

**REPORT OF THE  
SECRETARY OF TRANSPORTATION  
AND PUBLIC SAFETY ON**

**Privatization  
in  
Corrections**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



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STUDY OF CORRECTIONAL PRIVATIZATION

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CORRECTIONAL PRIVATIZATION

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## EXECUTIVE SUMMARY

With support of the Reagan Administration there has been increasing interest in recent years in turning to the private sector to provide programs and functions that were previously carried out by government agencies. Proponents of privatization believe that the private sector can provide better services at less cost than the public sector. Others disagree and the issue remains very controversial.

One such traditional government function is the operation of adult correctional facilities. At the present time at least two agencies of the Federal Government, several state governments and a number of local governments have entered into contractual agreements with private prison firms. Private finance/construction packages are increasingly popular as an expeditious solution to problems of overcrowding and substandard living conditions. In Virginia, local governments have purchased certain specialized services such as drug treatment, mental health, and vocational/educational programs from private vendors. At the state level the Department of Corrections purchases services such as medical, management, and youth custody and treatment. Currently, a 40-bed pre-release center for adult males who are 90-120 days from parole is the only total facility operated by a private firm in Virginia. A request for proposal' (RFP) for total private sector management of the State Penitentiary food service operation is currently being prepared with an anticipated release during the first quarter of calendar 1987. No full-custody primary confinement adult correctional facilities are owned or operated by a nongovernmental organization.

Based on review of available literature, contacts with knowledgeable and interested persons and a site visit to a privately operated adult facility, a number of potential benefits and problems have been identified.

The opportunity for speed in the attainment of operable facilities is the primary advantage noted. Private finance/construction packages particularly facilitate the process. Private prisons offer increased flexibility to deal with changes in prison populations and special need prisoners. They also provide new sources of innovations and creative solutions to problems. The existence of private prisons might also create a competitive atmosphere in the corrections industry which could result in reduced costs. Further evaluations with time and experience will indicate if quality services at lower cost are provided by the private sector.

Several potential problems were also recognized. Presently, Virginia laws and regulations leave open to interpretation the areas of delegation of authority and potential liability of government jurisdictions, officials, and employees for actions of the private prison operators. A specific definition of private prisons and their potential role for the state needs to be clarified. Questions arose that disproportionate attention to the profit motive could result in improper prison operations. A public-private liaison would be necessary to reduce the potential for an inadequately monitored or regulated facility. There is also the possibility that untested long-term financial arrangements may reduce competition and the government may become overly dependent on a very limited number of private contractors.

The "privatization" movement has gained worldwide momentum during the 1980's. The current impetus for governments to shift public functions to private organizations is largely practical but the political philosophy behind it has been rooted in our history since the days of Jefferson and Hamilton. Jefferson believed that the role of government had to be limited to ensure individual rights and Hamilton believed just as strongly in a dominant, central government. The Hamiltonian view has prevailed for the past

five decades but now the Reagan Administration has returned to the Jeffersonian view by cutting taxes and social expenditures and by initiating the transfer of federal responsibilities to the states and private enterprise.<sup>1</sup>

Prisons-for-profit, a controversial issue in the criminal justice system, is a reflection of the privatization trend that is sweeping across this country and world-wide. Many correctional agencies routinely contract with private firms for such services as food, health-care, educational, vocational and counseling services and pre-release and halfway house programs. The concept of private ownership and/or management of an entire prison facility is a relatively new response to pressures resulting from prison overcrowding and unconstitutional prison conditions. Interest in the transfer of financing, construction and operation of primary adult confinement facilities is increasing and further expansion is anticipated by correctional experts.

In Virginia, many questions and complex legal and policy issues have arisen concerning the development and operation of private prisons. This study is prepared in response to House Joint Resolution #55 which requests the Secretary of Transportation and Public Safety to study the desirability, economic feasibility and practicality of using private incarceration institutions.

## Trends In Privatization

"We're asking to form a partnership between the private and public sector." With these words President Reagan announced his intention to promote a free-market spirit in the U.S.A., philosophically reflecting his belief that the private sector can do a better job at less cost than federal agencies. In 1981 he created The President's Private Sector Survey on Cost Control, a task force led by J. Peter Grace, to identify opportunities for private sector involvement in government operations. Making its report in 1984, the Grace Commission identified 11,000 commercial activities to be performed privately and proposed that the Federal government could save \$5.6 billion in 1985 with additional contracting procedures when economically feasible.<sup>2</sup> Thus the Reagan Administration put new emphasis on a 30 year old government directive that services be performed by private contractors when it is possible to save 10% or more of costs.<sup>3</sup>

A 1985 survey of state general services officials, conducted by the Council of State Government, indicated a majority of states contract out for part of their legal, medical, engineering and technical professional services. This trend is increasing due to rising costs, shrinking revenues and federal aid cutbacks. As long as the federal deficit remains high the federal government will of necessity cut down existing public services and find alternative ways of delivering services with decreased expense. State and local governments face taxing limitations as government spending as a percentage of the gross national product decreases. This opens an opportunity for increasing privatization efforts to solve public service cost problems. A decentralization thrust in intergovernmental relations will make state and local governments more innovative as arrangers but not necessarily



the providers of services. Peter Drucker expounds on this theme; "government should spend more time governing and less time providing, they should either purchase services from the private sector or, simply, stop producing."<sup>4</sup>

There is evidence that the private sector can deliver services at lower cost in certain areas and private firms foresee a new source of sizeable profit as they look with interest at this \$30 billion per year growth industry.

Privatization, broadly defined, takes two forms.<sup>5</sup> The private sector assumption of public services is the result of reduced service levels or the government withdrawal of service. Through self-help or voluntary cooperation, private sector businesses, churches, universities, schools, neighborhood associations and charitable organizations help maintain needed service levels. The Salvation Army, YMCA/YWCA, Volunteers of America and Prison Fellowships exemplify such private service groups. Often the introduction of competition to supply a service acts as an incentive for efficiency and innovation of course. Some problems do arise such as getting private suppliers to provide services in remote rural areas and to take a long-term view of consumer needs rather than simply maximizing short-term gains.<sup>6</sup>

The second type of privatization involves delivery of public services by private enterprise through arrangements such as franchises, grants, vouchers, contracts and leases. Through franchising, monopoly privileges are authorized to a private firm to provide certain services. Such arrangements are common in utilities and urban transportation. A key feature of a franchise agreement is the establishment of product standardization and quality control, routine communications systems and managerial practices, and expert technical assistance. Tire recap shops and shoe factory franchises are among successful prison industry franchise ventures while new growth opportunities include auto repair and mail service operations such as a

barter clearinghouse or mail advertising. In a grant system, government subsidies are given to private firms to reduce the cost of certain services. Examples include subsidies for farm products and health, education and cultural programs. Using the voucher system where subsidies are given to the consumer to obtain certain goods and services provided by private firms, vouchers are issued to areas such as food stamps, low cost housing, medicaid and educational and cultural programs. It has also been suggested that vouchers be used to implement rehabilitation programs in the correctional environment. The inmate knows his own needs and would receive a voucher for the amount proportional to his length of incarceration or probation. The voucher could be used to purchase a variety of rehabilitation services: fees for psychological, psychiatric or religious counseling, educational classes or correspondence courses, and vocational training as well as to buy personal items.

Contracting is the most common alternative technique of delivering public services. The government agency enters an agreement with the private sector or another governmental agency to provide certain services. Contracting is typically found in public works, defense and specialized services. This method is most efficient where suppliers compete for contracts because operators must bid against competitors to obtain the work in the first place and then must periodically compete with other companies to retain the contract. In August 1985, private sector contracting was legislatively authorized in 16 states, not authorized in 13 states and neither specifically authorized nor prohibited in 21 states.<sup>7</sup> These numbers are changing as states respond to increasing pressures to privatize and enact the necessary legislation.

In the field of corrections, the contractual relationship varies from contracts for specialized services to financing, construction and management of facilities, and prison industries management. A variety of contractual services are provided to existing correctional facilities. A 1984 National Institute of Justice survey showed approximately \$200 million is spent annually with the average number of contracts per state at 82. Most of the contracts involve juvenile agencies but a total of 32 different areas were identified with physicians, health and mental health services being the most frequently contracted.<sup>8</sup>

Correctional facility planning expertise is also available for hire. A working liaison between the government agency and the builder can be established where the lack of adequate staff or state-of-the-art corrections planning is unavailable. Jurisdictions are simultaneously faced with the need for additional prison beds and citizens who refuse to pass the necessary bond issue for financing the new construction. Increasingly, groups of entrepreneurs are forming investment companies which put together a financial package to enable construction. A variety of fiscal arrangements can be undertaken: lease-purchase, lease-buy back, tax-oriented, short-term, variable rate or pooled financing.

There are two common variations on the way the private sector helps in the building of new facilities.<sup>9</sup> First, the government agency contracts for the construction then takes over the management. Advantages of this alternative include the use of fast-track construction methods and less bureaucratic red tape in purchasing and monitoring procedures which can shorten the construction period. Second, the private sector builds and manages the facility after completion. Kentucky's Marion Adjustment Center which opened in January, 1986 is an example of a privately owned and operated prison.

## CORRECTIONS AND THE PRIVATE SECTOR

Privatization of the correctional field is attractive to those states that are experiencing rapidly increasing inmate populations and rapidly decreasing financial resources. The 1984 Bureau of Justice statistics figures for state and federal prisons show 463,866 inmates, averaging 107% capacity. By December of 1985 there were 503,601 inmates as the total prison population continues to increase after having more than doubled in the past decade. Another 250,000 convicts are held in city and county jails nationwide. States such as California at 165% capacity (2/86) and Pennsylvania at 153% capacity (1/86) demonstrate the extreme overburden being placed on corrections. State prisons generally run 6-21% overcapacity while federal prisons with 40,200 inmates are 23-54% overcapacity. The current Virginia inmate population increased 8.4% from 10,293 to 11,153 between July 1985 and September 1986. Even with the opening of the 500-bed Augusta facility in July 1986, 1,609 felons with more than six months to serve were held in local jails. The Commonwealth anticipates a 20% increase in the prison population during the next four years with a population of 13,372 inmates by 1990. See Table 1, Average Daily Adult Population in Virginia Correctional Institutions, July 1986.<sup>10</sup>

Citing the fact that crime was at its lowest level in 12 years, U. S. Attorney General Edwin Meese reported that crimes fell by 14% in 1981-1984, yet, the national prison population is at its highest level. This rise is a result of higher levels of arrests and convictions, harsher sentences (more of which are mandatory), less use of parole and minimum sentences; all of which are measures designed to satisfy public demands for an end to "coddling" criminals.<sup>11</sup> The public supported measures designed to put more criminals behind bars for longer periods haven't given adequate consideration

TABLE I

Average Daily Adult Population in Virginia  
Correctional Institutions July 1986

<u>Major Institution</u>	<u>Capacity</u>	<u>9/86 Population</u>	<u>% of Capacity</u>
Augusta	500	519	104
Bland	440	458	104
Brunswick	500	682	136
Buckingham	500	718	144
Deerfield	290	320	110
James River	321	327	102
Marion	160	152	95
Mecklenburg	335	313	93
Nottoway	500	704	141
Penitentiary	868	752	86
Powhatan	596	621	104
Powhatan North	92	79	86
Powhatan Reception	245	316	129
Southampton	474	522	110
Southampton Reception	116	155	134
Southampton Youthful Offender Center	100	82	82
St. Brides	423	449	106
Staunton	527	553	105
Va. Correctional Center for Women	325	328	101
VCCW Reception	*	39	
Total Major Institutions	7312	8089	111
<u>Other Institutions</u>			
Correctional Field Units	2561		
Mixed Field Units/Work Release	244		
Subtotal Field + Work Release Units	2805	3003	107
MCV Security Ward	0	8	
Pre-Release Centers	**	53	
Total State Institutions	10,117	11,153	110

\*Included in VCCW operational capacity.

\*\*Operational capacity for the Pre-Release Center (86) is not included in the State total.

Source: Population Summary - September 1986, Virginia Department of Corrections, Research and Evaluation Unit.

to the conditions under which these prisoners must live. Corrections departments can not control the population intake so their immediate response is to double cell and then house overflow inmates in tents, gyms, corridors, recreation rooms or basements. Ten percent of the prison population is locked in prisons built before 1875, which are in deteriorating physical condition. Currently, 34 of the 50 states plus D.C. are either under court order to remedy prison conditions or are subject to litigation.

The cost of providing correctional service is high and the current systems are less than 100% efficient, yet community alternatives to keep the prison population down are often not well received. Intensive probation involves seeing the criminal five times a week instead of the usual one to two times a month, a very labor-intensive alternative. Home confinement would attempt to keep convicts at home except for their work hours and would require constant monitoring. A popular plan with local governments is the community work center for non-violent criminals who work for the city or county for no pay.<sup>12</sup>

Criminal justice reform programs and policies typically are susceptible to passing trends, fads or quick fixes at low costs which are more attractive than the prospect of planning for change. Private financing and operation of penal institutions have received "cautious" support from some corrections officials. A 1985 American Correctional Association (ACA) statement on the Public Correctional Policy on Private Sector Involvement in Corrections, stated that:

Government has the ultimate authority and responsibility for corrections. For its most effective operation, corrections should use all appropriate resources, both public and private. When government considers the use of profit and non-profit private sector correctional services, such programs must meet professional standards, provide necessary public safety, provide services equal to or better than government, and be cost-effective compared to well-managed governmental operations.

ACA expressed strong concerns about the need for more resources to bring correctional operations into compliance with constitutional standards, maintain sound correctional practices, monitor and evaluate services, and improve the field as a whole. They strongly emphasized that the ultimate responsibility for any correctional contract remains with the governmental body, not the contractor. They see the role of contracted services to be supplemental to agency operations not a replacement.<sup>13</sup>

The National Governor's Association adopted a resolution in March 1985, that declared: "States may wish to explore the option of contracting out the operation of prisons or other correctional programs. Private enterprise would be expected to run prisons in an approach similar to the way it now operates hospitals, drug and alcohol treatment programs, or job training programs for the government...States should approach this option with great care and forethought. The private sector must not be viewed as any easy means for dealing with the difficult problem of prison crowding."<sup>14</sup> This endorsement of correctional privatization is guarded at best.

The trend toward private sector operation of government services has also been criticized by representatives of public service employees who have lost their jobs and pensions. The American Federation of State, County and Municipal Employees (AFSCME) does not feel that privatization is in the citizens or employees best interest. They feel that care, treatment and rehabilitation of inmates is of secondary importance to private corporations who are primarily interested in the profits of a growing industry and that limited experience in operating training schools, halfway houses and juvenile treatment centers is very different than managing and operating state minimum, medium or maximum security correctional facilities. The AFSCME is not opposed to private sector financing since they are aware of the difficulties

states have in raising tax revenues to finance renovation and construction but feel that financing and management/operation should be kept separate issues. In April, 1985 AFSCME withdrew from the ACA because of ACA's adoption of a supportive policy allowing contracting of correctional facilities.<sup>15</sup>

The American Civil Liberties Union (ACLU) opposes privatization unless there are assurances of adequate safeguards to protect the rights of prisoners who have no one to speak for their interests in public and policy-making forums. They feel that facility capacity will increase only after unconstitutional conditions have been remedied using early release programs, elimination of mandatory sentence laws and increased use of alternatives to incarceration. They also feel that the profit motive may be improper and unethical in the correctional setting. Plans to cut costs by decreasing staff/inmate ratios and increasing the use of electronic and mechanized equipment denies prisoners needed contact with staff. Citing that jail officers salaries start at \$10,780/year, the ACLU and some labor unions question how they can be cut further? The ACLU also maintains that prisoners confined in private facilities must retain all legal rights and the same health and safety protections possessed by those held in public facilities. Functions which rightfully belong to the government cannot be contracted away. The government entity, not the private contractor, must make the decisions which impact the inmates sentence and/or duration of confinement. Lastly, prison and jail problems need increased citizen attention and the ACLU feels new financing methods which don't need voter approval will serve only to reduce public scrutiny, not increase it.<sup>16</sup>

At the 1985 convention of the Service Employee International Union (SEIU), government employee union leaders denounced privatization as their



"number one problem" and promised to wage a counterattack on the "contracting out epidemic."<sup>17</sup> Several important national criminal justice interest organizations such as the National Sheriffs Association and the National Coalition for Jail Reform have also raised serious objections. In February 1986, the American Bar Association approved a resolution calling for a halt in privatization of jail or prison operations "until the complex constitutional, statutory and contractual issues are developed and resolved." This perhaps is the most troublesome question which government faces when it attempts to structure its policy towards private sector management of correctional facilities. There is no long-term history available on the legal issues surrounding total contracting of a state minimum, medium or maximum security facility. There is also only a limited amount of case law available pertaining to this issue. Legal questions will continue to restrain correctional policy makers until such time as there is sufficient experience with private sector total facility contracting.

## ISSUES IN FACILITY MANAGEMENT CONTRACTING

Private sector participation in correctional programs is an old idea being expanded to meet modern needs and pressures. In the last decade prison populations have risen, budgets have become tighter and the quality of service more scrutinized by courts and legislatures. Prison administrators have been forced to be more creative and efficient in management practices and to look for alternative methods of operating and providing services in their attempt to coordinate agency, interagency and private resources to meet the demands of improved quantity and efficiency. Contracting for specialized services within an institution has become a standard feature of many state systems. Now the trend is moving even further toward the contracting of financing, construction and operation (issues which can be separate or connected) of total primary placement facilities for adults.

The pressure to change management style has mounted quickly and administrators are not even sure whether privatization is a legal or effective way to move. Newspaper and journal articles describe the phenomenon but there remains no pool of experience-based, practical information available. This will be remedied only as an increasing number of private facilities are built and those open are in operation for longer periods of time.

The Criminal Justice Institute (CJI) with principal investigators Camille G. Camp and George M. Camp conducted a survey to ascertain the nature, extent and issues associated with private sector correctional contracting. In 1985, the Camps again under the auspices of the National Institute of Corrections produced a guideline for correctional administrators on contracting. In 1984, the National Institute of Justice funded a survey that focused on a number of key issues that need to be anticipated in planning for total facility contractual agreements as outlined in the following chart:<sup>18</sup>

## Issues in Facility Management Contracting

### POLITICAL ISSUES

#### CONCEPTUAL

°Propriety of Delegating  
Social Control

°Effects on Public Policy

#### STRATEGIC

°Staff Resistance

°Management Opposition

°Public Attitudes

### ADMINISTRATIVE ISSUES

°Quality

°Accountability

°Flexibility

### TECHNICAL ISSUES

#### LEGAL

°Authority

°Liability

°Security

°Contract Specificity

#### FINANCIAL

°Efficiency

°Profitability

°Visibility

Source: Joan Mullen, Kent John Chabotar, and Deborah M. Carrow, The Privatization of Corrections (Washington, D. C.: National Institute of Justice, 1985). p.71.

## POLITICAL ISSUES

Conceptually, the propriety of delegating the authority for social control has become a major political issue. Correctional facilities are the means used by the state to deprive persons in custody of liberties enjoyed by other citizens. A democratic defense of the right to punish proposes that as citizens we agree to the laws by participating in making them or by electing representatives who make them and we accept the proposition that if we break the law, we ought to be punished. Thus, criminals are punished with their own consent. An equally crucial principle has been assumed to be that the agents of punishment be agents of the law and of the people who make them.<sup>19</sup> It is this delegation of authority to the private provider to be responsible for the range of management functions including classification and control of inmates (with the use of deadly force) that has been questioned.

It is argued that the private sector has no legitimate role in "quasi-judicial" functions such as sentencing recommendations or classification and parole release. Procedures connected to the duration of confinement, access to greater freedom, and accelerating or constraining final release belong under control of the state. For example, "good time" decisions made by the contractor have an impact on time served. Others counter-argue that a feasible role for private enterprise in correctional management requires a given level of decision making to control the inmate flow through the facility.

Contracting increases the political power of the private sector and private organizations have developed considerable lobbying skills to win over public support. This influence is considered a disadvantage when unnecessary or excessively costly programs are continued, but an advantage as the areas of appropriations for program improvement and resources become more competitive.

Privatization may have unintended effects in public policy as the interests of self-preservation or profit maximization conflict with the public interests.<sup>20</sup> "Skimming" the market occurs when the correctional agency becomes dependent on a limited number of contractors. The tendency to skim off the "cream of the crop" has been seen where private providers were able to dictate policies, restrict eligibility standards, or to close cases which might pose performance problems, thus leaving the less profitable, more troublesome cases for the public sector.

The pressure to maintain high occupancy rates or the "Hilton Inn Mentality" is applicable to the business of providing correctional services since per-diem reimbursement fees are maximized at higher population levels. Legal and managerial chaos can be avoided if defined capacity limits and specific minimum standards governing confinement are clearly specified in the contract.

Correctional privatization has involved many "prisons-for-profit" company officials being former government correctional officers. The ethical issue is raised with the appearance of impropriety in using the revolving door to the private sector to profit from government service which is potentially as damaging as actual misconduct.<sup>21</sup> More careful monitoring of government actions is suggested to ease concerns that privatization will foster a political spoils system with contract irregularities: collusion, conflict of interest, "kickbacks," bribery. Constraint of the 'revolving door' syndrome would be best accomplished by means of conflict-of-interest provisions attached to public employment, open competitive procurement procedures and contractor selection committees.

Another source of political concern is the effect of privatization on the visibility of corrections. Some argue that public input will be decreased as accountability shifts to the private providers. Others feel that

the process will be opened to outsiders with the use of private providers and increased opportunities for public scrutiny will be offered. However, fear prevails that the contractor may lack expertise as claimed.<sup>22</sup> In reality, in the short term, private institutions will likely be watched intensely, but it is unclear whether this interest will be sustained.

Strategically, the reduced power of special interest segments including the public employee unions, the American Civil Liberties Union and other public policy groups threatens to be a volatile issue in the effort to convert facilities to private sector management. The one million member AFSCME published Passing The Bucks, a book attacking privatization. It alleges that problems in contracting include fraud in bidding, management and control problems, low quality of work and cost underestimates. The AFSCME expects to see even more privatization promoted with the Reagan Administration's support firmly established after the Grace Commission report. The trend is inevitable, especially in cash-strapped state and local governments, many of which are prohibited from deficit spending. To avoid problems, one suggestion has been that private management be considered only for new facilities, or, when a takeover is planned, require a carefully orchestrated transition after thoroughly calculating and communicating the anticipated benefits to the state, and lobby to diffuse opposition.<sup>23</sup>

A potential roadblock to prison privatization was a suit brought by the Houston ACLU based on an incident involving alien stowaways who were improperly placed in detention facilities of a private security firm which had no contractual arrangement with the INS. Unfortunately, one stowaway was accidentally killed and two wounded as they attempted to escape. The ACLU contended that "private agencies are not adequately equipped and trained to do a humane job of incarceration, and that a profit motive is likely to

generate cost-cutting measures not in the interest of the prisoner or the public."<sup>24</sup> The ACLU asked a federal court to ban private contracting of incarceration.

The "Impacts of Privatization Upon Career Public Employees" was the topic of a paper delivered by William M. Timmins at the 1985 Conference of the National Institute of Justice. He suggests five areas of concern: equity to people who take career public service employment with good faith and who expect long term employment based upon satisfactory job performance; the ripple effect of long-term impacts in productivity and morale; erosion of long established career systems; career assistance and relocation assistance to workers being terminated; and undermined long-term trust by the general public and public workers in promises made by elected officials in executive offices and legislatures.

Attitudes of corrections management may not be supportive of privatization opportunities that threaten a loss of agency control or "loss of turf." The NIC survey noted this to be a stronger inhibitor of the expanding private sector role than the loss of employment for state workers.<sup>25</sup> They feel that the private prison issue diverts critical attention away from more basic concerns, such as the merit and impact of private programs which emphasize non-incarceration alternatives.<sup>26</sup>

Lastly, general public attitude constrains the development of private facilities. Personal security fears combine with traditional public reluctance to allow a corrections facility to be built in the community. Override powers of the government agency are not available to private contractors who face delays and costs in their efforts to secure local zoning approval.

## Administrative Issues

In the debate over private sector involvement in management and operation of a total facility, the issue of quality of service arises. In the short term, the quality of private service is likely to be superior. Private enterprise is not bound by civil service rules of employment and retention and the private provider is allowed to control performance and vary staff as needs change. Competitive wages provide managers both efficiency and control of workers. The retention of ineffective, inefficient employees is eliminated but if attrition rates rise too quickly, breakdowns in management continuity could result.

Independence from bureaucracy provides greater freedom to innovate and to deal with management or service delivery problems more rapidly. There exists a need for research into new programs or new approaches to existing programs but innovation is risky and can be expensive, thus the private provider may be less prone to attempt a new program because of the financial risk associated with failure and may opt to maintain programs known to have consistently high profitability. Then again, profitability is a desirable motive and could be an incentive sufficient to bring about new, more efficient methodologies and adaptations to technology.<sup>27</sup> Finally, the private sector is under competitive pressure and this can also provide significant incentive. Contractors rethink the organization of manpower and equipment to figure out how to accomplish the task most effectively.<sup>28</sup>

In the long term, quality of service improvements are more uncertain. Corrections needs may become predominantly supplied by a small number of corporate providers. Currently, less than ten companies in the U. S. manage or seek to manage prisons and jails. The reduced competitive pressure may erode short-term gains in quality and the private sector companies may act like the



monopolies they replaced. The needs for large capital reserves, cash flow, insurance coverage and specialized support personnel limit the companies which can offer the services.<sup>29</sup>

These facts suggest that correctional contracts are more appropriate when government lacks the capability to fulfill a particular need rather than when there is a quest for qualitative improvement. Time and documented experience may qualify this supposition.

Accountability for the operations of the contracted facility shifts to the private provider as the government relinquishes the burden of providing direct services and assumes the responsibility for monitoring. The importance of the monitoring function should not be underestimated. Quality control is made more difficult when governments deal with private agencies having only indirect control. The roles of public and private managers must be clearly defined and accountability established. Monitoring functions include the use of a liaison for problem-solving, trouble shooting, regular visitation and expediting contract amendments. Regular reports need to be reviewed and payments approved. The liaison also reviews procedural compliance, coordinates evaluations and directs remedial actions when necessary. This person or group confers with counsel and higher authority for more serious problems, stops payments if necessary, handles terminations, initiates renewals and performs an exit evaluation. An effective public-private alliance can be established with good monitoring procedures and liaison relationships.<sup>30</sup>

Internal staffing issues arise when the state distributes excess or problem prisoners among publicly operated institutions. Resources would be strained as would private and public corrections staff relations if the private staff were perceived as less burdened.<sup>31</sup>

With the shift of government responsibility from operations to oversight comes a shift in the government level of capability and flexibility. As capacity to operate facilities shrinks, public agencies lose the ability to respond to immediate problems such as severe overcrowding. Contracting gives government the ability to act quickly in the short term, but places constraints on the ability to change course over the long term. Furthermore, establishment of a management contract transferring the operations of an entire facility can cause an expensive and disruptive break in performance. Risk factors include the fact that there are a limited number of qualified bidders available, that operations need to be continuous while the search is underway and that the already poor performance of the current contractor could deteriorate further. Guarantees to insure against such government risks will increase the contractors risk and cost, and, might mean eventual elimination of private sector participation.<sup>32</sup>

Privatization works best when a balance is achieved between profitability and integrity in administration. The greatest benefits are derived if programs complement rather than replace existing public programs. With competition comes lower costs and greater effectiveness. However, in the contract awarding process larger corporate operations and incumbency do have the advantage. Oversight must not be "shadowed in political intrigue." There must be accountability and mutual participation by the public sector.<sup>33</sup>

### Legal Issues

Four areas of legal issues have been identified: authority, liability, security and contract specificity. Do states and counties have or need specific statutory authority to contract with private firms? Private sector contract agreements may be prohibited, allowed or omitted in current written

law. Policies do vary with most state statutes neither specifically authorizing or prohibiting privatization. Confusion reigns as the states are asked to take a position on this question. Texas, New Mexico, and Florida have recently passed legislation permitting private incarceration while in March, 1986, Pennsylvania banned new private prisons and restricted those currently in operation.

The Virginia Supreme Court has stated that "a state cannot barter away, or in any manner abridge or weaken, any of those essential powers which are inherent in all governments, and the exercise of which in full vigor is important to the well-being of organized society, and that contracts to that end are void upon general principals..." Mumpower v. Housing Authority, 176 Va. 426.11 S. E. 2d 732 (1940). Richmond, Fredericksburg and P. Co. Va. Richmond, 145 Va. 2285 130 S. E. 2d 771 (1926) proposes that the provision for the safety and welfare of citizens is a police power. The Virginia Supreme Court noted in Blue Cross v. Commonwealth, 221 Va. 349, 269 S. E. 2d 827 (1980) that although there is no exact definition of the police power of the Commonwealth it is a necessary attribute of the state and includes the power to prescribe regulations to promote health, peace morals, education and good order of the people. Barker V. Palmer, 217 N. C. 519.8 S. E. 2d 610 maintains the police power is the power to protect the public health and safety, to preserve good order and public morals, to protect the lives and property of citizens, and to govern men and things using any legislation necessary to achieve that end. Prison operations are thus interpreted to be an exercise of the Commonwealth's police power. Delegation of the responsibility to run prisons may be unconstitutional by Article IX, §6 of the Constitution of Virginia which states that the police power in the Commonwealth "shall never be abridged." The Director of the Department of Corrections has

the authority to make contracts necessary or incidental to his/her performance of duties as CEO, (Section 53.1-10(4) of the Code of Virginia), and contracts for the provision of correctional services. Specialized services such as food and medical, prison design, and construction are permitted when no delegation of the ultimate responsibility for facility operations has occurred.<sup>34</sup>

To retain the police power function, the government must maintain its ability to set policy and retain authority over the exercise of power. As applied to prisons this can be interpreted as a mandate to retain the right to make regulations for prisoner health, morale and physical well-being and that the state must exercise this power to provide for convict maintenance and custody. Examples of correction officials exercise of a police power function include: the rules and regulations covering items such as visitation, receipt of packages, recreation and inmate employment, area of inmate discipline, quelling of riots, prevention of escapes or apprehension of escapees, and provision of counseling and rehabilitative services when applied to inmate morale. Prison administration clearly involves the exercise of the police power function and policy formulation and exercise of authority which cannot be "bartered away." As current law and the Constitution of Virginia stand, it appears that these functions can only be exercised by the State and not, in total, by a private firm acting as an "agent" of the state.

Liability or "tortious conduct against an inmate that can result in an award of money damages against a defendant" is the most complex and pressing legal issue in determining whether to privatize corrections.<sup>35</sup> The major question is whether acts of a private industry operating a correctional institution constitute "state action" allowing liability under Federal Civil Rights Act 42 U. S. C. 1983. A party alleging a deprivation of statutory or

constitutional right under the act must show that the defendant acted under the color of state law, and that the actions of the defendant were fairly attributable to the state. Liability may be imposed upon the private contractor, the government officials and sometimes the government agency. Under privatization, private prison guards and officials may be held accountable for tortious actions against inmates which amount to civil rights deprivations. Liability of government defendants occurs when they failed to control or supervise the private providers activities and this failure was a cause of alleged tort. Thus government duty to prison and jail inmates is non-delegable. The government agency must retain ultimate control responsibility. Various doctrines of immunity must also be considered.<sup>36</sup>

Other typical questions raised deal with the spread of liability between the government and private managers, inadequacy or cancellation of company insurance coverage and whether disciplinary proceedings and punishment carried out by private jail managers are legally considered to embody the principles of due process of law. On the other hand, some authorities feel that the fervor over statutory and constitutional issues may be overstated since they can be dealt with in contract specifications.<sup>37</sup>

Consideration must be given to facility security. If the contractor meets standards adopted to control the performance of public corrections officers, there should be no constraints to the use of private employees to maintain public safety. Private citizens have limited powers to arrest and may carry a weapon after satisfying state and local requirements. To minimize contractors liability, the state might permit "deputizing" or delegate special police powers to corrections employees. This would secure the same qualified protection from civil suit granted to police officers. Alternatively, the contractor could be adequately insured.<sup>38</sup>

It is sound business judgment to make sure that all requirements or conditions for performance are explicitly stated in the written contract. This protects the provider from requirement changes and liability from lawsuits. Detailed statements of expectations also allow for accurate costing of services. Six general issues have been identified for consideration when soliciting and drawing up the contract.

- Duration of the contract - usually constrained by statute to 1-3 years so funds are not obligated beyond a state's fiscal period. Flexibility is provided to the government with increased risk to the private provider.
- Appropriate payment provisions - typically a 'per diem' rate is fixed which assures the government will face little risk of cost overruns and allows them to pay only for space used.
- Set minimum and maximum occupancy levels - guarantee contractor minimum per diem base and assure government capacity available.
- Types of inmates - placement eligibility and procedures defining contractors role in transfer/release decisions.
- Standards of performance - states have not enacted specific laws but Commission on Accreditation can provide point of reference.
- Performance incentives or penalty clauses for non-performance- contracts should be written to provide incentives for improved services. Contractors should be paid bonuses for less than average recidivism rate or larger than average number of inmates who successfully complete educational or job-training programs and should be penalized for allowing escapes or attacks by one inmate on another.<sup>39</sup>

## Financial Issues

Relative cost efficiency of public versus private facility management is a controversial subject. It has been suggested that private providers can operate at a lower cost due to staff efficiencies, lower pension and benefit costs and market incentives to increase productivity. Pessimistically, costs can be expected to escalate once the private provider is established and monitoring is enforced. As an example, in 1985, the CCA penal farm in Tennessee ran \$200,000 over budget because of an unforeseen surge in drunken driving convictions. The government was forced to pick up the tab. Yet, CCA has still saved \$300,000 since October 1984, when it took over the Silverdale facility. In Kentucky, USCC's daily charge is 19% more than the state's cost per day for the minimum security facility but this figure is in line with per diem costs of community corrections contracts. Also, the contractor has made court mandated improvements faster than would have been possible by the state. Limited experience, contractors' reluctance to share documentation and lack of cost-accounting systems preclude accurate comparative cost analysis at this time.

With regard to profitability, Mullen, Chabotar and Carrow of the National Institute of Justice suggests that ultimately one should view contracting with the private provider as hiring new staff; a decision made by evaluating performance history, competence and correctional philosophy rather than just accepting the lowest dollar bid. In fact, many private providers such as Buckingham Security Ltd have yet to make a profit. At their Bay County, Florida facility CCA has spent hundreds of thousands of dollars upgrading salaries and equipment and these expenses have offset anticipated savings in other facets. Big returns are expected from large maximum security prisons but no contracts have been procured yet. In another example, the '268'

center in Pennsylvania went bankrupt after an injunction prohibiting out-of-state prisoners was rendered.

One advantage of contracting is its ability to reveal the true costs of public service. In government accounting systems costs are usually buried in the expenditure records of different agencies and it is virtually impossible to isolate the full cost of a particular public service. Corrections departments face the same conditions and, in fact, voters and legislators may be very surprised to see the real costs of confinement practices that meet professional standards.<sup>40</sup> However, simply looking at contract payments alone still will underestimate the additional public costs attached to contract administration and oversight.



## ALTERNATIVE METHODS FOR FINANCING

Overcrowding of correctional facilities has been widely reported. Increasing the supply of space is an ambitious and costly solution to the problem, and private sector firms are increasingly involved in financing prison and jail construction.

After a correctional agency decides that a new, renovated or expanded facility is needed, they must choose between alternative methods of financing. Capital improvements are traditionally financed with current operation revenues ("pay-as-you-go" approach) where cash is paid instead of borrowing against future revenues. This works best when capital needs are consistent and moderate and the financial capability is sufficient. Appropriations must be allocated in the budget of two or more years to pay for the project during its entire construction period. Up to 40% of state prison systems surveyed by NIJ rely on the "pay-as-you-go" method and others combine current revenues with bond proceeds to finance most of their prisons and jails.<sup>41</sup>

The use of operating revenues has several advantages. Interest costs are saved since interest on long-term bonds often matches or exceeds the original capital cost. There is greater flexibility to meet emergencies by avoiding annual, fixed debt costs. Borrowing capacity is protected and favorable bond rating for long-term financing is maintained. Lastly, the substantial costs associated with bond issues: financial advisors, legal counsel, printing, advertising, etc., are avoided.

There are also disadvantages for the "pay-as-you-go" method. Capital construction projects are large and have irregular cash outlays. This

burdens the budget during the years in which the facility is being built. Many people feel that a project that yields services over a number of years should be financed by its users over that period of time rather than all at once by current taxpayers. During inflationary periods, current revenue construction may be more costly than the value of actual money paid in principal and interest charges on long-term debt. Finally, the large sums needed to fund the construction of a new jail or prison frequently cannot be generated.

The major financing alternative to "pay-as-you-go" revenue is the use of bond issues, or long-term borrowing. 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 specific percentage of the principal."<sup>42</sup>

Standard and Poor's or Moody's Investors Services rate most bonds for credit worthiness before the bonds are sold. Interest payments paid to the investor on bonds issued by or on behalf of a state or municipality are exempt from federal and sometimes state income taxes. These bonds are further defined to be general obligation or dedicated revenue bonds.

With general obligation financing the government owns the facility and makes the debt service payments on the bonds based on a pledge to raise taxes, if necessary, to cover the debt service. Thus, they are commonly referred to as "full-faith-and-credit" bonds. Interest on the bonds is tax exempt to the investor which lowers the interest rate the issuer must pay. Often this financing method requires a voter referendum and/or compliance with established debt limitations. This is usually the least expensive payment alternative unless timing delays, costs for the approval process or government construction requirements drive up the overall costs. Kentucky, Missouri, New Jersey, Rhode Island and California have all recently passed G. O. bond issues for prison and jail construction.

Dedicated revenue bonds or limited liability obligations are sold to produce revenue. The government owns the facility and makes debt service payments on the bonds based on specific revenues flowing to the government. Sources of the revenue can be any steady income stream and can include criminal justice related fees or fines, service charges, transfer taxes, etc. Interest on the bonds is tax-exempt to the investor, again lowering the interest rate the issuer must pay. Voter referendum and debt limitation restrictions are less stringent for revenue bonds. Requirements usually include a reserve fund, projected revenue higher than the annual debt service, and/or a moral obligation by the government to finance any shortfalls.

The use of lease financing has become increasingly popular when the states can't use bonds or current appropriations because of the constitutional debt limit, lack of standing in the credit market or limitations in state taxing authority. Many states including New York, Arizona, California and Illinois have enacted legislation allowing lease financing.

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."<sup>43</sup> Straight lease and lease-purchase agreements are the generally employed lease forms. Using the lease-purchase, the lessee purchases the asset over time and eventually holds title to the asset while having use of the facility. With the straight lease, the lessee uses the asset without taking title to it. No cash down payment is required in either case. The lessor gains tax advantages and a steady cash flow from periodic lease payments and transfers the responsibilities of ownership to the lessee. In recent years the tax shield allowed by energy and investment tax credits, accelerated depreciation charges and the interest paid on the borrowings have been valuable to the

lessor. However, the 1986 federal tax revisions have diminished or eliminated many of these advantages.

There is a challenge in finalizing the arrangements of a lease agreement. An adequate correctional facility must be provided to the government at a competitive rate while lessors must be allowed to gain a fair return on their investment and avoid undue default and foreclosure risks. There are many issues to consider before choosing the lease as the preferable financing alternate.<sup>44</sup>

°Cost of leasing - Detailed analysis of cash flows should include all aspects of the financing from issuance costs, discounts and arbitrage earnings to time advantages, construction costs and length and type of lease. Changes in bond ratings and interest rates make the advantages of debt financing vs. leasing fluctuate from year to year.

°Effect on borrowing capacity - borrowing capacity or "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" is increased with leasing arrangements. The government can acquire facilities without incurring debt subject to debt ceilings or to voter referenda but this advantage may be reduced as awareness grows of risks associated with leasing. In 1976 the Financial Accounting Standards Board (FASB) ruled that "capital leases" such as lease-purchase agreements must be recorded on the corporate balance sheet.

°Right of nonappropriation - Since the government has the right to insist on an annually renewable lease subject to nonappropriation of lease payments, pressure is put on the lessor to operate good facilities and services at competitive prices. Nonappropriation risk to the lessor though minimal is reflected in higher lease payments. These

risks could increase in the future if inmate populations decrease and excess prison capacity becomes available.

°Risk of obsolescence - Risk is shifted from the user to the owner and is reflected in higher lease payments. This risk does not apply to lease-purchase arrangements where title and risk transfers from lessor to government after a definite number of years.

°Facility Siting - State government can enforce its right to build on a proposed location but the private contractor may encounter a formidable obstacle at the zoning board. Contractors may also prefer urban/suburban sites to ensure a supply of lessees in the event that the government fails to appropriate funds to continue the lease.

°Experienced, independent legal counsel and financial analysts

Distinctions need to be drawn between the "straight or true lease" and the lease-purchase agreements. The true lease is "agreement in which the lessee acquires use, but not ownership of the leased property and the lease term is shorter than the assets useful life."<sup>45</sup> This lease form is often the most expensive financing alternative due to the fact that ownership is retained by the lessor, who must include costs in the rent that other entities could avoid: taxes, insurance, higher interest rates. Also, after the lease period, the asset's cash salvage value belongs to the lessor so the government can not use the salvage value to reduce the overall lease costs. Straight leases are widely used. A 1984 survey identified 18 corrections departments in 50 states who lease a total of 4000 minimum security beds. Michigan and Pennsylvania are the heaviest contractors.<sup>46</sup> No state is currently leasing a maximum or medium security facility. Increased flexibility to shift vendors or to respond to fluctuating inmate populations justifies the use of true leases. Another advantage is that the lessee is able

to avoid building obsolescence.

Two other leasing arrangements are modifications of the straight lease concept: leasing with the option to buy and sale-lease back. The option to buy allows the lessee the opportunity to purchase the asset after each year of the lease period. The cost is realized only when the lessee exercises the option to buy with greater capital outlay, the longer the lessee waits. A sale-leaseback involves government property sold to private investors and leased back by government for its use. This method is used most often to finance renovation of older or historic structures. The government retains the capital investment while providing investors with income tax investment incentives such as depreciation. The tax benefit value is shared with the public lessee through lower lease payments. Interest in sale-leaseback has diminished with 1983 and 1986 federal tax legislation that makes these arrangements less attractive for investors. Requirements for debt ceiling compliance or voter referenda are not required because leases are not considered legal debt due to annual appropriation clauses. Investors are protected against failure to appropriate lease payments by the right to foreclose the property and to re-release or sell it.<sup>47</sup>

Lease purchase agreements where the state contracts with private investors or a state building authority to build the property are used to acquire assets over a period of time as in an installment sale. The facility is nominally owned by the public authority or non-profit corporation but operated by the government with ownership passing to the government at the termination of the lease contract. Lease rental payments are made by the government to the public authority to discharge the debt service. Typically tax-exempt lease-purchase revenue bonds or certificates of participation are issued.

°lease-purchase revenue bonds - Income from a specific undertaking is pledged to pay interest and reduce principal. The bonds are neither included in debt limits nor do they require voter approval. In lease-purchase financing, the bonds are backed by rent paid under the lease agreement.

°certificates of participation (COPS)- Split the financing of the lease into pieces. In essence, they are a tax-exempt real estate investment trust, handled like municipal tax-exempt bonds. COPS mature serially, pay interest semi-annually and have prior redemption options.

Both market instruments receive investment grade ratings from Standard and Poor's and Moody's Investors Services. Disclosure requirements must be met if participation interests in the lease-purchase contract are publicly offered.<sup>48</sup>

Use of these instruments provides an attractive alternative to G. O. bond issue. First, they can be issued quickly (60-90 days) under the direction of the issuing government body. Backed by annual appropriation, the bonds are not usually classified as direct state debt, and time savings and interest earnings on reserve funds permit reduced debt service payments. Lease-purchasing is more attractive than straight leasing because under straight lease, the lessor uses taxable debt financing to obtain ownership tax benefits. Such taxable leases give a lower degree of control and interest rates are higher for the private owner to obtain funds. Also at the conclusion of the lease period, the government would not own the facility and would have to pay a fair market price if they chose to acquire it.<sup>49</sup>

In general the following steps are required to complete a lease-purchase transaction:

°Government body identifies or creates a legal entity such as a public building authority or nonprofit corporation to issue bonds and act as lessor of the correctional facility. (Alternatively, a municipal leasing corporation or a trustee bank can issue tax-exempt certificates of participation in the lease.)

°Government body enters into a lease agreement with lessor.

°Lessor raises capital in the tax-exempt revenue bond market through issuance of bonds or certificates of participation.

°Government body provides for construction and operation of facility and annually appropriates funds for lease payments.

°Government body obtains final ownership of facility when bonds are fully paid.<sup>50</sup>

Most states permit lease-purchase financing under explicit statutory authority or under implied powers, but statutes, traditional practices and other requirements vary from state to state. During the past two years Ohio, Missouri, Alaska, California, New York, Rhode Island and Louisiana have issued lease-purchase bonds for new state prisons and other states have passed enabling legislation.<sup>51</sup>

An area of concern with lease-purchase financing is the government's inability to maintain control of the construction and the operation of the facility. Certain requirements such as control of facility operation prior to state ownership can be incorporated in the lease agreement. Careful monitoring of building design and construction ensure compliance with correctional standards and building codes. Legal concerns include: 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 remedies available to the holder of a lease-purchase contract upon nonappropriation.<sup>52</sup> Other identified problems include: The IRS rule allowing reinvestment of reserve fund may lapse in December, 1986; restrictive borrowing limits of public building authority; expense incurred if bond proceeds are not invested at a higher interest rate; and negative implications of avoiding traditional capital outlay procedures.<sup>53</sup>

Innovative private sector involvement in leasing can be seen in the emergence of teams of private firms that arrange a total facility package—design, finance and construction. E. F. Hutton, Shearson Lehman/American Express, Merrill Lynch and Citicorp/Daniel are prominent representatives of a group of leasing companies, brokerage houses and investment banking firms that have been promoting lease-purchase financing. Construction funded by this method has been small scale and mainly at the local level. One of the first successful implementations was in 1983, in Jefferson County, Colorado. After voters twice rejected sales tax proposals to raise needed funds, E. F. Hutton's leasing specialists put together a \$30.2 million lease-purchase contract with certificates of participation. The COPS were sold in \$5000 units to investors. The new facility for 382 inmates opened in 1985 and will be leased until 1995 when the debt is repaid. The rating agency, reflecting the increased risk, granted a lower rating than on G. O. bonds. This resulted in increased interest charges of one-half to three-quarters of a percentage point.<sup>54</sup>

In California the ownership of the newly constructed Tehachapi maximum security prison is held by the California Public Works Board, a public corporation empowered to finance capital facilities. The California D.O.C. rents the facility from the Board and at the end of the 15-year-lease, ownership will revert to the D.O.C.<sup>55</sup>

On June 26, 1986, Daniel International Corporation and Citicorp Investment Bank were awarded the \$78 million lease-purchase contract for a new 2250-bed maximum security facility to be built at Coffield Prison Farm in Palastine, Texas. The state of Texas has been under court order since 1982 to depopulate the prisons or build new facilities. The court order was in response to the nationally prominent 1972, Estelle V. Ruiz civil case involving overcrowded conditions in prisons. The State of Texas owned property near Houston and the legislature appropriated the money from the sale of this land to finance new prison construction. The money never materialized, since the land value declined sharply in 1985 and the property never sold. Other financing options had to be researched. An expedient alternative method was a turnkey operation and with deadlines rapidly approaching, the state put out a RFP requiring a financing plan based on a hard dollar construction figure to cover construction as well as state expenses already incurred in facility design (HDR), consultants fees and site clearance. Citicorp financing required the sale of undivided interests in the form of certificates of participation valued at \$1 million each which carried a 4.5% rate of return. The package was awarded on the basis of being the lowest bid and the facility is currently under construction with an August 15, 1987 construction deadline.

The 1986 federal tax reform legislation tightens the restrictions on non-governmental financing of government activities with tax-exempt bonds. Therefore, the foregoing survey of past financing arrangements may change significantly as the private sector develops new taxable bond packages that will be attractive to investors as well as governments.

In conclusion, privatization of construction financing has two advantages. Private financing helps the government access private capital through various instruments such as bonds or cops, but the greater advantage

is in the timing of construction. Private sector firms can complete construction more quickly than agencies of the government that must put construction up for bid. Delays can be expensive for the construction companies as well because they are working on a hard dollar construction figure with little leeway and often, they will assume the interest rate risk during the construction period. Further discussion of private sector construction is warranted.

## Construction

Due to consistent inmate population increases there has been a need for rapid construction of secure and economical inmate housing. In response, the private sector has produced pre-fabricated or pre-manufactured housing systems which they feel can be efficiently and economically erected in a relatively short time. Pre-manufactured correctional facilities are defined to "consist of pre-manufactured modular units which have building components, such as: walls, floors, and roof systems, that are pre-assembled and delivered as a unit to the site...each unit has its own structural integrity so as to permit shipment to the site. One or more of the modular units may be joined, connected, or grouped together to make a pre-manufactured correctional facility."<sup>56</sup> Various types of pre-fabricated or modular correctional component units exist. Four common examples include the steel cell block, fabricated metal buildings, pre-stressed concrete panel systems (used in Virginia at the Augusta, Buckingham and Nottoway facilities) and pre-poured concrete cell units. The modular steel or concrete cell units are typically placed within a conventionally constructed structure. In contrast, conventionally constructed correctional facilities have wall, floor and roof systems that are all constructed on-site. Common examples are those using either concrete block or poured-in-place concrete.

A 1984 National Institution of Corrections study "Evaluation of Pre-Manufactured Housing for Correctional Purposes," presents a comprehensive, comparative evaluation of the industry. (See Table 2). Fifty-three different facilities were identified where at least a portion of the unit was pre-manufactured. These accounted for approximately 4,500 bed spaces (3,350 state and 1,150 county or local). A quick summary of the findings shows time savings was the principal reason for selecting pre-fabricated housing units.

Table 2  
Summary Characteristics of Pre-Manufactured Correctional Facilities Based on Survey Questionnaires

Manufacturer	Date of 1st Correctional Facility	Security Levels			Will Provide Program, Support, and Administrative Space	Primary Construction Material			Standard/Optional Equipment/System*					Furnishings
		Max	Med	Min		Concrete	Steel	Wood	Plumbing Fixtures	Cell Doors	Windows	Lighting Fixtures	Mechanical Systems	
Porta Space, Inc. Cockeysville, MD	1981	x	x	x	Yes		x	x	CSS	ESL KSL	N/A	Opt.	HVAC	Opt.
Tellus Manufacturing Corp. Sacramento, CA	1981	x	x	x	Yes		x		CSS	Opt.	Sec.	RS	HV AC (Opt.)	Opt.
Anderson Systems International, Inc. Dallas, TX	N/A	x	x	x	Yes	x			CSS	ESW KSW	Sec.	SS	HVAC	Opt.
Correctional & Detention Structures, Inc. Emeryville, CA	1982	x	x	x	Yes		x		Opt.	Opt.	Opt.	Opt.	HVAC	Opt.
Design Space International Bala Cynwyd, PA	1980	x	x	x	Yes		x	x	Opt.	KSL ESW KSW	Opt.	RS SS	HVAC	Opt.
Modular Correctional Systems, Inc. New York, NY	1983	x	x	x	No	x			CSS	ESL ESW	Sec.	SS	HV	Opt.
Omni Signal, Inc. Capitola, CA	1983			x	Yes			x	Opt.	N/A	Opt.	Opt.	Opt.	Opt.

\*Key: CSS - Combination stainless steel fixture  
 CP - Combination porcelain fixture  
 ESL - Electro/mechanical sliding doors  
 KSL - Key-operated sliding doors  
 ESW - Electro/mechanical swinging doors  
 KSW - Key operated swinging doors  
 HV - Heating and ventilation  
 HVAC - Heating, ventilation, & air conditioning  
 Sec. - Security-type or security glazing  
 Slid. - Non-security-type window or glazing  
 RS - Recessed, security light fixture  
 SS - Surface, security light fixture  
 RNS - Recessed, non-security light fixture  
 SNS - Surface, non-security light fixture  
 Opt. - Optional with owner  
 N/A - Information not provided

Speed was crucial since overcrowding and court orders to increase bedspace dictated an immediate need for construction. An average of 6.5 months was spent in planning, design, approvals and bidding processes and an average of 7.4 months was spent between manufacturers notice to proceed and occupancy for a total of less than 14 months from planning to occupancy. Pre-manufactured facilities were commonly used as a temporary solution to the problem and were planned with a limited life expectancy. Housing units constructed of steel were generally considered medium-maximum security and carried a premium price per square foot.<sup>57</sup> Modular unit building schedules are not affected by inclement weather, labor problems or delivery difficulties. Customized modular space for 100-inmates can be delivered in 70 days for turnkey installation. If the unit is ordered from a stock inventory, it can be delivered and installed a week after the order is placed.<sup>58</sup>

Modular space can also be leased or purchased. Leasing modular units is an ideal solution when funds for capital expenditures are limited and the lease-purchase option allows for the purchase of the modular unit after the designated lease period expires. The modular building manufacturer can propose a specific price for a specific job and can build and deliver the operation-ready space at that price because the unit is factory-produced under controlled conditions and includes all the necessary appointments of the building. Adjustments such as the size of the officer stations or type of security system required are factored into the set price. The price of a pre-manufactured unit (ranging from \$17,000-\$55,000 per cell) is substantially less than traditional building construction (ranging from \$60,000-\$90,000 per cell). Also the units can be relocated to meet urgent needs in crucial prison situations.<sup>59</sup>

A disadvantage is that pre-manufactured units usually rely on existing

facilities for support and program space. Typically, only sleeping areas, day spaces and toilet facilities are provided in modular units. It is imperative that officials evaluate the impact of the additional bedspaces on the existing water and sewer systems, medical facilities, food services and educational, visiting and recreational space available. Administrators feel staff-efficiency is comparable between pre-fabricated and conventionally constructed facilities. But due to lower population density units and poor sight lines within the units, officers must circulate more often in pre-manufactured housing modules which creates a situation where less direct supervision time is reported. Quality of life comparisons are influenced by the amount of support and program space available in the total facility. With one exception, all administrators surveyed in the NIC study expressed satisfaction with the use of pre-manufactured correctional units and indicated they would use them again under the same circumstances.

Table 3 from the NIC survey presents a summary based on data requested about pre-manufactured and conventionally constructed facilities. The cost of bedspace increases for pre-manufactured facilities as the number of beds increases which contrasts with the conventionally constructed facilities. As the facility size increases, it is necessary for more support spaces to be available. In conventional facilities, the support space is designed to fulfill program needs and economies of scale reduce the overall cost per bedspace.

It must be noted that a lack of direct comparison between facilities completed by the alternative construction methods hindered evaluation. For this reason, a method was developed to identify data from recently constructed facilities. Weighted averages were used to determine bedspace cost given

Table 3  
Summary of the Pre-Manufactured and Conventional  
Facilities Survey

Category	Facility Size (Beds)			Totals
	Less Than 100	100-200	More Than 200	
<b>No. of Facilities</b>				
Pre-Manufactured	11	3	2	16
Conventional	5	7	4	16
<b>Number of Beds</b>				
Pre-Manufactured	436	360	744	1,540
Conventional	267	1,050	1,706	3,023
<b>Total Square Feet</b>				
Pre-Manufactured	46,087	50,635	129,000	225,202
Conventional	102,150	348,767	645,828	1,096,745
<b>Square Feet/Inmate</b>				
Pre-Manufactured	105.7	140.6	173.4	146.2
Conventional	382.6	332.2	378.6	362.8
<b>Cost/Bed</b>				
Pre-Manufactured	\$13,133	\$16,319*	\$26,229	\$20,825
Conventional	\$52,463	\$37,884	\$40,059	\$40,397
<b>Cost/Square Foot</b>				
Pre-Manufactured	\$124.24	\$116.03*	\$151.28	\$137.85
Conventional	\$137.13	\$114.05	\$105.82	\$111.35

\*Of the three pre-manufactured facilities surveyed, two were woodframe construction at a weighted average cost per square foot of \$88.06. The one 100- to 200-bed steel frame pre-manufactured facility (which is more comparable to conventional construction) was \$201.00 per square foot; hence, an apparent lower cost per square foot and per bedspace for 100- to 200-bed pre-manufactured facilities. All costs are presented in the year of contract award.



the conditions that pre-manufactured and conventional facilities were required to provide the same space per inmate and conventionally constructed facilities were allowed to provide the same spatial standards. These conclusions are presented in Tables 4 and 5 from the NIC survey. If the amount of time to occupancy is a major factor, then pre-manufactured facilities provide bedspace up to three times faster, but if pre-manufactured facilities are required to provide a comparable amount of square footage as the conventional, then the cost is higher.<sup>60</sup>

Responding to the acute need for detention space, the State of California has employed new construction methods. In January 1984, approval was given for the \$140 million medium security California Medical facility, south of Vacaville. By August 1985, 1,200 inmates were housed in the first of two, 600-bed units. The second 1200 beds were due for completion by Summer, 1986. Support facilities for Phase One were completed in March, 1986 with Phase Two support services due before the end of 1986. The Vacaville facility expenditure per bed of \$55,000 is cost-efficient. Precast concrete construction meets plan specifications and is appropriate for construction speed. Based on the Vacaville prototype, ground was broken in May 1985, for a complex of four, 500-bed prisons in San Diego and in November 1985, for a 400-bed women's prison in Stockton.<sup>61</sup>

In 1983, the Philadelphia House of Corrections chose and installed modular units to solve a major space problem involving inmates double and triple celled. A 5,000 plus-square foot modular structure (for administration) was set as the central point with two long corridors extending from each side connecting four wings of dormitories. Each wing houses a total of 112 inmates. A security fence was included in the \$17,000 per bed cost. In another example, Lorton Reformatory in Virginia needed new guard towers and selected modular space manufactured in two sections and stacked on site.<sup>62</sup>

Table 4  
 Analysis of Cost To Provide Equivalent Space  
 For Pre-Manufactured and Conventional Facilities

Facility Size (Beds)	Bedspace Cost To Provide Comparable Space In Pre-Mfg.	Current Weighted Average Cost/Bed In Conv.	Bedspace Cost To Provide Comparable Space In Conv.	Current Weighted Average Cost/Bed In Pre-Mfg.
< 100	\$50,914	\$52,463	\$14,495	\$13,133
100-200	\$38,545	\$37,884	\$16,035	\$16,319
> 200	\$57,275	\$40,059	\$18,349	\$26,229
<b>Totals</b>	<b>\$50,012</b>	<b>\$40,397</b>	<b>\$16,279</b>	<b>\$20,825</b>

Table 5  
 Analysis of Design and Construction Time for Surveyed  
 Pre-Manufactured and Conventional Facilities

Facility Size (Beds)	Pre-Manufactured Sites		Conventional Sites	
	Avg. Mos. Design	Avg. Mos. Construction	Avg. Mos. Design	Avg. Mos. Construction
< 100	5.9	5.8	12.6	19.8
100-200	7.7	11.3	15.0	19.7
> 200	7.0	8.5	26.0	26.8
Totals	6.5	7.4	17.1	21.6

Although the modular prison construction industry is in its infancy its market is expected to expand capturing up to 35% of the bedspace demand between 1984-1990.<sup>63</sup> Aggressive expansion will be in pre-cast, pre-assembled concrete systems and the most competition will be felt in mid-size (100-300 bed) institutions. Potential clients will become more sophisticated and conduct detailed evaluations of the use of alternative systems and manufacturers will alter the marketing approach by emphasizing rapid construction and offering financial options such as leasing and lease-purchasing. After the premanufactured units are in existence for longer periods of time, more information will be available concerning the life cycle costs of pre-manufactured units. Passage of time will also allow the development of comparative studies of utility and maintenance costs, staffing efficiency, and operating cost data.<sup>64</sup>

maximum custody inmates since the minimum security prisoners are paroled or will go through a community program.

A final alternative to the overcrowding crisis is to restrict growth of the inmate population while building new facilities by expanding the use of community corrections programs. This option may not be politically feasible because people want criminals off the street.

## Consequences of Privatization

The growing trend of total facility contracting has produced unexpected as well as anticipated consequences for correctional administrators. With an increasing number of facilities under construction and in operation, more feedback will become available for analysis, but even now some consequences are being realized. They include competition between public and private facilities, use of employee performance contracts for public sector employees, improvements in monitoring public sector programs and operations, increased emphasis on specifying goals and objectives, and greater experience and knowledge in transitional issues.<sup>69</sup>

"Even the threat of contracting out improves efficiency in government," observes Stuart N. Butler, Director of Domestic Policy Studies at the Heritage Foundation, a conservative public policy research institute. Private sector entry into total facility management is seen as providing healthy competition for public administrators. With the innovation and flexibility allowed by privatization, this will change. New and useful approaches to correctional work could emerge as a result.

The correctional agency will be involved in detailed evaluations and assessments of contractors' performance based on written contractual agreements as well as expectations. Public sector employee evaluation will be tempered by these experiences and hopefully greater employee satisfaction and more productive work forces will follow as a consequence. Administrators are often criticized for their inability to monitor their own employees and programs. As correctional agencies gain experience by monitoring the operations of total facility contractors, their sharpened skills will result in the improved monitoring of their own operations.

Total facility contracting may be implemented in a facility that has always been run by a contracting agency, has never been operated by a contracting agency, has contracted out for specialized services or is completely new. In any scenario, the shift in operators can produce transitional consequences of which both parties need to be aware. These include employee unrest, confusion over policy and procedural matters and inmate testing of new rules and regulations. The experience of the Eckerd Foundation after it assumed operation of the Okeechobee facility could be a classic study in transitional problems and issues.<sup>70</sup>

The Okeechobee School for Boys is a 425-bed secure facility for delinquents under jurisdiction of the Florida Department of Health and Rehabilitation Services. In 1982, the Jack and Ruth Eckerd Foundation contracted to operate the facility. Jack Eckerd told the Governor of Florida he felt that he could run the troubled juvenile home more efficiently than the state, so the Governor challenged him to do it. The Foundation has a history of conducting summer wilderness camps for the emotionally disturbed, pre-delinquent youth and they are searching for better ways to work with delinquent individuals.

An evaluation funded by NIC was performed two years after the Eckerd Foundation had been operating the institution. The facility was found to be unorderly and poorly maintained. Staff turnover was exceedingly high and personnel were barely in control of the students. Even with increased flexibility, they had not yet been able to get their program running smoothly. The Foundation achieved no significant reduction in operational costs and the overall quality of operation was found to be comparable to a similar state institution. "In general, this example of the private sector in corrections reveals no strong support for this management alternative."<sup>71</sup>

Upon closer investigation, it was revealed that many shortcomings in fact could be traced to the original contract. This experience demonstrates that contract specificity is one of the most crucial aspects of the prison privatization process. For example, no performance goals had been stated at the outset and in fact, Eckerd did comply with more than 90% of 41 items enumerated. Basically these items pertained to input activities and concerned administrative and operational functions. There were no criteria for non-compliance stated nor any consequences specified. Accreditation was to have been achieved by June 1983, but the initial visitation wasn't scheduled until the Spring 1985, and there was no provision for contractual non-compliance. These negative scenarios would have been further avoided if there had been a closer coordinated monitoring of the contract by the state.

The general conclusion was drawn that we are a long way from the day large adult maximum security institutions are managed by private, for-profit corporations. Corrections budgets have never been excessively generous and the profit making potential doesn't seem evident. The private sector can supplement public agency efforts under some circumstances as in the case of small groups of special offenders such as the mentally ill, protective custody and mentally retarded. More evaluation is needed that will help specify conditions where public-private sectors can achieve a more mutually beneficial relationship.

As a final note, management changes were made at the time of this evaluation. Within 6 months, the new warden had made considerable changes for progress toward full contract compliance. Thus further evaluation may be warranted.<sup>72</sup>



## Special Needs Inmates

One group of inmates whose needs could be met by the private sector are special needs inmates who receive the least benefit from the correctional experience at a disproportionate cost to the system.<sup>73</sup> Special needs inmates include prisoners with physical handicaps, those who need administrative segregation or protective custody and those who are sentenced to the death penalty. Generally, as a group they present little threat to themselves, other inmates, or staff and the difficulties of administration are compounded by removing high security cells from their intended purpose of holding unruly and unmanageable prisoners. Joseph Fenton, of Buckingham Security Ltd., suggests that privatization would reduce costs, decrease restrictive confinement and increase positive opportunities. His special interest is with the protective custody (P.C.) inmates who represent 7% of the nation's prison population or 35,000 people.

The current privatization trend began with juvenile offenders and half-way houses, spread to the treatment of illegal/aliens and now Fenton feels the next logical step is to the care of P. C. inmates. P. C. prisoners must be kept separate from the general inmate population because they testified in a murder trial, owe gambling debts or served in high public office. They require separate and secure individual cells, dining, visiting and exercising areas, church services, library use and tutoring. Such inmates are not able to help defray their expense by productive labor within the prison. When individual services are totalled, P. C. inmates can cost the state up to 71% more than the average prisoner.<sup>74</sup>

P. C. and other special need prisoners such as geriatric or handicapped inmates create legal, administrative and budgetary problems. By specializing in one group, a private institution can provide productive work and allow

special needs inmates to participate in prison activities as ordinary prisoners do. It is suggested that it costs less for private care than it costs to maintain these prisoners in public prisons. In addition, secure cells are freed to house violent prisoners. Thus the system is used as it is intended and the average cost per-cell of remaining prisoners is reduced.

Buckingham Security has designed two private regional P. C. facilities for Pennsylvania. They will be "open" institutions where inmates can take advantage of a fully programmed day. The environment is less restrictive with opportunities to develop positive habits and patterns. They have plans for meaningful productive industry with the P. C. inmates employed daily by a not-for-profit industry. The primary purpose of the employment is to develop and reinforce productive work patterns to be used later upon release. Inmates will be paid for their labor and then charged for some expenses. The Fenton brothers feel the benefits of such a program include enhancement of self-worth, reduced expense to the state, partial support of dependents and savings from current real cost.<sup>75</sup> Currently, the plans for these two facilities have been "put on hold" while Pennsylvania continues their privatization moratorium through 1986.

## THE ENTREPRENEURIAL SPIRIT

A site visit to U. S. Corrections Corporation's Marion Adjustment Center in Saint Mary, Kentucky, served to bring many of the issues in privatization into focus. Kentucky is under court order to reduce prison populations and therefore turned to the private sector to expedite compliance. Currently, the system is over capacity by 1600 prisoners: 800 in prisons, 800 in local jails. This 200-bed, minimum-security adult male correctional unit for convicted felons serving less than 36 months, is the first facility fully owned and operated by a private firm and just opened its doors in January, 1986. Entrepreneurs J. Clifford Todd, developer, and Milton Thompson, architect, were originally interested in a financial/construction package and offered a "turnkey" operation bid in reply to Kentucky's first RFP. All bids were disqualified during which time they reconsidered their position and in their second bid against four competitors they offered a total finance/construct/operate package and won the contract. Interestingly, all the bids came in within a \$25-28/day range with \$1.00 difference between bids. U.S.C.C.'s advantage may have been in their already acquired renovatable facility which contrasted with the other bidders new construction projects.

The facility, located in rural Kentucky, 70 miles southwest of Lexington, had formerly been a small college with dormitory living space, recreation center and cafeteria contained in one major building. Minor renovations were necessary before opening. Other painting, cleaning and re-tiling projects are in progress using inmate labor. Other small buildings on location need extensive renovation and as these improvements are completed (again using inmate labor under skilled, professional supervision) the buildings will provide administrative offices, improved educational classrooms and gymnasium, as well as another 200-bed dorm. The staff numbers 46

with 33 in security. Currently, there are no restraining fences and no weapons at Marion. There have been 4 walk-aways in 7 months with 3 recaptured within 24 hours and 1 still at-large, in comparison to another state facility where 1.5 inmates walk out each week.

Saint Mary is a small community of 100 residents and local opposition to the prison was quite vocal. Several lawsuits had to be resolved before the facility could open its doors. The prevalent fears of escapes, robbery and rape have been soothed with the calm success of the first 7 months. The "NO PRISON" signs which grace the resident's front yards are gradually disappearing and only a small group of 3-4 hard core foes remain. U.S.C.C. actively working on better public relations in the community, held an open house the last week of July and invited all the townspeople (over 90% attended.) Tours of the facility were given and questions answered. The residents complimented the owners and director on their quality staff and were amazed when told that the tour guides were not staff but rather (college-educated) inmates. Two mothers made a specific point of thanking U.S.C.C. for the employment opportunities presented to their newly employed sons. This is noteworthy since unemployment is a persistent problem in the small farm community.

Thompson and Todd, although excited, enthusiastic, and worried, are growing more confident about their potential role and U.S.C.C.'s position in corrections management. This is a new wide-open field and they feel they are learning with each new experience just as their competitors are. Thompson feels privatization offers government the advantage of speed or quickness in facility development which is important with many states under court order. He also feels the increased flexibility from reduced governmental red tape combined with the entrepreneurial spirit will ultimately be an advantage for inmate care. For example, typically 20% of Kentucky's inmates are involved

in special programs: education, GED, counseling, skills training. At Marion, 60% or 120 inmates participate. The contract expenditures were written to include funding for the 20% participation level but U.S.C.C. has continued to include all interested inmates as they aggressively pursue state grant funding and other financing alternatives. The caseworkers have a close working relationship with the prisoners and have the time to review specifics and ensure inmates are treated fairly and receive their rewards such as "good time."

Thompson is personally intrigued by the recidivism problem (83% in Kentucky.) He is interested in recidivism rates; whether they are substantially improved with GED education and whether private corrections can offer better opportunities. It was acknowledged at this point, that the inmate population at Marion was "handpicked" and that the Kentucky Corrections cabinet was being very "protective" as this project got off the ground. The general population is younger with fewer problem cases although they have sent back a few offenders to other state facilities. This may explain the higher than usual program participation level. Only time and experience will indicate whether improved recidivism rates are tied to program (GED) participation.

The question of liability was briefly addressed during the interview. Ultimately, the Commonwealth of Kentucky retains responsibility. U.S.C.C. insurance will cover up to \$1.5 million per incident. To date the problem is untested and they realize no answers will be available until the first lawsuit is processed. There is an on-site liaison as well as monthly monitoring for contract compliance by state corrections officials and a cooperative environment exists with both public and private agencies complementing each other and trying to make this "work." U.S.S.C. and the

Marion staff are enthusiastic and have growing confidence in the success of the Marion Unit. The owners have just bid on an RFP for a 350-bed minimum security prison in Louisville and are excited about their growth opportunities.

## FUTURE OF PRIVATIZATION

Five circumstances under which experimentation with privately managed facilities might prove worthwhile have been identified:<sup>76</sup>

°rapid mobilization - need for additional facilities and manpower to accommodate sudden but transient confinement needs.

°experimentation - The agency can test new models of institutional corrections practice without making a permanent commitment or being encumbered by constraints.

°decentralization - greater diversity of programs by calling in local contractors rather than trying to fulfill demand for smaller, community oriented facilities under control of a centralized agency.

°specialization - contracting for health and mental health services allows greater access to specialized practitioners and the flexibility to offer unique services. Contracting for confinement of offenders with special needs may lead to relief in the general purpose institution while delivering services not otherwise offered by the state.

°regionalization - private sector vendors are not bound by jurisdictional politics that impede collaborative efforts to develop shared facilities between states or counties within the state.

As suggested by the NIJ study the greatest promise of the private sector may lie in the capacity to develop facilities that can meet unique demands or provide the opportunity for testing new models of constitutional corrections practice. The prospective task is not to replace public corrections functions with private equivalents but to create a corrections system that uses both sectors to their best advantage.<sup>77</sup>

The liberalism of the 1970's has disappeared and, ideologically, conservative values will influence further privatization. The size of the

government will not likely increase at the rate it has in the past few decades, so slower growth with a decline in government spending and in the work force could result. With high federal deficits and tax reform not yet implemented, the federal government needs to cut back existing public services and find cheaper, alternative methods of delivering services. The decentralization thrust will make all levels of government more innovative as managers, not providers, of public service. Thomas Jefferson's statement "the less government, the better" has renewed popularity as fiscal austerity and federal aid cutbacks force state and local governments to consider privatization for improved productivity, efficient management and cost effectiveness.

Certain conditions are necessary for successful privatization.<sup>78</sup> First, privatization cannot be sustained unless leadership is committed and unless dissatisfaction with the performance of other alternatives prompts a call for change. The best conditions for contracting call for full support of the governing authority and a total agency plan with supportive key staff members.<sup>79</sup> The planning process should explore all impacts. For example, the chosen alternative institutional arrangements shouldn't stifle competition among suppliers because multiplicity of suppliers is necessary to inhibit the creation of a private monopoly. There needs to be freedom of entry to provide goods and services since long term contracts and franchises limit competition and consumer choice. Public services to be provided must be specific or have measurable outcome. A fair and flexible contracting process will enhance monitoring and consumers should be able to link benefits they receive from a service to costs they pay for it. Oversight must assure privately provided services are not susceptible to fraud and there should be equity in the delivery of public services with benefits to capital owners,



consumers and the public. Access to legal counsel also helps insure success. The government agency will need to redefine its role to search for ways to increase competition in the supply of public services and must monitor and evaluate public services being delivered.

In conclusion, the environment conducive to total facility contracting has been characterized as a minimum security setting, on a regional basis (with more than one agency contracting with provider) and for inmates with special needs.<sup>80</sup> Interest in total facility contracting is growing and although the movement is in its infancy, a handful of private providers are committed to initiating and expanding efforts to privatize correctional facilities. Based on feedback from past and ongoing experiences, providers will continue efforts to expand the number of privately operated prisons. As long as the tax treatment is determined to be favorable to investors and the owners of these facilities, management and ownership will continue to join together.

## 1986 SUMMARY OF TOTAL FACILITY CONTRACTING

### Juvenile Institutions

Since the 19th century, juvenile offenders have been confined and cared for in privately operated institutions run by religious and charitable organizations. The trend to privatize has produced an increasing number of private for-profit and not-for-profit corporations. These providers run secure juvenile facilities, some of which are relatively large, in eight states: Florida, Massachusetts, Michigan, Pennsylvania, Rhode Island, Oklahoma, Tennessee and Washington.

#### °Florida

The Okeechobee School for Boys	425-bed secure juvenile facility
Jack and Ruth Eckerd Foundation (1982)	\$14,588/yr/inmate

#### °Pennsylvania

The Weaversville Intensive Treatment Unit	20-bed heavy security training school for delinquents
RCA Service Co. (1975)	\$40,000/yr/inmate

#### °Tennessee

Tall Trees	48-bed
CCA	
Shelby Training Center	35-bed (125-bed addition under construction)
CCA	
Johnson City	regional detention center
CAI	

## Young Adult Institutions

°California  
La Honda  
1984 contract from Federal Bureau of Prisons  
60-bed facility for 18-26 year olds

## State, County and City Adult Facilities

°Alaska - jails built under lease/purchase

°Arizona - Phoenix (services)

°Colorado

Elbert County Judicial + Law Enforcement Center  
Rio Grande County Jail Facility  
Johnson County Jail Facility  
National Corrections Corporation

°Florida

Bay County Jail and Annex  
CCA (1985)  
196-bed facility  
150 man work camp

°Kentucky

Marion Adjustment Center  
USCC (1986)  
200-bed minimum security, adult

°New Mexico

Sante Fe County Detention Facility  
CCA (8/1/86)  
110-bed facility

°Ohio - jails built under lease/purchase

°Pennsylvania

Butler County Prison 100-bed  
Buckingham Security Ltd

°Tennessee

Chattanooga Jail 250-bed  
Hamilton County Jail (Silverdale) 350-bed, med. security,  
\$7,665/yr/inmate  
Memphis and Chattanooga Counties  
Rutherford County Jail 1/13/86 design/build contract  
CAI

°Texas

Coffield Unit 2,250-bed max. security facility  
Citicorp/Daniel Construction (6/86) \$67.1 million financing/  
construction package

°Wyoming

Western County Law Enforcement Facility  
NCC

Federal

°Immigration and Naturalization Service

Texas  
Houston Processing Center 350-bed detention center  
CCA (1984) \$8,670/yr/inmate  
Laredo Processing Center 200-bed detention center  
CCA (1985) \$10,585/yr/inmate  
Arizona, California, Colorado 350 beds in 4 locations  
— Behavioral Systems Southwest (\$983) \$5,110/yr/inmate



°Ramsey County, Minnesota

Volunteers of America (VOA)

30-bed facility for female  
misdemeanants

°Denver, Colorado

Halfway Houses

10/12 beds

°Johnson City, Tennessee

Juvenile Halfway House

10 beds

Private Firms Hiring Inmates for Services

°Arizona - Best Western International, Telephone Reservation Center (1984)

°Oklahoma - Howard Johnson, Telephone Reservation Center

°Kansas - Zephyr Products, Inc., Light Metal Manufacturing Plant (1980)

°Mississippi - Coal Mist, Inc., Equipment Assembly Plant

°Missouri - Moberly Plasma (25 inmates)

°Minnesota - Control Data (1981, 107 inmates)

°Washington - 12 companies, manufacturing and services

°Utah - private firm sells correctional industrial products

°Florida - Prison and Rehabilitation Industries and Diversified Enterprise,  
Inc. (PRIDE) controls all correction industries.

Private providers are being aggressive in their pursuit of contracts. Buckingham Security of Lewisburg, Pennsylvania proposed in 1985, to own and operate two prisons (one 720-bed facility near Pittsburgh, PA., and one in

Western U. S.) on the basis of contracts with a number of correctional agencies for the care and treatment of distinct types (protective custody) of inmates with special confinement needs. Just as final negotiations were being enacted, the Pennsylvania State Legislature called a one year moratorium (through 1986) on privatization of prisons while further study is made of the issue. This has left Buckingham Security in possession of both the plans and site for construction but no contract.

In another turn of events, in 1985 CCA bid for a 99 year lease contract to administer the entire crisis-ridden Tennessee state prison system. The state legislature vetoed this action even though CCA claimed they could save the state \$15 million per year. The Governor did want the private sector to manage two new maximum security prisons that the state needs to build. But the legislature passed regulations for private management of a work camp only and required the private provider to show a 5% savings.

APPENDIX

Corrections Corporation of America

28 White Bridge Road, Suite 206

Nashville, TN 37205

(615) 356-1885

Thomas W. Beasley, President

T. Don Hutto, Executive Vice President

Doctor R. Crants, Treasurer

Incorporated January 1983

Corrections Corporation of America states its purpose is, "to provide an innovative alternative to the problem of corrections and detention facility planning, financing design, construction and management." Focusing on facility and program management for local, state and federal governments, CCA was initially financed by Massey Birch Investment Group, the same firm which started Hospital Corporation of America and has raised in excess of \$17.0 million in equity. Currently, they manage eight facilities and prisons.

Projects currently under CCA management and operation:

Houston Processing Center

15850 Export Plaza Drive, Houston, TX 77032

This facility was designed and constructed by CCA in 6 months for the U. S. Department of Justice to house 350 undocumented aliens. This fully accredited (by Commission on Accreditation for Corrections) institute houses up to 150 Level II secure unit inmates for the Federal Bureau of Prisons. The facility opened April 1984. Per diem charge of \$23.84



includes capital and operating cost components. Capital cost \$14,300 per bed or \$60 per square foot.

Reference: Hugh Brien, INS, (202) 633-3335

#### Laredo Processing Center

P. O. Box 6548, Laredo, TX 78042

This facility designed and constructed by CCA in 145 days for U. S. Department of Justice to accommodate 200 undocumented aliens (families and male/female juveniles).

Reference: Emilo Saenz, INS, (512) 727-4772

#### Tall Trees

3335 Old Getwell Road, Memphis, TN 38118

Tall Trees is a community residential facility operated for the Juvenile Court of Memphis and Shelby County, serves as an alternative to secure confinement for up to 48 males and provides programs to enhance inmate readjustment to the community. Final accreditation award will be received in August 1986.

Reference: William R. Key, CEO, (901) 528-8400

#### Shelby Training Center

Managed by CCA for the Juvenile Court of Memphis and Shelby County, this secure facility provides a comprehensive program in a highly structured environment to assist juveniles in their development of appropriate behavior for readjustment in the community.

Reference: William R. Key, CEO, (901) 528-8400

Silverdale

76 Standifer Gap Road, Chattanooga, TN 37421

Managed for Hamilton County, this facility is a 100 bed female and 250 bed male county penal farm for sentenced misdemeanants and felons serving up to seven years.

Reference: Floyd Fuller, Director of Corrections (615) 757-2640

Fayetteville Community Treatment Center

416 Cedric Street, Fayetteville, North Carolina

This facility is owned and managed by CCA for the Federal Bureau of Prisons for pre-release, alternative sentencing and DUI programming.

Reference: Michael Young, Federal Bureau of Prisons, (919) 856-4548

Bay County Jail and Workcamp/Jail Annex

Panama City, Florida

This Bay County facility managed by CCA is a 196 bed institution housing pre-trial males and females as well as sentenced male and female misdemeanants and felons. The annex is a newly constructed 174 bed facility to house sentenced inmates and includes a 20 bed unit for male/female juveniles pending trial.

Reference: Larry Davis, Contract Monitor, (904) 784-4000

Santa Fe County Detention Facility

Santa Fe, New Mexico

CCA management start up date for this new facility is August 1, 1986. It consists of 110 beds with a juvenile section consisting of 20 housing cells and 4 booking cells.

Reference: Nancy E. Rodriguez, County Executive, (505) 984-5007

Buckingham Security, Ltd.

1202 Market Street, P. O. Box 631

Lewisburg, PA 17837

(717) 523-3210

Charles Fenton - President

Joseph Fenton - Executive Vice-President

This closely held Connecticut corporation headquartered in Pennsylvania, has the capacity to design, build, own, finance and operate any size or classification of correctional institution including minimum through maximum security and special needs inmates.

July 1986, currently under contract - 100 bed Butler County, PA prison and  
16 bed work release center

Invitation to bid on 110 bed New Mexico County facility declined

Invitation to bid on 480 bed Texas county facility due 7/15/86

Invitation to bid on 700 bed (4 facilities) North Carolina corrections-  
awaiting legislative budgetary approval.

Corrections Associates, Inc.

446 Metroplex Drive, Suite 226  
Nashville, Tennessee 37211  
(615) 834-3030

Clay Building, Suite 4  
3117 West Clay Street  
Richmond, Virginia 23230

Hubert L. McCullough, Chairman and CFO  
Travis A. Snellings, President  
Organized in July 1985

Projects currently under CAI Management include:

Coordinated Alternatives, Inc.  
non-residential program for 12-15 juveniles, contracted 7/1/86  
juveniles either (1) diversion (after court) (2) after care from  
learning center (3) social service referrals

Tuscaloosa, Alabama Jail  
150-bed minimum security facility, contracted 5/86 for 18 months

Johnson City, Tennessee  
12-15 bed regional juvenile detention center, contracted 11/85

Management consulting contract with Tennessee Department of Corrections

Currently building:  
Piedmont Regional Jail in Farmville, Virginia  
Rutherford County Jail in Tennessee

Needs assessment for Talbot County, Maryland

Negotiating management contract for 25-bed adult facility with Lebanon  
Community Corrections Center of Southwest Virginia Community Correc-  
tions, Inc.

## RCA Service Company

Route 38

Cherry Hill, NJ 08358

(609) 486-5041

M. G. Langsdorf, Manager

Education and Human Services Marketing

S. R. Melocarro, Manager

Program Development

RCA Education and Human Services, a major operating unit of RCA Service Company, has a leading role in the development and operation of residential care, educational, training and placement programs for problem youths as well as training programs for incarcerated and post-incarcerated adults. RCA currently manages 5 juvenile treatment programs in the states of Pennsylvania, Rhode Island and New Jersey.

### Southern New Jersey Serious Youthful Offender Program

In October 1985, RCA was awarded a grant by the state to investigate private sector initiatives for the rehabilitation of chronic, serious youthful offenders. As part of a nationwide experimental investigation to determine whether privately or publicly run correctional facilities are more effective, male youths undergo eligibility screening and are then randomly assigned to the RCA Responsible Living Model Program or to conventional state programs. The Responsible Living Program has the capacity for 70 youths distributed throughout three phases: a secure home phase, a wilderness/work project phase, and a community reentry phase.

## Rhode Island Evaluation and Treatment Center

Cranston, Rhode Island

This RCA-operated facility is a secure, coeducational treatment facility for emotionally disturbed delinquent youths. This center provides long-term treatment to highly disruptive male and female youths between 13 and 18 years old.

## Weaversville Intensive Treatment Unit

Weaversville, Pennsylvania

Since 1975, RCA has been running this state maximum security facility for 15-20 hard-core juvenile delinquents. The state owns the building, but employees of RCA staff and run the program. The state sets program standards and a \$900,000 yearly budget, about 5% of which is RCA's profit. The RCA program is based on an individualized prescriptive approach that identifies individual skill and training needs, fosters educational development and growth in the specified need areas. The program also coordinates educational objectives with placement opportunities in occupational areas or with continuing education and training environments. RCA interests lie in providing training and educational programs; but in order to get the contracts to provide these services to correctional facilities, they will also run the facility.

## Pennsylvania Youth Forestry Camp

Trough Creek State Park, Aitch, Pennsylvania

RCA was selected in 1971 to provide instruction in general education development and adult basic training for residents of the Youth Forestry Camp. Instruction for male youths, between 15 and 18 years of age, assigned to this state-operated facility by juvenile courts, leads to a

high school equivalency diploma and prepares students for work or further training after leaving the institution.

Educational Needs Assessment, West Virginia Juvenile Correctional Institutions

Inmate Training at Luzerne County Prison

Wilkes-Barre, Pennsylvania

Inmate Training at Albion Community Preparation Facility for New York State

Department of Corrections

## The Jack and Ruth Eckerd Foundation

100 Starcrest Drive, N.

Clearwater, FL 33575

Since July 1982, the non-profit Jack and Ruth Eckerd Foundation has run the Okeechobee School for Boys in the state of Florida. The foundation, endowed by the Florida-based Eckerd drug store chain, has been running wilderness programs for emotionally disturbed youngsters for 16 years. Eckerd's contract totals \$6.2 million per year (1984) for 425 inmates.



Behavioral Systems Southwest, Inc.

300 South Park Avenue

Pomona, CA 91766

Ted Nissen, President

Founded 1977

In 1971, Mr. Nissen, a 20 year veteran of the California Corrections Department set up a nonprofit half-way house for heroin addicts under an \$85,000 federal contract. Six years later he converted it to a for-profit status and renamed the company, Behavioral Systems Southwest, Inc. By 1984, Behavioral Systems ran 16 centers for the federal government and for the states of California and Arizona in the areas of minimum security prisons, immigration control, half-way houses for addicts and drunk driving schools. In 1984 the company held 350 INS prisoners in four converted motels in California, Arizona, and Colorado.

U. S. Corrections Corporation

P. O. Box 1485

Frankfort, KY 40601

(502) 692-9622

J. Clifford Todd

Milton D. Thompson, Jr.

January 6, 1986, opened the first privately owned and privately operated prison in the nation at the Marion Adjustment Center, Saint Mary, Kentucky. They received a three-year contract with the Commonwealth of Kentucky to provide total care and custody for some of the State's minimum security inmates. With a capacity for 400 inmates, Marrison currently houses 200.

Palo Duro Private Detention Services, Inc.

Amarillo, Texas

T. L. Baker, CEO

In May 1984, the corporation received a contract from the Federal Bureau of Prisons to build and operate a new 600-bed medium-security prison in Mineral Wells, Texas to house illegal aliens who have been convicted of crimes. They were allotted a per diem charge up to \$45 a day.

## Wackenhut Services Incorporated

1500 San Remo Avenue  
Coral Gables, FL 33146  
(305) 666-5656

George R. Wackenhut, President

George C. Zoley, Government Services

Founded 1960 as subsidiary of Wackenhut Corporation

Wackenhut Corporation has grown since 1954 to be one of the world's largest protective service organizations. They view contracted detention services as a logical extension of services. They provide security, law enforcement, job corps, alien escorting/custody, food, medical, fire, and training.

Nevada Nuclear Test Site (1965-present) security personnel

John F. Kennedy Space Center (1971-1983) security, fire prevention/  
detection, and communications personnel

Hall County, Georgia (1983-present) largest local government fire de-  
partment in U. S. contracted to private organization

### Recent major social service contract

Oklahoma Job Corps Center

Guthrie, Oklahoma

This 630-bed juvenile training facility contract with the U. S. Department of Labor is for a two year term beginning May 30, 1985, with three 1 year options and is valued at \$10.5 million. The male and female juveniles between the ages of 16-22 have been determined by the DOC to be economically disadvantaged and 40% have prior arrest records.

Correctional Medical Systems, Inc.

999 Executive Parkway

St. Louis, MO 63141

(314) 878-1810

Walter J. Schriver, President

Company founded 1979

ARA Services, Inc-parent Company

Correctional Medical Systems is the country's largest provider of contract medical services in the correctional field serving over 30,000 inmates at 42 contract sites in Alabama, Delaware, Georgia, Illinois, Iowa, Pennsylvania, South Carolina, Virginia and West Virginia. CMS provides a health-care program at the Virginia Beach Jail. They specialize in comprehensive medical, dental and psychiatric services. They contract on a per-inmate, per-year reimbursement rate for periods up to five years. In addition to providing direct services, they will provide for hospitalization, supplies, equipment and will build facilities for a long-term contract.

Eclectic Communications, Inc.

1823 Knoll Drive

Ventura, CA 93003

Art McDonald, President

San Francisco, California

Juvenile facility under contact since 1983 from Bureau of Prisons.

Newport News, Virginia

Pre-release Center, adult residential facility for inmates who are at least 90 to 120 days from parole, 40-beds.

## National Corrections Corporation

P. O. Box 1556

4877 National Western Drive, Suite 200

Denver, CO 80201

(303) 296-6606, 1-800-222-Jail

O. Wesley Box, President

J. Patrick Jones, Vice-President

Founded 1972

National Corrections Corporation (NCC) plans, designs, finances, constructs and operates detention facilities. Their facilities are designed to be the "most perfected balanced facility possible" and meet ACA Standards as well as existing state standards. They specialize in regional/county jails (only) with a capacity to 200 beds.

Elbert County Judicial and Law Enforcement Center - Summer, 1985

Weston County Law Enforcement Facility, Wyoming

Johnson County Jail Facility, Tennessee

Rio Grande County Jail Facility

International Corrections Corporation

One Northshore Center  
Pittsburg, Pennsylvania 15212  
(412) 323-4789

David F. Figgins, Chairman  
Charles R. Zappala, President



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