer programs for self-instruction in math, reading, and social skills.	None
MISSISSIPPI	None	None

*Where inmates are reported to work on prison construction or renovation projects, unless specifically noted, it is not clear that the projects are privately contracted.

Table 2-A
(continued)

PRIVATE SECTOR INVOLVEMENT IN VOCATIONAL TRAINING AND WORK PROGRAMS

State	Training Contracts	Employment Contracts*
MISSOURI	Some vocational training is provided by private organizations under contract to DOC.	None
MONTANA	None	None
NEBRASKA	The local community college operates all vocational and academic programs under contract with DOC.	Inmates do finishing work on construction projects contracted to private firms.
NEVADA	None	None
NEW HAMPSHIRE	None	None
NEW JERSEY	Private firms have donated computers for vocational training.	None
NEW MEXICO	None	None
NEW YORK	Sears provided an auto mechanics course in one women's institution. Although the program terminated (because the scope of Sears' instruction was too narrow), Sears has maintained a liaison role for placement.	None
NORTH CAROLINA	None	None
NORTH DAKOTA	None	None
OHIO	None	None
OKLAHOMA	None	None
OREGON	None	None
PENNSYLVANIA	None, although private sector involvement in training is an objective of the DOC.	None
RHODE ISLAND	A private firm does job placement and training but not on prison grounds.	Three buildings were converted to correctional facilities by inmate construction crews.
SOUTH CAROLINA	None	None
SOUTH DAKOTA	A culinary arts program was once contracted to a private, out-of-state organization. The program was unsuccessful due to personnel problems.	None
TENNESSEE	None	None
TEXAS	None	None
UTAH	Control Data has a small training program using its PLATO computer. (See entry for Minnesota, above.) They are currently seeking to place inmate "graduates" with private firms.	None
VERMONT	None	None
VIRGINIA	None	None
WASHINGTON	None	None
WEST VIRGINIA	None	None
WISCONSIN	None	None
WYOMING	Trade unions have provided training in electronics and T.V. repair (among others). DOC is negotiating with a private firm for training in one or two additional skill areas.	None

*Where inmates are reported to work on prison construction or renovation projects, unless specifically noted, it is not clear that the projects are privately contracted.

Appendix B: Privatization Experience in Other Fields

Since the advent of the "new Federalism" and renewed interest in privatization, the literature--both academic and popular--has burgeoned with polemic and empirical studies of the successes and failures of privatization in many fields. In its broadest sense, privatization simply means shifting public service functions out of the government's domain. In reviewing the experience in other fields, the most frequently discussed methods of privatizing public services include strategies for transferring the funding responsibility as well as the responsibility for providing services to the private sector. Most strategies fall into one of five categories:

(1) User fees have been recommended as a way of reducing the demands on tax revenues and assigning the costs of a public service directly to its users, who may buy from the government or look for more cost-efficient alternatives. This strategy is effective only to the extent that specific beneficiaries of a government service can be identified. Illustrating the advantages of specific user fees over general taxation, Savas describes a situation in St. Paul, Minnesota, "where both the city and the private sector sold refuse collection service; the city's cost was 26 percent higher than that of most private firms, and the city lost virtually all of its customers except for senior citizens and welfare recipients who were eligible to receive city service at half price."¹ Applied to the field of public safety, examples of this form of privatization include fees for specialized police and fire protection services--applications that have not proved to be politically popular.²

(2) "Load Shedding" is another popular concept in the privatization literature that generally refers to government withdrawal from the provision of certain public services which are left to the private sector to furnish on a voluntary basis. Day care, park and recreational services, and commercial and industrial refuse collection are some of the common examples used to illustrate how some public services can be naturally supplanted by private alternatives. Citizen safety patrols and various self-help groups and voluntary organizations that work with offenders and ex-offenders are examples of the modest load shedding opportunities in law enforcement and corrections.

(3) Subsidizing consumers through voucher systems is one means of pursuing a load shedding strategy without penalizing low income groups who may have no access to "natural" alternatives in the private sector. By giving subsidies to the consumers rather than the producers of service, vouchers strengthen individual choice and foster competition among suppliers--circumstances that can lead to greater efficiency. HUD's Housing Allowance and Section 8 housing programs were voucher-like efforts to shift the provision of low-income shelter from public housing projects to private alternatives. Food Stamps constitute a more classic voucher program. Vouchers have also been suggested for some educational, welfare and transportation services. In the corrections field, a number of analysts, including Gail Funke et al.,³ David Fogel⁴ and Norval Morris⁵, have suggested vouchers for selected community corrections programs as well as certain institutional services.

(4) Subsidizing producers through grants and tax incentives is another means of stimulating the growth of private alternatives to public service delivery. The grant mechanism is widely available to most areas of public service; tax abatement strategies are generally more selective. As we have noted, tax abatement strategies may also be required to stimulate private sector participation in prison work programs. Unlike pure load shedding arrangements which shift both service and funding functions to the private sector, both vouchers and tax incentives call for the government to retain the responsibility for providing for the service but not for producing the service.

(5) Contracting is also considered a form of partial or incomplete privatization where government retains the funding responsibility but uses the private sector to provide the services. Most would agree that if there is active market competition, contracting can lead to reduced costs since--unlike public sector monopolies--private organizations face market pressures to perform more responsively and efficiently. At the same time, however, private contractors have the obvious incentives to restrict competition and may also "have every incentive to join the campaign for higher government spending--the antithesis of privatization."⁶

Chapter Four discusses the relevance of these contracting concerns to the corrections field. This appendix describes several examples of contracting in other fields in order to provide a broader context for the discussion of issues in Chapter Four.

The first section to follow examines facility construction and management practices in three fields--sewage treatment, public housing and air traffic control--each of which require facilities with relatively high capital costs. The next section covers three additional fields--education, employment and health--that involve the delivery of fairly complex human services. Many other fields could be included, for contracting is hardly a new concept, particularly at the municipal level. A 1973 survey of 2375 cities identified more than 60 services provided under contract;⁷ in the ten years that have since elapsed, the list has undoubtedly grown. Our interest, however, was not in the practice of contracting for single services but rather, contracting for the performance of entire public functions, particularly those that have involved both facility management and the delivery of social welfare services.

The discussion of these strategies is not exhaustive; it is merely illustrative of some of the approaches that have been applied in other fields in an effort to move the provision of public services into the private sector. All raise certain fundamental issues that are likely to be encountered if the corrections field takes more aggressive steps to engage the private sector in carrying out its public responsibilities.

Facility Construction and Management

—Environmental Protection Services

Due perhaps to the high capital costs and technologically straightforward operational requirements, the private sector has become increasingly involved in the field of environmental control. In 1982, Savas reported that 21 cities contracted with private sector firms for sewage disposal, 14 had contracts for the construction of sewer lines, 5 had contracts for water pollution abatement, and one contracted for air pollution abatement.⁸

Acknowledging the ironic parallel between wastewater treatment and corrections facilities, Steinberg, Keating and Dahl point to the relevance of this experience to the corrections field:

... Wastewater treatment plants...are uncomfortably similar to local jails. Both often involve antiquated, decaying physical structures; highly labor-intensive operational functions; a unionized or politically volatile labor force that involves important issues of patronage; escalating governmental and judicial demands for quality of performance offset by shrinking resources; and a history of antedeluvian management practices resulting from virtually complete insulation from public scrutiny . . . In nearly every case, the political barriers to the involvement of private enterprise in so basic a governmental function yielded to the unremitting calculus of increased demands for services and diminishing local resources.⁹

A case study of Poughkeepsie, New York's experience in contracting the operation and maintenance of a sewage treatment plant illustrates some of the common problems that may both motivate and impede contracting efforts. The city's own plant operations were reportedly plagued by chronic personnel problems that called for a professional manager with unique technical and managerial skills. It was clear, however, that finding such a manager would require the city to compete with the private sector and it could hardly afford the salary a private sector firm might pay. Since contracting appeared to offer substantial overall savings, it was considered the best alternative. Selling the concept and defending the contract involved extended public information efforts and negotiations with the city's employee union who found the concept a threat "to sources of membership, fiscal stability and consequently, union pluralistic power."¹⁰ The case study authors highlight the importance of considering the contract decision in the same way as a staff hiring decision, carefully researching the record of potential firms, and defending the choice in open debate.

In addition to operating facilities, in recent years there has been growing interest from the private sector in developing financing packages for localities that are constructing waste treatment facilities. This trend has reportedly increased as the Environmental Protection Agency (EPA) has reduced federal allotments for such construction. (At one time 75 percent of such expenses were federally funded.) According to some observers, however, the complex regulatory restrictions and large sums of money required for the development of waste treatment facilities have made the formulation of innovative funding arrangements quite risky. To the

extent that regulations are changed following the commencement of construction, private investments are highly vulnerable.

In addition to federal regulatory constraints, state contracting laws have impeded privatization efforts in this area. Under an initiative in Camden County, New Jersey--one of the first that called for the private sector to finance, build, own and operate a \$150-200 million sewage treatment system--bids were solicited by the county's Utilities Authority only to find that state and municipal contract law unfavorably restricted the duration of contracts. As a result, the project has been significantly delayed pending the development of appropriate privatization legislation.¹¹

Both the labor relations and legislative problems encountered in this field are directly transferrable to corrections--or any other field considering privatization--and clearly call for care in the early planning and implementation stages.

--Low and Moderate Income Subsidized Housing

On the surface, public housing is another field that bears some resemblance to the problems of housing offender populations. Traditionally, public housing projects have been built and operated by Public Housing Authorities (PHAs), subject to federal subsidization and regulation. Two sorts of privatization options have been pursued--first, using existing private rental housing instead of building public housing units and, second, shifting responsibility for development and/or operation of newly constructed units from PHAs to private firms.

The first option--using the existing rental stock--involves programs under which eligible low-income households rent units in the private market, with some of the rent paid by the program. These voucher-like programs include some forms of the Section 23 (existing) and Section 8 (existing) housing programs, as well as the programs tested in the various Experimental Housing Allowance Program (EHAP) experiments and demonstrations. The basic finding was that such programs tended to be much less expensive than new construction programs--primarily because, as it happens, rents were generally too low to justify substantial new low and moderate income rental housing construction in most areas of the country.¹² Obviously, however, only limited parallels can be drawn to corrections,

since offender populations could hardly be given their choice of facility under a voucher program.

The second sort of option--transferring various aspects of construction and operation to private firms--is more relevant to the question of the costs of public vs. private construction. The major options tested were:

- The Turnkey Program, under which PHA's essentially agreed to purchase a project constructed by a private builder. Design approval remained with the PHA, subject to federal regulation.
- Section 23 and Section 8 New Construction, under which developers built and operated a project, subject to federal regulation. Subsidies were paid to the private owner to make up the difference between negotiated allowable costs and the rents charged to tenants (which are set in terms of tenant income).
- Section 236, which offered relatively shallow subsidies to private developers who then owned and operated the project.
- Section 221(d)(3) and 221(d)(4) which were unsubsidized but still subject to federal regulation.

Although construction under each of these programs--including "unsubsidized" 221(d)(3) and 221(d)(4)--is subject to federal regulations and hence less than strictly private, they can be arrayed on a continuum as being more or less subject to private market forces. In these terms, unsubsidized Sections 221(d)(3) and (4) seem the closest to private market construction. Section 236 and Section 8, which involve private development and operation would be next, with 236 ranked as more nearly private since it enjoyed much less substantial federal subsidies. Finally, Conventional and Turnkey Public Housing, developed and operated by Public Housing Authorities would be least private, with Turnkey ranked as the more nearly private of the two, due to the fact that actual construction was carried out under contract with a private developer.

A major analysis of construction costs under the different programs found that, after taking account of differences in project size and quality, Section 236 appeared to have costs similar to unsubsidized 221(d)(3) and (4); Section 8 costs ran from 3 to 13 percent higher, depending on the subvariants involved, while Conventional and Turnkey Public

Housing costs were about one-third higher.¹³

This suggests that privatization of construction and operation did reduce the costs of new construction. In general, the more subsidized the project, the higher was its cost. It should be noted, however, that the study's results appear to be very dependent on the accuracy of the price indices used to compare costs in different regions and years. This is unfortunate, since the indices used were privately compiled construction cost indices of unknown quality.

The differential costs and benefits of private vs. public management of public housing projects have also been examined by HUD in a study conducted by the Granville Corporation.¹⁴ The study covered 19 of 21 sites across the nation where private for-profit firms had been under contract to manage public housing for longer than one year. Based on a quasi-experimental design using matched sites in rural, urban-family, and urban-senior developments, the evaluators found slightly higher costs and equivalent performance for urban elderly projects and approximately equal costs and performance in rural and urban family sites. Privately managed urban family projects were, however, plagued by rent delinquencies, vandalism and poor upkeep. The evaluators recommended enhanced performance monitoring and the use of monetary incentives for rent collection.

—Air Traffic Control

Arguing for the privatization of national air traffic control functions, Robert Poole notes that,

The 1981 strike by members of the Professional Air Traffic Controllers' organization (PATCO) was not an isolated incident. It was merely the latest crisis in the troubled history of the U.S. air traffic control (ATC) system. A reading of the system's history reveals an ongoing pattern of technological lag, lack of cost-effectiveness, unresponsiveness to user needs, absence of long range planning, political interference, and labor problems.¹⁵

While Poole concedes that there are no guarantees that private sector organizations would be immune from similar problems, he suggests that the problems would be much less evident if ATC services were provided by marketplace institutions instead of a bureaucracy operating under a civil service

structure, severe political constraints, monopoly provider status, and funded by taxes rather than direct user payments.

Poole notes a number of initiatives that point to an emerging trend toward the privatization of ATC services:

- Since 1968, Barton Air Traffic Control has been building and operating control towers at airports whose overall volume does not qualify for an FAA tower. While the minimum FAA tower reportedly costs just under \$1 million to install and \$275,000 to operate, a Barton tower typically costs about \$120,000 a year including amortization of construction costs.¹⁶ While it is not clear that the two types of facilities are exactly comparable, the differences are attributed to the absence of civil service or union regulations, less expensive radio equipment, and the use of modular, pre-fabricated building components.
- A number of newer firms entered the market for ATC services following the closure of smaller FAA towers during the controllers strike. Air Traffic Control Services Inc., organized by a group of FAA controllers who had not joined the strike, won a contract to reopen a tower in Kentucky. In Kansas, Midwest ATC services has reportedly won a number of tower contracts. One tower in New Mexico is operated for \$99,000 a year, in contrast to the \$287,000 required by the former FAA operation.¹⁷

While the evidence is limited, the experience in each of the areas discussed in this section seems to support the premise that contracting for well-defined services with readily observable results can offer both administrative and financial rewards. Wastewater treatment, public housing and air traffic control all involve the delivery of readily defined, highly tangible services that may benefit from the incentives to productivity offered by free enterprise. No major wastewater treatment or ATC facilities have operated under contract for sufficient time to judge the ongoing management costs and benefits of privatization. Only in the area of public housing management has sufficient experience developed to support a systematic assessment. Here the results have been ambivalent, calling attention to the greater need for performance monitoring when contracting for less definable public services.

In the next section we turn to several examples of contracting for more complex human services, including education, medical care and employment assistance.

Human Service Contracting

—Education

Perhaps the most closely scrutinized effort to privatize a more complex public service was the concept of "performance contracting" in the public schools. A rather controversial notion in the late 1960s, performance contracting is a covenant between a local education agency and a learning-system contractor in which payment to the contractor is related to some measure of the students' achievements in the learning program. In 1970-71, the Office of Economic Opportunity launched a \$6 million experiment with performance contracting involving 18 school districts (totalling 27,000 disadvantaged students) and six private education firms. Each firm guaranteed a minimum grade-level increase and a base dollar amount would be recovered only for each student who achieved such an increase. The firm also would recover a set unit dollar amount (in addition to the base) for every 0.1 grade level increase over the guaranteed minimum. This formula comprised 75 percent of the firms' total possible compensation: the remainder was based on the results of five interim tests administered throughout the school year.

OEO reported that the experiments failed and that private firms did no better than public schools in educating these students. However, a subsequent investigation by the General Accounting Office unveiled numerous mishaps and problems, both in the experiment's implementation and the evaluation methodology, so that no firm conclusions can be drawn.¹⁸

Similarly, the Rand Corporation conducted case studies of five performance contracting experiments: in Gilroy, California; Texarkana, Arkansas; Gary, Indiana; Grand Rapids, Michigan; and Norfolk, Virginia. Most of these programs were structured quite similarly to those in the OEO experiment; however, the one in Gary is particularly notable because the private firm assumed responsibility for operation of the entire school, not just single classes or assigned students. Based on first-year results of the five programs, the Rand Corporation identified three advantages and three disadvantages of

performance contracting in education:

Advantages

- It facilitates the introduction of radical change in education.
- It increases the emphasis on accountability for student learning.
- It brings new learning service companies into the education field.

Disadvantages

- Complex performance contracting programs severely hamper management and incur unnecessarily high costs.
- Difficulties in defining objectives in a range of subject areas and in measuring the attainment of objectives suggests that performance contracting programs should be narrowly focused.
- Performance contracting tends to exacerbate old problems such as union conflicts, legal restrictions, and weaknesses of standardized testing.

The five case studies, published separately, are invaluable sources of detailed information on implementation and acceptance of performance contracting.¹⁹ The difficulties experienced in defining and measuring the attainment of performance objectives should be of particular interest to those considering performance contracts in the corrections field. While reduced recidivism may hold significant attraction as a performance objective, its measurement can be a task even more perilous than measuring educational attainment.

—Health Services

The privatization of health care services provides an interesting example of the political controversy that has frequently surrounded the attachment of the profit motive to the delivery of human services. To the extent that private, nonprofit hospitals with quasi-public "missions" have been large providers of in-patient care for many years, privatization in its broadest sense has been a firmly established tradition in hospital management. With this structure, and funding mechanisms (insurance

reimbursement) equally available to public and private service providers, the health care field has been uniquely amenable to move toward the commercialization of its facilities.

Beginning in the late 1960s, abuses on the part of health providers (unnecessary service and excessive insurance claims) as well as inept financial management (leading to increased taxes and/or health insurance rates) stimulated both tighter controls and an accelerating trend toward private (profit-making) management of public and private (nonprofit) health care programs and facilities.²⁰ Management contractors were soon joined by entrepreneurial owner-operators. Over the past decade, a number of profit-making proprietary chains have assumed ownership of a variety of private nonprofit and public (city or county) hospitals. Hospital Corporation of America (HCA) is the largest, with reported assets of roughly \$4 billion encompassing approximately 200 hospitals nationwide. Humana, Qualicare and Applied Medical International (AMI) are involved in similar commercial ventures.

In the absence of any rigorous empirical assessments, the question of converting nonprofit institutions to proprietary organizations has stimulated a great deal of highly polemical debate. The recent attempt of HCA to purchase McLean Hospital, a nonprofit psychiatric facility in Massachusetts, illustrates the powerful resistance of many health professionals to the commercialization of hospital care. HCA's offer to purchase McLean, a teaching hospital, was rebuffed by the faculty of Harvard Medical School who were concerned about the propriety of affiliating a nonprofit institution with a commercial organization and foresaw reductions in the quality of care, increasing constraints on the ability of the hospital to fulfill its public responsibility, and a greater burden for community service falling to the public hospital network. With the threatened resignation of a large number of key staff, the offer was declined. (In Kentucky, a similar takeover was reportedly followed by a significant number of staff departures, presumably for similar reasons.)

In the broader debate, advocates of commercialized medicine claim that market pressures will produce greater efficiency, better management, more accountability and higher quality services. (As a private, nonprofit teaching hospital, McLean is not typical of the community hospital that is generally used in these comparisons.) Typically governed by

boards composed of lay citizens, community hospitals often labor with unsophisticated management that is slow to innovate and unresponsive to changes in the reimbursement environment. Proprietary hospitals are considered necessarily more responsive to the current reimbursement revolution that has brought year-to-year changes demanding rapid administrative action. The shift in Medicare and Medicaid payment policies from reimbursement on a cost basis to fixed price reimbursements is also noted as a move that provides a particular incentive for proprietary hospitals to deliver medical services more efficiently.

In this debate, a distinction is often made between "chain" and "free-standing" proprietary hospitals. While the latter--essentially Doctors Hospitals--may have few incentives to contain costs and deliver high standards of care, the chain providers are reputedly more concerned about quality for the stakes are higher and the consequences of a medical disaster are less tolerable. Chain providers also have the advantage of better access to larger amounts of capital as well as central administrative support.

At least two features of this debate touch on issues relevant to the corrections field:

- As nonprofit hospital facilities convert to proprietary institutions, critics of commercialization fear that a larger share of the burden for providing non-reimbursable public services may be placed on public hospitals. An analogous fear in corrections--particularly in community-based corrections but potentially applicable to the institutional sphere as well--concerns the ability of private providers to restrict eligibility standards or to terminate their "worst cases," returning them to public sector corrections programs or facilities. In this respect, privatization may facilitate more efficient treatment of selected cases by imposing a larger overall burden on the public sector.
- The issue of scale of operation also poses an interesting dilemma in the corrections field. Just as chain hospitals are presumed to hold a higher vested interest in the quality of medical care, it is reasonable to assume that larger operations in the corrections field would be less susceptible to practices that might violate accepted professional standards. Unlike the health care field, however, the market for

institutional corrections services is smaller and likely to be significantly less attractive to private enterprise. In this environment there is probably room for an extremely small number of chain providers (leading to an erosion of the benefits of active market competition) or a larger number of small providers (increasing the risks of poor performance).

Recognizing that the debate in the medical field has grown without any solid empirical foundation, the Institute of Medicine of the National Science Foundation is conducting a rigorous assessment of the relative merits of different types of hospitals. Final results of this assessment should be available in 1985. Because it provides a fairly advanced example of the commercialization of a public service, developments in this field may bear close scrutiny by those interested in similar ventures in the corrections field.

Useful information from this field may also be gleaned about the mechanics of the solicitation and contracting processes. As communities contract for such services as the care of all Medicaid recipients in a given jurisdiction, a variety of questions have emerged about appropriate procedures for soliciting and evaluating proposals, drafting contracts and monitoring performance. A body of knowledge that extends beyond typical federal and state procurement regulations is thus developing in this field and will certainly be applicable to other contracting endeavors.

—Employment Services

The Job Corps program was developed in 1964 as a major initiative of the Office of Economic Opportunity (OEO). In the nearly twenty years since the program has been in existence, few changes have been made in the basic program design, although many research and development projects have contributed to innovations in instructional methods and ways to address specific needs of particularly disadvantaged participants. The program was significantly expanded in 1977, to its current capacity of between 37,000 and 44,000 slots. The stability and endurance of the basic Job Corps model sets it apart as a unique employment and training initiative.

The Job Corps serves economically disadvantaged young persons from 14 to 22 years of age who require intensive assistance to succeed in the work

force, at school or in the military. Participation is limited to those youths meeting age and income criteria who also live in sufficiently "disorienting conditions as to substantially impair prospects for successful participation in other programs providing needed training, education or assistance." As such, the Job Corps targets its resources on especially disadvantaged youths whose needs (presumably) cannot be met by other social programs.

In providing social and employment-related services to this severely disadvantaged population, the Job Corps program carries out its philosophy of intensive, individualized attention to increase employability. With few exceptions, all services are provided to youth at one of 107 Job Corps centers. Each center provides basic education, skill training, work experience and an applied "systems approach" to learning. Finally, most centers are residential and offer peer counseling and group activities (e.g., sports, student government) in addition to instruction. By removing the youths from a disruptive home environment and surrounding them with social and educational resources, Job Corps attempts to alter their "passage to adulthood," training participants for employment and productive community living.

Often located on former military installations in semi-rural or isolated areas, the centers range in size from 100 to over 2,500 slots. One-third of the centers are Civilian Conservation Centers (CCCs) operated by the U.S. Departments of Interior and Agriculture; most of these are the smallest centers located on public lands in the Denver and Seattle regions. The remainder are large "contract centers" operated by private industry, or nonprofit organizations formed specifically to administer Job Corps programs. Operation of these centers is competitively contracted by the Regional Offices every two years. Several large private corporations administer the majority of these centers, including Singer Corporation (11 centers), RCA (12 centers), AVCO (5 centers) and Teledyne (7 centers).²¹

Over the 20-year history of the Job Corps program, a number of centers—both publicly and privately operated—have closed or required significant management changes. While the reasons have varied, at least two lessons can be drawn that may pertain to the private operation of any facility or program for particularly difficult population groups.²²

- In general, universities and nonprofit institutions did not fare as well as other organizations in the business of operating Job Corps centers. The reasons most commonly advanced for these failures centered around management weaknesses. It is difficult to determine, however, whether those weaknesses were intrinsic to the institution, or whether they were center-specific.
- Some companies that were motivated to operate centers largely as a public service withdrew when the program or their center was the target of negative publicity as a result of incidents involving center youth--from the occasional assault to the more routine "trouble with townies." Some of the affected centers--particularly those allied with major national corporations--were obviously concerned about the public relations consequences of these incidents.

Despite the attrition attributed to these factors, on the whole, Job Corps has increased the proportion of privately operated centers and appears to be satisfied with the concept of contracting. While the initial rationale for contracting was to encourage creativity by involving high-tech corporations or public-spirited groups, history has pointed more toward the wisdom of selecting contractors based on their general organizational strength and commitment. If this experience can be generalized, it clearly suggests that contracting correctional agencies might do well to place a high priority on the business management skills of applicant contractors. While public service motives are not to be discounted (and may be an important factor to consider in the proposal evaluation process), it may be relatively more important that human service contracting be perceived and practiced as a legitimate business enterprise.

Summary

One of the most striking conclusions to be drawn from the material presented in this appendix is the surprising lack of information available on the processes and outcomes of contracting for human service delivery. Assessments of the differences between public and private management are largely anecdotal; distinctions made between private nonprofit and private for-profit contractors are also highly speculative.

On both left and right, the discussion regarding the use of nongovernmental organizations remains largely ideological and subjective. . . . There are still many unanswered questions regarding the different components of the contracting process: Should bidding in the human services be competitive? Should low bidders always be accepted? Should nonprofit providers be preferred over profit-making organizations? How can government avoid driving out smaller agencies that may be unable to compete in the bidding process? How can fair costs be determined? Is there a role for citizens in the contract management process? And, finally, what difference does all of this make for clients?²³

While much remains to be learned, the experience reported in this appendix does suggest that--provided the key planning, implementation and monitoring issues are thoughtfully addressed--it is quite feasible to contract successfully for both traditional technological functions as well as more intangible social "products."

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