

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Privatization of Correctional Facilities

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



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Members of the Joint Subcommittee

Franklin P. Hall, Chairman
William A. Truban, Vice Chairman
Howard P. Anderson
Robert S. Bloxom
Vincent F. Callahan, Jr.
Alan A. Diamonstein
Arthur R. Giesen, Jr.
J. Samuel Glasscock
Virgil H. Goode, Jr.
Robert E. Harris
Lacey E. Putney
Alson H. Smith, Jr.
A. Victor Thomas

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EXECUTIVE SUMMARY

In the 1990 General Assembly, Delegate Franklin P. Hall introduced House Bill 1011, which authorized the Department of Corrections to contract for private sector correctional facilities. House Bill 922, introduced by Delegate John A. Rollison as chief patron, authorized the department and localities to contract for private facilities.

At the same time, Senator William A. Truban introduced a budget amendment calling for a joint subcommittee to examine this issue. A particular focus of the study was the feasibility of a private facility to relieve overcrowding at the Virginia Correctional Center for Women. The study was agreed to and the joint subcommittee was established. No action was taken on the original House bills, but on December 17 the joint subcommittee agreed new legislation should be presented to the 1991 General Assembly.

This report defines privatization as a contractual relationship between the Department of Corrections, the Department of Youth and Family Services, or a locality (or localities), and a qualified private corporation. The contract specifies that the corporation shall finance, design, acquire the site for, construct, maintain, and/or operate a correctional facility, under the supervision of the contracting agency.

Following a competitive bidding process, the contracting agency pays a negotiated price, which may be calculated on a per inmate per day basis. The per diem payment may include either a capital or an operating cost component, or both. The contract may be renegotiable after a period of time, and at some point the facility may revert to public ownership.

Growth of Privatization in the 1980's

The use of privatization expanded during the 1980's as an alternative method of incarceration for certain types of offenders, including minimum and medium security males and females. By late 1990, 14 private companies operating 48 private adult facilities in twelve states accounted for about 1.5 percent of all correctional beds in the United States. Privatization has long been accepted in the field of juvenile corrections and treatment.

Privatization appears to have been effective in reducing capital and operating costs. The attractiveness of this approach has been evident in states such as Texas, Florida, New Mexico, Tennessee, Kentucky, and California. The federal government has also turned to the private sector to house illegal aliens and minimum security offenders.

Potential Use of Privatization in Virginia

The current projection of state-responsible inmates suggests the Commonwealth will need 4,000 additional prison beds by 1995, beyond the number already funded. This represents a 20 percent increase in the operational capacity of Virginia's adult prisons, beyond the number of beds already funded. The private sector has the potential to provide up to 1,000 of those needed beds, at lower cost. Accordingly, this report proposes a limited initial program be developed.

Privatization should not be viewed as an end in itself, but as one means for the Department of Corrections to meet its statutory responsibility to house securely those offenders who are sentenced to its custody. The potential advantages of privatization may include:

- (1) Reduced capital and operating costs, when compared to standard state or local government operations;
- (2) Increased flexibility to increase or decrease levels of services rapidly depending on changing conditions and demands;
- (3) Increased value of the local property tax base; and,
- (4) The ability to locate facilities with less conflict.

There are no constitutional or legal barriers to privatization, except that any such program would have to be authorized in the *Code of Virginia*. In any private contracting situation the Commonwealth will retain ultimate responsibility for the incarceration of offenders sentenced by the courts.

Privatization may also be of help to financially-strapped localities which must expand their local jails and juvenile detention centers. The private sector has already been used extensively in Virginia for providing residential and non-residential services for juveniles. However, no statutory authority exists for localities to contract with private corporations for either adult jails or juvenile detention facilities.

A Limited Initial Program. In order to assess the potential for cost savings, the 1991 General Assembly should authorize a limited initial program. The Board and Department of Corrections should coordinate this initial program with the master plan for capital projects to meet projected bed space needs for 1995. Specific proposals should be presented to the General Assembly by December 1, 1991. This will enable the 1992 General Assembly to compare the costs and benefits of public and private facilities.

Privatization should serve specific, clearly defined needs in such a way as to achieve a cost advantage or service improvement. There are several such targets of opportunity in Virginia, including:

- Female Offenders. The number of state-responsible females is projected to increase 85 percent from 1990 to 1995 (from 915 to 1,700 women). This is far greater than the rate of growth projected for male inmates, during the same five year period.

However, the current capacity of the Virginia Correctional Center for Women is only 485, and the VCCW is already overcrowded with 585 inmates. Current support services and physical infrastructure are inadequate to accommodate any more inmates at the existing facility.

The remaining state-responsible females are backed up in local jails, a situation which often forces the locality to make less efficient use of its available jail space. For example, an entire floor or wing may have to be reserved for females, even though the capacity of that unit may not be fully utilized. Rapid growth in the number of female offenders presents a unique challenge which can be addressed by the private sector.

- Minimum Security Male Offenders. A number of other states and the federal government have utilized the private sector to build and operate minimum security facilities for male offenders, such as pre-release centers. Many such centers provide work-release opportunities for selected inmates during the day, but provide secure perimeters and armed guards to ensure that inmates remain under supervision at night.

The Virginia Department of Corrections has contracted for pre-release centers and halfway houses since 1986. However, the department is not fully utilizing its existing capacity. The average daily population was only 33 in November, 1990, compared to an operational capacity of 103 beds. One of the reasons for the current low utilization of halfway houses and pre-release beds is the perception that security in these units may not be sufficient for the types of inmates available.

Privatization may offer the potential for more appropriate facilities for offenders who are near the end of their sentences, but who may need a greater degree of supervision than is currently available in halfway houses. Further review by the Board of Corrections is needed in this area.

- Local Jails and Detention Centers. Localities in Virginia are faced with reductions in state aid for education, human services, and law enforcement. At the same time, their needs for jails and detention centers are increasing. The potential state reimbursement for construction of jail projects which are currently approved, planned or under consideration could reach \$253 million. Given the present budget crisis, this amount of money may not be available. Privatization may offer the potential for these localities to obtain the required facilities, with payments to be made over the life of the project.

The joint subcommittee finds privatization to be an attractive alternative which may potentially reduce costs for both the Commonwealth and local governments. However, prior to the appropriation of funds for specific contracts, further consideration must be given to a number of regulatory and technical issues (including reimbursement policies) by the appropriate policy boards. With these conditions in mind, the joint subcommittee offers the following recommendations for consideration by the 1991 General Assembly.

Recommendations

The joint subcommittee recommends the following legislation:

1. House Bill 1809, which authorizes the Board of Corrections to initiate a project for the private financing, design, site selection, construction, maintenance, and/or operation of one women's facility and one minimum security, pre-release facility for men, consistent with the department's master plan. *(HB 1809 includes a directive to the Department and Board of Corrections to submit actual proposals, through the Secretary of Public Safety, to the General Assembly by December 1, 1991. Of course, no private contract may be awarded until funding is appropriated by the General Assembly.)*
2. House Bill 1810, which authorizes the Board of Corrections to approve not more than two private local or regional jails.
3. House Bill 1811, which authorizes the Board of Youth and Family Services to approve not more than two private local or regional juvenile detention facilities.

AUTHORITY FOR THE STUDY

In the 1990 General Assembly, Delegate Franklin P. Hall introduced House Bill 1011 which authorized the Department of Corrections to contract for private sector correctional facilities. A similar bill (House Bill 922) was introduced by Delegate John A. Rollison. At the same time, Senator William A. Truban introduced a budget amendment calling for a joint subcommittee of the Senate Finance and House Appropriations Committees to examine this issue. A particular focus of the Senate amendment was the desire to study the feasibility of a private sector facility for women, to relieve overcrowding at the Virginia Correctional Center for Women.

The conference committee on the budget accepted the study proposal. Accordingly, the 1990 Appropriations Act (Chapter 972, Acts of Assembly 1990) created a joint subcommittee to consider the feasibility of private contracting for correctional facilities. The two bills were referred to the joint subcommittee. Language in the Item 629, Paragraph F, at Page 224 contains the following charge:

A Joint Subcommittee, composed of members of the Public Safety Subcommittee of the Senate Finance Committee and the Public Safety and Capital Outlay Subcommittees of the House Appropriations committee, shall conduct a study of the feasibility of contracting with private enterprise for correctional services. The study shall consider the need to reduce overcrowding at the Virginia Correctional Center for Women, as well as other areas in which it would be prudent and cost-effective for the Department of Corrections to contract for private sector services. The Department of Corrections shall present a report to the joint subcommittee by September, 14, 1990, on strategies to address female offenders at the state and local level. The joint subcommittee shall present its final report, including recommended legislation, as appropriate, to the 1991 General Assembly.

The joint subcommittee met on July 17, September 27, and December 17, 1990. At the December 17 meeting a draft report and three legislative recommendations were adopted. Following that action, the House Appropriations Subcommittee on Public Safety voted to take no action on the two carry-over bills, so that the new legislation could be introduced instead. This report fulfills the reporting requirement contained in Item 629.

THE RISING COST OF CORRECTIONS

The number of criminals housed in Virginia's prisons increased rapidly over the past decade. From July 1, 1980 to 1990, the number of adult offenders housed by the Virginia Department of Corrections increased over 76 percent, from 8,295 to 14,647 inmates. This represents an incarceration rate in Virginia of 235 inmates per 100,000 population as of July 1, 1990. (However, Virginia's incarceration rate is lower than the national average of 302.)

In addition to the state inmates housed in facilities operated by the Department of Corrections, another 3,230 state felons were housed in local jails as of July 1, 1990. Including this jail backlog, the total "state-responsible" inmate population was 17,877. This is projected to increase 38 percent to 24,719 by 1995. The General Assembly has responded to projected growth in inmate population by funding new prisons as well as alternatives to incarceration for non-violent offenders. Nevertheless, an additional 4,000 new beds will be needed by 1995, beyond the number already funded.

The needs for jails and juvenile detention centers at the local level is increasing as well. These facilities will require state reimbursement for capital outlay as well as for operating expenses. In view of Virginia's current fiscal situation, and the likelihood of slower growth in revenues during the 1990's, it is imperative that all possible long-term strategies for reducing these costs be explored fully.

Adult Correctional Facilities

Incarceration is expensive. The capital cost of the new 1,740-cell Greensville Correctional Center is over \$126 million, or more than \$72,000 per cell. The capital cost of the 516-cell Keen Mountain Correctional Center (in Buchanan County) is over \$46 million, or more than \$90,000 per cell. Projections for building additional maximum security facilities suggest that the 516-cell prototypes will cost \$50 million in current dollars.

Still, the capital costs of building new facilities represent less than five percent of the total funds expended over the life of the facility. Operating costs account for the remaining 95 percent of life-cycle costs. Operating cost increases are placing increased pressure on limited state funds available to meet essential service needs. For example, general fund operating appropriations for the Department of Corrections have increased from \$295 million in fiscal year 1989 to \$385 million in 1992, an increase of 30 percent in just three years. Most of this is due to the opening of new prisons.

Despite improvements in efficiency, the increased operating costs for prisons have become one of the major factors driving state budget increases in recent years. For the 1990-92 biennium, the new dollars included in the Appropriations Act for the new facilities at Greenville and Keen Mountain total over \$80 million. To the extent that operating costs for prisons continue to increase, fewer dollars will be available for other state needs.

A report to the Joint Subcommittee by the Secretary of Public Safety on the True Cost of Correctional Facilities found that the average per capita operating cost of adult facilities was \$19,830 in fiscal year 1990. This included direct costs of \$16,637 and indirect costs of \$3,193.

A wide variation exists in operating costs by facility. These costs ranged from a low of \$14,026 for the least expensive correctional field units (Fairfax, Pocahontas, and Halifax), to \$39,972 for Mecklenburg Correctional Center and \$44,679 for Marion Correctional Treatment Center. The Marion center is unusually expensive due to the extra staffing required to carry out its mental health treatment mission. Mecklenburg is a high-cost maximum security facility because of its inefficient design and resulting high staffing ratio. An amendment proposed by the Governor to the 1991 Appropriations Act includes \$100,000 for a planning study to suggest mission and design changes to make this facility more efficient.

Annual operating costs per inmate for the three facilities built in the early 1980's (Buckingham, Nottoway, and Augusta Correctional Centers) averaged \$17,674 in 1990. The growth in operating costs has been reduced in recent years by increased double-celling. It is expected that the operating costs for the new Greenville and Keen Mountain Correctional Centers will be lower still, based on a more efficient housing unit design and resulting improvements in staffing ratios. Still, the Commonwealth must continue to examine carefully all possible strategies to reduce its capital and operating costs for adult corrections.

Local and Regional Jails

The cost of building and operating local jails is rising as well. The Joint Subcommittee on State Support for Jail Construction has reported (in Senate Document No. 17 of 1991) on projected costs in this area. According to the report, \$253 million is needed to meet the state share of reimbursement for local and regional jail projects which are (1) already approved by the Board of Corrections; (2) in the planning stages; or (3) under consideration. Over \$20 million is included in the 1991 Appropriations Act, as introduced, for state reimbursement for local and regional jails.

Virginia is one of only five states to provide construction assistance to localities for building new jails or bringing existing jails up to standards set by the state. Virginia also contributes more dollars per capita to the operation of local jails than any other state. According to a 1989 report by the National Conference of State Legislatures, Virginia spent \$27.37 per capita on state aid to local corrections. The next highest state was California (at only \$9.57 per capita).

The level of capital and operating assistance for jails is set in the *Code of Virginia*. The Commonwealth pays for one half of the construction, enlargement, or renovation cost of regional jails. Reimbursement for the capital costs of local jails is capped at specified amounts, with a maximum of \$1.2 million in state funds. These amounts are paid by the Department of Corrections following completion and inspection of the project. Operating costs, on the other hand, are paid by the State Compensation Board:

- First, a per diem of \$8 per prisoner is provided, along with a supplemental payment of \$6 per diem for state prisoners.
- Second, reimbursement is paid for two-thirds of the cost of medical and treatment staff, for approved positions; and,
- Third, reimbursement is paid for 100 percent of approved security positions.

State assistance in the 1990-92 biennium for the direct cost of local and regional jail operations exceeds \$354 million. These state dollars represent a very high percentage of the direct cost of operating jails. In 1988, state funds ranged from 45 to 100 percent of the direct cost of operating individual jails. At the statewide median, the Commonwealth paid for 86 percent of operating costs in 1988.

Juvenile Detention Facilities

The new Board of Youth and Family Services (created as of July 1, 1990) will be responsible for approving proposed juvenile detention homes, group homes, and other programs at the local and regional level. Concerns about the rising cost of these facilities and programs led the 1990 General Assembly to direct the Department of Youth and Family Services to conduct a cost management study on state support for such facilities.

The Commonwealth is required by statute to reimburse localities for one half the cost of construction, enlargement, or renovation of juvenile detention facilities and group homes. Proposals made recently for secure detention homes costing in excess of \$100,000 per bed have underscored the

need for careful attention to cost reduction strategies. Likewise, recent proposals for non-secure group homes have projected capital costs in the range of \$50,000 per bed for 12-bed facilities, assuming full occupancy.

The state pays for a share of the operating costs of these facilities through a block grant. Total state funds expended for this purpose in fiscal 1992 will exceed \$22 million. Recently, concerns have been raised that the state is not meeting its share of the operating expenses of these facilities. Concerns have also been raised that the annual operating costs for non-secure group homes are in excess of \$40,000 per bed.

In each case, the capital and operating costs of adult correctional facilities, adult jails, and juvenile facilities are increasing faster than the ability of the Commonwealth to meet the projected expenses. This report suggests that for certain, selected types of facilities, the private sector has the potential for providing the needed services at lower cost. A limited, initial program is recommended to determine whether such cost savings can actually be achieved.

LEGAL AND CONSTITUTIONAL ISSUES

At present, there is no statutory basis for the Department of Corrections to contract for private correctional facilities, nor is there any statutory basis for localities to contract for private jails or secure juvenile detention facilities. In 1988 the Attorney General opined that in the absence of a specific authorization, localities could not contract for private jails. However, there are no legal or constitutional obstacles to prevent the General Assembly from authorizing privatization as one approach to meeting the need for selected types of correctional facilities. Any such statute, however, should be drawn carefully to protect the interests of the Commonwealth.

Attorney General's Opinion

In 1988, the Attorney General issued an opinion that a regional jail board could not contract with a private jail management company to house and care for prisoners committed to the jail. Responding to an inquiry by the Prince William-Manassas Regional Adult Detention Center, the Attorney General invoked the Dillon Rule, which holds that localities have no powers except those expressly granted by the General Assembly. In this case, Section 53.1-84, *Code of Virginia*, governs state financial assistance to localities "for the confinement of persons in local facilities in accordance with reports of prisoner days provided by the Department (of Corrections)."

Furthermore, Section 53.1-86 provides that "no locality receiving state funds (under this statute) shall use such funds for any purpose other than for paying expenses incurred as the result of the confinement of persons in local correctional facilities." A local correctional facility is defined as "any jail, jail farm, or other place used for the detention or incarceration of adult offenders, excluding a lock-up, which is owned, maintained or operated by any political subdivision or combination of political subdivisions of the Commonwealth."

According to the Attorney General, the basic question is whether the General Assembly intended that a jail board created pursuant to Section 53.1-106 would have the authority to contract with a private company to house and care for the regional jail's excess inmate population.

The General Assembly has not authorized the use of private correctional facilities, although the legislature has authorized other, specific alternatives to incarceration. The Attorney General therefore concluded that "the General Assembly has not, at least as yet, determined that privatization is a viable and appropriate alternative in Virginia to traditional methods of incarceration."

In view of this analysis, it is necessary for the General Assembly to authorize the use of private correctional facilities specifically in statute before the option of privatization can be utilized in Virginia.

Potential Constitutional Issues

As a prerequisite to considering legislation which would expand the role of the private sector in the state's corrections system, it is appropriate to examine any state or federal constitutional issues which would potentially affect the legality of any statutory changes. It is assumed for the purpose of this discussion that the situation under review involves a private contractor being charged with the day-to-day operation and maintenance of a facility used to incarcerate state-responsible prisoners. Generally, what is said about the constitutional issues arising in this scenario will also apply to the privatization of particular services or other facilities, such as juvenile detention centers or "halfway houses." However, the magnitude of any constitutional concern may diminish, or even disappear, as the scope of the privatized activity is narrowed.

Liability of the Contracting Jurisdiction. Much of the state's liability arising from its operation of prisons is determined through federal lawsuits brought pursuant to 42 U.S.C. §1983, which allows an inmate to obtain damages from the state for deprivation of rights guaranteed by the Constitution or laws of the United States. An inmate plaintiff in such a suit can prevail against a private party defendant only if it is shown that at the time of the deprivation the offending private party was acting "under color of state law" — that is, that there was state action. A private party is acting under color of state law "only when exercising power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law'." *Polk County v. Dodson*, 454 U.S. 312, 317-318 (1982) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). Therefore, if the actions of a private prison operator can be "fairly attributable to the State" §1983 liability remains. See *Lugar*, 457 U.S. at 937.

Whether state action existed when a private party performed a corrections function was an unsettled question in the Fourth Circuit prior to 1988. In at least some instances, that court held that no state action existed. *Calvert v. Sharp*, 748 F.2d 861 (4th Cir. 1984); *West v. Atkins*, 815 F. 2d 993 (4th Cir. 1987) (en banc). Now, however, the rule is clear. The United States Supreme Court overturned *West v. Atkins* in a unanimous decision handed down on June 20, 1988. *West v. Atkins*, 108 S. Ct. 2250 (1988). In that case, the Court held that state action existed where North Carolina was providing medical services to inmates through a private physician who was working

under a contract. As a result, the doctor was liable in a §1983 suit for improper medical care. Justice Blackmun, writing for the Court, said:

“It is the physician’s function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State. Whether the physician is on the state payroll or is paid by contract, the dispositive issue concerns the relationship among the State, the physician, and the prisoner. Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State’s prisoners of the means to vindicate their Eighth Amendment rights. The State bore an affirmative obligation to provide adequate medical care to West; the State delegated that function to respondent Atkins; and respondent voluntarily assumed that obligation by contract.” 108 S. Ct. at 2259 (footnote omitted).

Delegation of State Functions. The second major issue with a constitutional dimension involves the state’s authority to delegate the corrections function to a private entity. Article IV, §1 of the Constitution of Virginia vests all legislative power of the Commonwealth in the General Assembly. One likely aspect of an unlawful delegation attack would be an alleged violation of this separation of powers provision. The other probable source of attack is the due process clause of the federal constitution’s Fifth Amendment. Such an attack would allege deprivation of a personal liberty or property interest without due process of law.

There is no authoritative case law in this area, at present. Certainly, it is true that pieces of the corrections function have been performed privately for years — for example, food service or temporary, predisposition detention of juveniles. It might be assumed that the lack of an unconstitutional delegation challenge to this practice in the past signifies the absence of any improper delegation. That view may be overly optimistic for two reasons: (1) if the potential reward is great enough, some enterprising prisoner or his attorney will almost certainly press the issue in litigation; and (2) the number of instances in which the private contractor has complete day-to-day charge of a correctional facility housing adult felony term prisoners is small, thereby limiting the opportunities for a court to address this issue.

There are three types of delegation involved in the privatization of prisons. They are delegation of the management function, the rule-making authority, and the adjudicative function. While there are no firm conclusions at this time regarding the constitutionality of these delegations, some general principles are fairly clear.

Delegation of the management function is permissible and would survive constitutional scrutiny. However, ultimate control and policy

formulation must be retained by the governmental agency. Activities that are purely ministerial in nature — cell assignments, inmate counts, activity scheduling — seem to present the least potential for delegation problems. See generally *People v. Chicago Railroad Terminal Authority*, 14 Ill. 2d 230, 151 N.E. 2d 311 (1958). Nonetheless, it seems prudent to be certain that any legislation would require management activities to apply equally to all inmates similarly situated and that such activities will not unreasonably restrict constitutional freedoms such as religious expression. *Robbins*, 38 Am. U. L. Rev. at 574.

More difficult problems arise when rule-making authority is delegated. If the private contractor promulgates internal disciplinary rules that, for example, include extra restrictions on out-of-cell time as punishment for abusive language to a guard, the inmate's liberty interest has been affected. Due process considerations might prohibit the delegation of the authority to create such a rule unless the private contractor's role in the promulgation process is merely to recommend adoption to an administrative or judicial body. That reviewing authority must then be empowered to accept, reject, or modify the proposal as it sees fit. *Id.*

For this reason, there is no suggestion in this report that the Commonwealth delegate the power to make a binding determination that an inmate has violated a prison rule and is therefore subject to disciplinary action. Such legislation would almost surely be invalidated. *Id.* at 568-569. This is a delegation of adjudicative power and is a step beyond delegation of rule-making authority. In this situation, the private contractor is interpreting and determining appropriate application of rules which affect personal, constitutionally-protected interests. Due process concerns are very keen in this arena. The private contractor's various motivations to maintain full occupancy in his facility would only serve to intensify the court's scrutiny of these concerns.

It is possible that legislation may properly delegate to a private contractor the authority to make at least preliminary determinations of rules violations and punishment. To avoid constitutional infirmity, however, such legislation must provide for some type of review, administrative (through Department of Corrections procedures), judicial, or both. Indeed, even the department's administrative appeal and review procedure is subject to due process requirements. See *Wolf v. McConnell*, 418 U.S. 539 (1974). Moreover, administrative adjudications by DOC will be judicially reviewed if there is a lack of evidence to support the decision and disposition. See *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445 (1985); *Kelly v. Cooper*, 502 F. Supp. 1371 (E.D. Va. 1980).

The questions that arise when adjudicative power is delegated apply with equal or greater force when considering a private contractor's role in

good time accrual and discretionary parole decisions. This is an area which so fundamentally and directly affects basic constitutional liberty rights that a court may disapprove of any delegation. See generally *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936) (a federal statute which made wage and hour agreements reached by a majority of miners and producers binding on others was invalidated because the property interest of the minority was being affected by a private group with potentially adverse interests); *Melcher v. Federal Open Market Commission.*, 644 F. Supp. 510, 520 (D.D.C. 1986) (noting, in dictum, that “many responsibilities may be so intrinsically governmental in nature that they may not be entrusted to a non-governmental entity”).

In sum, it can be said that legislation to permit the private operation of corrections facilities or services will likely pass constitutional muster if there is governmental oversight and review of activities by the private contractor which affect property or liberty interests of the inmates. In other words, the private sector should not be involved in certain functions involving the nature and length of confinement, which are at the core of public responsibility. These functions would include the conduct of disciplinary hearings, the calculation of good time credits, and the decision to grant parole or early release.

Guidelines for Private Contracting

The American Bar Association has developed a model statute and contract to address concerns about the constitutionality of delegating to a private contractor the authority to incarcerate, and the need to ensure accountability. These documents were reviewed by legislative staff during the course of developing proposed legislation for this study.

In reviewing the Model Statute and Contract, the ABA Criminal Justice Section offered ten guidelines concerning the use of privatization. These guidelines are included in their entirety as Appendix A. A brief summary of these guidelines is included below:

1. **Purposes of Privatization.** Any statute and contract should clarify the purpose of privatization is to provide cost-effective and proper care, supervision, and treatment of inmates.

2. **Contract Term and Renewal.** A three-year contract term should be of sufficient length to be fair to the contractor, provide flexibility to respond to new problems, and encourage market competition.

3. **Standards of Operation.** The contract should require compliance with minimum operating standards developed by the American Correctional Association and the National Commission on Correctional Health Care.

4. Use of Force. The delegation of the use of force, which is a basic governmental function, should be defined very carefully.

5. Employee Training. All employees of private prisons should receive, at minimum, the same quality and quantity of training as that required for public correctional employees.

6. Monitoring. Effective monitoring of the private contractor's performance is essential to assure accountability. There should be an on-site monitor, with access to all necessary information. Copies of the monitor's reports should be provided at least annually to the appropriate legislative committees. Access to the private facility should be provided to the public on the same basis as for comparable public correctional facilities.

7. Liability and Sovereign Immunity. The private contractor should be required to assume all liability arising under the contract and should be prohibited from using immunity defenses, such as sovereign immunity or qualified immunity, to limit such liability.

8. Insurance. The private contractor should be required to provide adequate insurance coverage, specifically including insurance for civil rights claims.

9. Termination of Contract and Assumption of Government Control. The contracting agency should have the authority to terminate a contract on short notice in order to respond to problems arising under the contract. Each jurisdiction should have a comprehensive plan -- in advance of entering into a contract -- for assuming control of a facility if necessary.

10. Nondelegability of Contracting Agency's Authority. Certain functions, such as those involving the nature and length of confinement, which are at the core of governmental responsibility. These functions are least appropriate for delegation. The conduct of disciplinary hearings, the calculation of good time credits, and the decision to grant parole are among those core functions.

The ABA guidelines suggest that contractors not be permitted to require an inmate to perform work, except on contracting agency projects. Any contract should address this matter specifically to avoid the risk of exploitation of inmates by the contractor.

CURRENT EXTENT OF PRIVATIZATION

In the context of this report, privatization is a contractual relationship between the Department of Corrections, the Department of Youth and Family Services, or a locality (or localities) and a qualified private corporation. The contract specifies that the corporation shall finance, design, acquire the site for, construct, maintain, and/or operate a correctional facility, under the supervision of the contracting agency.

Following a competitive bidding process, the contracting agency pays a negotiated price, which may be calculated on a per inmate per day basis. The per diem payment may include either a capital or an operating cost component, or both. The contract may be renegotiable after a period of time, and at some point the facility may revert to public ownership.

Privatization in Virginia

The Departments of Corrections (DOC) and Youth and Family Services (DYFS) already have authority to contract for specific, specialized services as needed to carry out their missions. There are precedents for the use of private facilities for residential treatment of both juveniles and adults. In addition, private vendors have supplied a variety of specific services needed by the Department of Corrections. What is at issue in this study is the granting of authority to contract for an entire facility, including site acquisition, design, construction, and operation.

For many years, the Department of Corrections utilized contracts for community placements of juveniles as an alternative to placement in the state-operated learning centers. This function has now been assumed by the new Department of Youth and Family Services. For fiscal 1992, \$8.5 million for private sector placements is included in the Appropriations Act (as introduced in the 1991 session). As of January 1, 1991, there were 442 active cases, including 206 residential and 236 non-residential placements. Also, \$350,000 is included each year in the current Appropriations Act for the Peninsula Marine Institute, a private, non-residential treatment program for juveniles operated by the Associated Marine Institutes. Evaluations of this program have been positive.

The use of the private sector for adult community facilities is also well-established in Virginia. In Section 53.1-179, *Code of Virginia*, the General Assembly has authorized the Director, Department of Corrections to "purchase temporary room and board and training, counseling, and rehabilitation services for probationers and parolees." Currently, there are

103 private pre-release beds under contract, of which an average of 33 were filled during November, 1990. The Appropriations Act includes \$1.9 million for these centers for fiscal 1992.

Current Census of Private Correctional Facilities

As of the end of calendar year 1990, 14 private companies were operating 49 private adult correctional facilities with 16,120 beds. These facilities are located in twelve states. The private market represents about 1.5 percent of all adult correctional beds in the United States. A summary of this data is included as Appendix C in this report.

Twenty-two of the private facilities are located in Texas. Nine of the facilities represent corporate take-overs of existing security facilities. The first of these facilities to open was the Corrections Corporation of America facility in Houston, Texas, for the U.S. Immigration and Naturalization Service, which opened in April, 1984.

Three companies account for over two-thirds of the present market for private correctional beds. Corrections Corporation of America, with 5,007 beds (31 percent); PRICOR, with 3,077 beds (19 percent); and Wackenhut Corrections Corporation, with 2,806 beds (17 percent), dominate the market. The U.S. Corrections Corporation, with another 1,230 beds (8 percent) is the only other company with a significant market share. The other ten companies account for less than one-quarter of the market (24 percent).

Facilities for Females. Eleven of these 49 facilities house female offenders, and three of these also include provisions for housing certain juvenile offenders. Four of the 11 facilities are under contract with state government for the exclusive housing of female offenders:

- Corrections Corporation of America (200-bed) women's prison for all security levels at Grants, New Mexico (under contract with the New Mexico Department of Corrections);
- Concepts, Inc. (100-bed) minimum security facility for women at Bridgeport, Texas (under contract with the Texas Board of Pardons and Parole.);
- Dismas Charities, Inc. (100-bed) minimum security facility for women at Owensboro, Kentucky (under contract with the Kentucky Department of Corrections); and,

- Eclectic Communications, Inc. (220-bed) minimum security facility for women at Live Oak, California (under contract with the California Department of Corrections).

Facilities for Males. Most private correctional facilities for men are designed for minimum security offenders. In fact, there are very few examples of medium security facilities for men operated under contract with state government by the private sector, and there are no such facilities for maximum security male inmates.

A majority (28) of the total 49 private facilities are under contract with federal or local agencies. The remaining twenty-one facilities are under contract with state agencies. Of these 21, however, only seven include any inmates with greater than a minimum security classification. Four of these are operated under contract with the Texas Department of Corrections or Bureau of Pardons and Parole by the Wackenhut Corrections Corporation, and are designated as minimum to medium security. The remaining three are operated by the Corrections Corporation of America. One of these is the facility for women of all security levels in New Mexico. The other two are medium security facilities for men in Queensland, Australia, and in Winnfield, Louisiana.

Cost of Private Prison Facilities

At the September 27 meeting of the joint subcommittee, the three companies which account for two-thirds of the current private sector prison beds, were invited to speak. CCA, PRICOR, and Wackenhut each described their business philosophy, current operations, and financial condition. At the conclusion of these presentations, Delegate Franklin P. Hall, chairman of the joint subcommittee, asked the three spokesmen if they would be willing to provide general information about the capital and operating costs of private facilities in Virginia. Delegate Hall indicated that he assumed the subcommittee could provide a general description of a hypothetical facility for purposes of a comparison. Each of the three spokesmen agreed to respond to such a request for information.

Request for Information. Subcommittee staff discussed this request with officials from the Department of Corrections, and on October 12 staff wrote to each of the three companies requesting information. The letter emphasized that this did not constitute a Request for Proposals, nor was there any plan for the construction of such a facility at this time. Therefore, the letter concluded, the companies would not be bound by the information provided, should they later submit proposals for an approved project.

The request for information consisted of three parts. The first hypothetical facility would be a 500-bed correctional center for female offenders. The security level would be minimum to medium. This facility would serve primarily non-violent repeat offenders, including drug offenders. The Virginia Correctional Center for Women (VCCW) would continue to house violent offenders in its maximum security building, which you toured on September 27. Otherwise, VCCW would primarily serve first time offenders.

The request assumed this private facility would be located in the urban corridor of Virginia (and not on state-owned land). The hypothetical facility would be a full service correctional center, with appropriate levels of counseling, treatment, and medical services, food services, recreation, academic and vocational educational programs, and work opportunities. Provisions for water supply and tertiary sewage treatment should be included. It should be characterized as a "prison" environment, rather than the campus-like atmosphere of the VCCW. It should, however, meet American Correctional Association (ACA) standards.

It was assumed that the private vendor would finance, design, build and operate the facility. The vendor would then charge the Virginia Department of Corrections a negotiated per diem rate for inmates. The request included both operating and capital costs for such a facility.

It was further assumed that first time and violent female offenders would serve their terms at VCCW. Repeat, non-violent offenders would be assigned to the private facility.

The second part of the letter requested the same information for a 500-bed, minimum to medium-security facility for male offenders. The letter spoke to the differences which the private vendors would expect, if any, in both capital and operating costs.

As the third and final part of the request, the letter asked the private vendors to provide information on the (operating and capital) cost of providing four, 50-bed pre-release centers for female offenders, and four similar pre-release centers for males. These minimum security centers would be located in the major metropolitan areas of Virginia, and should meet ACA standards. Again, these centers would be on non-State property.

Vendor Responses. The three private companies responded to this request for information in mid-November. Briefly, they concluded:

- Corrections Corporation of America. CCA reported its typical 500-bed facility had cost about \$14.8 million, including \$11.6 million in building costs. This did not include the cost of water

and sewage treatment facilities, or the cost of land acquisition. Operating costs were projected to range from \$30 to \$33 per offender per day (or about \$12,000 per year) depending on the final scope of specialized programs desired. The proposed facility for women would be similar in design to the 200-bed women's prison in New Mexico. CCA does not operate any pre-release centers and did not submit information concerning this option.

- PRICOR. This proposal was based on PRICOR's experience in financing and building six 500-bed facilities in Texas, which would not be comparable to Virginia's urban corridor. Each of the PRICOR facilities was financed with tax-exempt, mortgage revenue bonds sold by local non-profit corporations. These local non-profits were authorized by the Texas state legislature. The counties lease these facilities from the non-profit corporations, and when the bonds are paid off (in about 15 years), the facilities will belong to the counties. Per diem rates of about \$40 are considered sufficient to pay off the bonds and operate the facilities. This would translate to about \$14,600 per year. Capital costs were estimated at about \$12.5 million, but the actual components included in this amount were not specified.

PRICOR has also operated a 28-bed community corrections center in Lebanon, Virginia, for over four years. This center provides substance abuse counseling, education, and computer skills training to 28 males and females. The Virginia Department of Corrections already contracts with PRICOR to place inmates in this center. DOC pays \$32 per diem to house inmates at this center. With low security requirements for this type of program, capital costs can be reduced by leasing a suitable facility and making physical plant improvements, rather than building a new center. Combining capital and operating costs in this manner, PRICOR's transmittal included a per diem rate of \$33 to \$34.

- Wackenhut Corrections Corporation. Two 500-bed facilities at Kyle and Bridgeport, Texas, were built during 1988-89 by Wackenhut at a cost of \$11.7 million each. This includes site development and furnishings, but other capital cost components are not specified. The Wackenhut facilities house minimum to medium security males in two-man cells. Operating costs for these facilities are currently \$29.27 per diem, and debt services adds an additional \$5.98 per diem. This would translate into annual costs of between \$13,000 and \$14,000 per year. It cannot be assumed that these costs are achievable in Virginia's urban corridor.

The level of detail provided by the three companies was not sufficient to make any comparisons. The per diem costs suggested range from \$30 to \$40 per inmate per day, or less than \$15,000 per year. However, two of the three responses included operating per diem costs while PRICOR included both operating and capital costs. None of the three firms modified their capital or operating costs to reflect an urban setting in Virginia. None of the three firms specifically addressed the extent to which academic, vocational, counseling, treatment and medical services would be provided, and none addressed the extent to which work programs would be included.

Requests for Proposals from the Private Sector

For this reason, actual proposals will be necessary to compare costs among the private companies and between the private proposals and the cost of public construction and operation. The approach recommended in this report is to authorize the Board of Corrections in statute to contract for private facilities, and to direct the Department and Board to initiate a Request for Proposals. This process would move forward during the coming year, and proposals would be presented to the General Assembly for consideration during the 1992 session. Three key points must be underscored:

- First, sufficient time must be provided to the Department and Board of Corrections to develop regulations and model contracts for the use of privatization;
- Second, proposals for private facilities must be coordinated with the department's master plan for meeting projected needs to 1995 and with the Commonwealth's capital outlay budget process for 1992-94; and,
- Third, no private facility can be initiated in Virginia until funds are actually appropriated by the General Assembly.

The 1990 General Assembly authorized 2,475 additional beds in three 825-bed facilities, to be financed through the Virginia Public Building Authority. The last of these three facilities is projected to come on line in January, 1993. In view of these efforts to meet projected bed needs in the short term, it would appear that consideration of new, private proposals by the 1992 General Assembly would not represent an unreasonable delay in the planning process.

POTENTIAL USES OF PRIVATIZATION IN VIRGINIA

Current projections indicate Virginia will have a population of 24,719 state-responsible inmates by 1995. This represents a 38 percent increase in the number of state-responsible inmates between 1990 and 1995. However, the currently funded operational capacity of adult prisons is only 19,703. Some of the estimated increase can be diverted through alternatives to incarceration for non-violent offenders. However, the Department of Corrections will still need 4,000 additional prison beds by 1995 -- an increase of 20 percent over the currently funded operational capacity. The private sector has the potential to provide up to 1,000 of those needed beds, at lower cost.

In view of Virginia's growing needs for correctional facilities, and the need to explore steps which might result in reduced capital and operating costs, there are several potential areas in which the private sector might be used effectively in Virginia. These include:

- Minimum to medium security facilities for women;
- Minimum security, pre-release facilities for men; and,
- Local and regional jails and juvenile detention facilities.

There are no constitutional or legal barriers to privatization, except that any such program would have to be authorized in the *Code of Virginia*. In any private contracting situation the Commonwealth will retain ultimate responsibility for the incarceration of offenders sentenced by the courts.

Privatization may also be of help to financially-strapped localities which must expand their local jails and juvenile detention centers. The private sector has already been used extensively in Virginia for providing residential and non-residential services for juveniles. However, no statutory authority exists for localities to contract with private corporations for either adult jails or juvenile detention facilities.

Facilities for Female Offenders

The Department of Corrections presented a report on correctional facilities for women to the Joint Subcommittee on September 27, 1990. This report had been requested pursuant to the same item which created the Joint Subcommittee. In its report, DOC found that increased arrest and prosecution rates for women nationally are resulting in the incarceration of greater numbers of women. For example:

- The number of females housed in local jails nationally has increased by 93.6 percent from 1983 to 1988.
- The number of females in prisons nationally increased 138 percent from 1976 to 1986, compared to an increase of 94 percent for males during the same period.

Projected Growth of Female Offenders. In Virginia, the rate of incarceration for females appears to be growing faster than the national trends. According to the DOC report, the average female population in Virginia's local jails (as of June 30) has increased from 500 in 1986 to 1,250 in 1990. This is an increase of 150 percent in four years. The average number of state responsible female offenders has increased from about 350 in 1983 to almost 915 in 1990 (an increase of 160 percent).

The DOC is currently responsible for these 915 female offenders, but the number is projected to increase by another 85 percent within five years. The simulation model used to project the overall state responsible population is not currently able to project specific groups, such as females. Instead, DOC developed a separate statistical model to produce an estimate. This model suggests that the state responsible female population may increase to 1,700 in 1995 and 2,600 by the year 2000.

Virginia does not have the bed capacity to house this projected female population. Current operating capacity at the Virginia Correctional Center for Women (the department's only facility for women) is 444 inmates, plus an additional 41 beds for the reception of new inmates. The current population of VCCW is about 595 inmates. This 22 percent rate of overcrowding is already taxing the support services and infrastructure at VCCW.

The population of female offenders in local jails is expected to increase as well. The Department of Planning and Budget jail population forecast model does not currently estimate future growth of female offenders in local jails. However, in light of increasing arrest and prosecution trends, significant growth is anticipated.

Few jails have adequate space for women. Many jails can only accommodate women by moving male inmates to other areas of the jail. Frequently, this results in reduced utilization of available beds, because the physical area of the jail which is designated for women is not always filled to capacity. For example, the beds in the Norfolk City Jail which are currently allocated to 90 female inmates could be reallocated to provide space for 180 males, according to city officials. The minor renovations necessary to convert this space to men's quarters would be economical compared to today's construction costs for new facilities.

Services for Female Offenders. The DOC report suggested that increased emphasis on alternatives to incarceration was needed to address the growing female population, but that there would still be a need for additional beds to house the state responsible population. The report described Georgia's continuum of sanctions, which move from the least restrictive to the most restrictive. The key to the success of such a continuum, according to the report, is close cooperation between the local community, the courts, local correctional facilities, and state correctional facilities.

The DOC report also reviewed the experience of the Minnesota Department of Corrections and the Federal Bureau of Prisons in handling female offenders. Minnesota's Community Corrections Program provides financial incentives to localities which handle all but the most violent offenders. The Federal Bureau of Prisons (BOP) contracts with nearly 300 private vendors to operate transitional centers nationwide. Most such vendors are non-profit organizations. The centers provide settings for inmates within six months of release to receive life skills training, employment counseling, and substance abuse treatment. Two such transitional centers are already operated in Richmond. The Federal BOP is currently expanding this option to include a more restrictive program for those sentenced directly from the courts for one year.

Options for Female Offenders in Virginia. Many of these options are already available in some areas of Virginia, although the services may not yet be organized into a formal continuum. As indicated by Edward W. Murray, Director, Virginia Department of Corrections, at the September 27 meeting, Virginia's policy choices include:

- More aggressive use of alternatives to incarceration to divert offenders at the local level;
- Expansion of state and local correctional facilities; and,
- Use of private sector facilities.

The Department concluded that female offenders provide the opportunity to take advantage of private sector alternatives. The construction gap for 1995 represents a shortfall of at least 785 beds (1,700 offenders projected for 1995 less 915 state responsible at present). This gap does not address the current level of overcrowding at the Virginia Correctional Center for Women. A combination of a private correctional facility for women in tandem with increased alternatives to incarceration at the local level could close this gap and reduce overcrowding at VCCW.

Pre-Release Facilities for Male Offenders

Other states and the federal government have utilized the private sector to build and operate minimum security facilities for male offenders, including pre-release centers, drug treatment facilities, and halfway houses. Some of these centers provide work-release opportunities for selected inmates during the day, but provide secure perimeters and armed guards to ensure that inmates remain under supervision at night.

As of December, 1990, at least twelve minimum security facilities for males were operated by private corporations in Texas, California, and Kentucky. These facilities reported a total operating capacity of over 4,600 inmates. The weighted average per diem charge (for the eleven of these facilities which reported per diem charges) was about \$33 per diem, or about \$12,090 per year.

The Department of Corrections has contracted for pre-release centers and halfway houses using federal funds since 1986, and general funds have been appropriated for this purpose since 1989. The average charge per bed day for these facilities is about \$32, according to the Department of Corrections. However, the department is not fully utilizing its existing capacity in this area. The average daily population of current pre-release units was only 33 in November, 1990, compared to an operational capacity of 103 beds.

One of the reasons for the current low utilization of halfway houses and pre-release beds is the perception that security in these units may not be sufficient for the types of inmates available. For example, many non-violent offenders who might have been assigned to these units in previous years are now routinely diverted to alternative programs in the community. Privatization may offer the potential for more appropriate facilities for offenders who are near the end of their sentences, but who may need a greater degree of supervision than is currently available in halfway houses. Further review of this area by the Board of Corrections is needed to determine the appropriate number and type of beds needed in this area, and the potential cost-savings which could be achieved.

Local and Regional Jails and Detention Centers

Localities in Virginia are faced with reductions in state aid for education, human services, and law enforcement. At the same time, their needs for jails are increasing. For example, the current forecast for local jails indicates an increase of over 5,700 local responsibility inmates by 1995 (over 50 percent). The potential state reimbursement for construction of jail projects which are currently approved, planned or under consideration could reach \$253 million.

Market competition may benefit localities which need to expand their existing jail facilities without committing huge sums to the initial capital investment. This report suggests the Board of Corrections should be authorized to approve not more than two private local or regional jails to test this concept.

No projections are available concerning the number of juvenile detention or group home beds which may be needed by 1995. However, many cities and counties are addressing the need for these facilities. For example, the oldest detention home in Virginia is in the City of Norfolk. This facility is currently rated for 20 males and 14 females. However, the number of youths currently housed at the facility exceeds its capacity by 100 percent for males. This situation is expected to worsen over the next two years.

The profile of juveniles in the Norfolk Detention Home has changed over the years. Instead of minor delinquents, the facility now houses an increasing number of youths who are certified to be tried as adults. These include young offenders charged with murder, robbery, malicious wounding, concealed weapons, and other violent offenses. Unfortunately, the current design of the facility provides very little flexibility for dealing with a disparate population of violent and non-violent offenders. In fact, the obsolete layout of the facility has led to inefficient use of staff.

A new facility is clearly needed. The Norfolk City Council has expressed its intent to replace the detention home with a more secure, 80-bed facility. Current estimates now being considered suggest a capital cost of about \$7 million, or over \$87,000 per bed. Once this project is approved by the Board of Youth and Family Services, the Commonwealth will be obligated to reimburse the city for half of the cost of construction.

The Board of Youth and Family Services should explore the potential use of privatization for these types of facilities. Market competition may offer localities such as Norfolk the opportunity to reduce both capital and operating costs in the long run. This report suggests the Board should be authorized to approve not more than two private local or regional detention centers to test this concept.

FINDINGS AND RECOMMENDATIONS

There are no constitutional or legal barriers to privatization by the Department of Corrections, except that any such program would have to be authorized in the *Code of Virginia*. In any private contracting situation the Commonwealth will retain ultimate responsibility for the incarceration of offenders sentenced by the courts. For this reason, any legislation should be drawn carefully to protect the interests of the Commonwealth.

Privatization may also be of help to financially-strapped localities which must expand their local jails and juvenile detention centers. The private sector has already been used extensively in Virginia for providing residential and non-residential services for juveniles. However, no statutory authority exists for localities to contract with private corporations for either adult jails or juvenile detention facilities. Such legislation is recommended.

In any discussion of private jails and detention facilities, the reimbursement of localities for operating and capital costs is an important issue. The joint subcommittee finds that the Commonwealth should reimburse over time the amount which would otherwise have been paid initially for capital costs, had the project not been privatized. However, this area requires further technical review and consideration by the appropriate policy boards, with input from the affected state and local agencies.

Advantages of Privatization

The potential advantages of privatization may include:

- (1) Reduced capital and operating costs, when compared to standard state or local government operations;
- (2) Increased flexibility to increase or decrease levels of services rapidly depending on changing conditions and demands;
- (3) Increased value of the local property tax base; and,
- (4) The ability to locate facilities with less conflict.

Privatization should not be viewed as an end in itself, but as one means for the Department of Corrections to meet its statutory responsibility to house securely those offenders who are sentenced to its custody by the courts.

A Limited Initial Program

In order to assess the potential for cost savings, the 1991 General Assembly should authorize a limited initial program. The Board and Department of Corrections should coordinate this initial program with the master plan for capital projects to meet projected bed space needs for 1995. Specific proposals should be presented to the General Assembly by December 1, 1991. This will enable the 1992 General Assembly to compare the costs and benefits of public and private facilities. To accomplish this the following recommendations are made:

1. House Bill 1809 should be adopted. This bill authorizes the Board of Corrections to implement an initial program to test the concept of privatization of adult correctional facilities. The timing of the program should coincide with the development of the 1992-94 capital outlay budget. Not later than December 1, 1991, the Board and Department of Corrections should transmit to the Chairmen of the House Appropriations and Senate Finance Committees a plan which should include:
 - a. Regulations, as promulgated by the Board, for contracting for the financing, design, construction and/or operation of private facilities;
 - b. Actual bids submitted in response to a Request for Proposals for not more than two minimum to medium security facilities, to be financed, designed, built and operated by a private corporation on non-state land, and located in or near the urban corridor of Virginia;
 - c. Actual bids submitted in response to a Request for Proposals for an additional number of less secure beds to be located in community-based facilities, as part of a continuum of services for female offenders; and,
 - d. A cost accounting methodology to compare the capital and operating costs of the private facility to comparable state facilities. The report should also include steps to compare the length of time required to design and construct the private facility compared to Virginia's experience with comparable public facilities.

The Joint Subcommittees on Public Safety and Capital Outlay of the House Appropriations and Senate Finance Committees

should meet during December, 1991, to compare the bids received with other financing options.

2. House Bill 1810 should be adopted. This bill authorizes the Board of Corrections to approve not more than two private local or regional jails in the Commonwealth.
 - a. This legislation should direct the Board of Corrections to promulgate regulations to govern the reimbursement for such private jail facilities.
 - b. The regulations should specify that the per diem rate paid to the private contractor for operating expenses shall not exceed the total cost ordinarily paid by the Commonwealth and the locality for operating expenses, calculated on a per diem basis.
 - c. The regulations should address the manner in which the state contribution for capital costs are to be amortized over the period in which the facility is financed.
 - d. The regulations should establish minimum standards for construction, equipment, administration and operation, which are at least as stringent as those for other local correctional facilities.
 - e. A report on the regulations should be transmitted to the Chairmen of the House Appropriations and Senate Finance Committees by December 1, 1991.
3. House Bill 1811 should be adopted. This bill authorizes the Board of Youth and Family Services to approve not more than two private local or regional juvenile detention facilities, at the discretion of the Board.

Respectfully Submitted,

Franklin P. Hall, Chairman
William A. Truban, Vice-Chairman
Howard P. Anderson
Robert S. Bloxom
Vincent F. Callahan, Jr.
Alan A. Diamonstein
Arthur R. Giesen, Jr.
J. Samuel Glasscock, *dissenting*
Virgil H. Goode, Jr.
Robert E. Harris
Lacey E. Putney
Alson H. Smith, Jr.
A. Victor Thomas, *dissenting*

DISSENTING STATEMENTS

January 23, 1991

I dissent from the report of the Joint Subcommittee for the following reasons:

1). I disagree with the philosophy of privatization of ownership and operation of prisons and jails. The fact that the State may constitutionally allow private ownership and operation of prisons and jails does not mean that such action is wise. Public safety is one of the basic functions of government and should not be delegated. We should not permit private parties to restrain or punish our citizens.

2). The conclusion that privatization of prison ownership and operation will reduce costs is not supported by the report. If there are any unnecessary statutes or regulations which prevent the State from using sound planning, construction and financing techniques in the building of prisons, we should change them. Otherwise, the State should be able to construct prisons at least as cheaply as a private party. Ultimately the State will have to pay the construction costs, either directly and then own the facility or through the private operator who will then be the owner of the facility.

There has been no real effort to compare the total cost of state versus private operation of prisons. Consideration of the cost of private operation of a prison should also include the cost of the State in contracting with the private operator and in overseeing compliance with the contract. It would also appear that a private contractor might enter into an initial contract at a favorable cost, but be in a position to raise the cost dramatically if the State were at some later time truly dependent on the spaces provided by the private operator.

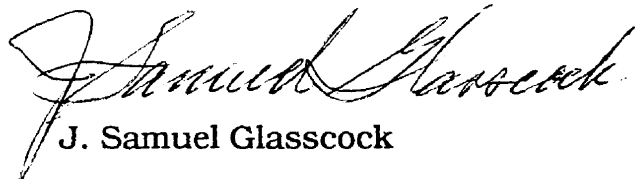
In addition, the proposal to allow private construction and operation of a women's prison and a pre-release center will not give us a true comparison of costs. These are special facilities, not the usual medium or maximum security male facilities.

Privatization of some services in prisons makes good sense. Privatization of ownership and operation does not. If the private sector offers some good construction and management techniques, we should adopt them. We should not try to abdicate the State's responsibility or engage in practices which will cost us more in the long run.

3). The report indicates that privatization may allow us to locate prison facilities with less conflict. It appears that if these facilities are located where they should be there will be no greater conflict with the State locating these facilities than with a private concern locating these facilities.

4). The report recommends the payment of the State's share of the construction of jails over a period of time. It appears that this would not be appropriate unless the state also pays the additional cost to finance the bonds required to carry the indebtedness over a period of time.

Respectfully submitted,



J. Samuel Glasscock

JSG:lw



A VICTOR THOMAS
MEMBER HOUSE OF DELEGATES
1301 ORANGE AVENUE, N.E.
ROANOKE, VIRGINIA 24012

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

COMMITTEE ASSIGNMENTS:
CONSERVATION AND NATURAL RESOURCES
(CHAIRMAN)
PRIVILEGES AND ELECTIONS
APPROPRIATIONS
MILITIA AND POLICE

January 28, 1991

I dissent from the report of the Joint Subcommittee for several reasons.

First, the testimony we received was clear and convincing to the effect that the Commonwealth is ultimately liable for any occurrences within its prisons. Since the responsibility remains with the state, it makes no sense to me to try and delegate that responsibility to a private contractor.

Second, incarceration of citizens seems to me one of government's most basic functions. Incarceration is not a mere service. It is an awesome responsibility for which the government, on behalf of all its citizens, should not take even the slightest risk.

Finally, the notion that the state will experience great cost savings using the private sector seems to me unfounded. The private sector is interested in providing correctional services for one reason—making a profit. It is just not reasonable to conclude that the private sector can do the job so much better than we are already doing it that they can make their profit without providing less services or charging more for the same services.

Sincerely,

A. Victor Thomas

APPENDIX A

American Bar Association

Guidelines Concerning Privatization of Prisons and Jails

APPENDIX A

GUIDELINES CONCERNING PRIVATIZATION OF PRISONS AND JAILS

1. Purposes of Privatization. Any statute authorizing contractual arrangements with private entities for the operation of prisons or jails, and any contract between a public agency and a private contractor for such operation, should make it clear that any such contract is to be cost-effective and for the purpose of providing proper care, supervision, and treatment of inmates.

2. Contract Term and Renewal. The term of a contract will vary in light of a wide range of factors, but should be structured so as to take advantage of the potential advantages of private sector competition. It should be long enough to be fair to the contractor and enable the contractor to become economically efficient, yet short enough to ensure flexibility to deal with new problems, prevent market entrenchment, and encourage other contractors to enter the market on a competitive basis. A three year term appears to represent an appropriate balance.¹

3. Standards of Operation. The American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC) have developed and published Standards that constitute minimum recommended guidelines for the maintenance and operation of prisons and jails.² Requiring incorporation of these standards into a contract for operation of a prison or jail provides a basis for accountability. The standards are objective and realistic. They provide useful yardsticks for measuring performance by a private contractor. Requiring that a private correctional facility meet at least the percentage of ACA Standards and NCCHC Standards required for accreditation of public corrections facilities is sound policy.³ In addition to meeting the ACA and NCCHC Standards, all facilities should, of course, comply at all times with all federal and state constitutional standards, federal, state, and local laws, and court orders.

4. Use of Force. The use of force may sometimes be necessary in a prison or jail setting, in order to maintain order and security. Use of force for these purposes is, however, a quintessentially governmental function. If a private contractor is to be delegated authority to use force in a prison or jail, the scope of such a delegation must be defined with great care. The provisions of the Model Statute set forth appropriate guidelines in this area.⁴

5. Employee Training. A prison or jail cannot be operated safely in accordance with constitutional, statutory, and contractual standards without an adequately trained staff. All employees of privately operated correctional facilities should receive, at a minimum, the same quality and quantity of training as that required by applicable federal, state, and/or local statutes, rules, and regulations for employees of public correctional facilities. A private contractor should also comply with the ACA and NCCHC Standards relating to training, if any of these are more stringent than governmental standards.

6. Monitoring. Effective monitoring of a private contractor's performance under the contract is a sine qua non of any system that seeks to assure accountability. Although the contracting agency may be able to delegate some of the governmental functions associated with the operation of a facility, it cannot delegate its responsibility to see that these functions are carried out in accordance with constitutional and legislative standards, as well as with other standards mandated by public policy.⁵ A monitoring system should give the contracting agency maximum access to all of the information it needs to carry out its oversight responsibilities. Key elements of any monitoring system should include the following:

- a. Appointment by the contracting agency of a monitor for the facility, who will be on-site on a daily basis and will have staff assistance as needed. The monitor should have access to all areas of the facility and to inmates and staff at all times. The contractor should be required to provide any and all data, reports, and other materials that the monitor determines to be necessary to carry out the monitoring responsibilities.
- b. A requirement that the monitor report at least annually on the contractor's performance to the contracting agency, with a copy of the report forwarded to an appropriate committee of the legislature.
- c. Access for members of the public to the private facility,⁶ subject only to the same limitations placed on public access to an equivalent publicly operated facility.

7. Liability and Sovereign Immunity. A private contractor operating a prison or jail facility should be required to assume all liability arising under the contract and should be prohibited from using immunity defenses, such as sovereign immunity or qualified immunity, to limit such liability. Several states have already adopted this approach in prison/privatization legislation,⁷ and the rationale is clear: it creates an economic incentive for the private

contractor to provide adequate inmate care and treatment. Permitting a contractor to escape liability would severely undermine the goal of accountability.

8. Insurance. Private contractors should be required to provide adequate insurance coverage, specifically including insurance for civil rights claims. A requirement of adequate insurance coverage will protect the contracting agency and the public against the possibility that a contractor will be unable to absorb financial losses that could be sustained as a result of prisoner litigation.⁸ Requiring an independent risk-management expert to evaluate the adequacy of a private contractor's proposed insurance plan is one way of providing appropriate safeguards in this area.⁹

9. Termination of Contract and Assumption of Government Control. It is essential that a contracting agency have the authority to terminate a contract on short notice in order to respond to problems arising under the contract or to respond to a shortfall in appropriations. While an abrupt termination is unlikely, each jurisdiction should have a comprehensive plan — in advance of entering into a contract — for assuming control of a facility immediately if necessary. The plan should fully address issues relating to the assumption of control of the facility, including but not limited to, the transfer of title to the contractor's files and records.

10. Non-delegability of Contracting Agency's Authority. There are some types of matters — especially those involving the nature and length of inmate confinement — that are particularly close to the core of governmental responsibility, and thus least appropriate for delegation. These include, but are not limited to, transferring inmates from one facility to another; formulating inmate work rules and rules of inmate behavior; conducting disciplinary hearings; granting, denying, or revoking sentence credits; developing and implementing procedures for calculating sentence credits, release dates, or parole-eligibility dates; and making work release, parole, furlough, and other release decisions.¹⁰ In addition, because of the risk or exploitation of inmates by private contractors, contractors should not be permitted to require an inmate to work, except on contracting -agency projects. Any contract for private correctional services should address these issues with specificity, making it clear that these are areas in which the contracting agency is not attempting to delegate its authority or responsibility to a private contractor.¹¹

FOOTNOTES TO THE GUIDELINES

1. The Model Contract and Model Statute provide for a three year term. Ira Robbins, The Legal Dimensions of Private Incarceration (Washington, D.C.: American Bar Association, 1988) pp. 368, 455 (hereinafter referred to as the Robbins Study.)
2. American Correctional Association, Standards for Adult Correctional Institutions (College Park, Maryland: 1981) and Correctional Standards Supplement (College Park, Maryland: 1986); National Commission on Correctional Health Care, Standards for Health Services in Prisons (Chicago, Illinois: 1987). The ACA Standards cover all aspects of prison life, while the NCCHC Standards focus on provision of adequate health services to inmates.
3. Robbins Study, Supra note 1, at 431-34 (Model Statute). It should be noted that the Model Statute allows the contracting agency to require a higher level of performance by contract. Id. at 456. The Model statute does not, however, make accreditation a statutory requirement. While the Standards provide a respected and uniform measure of the quality of services provided at a jail or prison facility, the accreditation process should not be used as a substitute for on-site monitoring by the contracting agency.
4. The Model Statute provides as follows:
 - a. A private contractor's employees serving as "jailers" shall be allowed to use force only while on the grounds of a facility, while transporting inmates, and while pursuing escapees from a facility.
 - b. "Non-deadly force," which is force that normally would cause neither death nor serious bodily injury, and "deadly force," which is force that is likely to cause death or serious bodily injury, shall be used only as set forth herein.
 - c. Non-Deadly Force. A private company jailer shall be authorized to use only such non-deadly force as the circumstances require in the following situations: to prevent the commission of a felony or misdemeanor, including escape; to defend oneself or others against physical assault; to prevent serious damage to property;

to enforce institutional regulations and orders; and to prevent or quell a riot.

- d. Use of Firearms/Deadly Force. Private company jailers who have been appropriately certified as determined by the contracting agency and trained pursuant to the provisions of Subsection e. shall have the right to carry and use firearms and shall exercise such authority and use deadly force only as a last resort, and then only to prevent an act that could result in death or serious bodily injury to oneself or to another person.
 - e. Private company jailers shall be trained in the use of force and the use of firearms, in accordance with ACA Standards 2-4186 through 2-4189 and 2-4206, and shall be trained, at the contractor's expense, at the facilities that train public prison and jail personnel for at least the minimum number of hours that public personnel are currently trained.
 - f. Within three (3) days following an incident involving the use of force against an inmate or another, the employee shall file a written report with the administrative staff and contract monitor describing the incident.
 - g. A private contractor shall stand in the shoes of the contracting agency in any agreement, formal or informal, with local law enforcement agencies concerning the latter's obligations in the event of an emergency situation, such as a riot or escape. *Id.* at 435-36.
5. Indeed, inadequate monitoring could render a contract void for excessive delegation and could increase the contracting agency's exposure to liability.
 6. Robbins Study, *supra* note 1, at 439.
 7. See Ariz. Rev. Stat. Ann. §41-1609.01(0) (1985 & Supp. 1987); Tenn. Code Ann. §41-24-107(b) (Cum. Supp. 1987); Tex. Rev. Stat. Ann. art. 6166g-2, §4 (Vernon Supp. 1988).
 8. Although an absolute ban on self-insurance may not be necessary, the adequacy of a private contractor's self-insurance program should be examined with particular care.

9. Both Arizona and Tennessee have adopted the approach of having an independent expert in the area of risk management evaluate the private contractor's proposed insurance plan. See Ariz. Rev. Stat. Ann. §41-1609.01(n)(2) (Supp. 1987) and Tenn. Code Ann. §41-24-107(a)(2) (Cum. Supp. 1987).
10. A private contractor could, however, appropriately provide to a parole board or the contracting agency information needed when making release decisions.
11. Jobs related to the general upkeep and operation of a correctional institution, involving such tasks as cooking, laundry, and maintenance, would be considered contracting agency projects if the contracting agency has approved of the assignment of inmates to these jobs.
12. See the Provisions of the Model Statute and accompanying commentary in the Robbins Study, supra note 1, at 449-50. Responsibility for other types of matters may be appropriate for partial, but not total, delegation to the private contractor. For example, a contractor might appropriately make decisions concerning the classification of inmates incarcerated in private prisons or jails, since the contractor is the one who has day-to-day contact with the inmates. These decisions, however, should be subject to full review by the contracting agency since inmates' classification levels will substantially affect the conditions of their confinement and perhaps the length of their confinement as well.

APPENDIX B

Previous Reports on Privatization in Virginia

Since 1985 several reports have addressed the issue of privatization. These reports were generally inconclusive, either because when they were written there was less experience in the private sector by which to judge performance, or because the reports did not conduct a thorough review of existing private facilities.

In 1985 the Public Safety Subcommittee of the Senate Finance Committee issued a report on privatization. This report concluded that the executive branch of Virginia state government should "... initiate a wide-ranging, intensive review of the feasibility of increasing the use of the private sector in corrections in Virginia. The most immediate and promising avenue for privatization is in the direction of expanded contracting for specific, selected services... The subcommittee believes additional study is needed to determine whether or not the private operation of an entire state correctional facility would be beneficial to the Commonwealth. At this time, the subcommittee finds there is insufficient evidence to draw any conclusion in this regard."

House Joint Resolution 55 of 1986 requested the Secretary of Transportation and Public Safety to study the desirability, economic feasibility, and practicality of contracting for private correctional facilities. The resulting report was published in November, 1986 (see House Document 7 of 1987). This report did not make any recommendations.

However, the report did conclude in a general way that "...the environment conducive to total facility contracting has been characterized as a minimum security setting, on a regional basis..., and and for inmates with special needs." However, the report concluded "... we are a long way from the day large adult maximum security institutions are managed by private, for-profit corporations.... 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."

Apparently, nothing came of this report. Nevertheless, as pointed out in the Senate report, Virginia continued to make extensive use of private sector contracts for specialized residential services, particularly for juveniles and pre-release centers.

The Virginia State Crime Commission has taken no position for or against private sector prisons.

Two recent reports recommended that Virginia not consider private operation of a complete facility. However, neither of the bodies which made these recommendations examined private sector operations in detail. For example, the Governor's Commission on Efficiency in Government was opposed to privatization of a major prison facility. In its report (Improving Government Operations: Final Report on Efficiency, Regulatory Reform, and Privatization), the 1989 Axselle Commission concluded that Virginia "...not consider at this time the private operation of a full custody, primary confinement, adult correctional facility." Also, the Commission on Prison and Jail Overcrowding in 1989 favored continuation of the practice of purchasing selected services for offenders, but not contracting for the operation of a secure facility.

APPENDIX C

Census of Private Facilities

The following census of private sector correctional beds was prepared by legislative staff using data provided by Dr. Charles W. Thomas, Associate Dean, College of Liberal Arts and Sciences, University of Florida at Gainesville. Dr. Thomas shared this information with the joint subcommittee during its meeting on July 17, 1990. A complete listing of privately operated adult prisons and private prison companies, prepared by Charles Logan, Visiting Fellow, National Institute of Corrections, is also included in this appendix.

PRIVATE CORRECTIONAL FACILITIES

(As of December, 1990)

51

Company/Location	Security	Capacity	Date Opened	Threshold Per Diem	Minimum Per Diem	Notes
Corrections Corporation of America			5,007			
Panama City, Florida	County/Fed-USMS	Min/Med/Max	204	Oct-85	\$34.42	\$23.72 (T), x
Panama City, Florida	County	Min/Med	257	Apr-86	\$34.42	\$23.72 x
Queensland, Australia	Province	Med	244	Nov-89	AUS \$73.78	-
Estancia, New Mexico	Fed-USMS	Min	256	Dec-90	NA	-
Cleveland, Texas	State DOC	Min	500	Sep-89	\$35.25	-
Brooksville, Fla	County/Fed-USMS	Min/Med/Max	252	Oct-88	\$29.72	\$40.50 (T), y
Houston, Texas	Fed-INS/State BPP	Min	350	Apr-84	\$32.66	\$33.00 y
Laredo, Texas	Fed-BOP	Min (F/J)	208	Mar-85	\$27.38	\$47.00 yy
Grants, New Mexico	State DOC	Min/Med/Max (F)	200	Jun-89	\$69.75	- z
Mason, Tennessee	Fed-USMS	Min/Med	256	Nov-90	NA	-
Pecos, Texas	Fed-BOP,USMS	Min	532	Sep-88	-	- zz
Santa Fe, New Mex	Fed-BOP,USMS/C'nty	Min/Med/Max	201	Aug-88	\$48.75	- (T)
Chatanooga, Tenn	County	Min/Med/Max	320	Oct-84	\$22.66	- (T)
Chatanooga, Tenn	County	Min/Med/Max (F)	117	Oct-84	\$22.66	- (T)
Venus, Texas	State DOC	Min	500	Aug-89	\$35.25	-
Winnfield, LA	State DOC	Med	610	Mar-90	\$26.00	-
Concepts, Inc.			600			
Mineral Wells, TX	State BPP	Min	500	NA	NA	-
Bridgeport, TX	State BPP	Min (F)	100	NA	NA	-
Detention Systems, Inc.			726			
Zavala County, TX	County	Min/Med	226	Feb-89	\$46.50	-
Limestone County, TX	County	Min/Med	500	Spring 91	\$46.50	-

<u>Company/Location</u>	<u>Security</u>	<u>Capacity</u>	<u>Date Opened</u>	<u>Threshold Per Diem</u>	<u>Minimum Per Diem</u>	<u>Notes</u>
<i>Dismas Charities, Inc. (non-profit)</i>						
		100				
Owensboro, Kentucky	State DOC	100	Jun-90	\$27.50	-	
<i>Eclectic Communications, Inc</i>						
		540				
Baker, California	State DOC	200	Aug-87	\$38.70	-	
LaHonda, California	State DOC	120	Jan-86	\$49.02	\$32.88	x
Live Oak, California	State DOC	220	Aug-88	\$42.93	\$32.88	x
<i>Eden Detention Center, Inc.</i>						
		324				
Eden, Texas	Fed-BOP	324	Oct-85	\$32.14	-	
<i>Esmore, Inc.</i>						
		90				
Seattle, Washington	Fed-INS	90	Jun-89	\$90.00	\$40.00	x
<i>Management and Training, Inc.</i>						
		400				
Desert Center, CA	State DOC	400	Sep-88	\$32.08	-	
<i>Mid-Tex Corrections, Inc.</i>						
		350				
Big Spring, Texas	FED-BOP	350		NA	-	
<i>Pricor</i>						
		3,077				
Tuscaloosa, Alabama	County	144	Jun-86	-	-	z
Houston, Texas	State BPP	223	Jun-87	\$32.50	-	
Sweetwater, Texas	State BPP	210	Jul-89	\$33.00	-	

<u>Company/Location</u>		<u>Security</u>	<u>Capacity</u>	<u>Date Opened</u>	<u>Threshold Per Diem</u>	<u>Minimum Per Diem</u>	<u>Notes</u>
<i>Pricor (Continued)</i>							
Pecos County, Texas	County	Min/Med	500	Nov-90	-	-	xx
San Saba County, TX	County	Min/Med	500	Nov-90	-	-	xx
Swisher County, TX	County	Min/Med	500	Nov-90	-	-	xx
Angelina County, TX	County	Min/Med	500	Nov-90	-	-	xx
LaSalle County, TX	County	Min/Med	500	Nov-90	-	-	xx
<i>Texas Detention Management, Inc.</i>			440				
Newton County, TX	County	Min/Med/Max	440	Spring 91	NA	-	
<i>U.S. Corrections Corporation</i>			1,320				
St. Mary's, Kentucky	State DOC	Min	500	Jan-86	\$26.89	-	
Louisville, Kentucky	County	Min	320	Jan-90	\$27.50	-	
Beattyville, Kentucky	State DOC	Min	500	Aug-90	\$26.89	-	
<i>Wackenhut Corrections Corporation</i>			2,806				
San Antonio, Texas	State BPP	Min/Med (+F)	619	Jan-89	\$22.50	-	(a) (T)
Kyle, Texas	State DOC	Min/Med	500	Jun-89	\$34.79	-	(a)
Bridgeport, Texas	State DOC	Min/Med	500	Aug-89	\$34.79	-	(a)
McFarland, CA	State DOC	Min/Med (+F)	200	Jan-89	\$31.55	-	(a)
Aurora, Colorado	Fed-INS	Min/Med	167	May-87	\$36.69	-	(a)
New York, NY	Fed-INS	Min (+F/J)	100	Oct-89	\$95.45	-	(a) (T)
Detroit, Michigan	City	Min/Med/Max	400	Apr-87	\$11.65	-	(b) (T)
Monroe County, Fla	County	Min/Med/Max (+F/J)	320	Feb-90	\$47.60	\$5.00	(T)

Gary White and Associates

340

Bakersfield, CA

State DOC

Min

340

Apr-89

\$32.76

TOTAL PRIVATE SECTOR PRISON BEDS

16,120

TOTAL BY COMPANY	Number of Beds	Market Share
Corr Corp of America	5007	31%
PRICOR	3077	19%
Wackenhut	2806	17%
U.S. Corrections Corp	1320	8%
All Other	3910	24%
Total	16120	100%

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Acronyms for Contracting Agencies

Fed-BOP	Federal Bureau of Prisons
Fed-INS	Federal - Immigration and Naturalization Service
Fed-USMS	Federal - United States Marshals Service
State DOC	State Department of Corrections
State BPP	Texas State Bureau of Pardons and Parole

Footnotes

- (F) Facility for females only
- (+F) Facility includes both males and females
- (+F/J) Facility includes males, females, and juveniles
- (a) Includes debt service
- (b) No overnight beds included
- x Per diem rate decreases as number of inmates increases
beyond a specified threshold level(s)
- xx Per diem rate decreases as percentage occupancy rises
- y Differential rates charged for federal, state, or local inmates
- yy Highest rate listed is for BOP juveniles
- z Guaranteed base payment per month
- zz Guaranteed base per month plus per diem for inmates over 480
- (T) Take-over of existing correctional facility

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Source:

Charles W. Thomas, Center for Studies in Criminology and Law
University of Florida, Gainesville, FL (Telephone: 904/392-0783)

APPENDIX D

Proposed Legislation

Adult Correctional Facilities (House Bill 1809)

Local and Regional Jails (House Bill 1810)

Juvenile Detention Centers (House Bill 1811)

1991 SESSION

LD5681474

HOUSE BILL NO. 1809

Offered January 22, 1991

A BILL to amend the Code of Virginia by adding in Title 53.1 a chapter numbered 15, consisting of sections numbered 53.1-261 through 53.1-267, relating to private operation of corrections facilities.

Patrons—Hall, Rollison, Clement, Giesen, Bloxom, Putney, Keating, Callahan, Hamilton, Van Landingham, DeBoer, Forehand, Guest, Smith, Diamonstein, Fill, Robinson, Heilig, Eck, Ealey, Moss, Harris, R.E., Orrock, Howell and Cunningham, J.W.; Senators: Truban, Scott, Cross, Colgan, Goode, Holland, R.J., Anderson, Gray, Schewel, Saslaw, Lambert, Fears, Russell, Waddell and Miller, Y.B.

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 53.1 a chapter numbered 15, consisting of sections numbered 53.1-261 through 53.1-267, as follows:

CHAPTER 15.

CORRECTIONS PRIVATE MANAGEMENT ACT.

§ 53.1-261. Definitions.—As used in this chapter unless the context requires otherwise or it is otherwise provided:

“Correctional services” shall mean the following functions, services and activities, when provided within a prison or otherwise:

- 1. Operation of facilities, including management, custody of inmates and provision of security;
2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;
3. Development and implementation assistance for classification, management information systems or other information systems or services;
4. Education, training and employment programs;
5. Recreational, religious and other activities; and
6. Counseling, special treatment programs, or other programs for special needs.

“Prison” or “facility” or “prison facility” shall mean any institution operated by or under authority of the Department and shall include, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair or other means, any physical betterment or improvement related to the housing of inmates or any preliminary plans, studies or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility.

“Prison contractor” or “contractor” means any entity entering into or offering or proposing to enter into a contractual agreement to provide any correctional services to inmates under the custody of the Commonwealth.

§ 53.1-262. State correctional facilities; private contracts.—The Director, subject to approval of the Board, is hereby authorized to enter into contracts with prison contractors for the financing, site selection, acquisition, construction, maintenance, leasing, management and operation of prison facilities, subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

- a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

1 *b. The financial resources to provide indemnification for liability arising from prison*
2 *management projects;*

3 *c. Evidence of past performance of similar contracts; and*

4 *d. The ability to comply with all applicable federal and state constitutional standards;*
5 *federal, state, and local laws; court orders; and correctional standards.*

6 *2. Contracts awarded under the provisions of this chapter, including contracts for the*
7 *provision of correctional services or for the lease or use of public lands or buildings for*
8 *use in the operation of facilities, may be entered into for a period of up to thirty years,*
9 *subject to the requirements for annual appropriation of funds by the Commonwealth.*

10 *3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply*
11 *with the following:*

12 *a. Provide for internal and perimeter security to protect the public, employees and*
13 *inmates;*

14 *b. Provide inmates with work or training opportunities while incarcerated; however,*
15 *the contractor shall not benefit financially from the labor of inmates;*

16 *c. Impose discipline on inmates only in accordance with applicable regulations; and*

17 *d. Provide proper food, clothing, housing and medical care for inmates.*

18 *4. No contract for correctional services shall be entered into unless the following*
19 *requirements are met:*

20 *a. The contractor provides audited financial statements for the previous five years or*
21 *for each of the years the contractor has been in operation, if fewer than five years, and*
22 *provides other financial information as requested; and*

23 *b. The contractor provides an adequate plan of indemnification, specifically including*
24 *indemnity for civil rights claims. The indemnification plan shall be adequate to protect the*
25 *Commonwealth and public officials from all claims and losses incurred as a result of the*
26 *contract. Nothing herein is intended to deprive a prison contractor or the Commonwealth*
27 *of the benefits of any law limiting exposure to liability or setting a limit on damages.*

28 *5. No contract for correctional services shall be executed by the Director nor shall any*
29 *funds be expended for the contract unless:*

30 *a. The proposed contract has been reviewed and approved by the Board;*

31 *b. An appropriation for the services to be provided under the contract has been*
32 *expressly approved as is otherwise provided by law;*

33 *c. The correctional services proposed by the contract are of at least the same quality*
34 *as those routinely provided by the Department to similar types of inmates; and*

35 *d. An evaluation of the proposed contract demonstrates a cost benefit to the*
36 *Commonwealth when compared to alternative means of providing the services through*
37 *governmental agencies.*

38 *6. A site proposed by a contractor for the construction of a prison facility shall not be*
39 *subject to the approval procedure set forth in § 53.1-19.*

40 *§ 53.1-263. Authority of security employees.—Security employees of a prison contractor*
41 *shall be allowed to use force and shall exercise their powers and authority only while on*
42 *the grounds of an institution under the supervision of the prison contractor, while*
43 *transporting inmates and while pursuing escapees from such institutions. All provisions of*
44 *law pertaining to custodians of inmates, correctional officers, or prison or jail officers,*
45 *except § 19.2-81.1, shall apply to contractors' security employees.*

46 *§ 53.1-264. Application of certain criminal law to contractor-operated facilities.—All*
47 *provisions of law establishing penalties for offenses committed against custodians of*
48 *inmates, correctional officers, prison guards, or jail officers shall apply mutatis mutandis to*
49 *offenses committed by or with regard to inmates assigned to facilities or programs for*
50 *which a prison contractor is providing correctional services.*

51 *§ 53.1-265. Powers and duties not delegable to contractor.—No contract for correctional*
52 *services shall authorize, allow, or imply a delegation of authority or responsibility of the*
53 *Director to a prison contractor for any of the following:*

54 *1. Developing and implementing procedures for calculating inmate release and parole*

1 *eligibility dates;*

2 2. *Developing and implementing procedures for calculating and awarding sentence*
3 *credits;*

4 3. *Approving inmates for furlough and work release;*

5 4. *Approving the type of work inmates may perform and the wages or sentence credits*
6 *which may be given the inmates engaging in such work;*

7 5. *Granting, denying, or revoking sentence credits;*

8 6. *Classifying inmates or placing inmates in less restrictive custody or more restrictive*
9 *custody;*

10 7. *Transferring an inmate; however, the contractor may make written recommendations*
11 *regarding the transfer of an inmate or inmates;*

12 8. *Formulating rules of inmate behavior, violations of which may subject inmates to*
13 *sanctions; however, the contractor may propose such rules to the Director for his review*
14 *and adoption, rejection, or modification as otherwise provided by law or regulation; and*

15 9. *Disciplining inmates in any manner which requires a discretionary application of*
16 *rules of inmate behavior or a discretionary imposition of a sanction for violations of such*
17 *rules.*

18 § 53.1-266. *Authority to contract with tax-exempt entities.—The Department is hereby*
19 *authorized and empowered to cooperate and contract with tax-exempt entities to provide*
20 *for the payment of the principal of, premium, if any, interest on, and trustee's and paying*
21 *agent's fees in connection with bonds issued to finance the acquisition, construction and*
22 *operation of prison facilities authorized under this Act, to be secured by a lien on and*
23 *pledge of one or more of the following: (i) all revenues derived from payments to be made*
24 *by the Department for the housing of prisoners or (ii) any other revenues authorized by*
25 *the General Assembly or relevant governing body or appropriations of the General*
26 *Assembly. It shall not be necessary to the perfection of the lien and pledge for such*
27 *purposes that the trustee in connection with such bond issue or the holders of the bonds*
28 *take possession of the collateral security.*

29 § 53.1-267. *Board to promulgate regulations.—The Board shall make, adopt and*
30 *promulgate regulations governing the following aspects of private management and*
31 *operation of prison facilities:*

32 1. *Contingency plans for state operation of a contractor-operated facility in the event*
33 *of a termination of the contract;*

34 2. *Use of deadly and nondeadly force by prison contractors' security personnel;*

35 3. *Methods of monitoring a contractor-operated facility by the Department or the*
36 *Board;*

37 4. *Public access to a contractor-operated facility; and*

38 5. *Such other regulations as may be necessary to carry out the provisions of this*
39 *chapter.*

40 2. That the Board of Corrections, together with the Department of Corrections, is directed
41 to submit to the General Assembly, through the Secretary of Public Safety, on or before
42 December 1, 1991, a proposal for the private site selection, construction, financing,
43 maintenance and operation of one correctional facility for adult female offenders and one
44 minimum security prerelease facility for adult male offenders consistent with the
45 Commonwealth's general plans for correctional facilities and services during the next or
46 subsequent biennium. For each proposed facility the proposal shall contain a complete cost
47 analysis and a comparison of the projected private contract costs with the cost of the
48 state's constructing, operating and maintaining a similar facility.

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1991 SESSION

LD6501474

HOUSE BILL NO. 1810

Offered January 22, 1991

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 53.1 an article numbered 1.1, consisting of sections numbered 53.1-71.1 through 53.1-71.6, relating to private operation of local correctional facilities.

Patrons—Hall, Rollison, Clement, Giesen, Bloxom, Putney, Keating, Callahan, Hamilton, Van Landingham, DeBoer, Forehand, Moss, Smith, Diamonstein, Fill, Robinson, Heilig, Ealey, Eck, Harris, R.E., Orrock and Howell; Senators: Truban, Scott, Cross, Fears, Goode, Holland, R.J., Anderson, Gray, Schewel, Saslaw, Lambert, Russell, Colgan, Waddell and Miller, Y.B.

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 53.1 an article numbered 1.1, consisting of sections numbered 53.1-71.1 through 53.1-71.6, as follows:

Article 1.1

Private Operation of Local Correctional Facilities.

§ 53.1-71.1. Board may authorize private construction, operation, etc., of local correctional facility.—A. The Board may authorize a county or city or any combination of counties, cities or towns to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management and operation of a local correctional facility; however, the Board shall not authorize more than two such projects.

B. Any project the Board authorizes pursuant to subsection A of this section shall be subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from jail management projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and correctional standards.

2. Contracts awarded under the provisions of this article, including contracts for the provisions of correctional services or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.

3. No contract for correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county or city or combination of counties, cities or towns and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a local correctional facility contractor or the county or city or combination of counties, cities or towns of the benefits of any law limiting exposure to liability or setting

1 a limit on damages.

2 4. No contract for correctional services shall be executed unless:

3 a. The proposed contract has been reviewed and approved by the Board;

4 b. An appropriation for the services to be provided under the contract has been
5 expressly approved as is otherwise provided by law;

6 c. The correctional services proposed by the contract are of at least the same quality
7 as those routinely provided by a local correctional facility to similar types of inmates; and

8 d. An evaluation of the proposed contract demonstrates a cost benefit to the county or
9 city or combination of counties, cities or towns when compared to alternative means of
10 providing the services through governmental agencies.

11 § 53.1-71.2. Authority of security employees.—Security employees of a local correctional
12 facility contractor shall be allowed to use force and shall exercise their powers and
13 authority only while on the grounds of a local correctional facility under the supervision
14 of the local correctional facility contractor, while transporting inmates and while pursuing
15 escapees from such facilities. All provisions of law pertaining to custodians of inmates or
16 jail guards or officers shall apply to contractors' security employees.

17 § 53.1-71.3. Application of certain criminal law to contractor-operated facilities.—All
18 provisions of law establishing penalties for offenses committed against custodians of
19 inmates or jail guards or officers shall apply mutatis mutandis to offenses committed by
20 or with regard to inmates assigned to facilities or programs for which a local correctional
21 facility contractor is providing correctional services.

22 § 53.1-71.4. Powers and duties not delegable to contractor.—No contract for
23 correctional services shall authorize, allow, or imply a delegation of authority or
24 responsibility to a local correctional facility contractor for any of the following:

25 1. Developing and implementing procedures for calculating inmate release dates;

26 2. Developing and implementing procedures for calculating and awarding sentence
27 credits;

28 3. Approving inmates for furlough and work release;

29 4. Approving the type of work inmates may perform and the wages or sentence credits
30 which may be given the inmates engaging in such work;

31 5. Granting, denying, or revoking sentence credits;

32 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive
33 custody;

34 7. Transferring an inmate; however, the contractor may make written recommendations
35 regarding the transfer of an inmate or inmates;

36 8. Formulating rules of inmate behavior, violations of which may subject inmates to
37 sanctions; however, the contractor may propose such rules for review and adoption,
38 rejection, or modification as otherwise provided by law or regulation; and

39 9. Disciplining inmates in any manner which requires a discretionary application of
40 rules of inmate behavior or a discretionary imposition of a sanction for violations of such
41 rules.

42 § 53.1-71.5. Authority to contract with tax-exempt entities.—The county or city or
43 combination of counties, cities or towns is hereby authorized and empowered to cooperate
44 and contract with tax-exempt entities to provide for the payment of the principal of,
45 premium, if any, interest on, and trustee's and paying agent's fees in connection with
46 bonds issued to finance the acquisition, construction and operation of facilities authorized
47 under this article, to be secured by a lien on and pledge of one or more of the following:
48 (i) all revenues derived from payments to be made by the county or city or combination
49 of counties, cities or towns for the housing of prisoners or (ii) any other revenues
50 authorized by the relevant governing body or appropriations of the General Assembly. It
51 shall not be necessary to the performance of the lien and pledge for such purposes that
52 the trustee in connection with such bond issue or the holders of the bonds take possession
53 of the collateral security.

54 § 53.1-71.6. Board to promulgate regulations.—A. The Board shall make, adopt and

1 promulgate regulations governing the following aspects of private management and
2 operation of local correctional facilities:

3 1. The schedule for state reimbursement to the localities for costs of construction;

4 2. The manner of state payment to the localities for the care and custody costs at the
5 facility of persons accused or convicted of any offense against the laws of the
6 Commonwealth. Such payments shall include only the reasonable costs of guarding and
7 providing necessary housing, maintenance, administrative expenses, food, clothing,
8 medicine and medical attention for such prisoners. However, in no event shall the
9 payment to a locality or localities, when calculated on a per diem per prisoner basis,
10 exceed the total cost ordinarily paid by the Commonwealth to the locality or localities for
11 prisoner care and custody expenses, when calculated on a per diem per prisoner basis;

12 3. Minimum standards for the construction, equipment, administration and operation of
13 the facilities; however, the standards shall be at least as stringent as those established for
14 other local correctional facilities; and

15 4. Contingency plans for operation of a contractor-operated facility in the event of a
16 termination of the contract;

17 5. Use of deadly and nondeadly force by local correctional facility contractors' security
18 personnel;

19 6. Methods of monitoring a contractor-operated facility by an appropriate state or local
20 governmental entity or entities;

21 7. Public access to a contractor-operated facility; and

22 8. Such other regulations as may be necessary to carry out the provisions of this
23 article.

24 2. That the Board of Corrections is directed to submit to the General Assembly, through
25 the Secretary of Public Safety, on or before December 1, 1991, any proposals made
26 pursuant to this act for the private site selection, construction, financing, maintenance and
27 operation of local correctional facilities. For each proposed facility the proposal shall
28 contain a complete cost analysis and a comparison of the projected private contract costs
29 with the cost of a locality or localities constructing, operating and maintaining a similar
30 facility.

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Official Use By Clerks	
Passed By	Passed By The Senate
The House of Delegates	
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
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Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

1991 SESSION

LD6502474

HOUSE BILL NO. 1811 Offered January 22, 1991

A BILL to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 13.2, consisting of sections numbered 16.1-322.5 through 16.1-322.8, authorizing private operation of juvenile detention facilities.

Patrons—Hall, Rollison, Clement, Giesen, Bloxom, Putney, Keating, Callahan, Hamilton, Van Landingham, DeBoer, Forehand, Moss, Fisher, Smith, Diamonstein, Cunningham, J.W., Fill, Robinson, Heilig, Ealey, Eck, Harris, R.E., Orrock and Howell; Senators: Truban, Scott, Cross, Goode, Holland, R.J., Anderson, Gray, Schewel, Lambert, Saslaw, Fears, Russell, Colgan, Waddell and Miller, Y.B.

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 16.1-322.5 through 16.1-322.8 as follows:

Article 13.2.

Private Operation of Juvenile Detention Facilities.

§ 16.1-322.5. State Board may authorize private construction, operation, etc., of local or regional detention homes, etc.—A. The State Board of Youth and Family Services may authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management, and operation of a local or regional detention home or other secure facility; however, the State Board shall not authorize more than two such projects. Any project authorized pursuant to this article shall be consistent with the statewide plan developed pursuant to § 16.1-310.

B. Any project the State Board authorizes pursuant to subsection A of this section shall be subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no such contract may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from detention home or other secure facility management projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and standards for a detention home or other secure facility.

2. Contracts awarded under the provisions of this article, including contracts for the provision of juvenile correctional facilities or programs or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.

3. No contract for juvenile correctional facilities or programs shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the

1 county or city or combination of counties, cities, or towns established pursuant to §
2 16.1-315 and public officials from all claims and losses incurred as a result of the contract.
3 Nothing herein is intended to deprive a contractor or the county or city or combination of
4 counties, cities, or towns established pursuant to § 16.1-315 of the benefits of any law
5 limiting exposure to liability or setting a limit on damages.

6 4. No contract for correctional services shall be executed unless:

7 a. The proposed contract has been reviewed and approved by the State Board;

8 b. An appropriation for the services to be provided under the contract has been
9 expressly approved as is otherwise provided by law;

10 c. The juvenile correctional facilities or programs proposed by the contract are of at
11 least the same quality as those routinely provided by a governmental agency to similarly
12 situated children; and

13 d. An evaluation of the proposed contract demonstrates a cost benefit to the county or
14 city or combination of counties, cities, or towns established pursuant to § 16.1-315 when
15 compared to alternative means of providing the services through governmental agencies.

16 § 16.1-322.6. Powers and duties not delegable to contractor.—No contract for juvenile
17 correctional facilities or programs shall authorize, allow, or imply a delegation of authority
18 or responsibility to a juvenile correctional facilities or programs contractor for any of the
19 following:

20 1. Developing and implementing procedures for calculating a detainee's release date;

21 2. Classifying detainees or placing detainees in less restrictive custody or more
22 restrictive custody;

23 3. Transferring a detainee; however, the contractor may make written recommendations
24 regarding the transfer of a detainee or detainees;

25 4. Formulating rules of detainee behavior, violations of which may subject detainees to
26 sanctions; however, the contractor may propose such rules for review and adoption
27 rejection, or modification as otherwise provided by law or regulation; and

28 5. Disciplining detainees in any manner which requires a discretionary application of
29 rules of detainee behavior or a discretionary imposition of a sanction for violations of
30 such rules.

31 § 16.1-322.7. Authority to contract with tax-exempt entities.—The county or city or
32 combination of counties, cities, or towns established pursuant to § 16.1-315 is hereby
33 authorized and empowered to cooperate and contract with tax-exempt entities to provide
34 for the payment of the principal of, premium, if any, interest on, and trustee's and paying
35 agent's fees in connection with bonds issued to finance the acquisition, construction and
36 operation of detention homes or other secure facilities authorized under this article, to be
37 secured by a lien on and pledge of one or more of the following: (i) all revenues derived
38 from payments to be made by the county or city or combination of counties, cities, or
39 towns established pursuant to § 16.1-315 for the provision of juvenile correctional facilities
40 or programs or (ii) any other revenues authorized by the relevant governing body or
41 appropriations of the General Assembly. It shall not be necessary to the perfection of the
42 lien and pledge for such purposes that the trustee in connection with such bond issue or
43 the holders of the bonds take possession of the collateral security.

44 § 16.1-322.8. State Board to promulgate regulations.—The State Board shall make,
45 adopt, and promulgate regulations governing the following aspects of private management
46 and operation of local or regional detention homes or other secure facilities:

47 1. The schedule for state reimbursement to the cities or counties or any combination
48 thereof, as the case may be, for costs of construction;

49 2. The manner of state payment to the localities for the care and custody costs at the
50 facility of children for whom the Commonwealth is required to provide funds. However,
51 no event shall the payment to the localities, when calculated on a per diem per child
52 basis, exceed the total cost ordinarily paid by the Commonwealth to the locality for the
53 care and custody expenses of such children, when calculated on a per diem per child
54 basis.

1 3. Minimum standards for the construction, equipment, administration, and operation of
 2 the facilities; however, the standards must be at least as stringent as those established for
 3 other local or regional detention homes or other secure facilities;

4 4. Contingency plans for operation of a contractor-operated facility in the event of a
 5 termination of the contract;

6 5. The powers and duties of contractors' personnel charged with the care and custody
 7 of detainees, including use of force and discipline;

8 6. Methods of monitoring a contractor-operated facility by an appropriate state or local
 9 governmental entity or entities;

10 7. Public access to a contractor-operated facility; and

11 8. Such other regulations as may be necessary to carry out the provisions of this
 12 article.

13 2. That the State Board of Youth and Family Services is directed to submit to the General
 14 Assembly, through the Secretary of Public Safety, on or before December 1, 1991, any
 15 proposals made pursuant to this Act for the private site selection, construction, financing,
 16 maintenance and operation of juvenile detention homes or other secure juvenile facilities.
 17 For each proposed facility the proposal shall contain a complete cost analysis and a
 18 comparison of the projected private contract costs with the cost of a locality or localities
 19 constructing, operating and maintaining a similar facility.

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Official Use By Clerks	
<p style="text-align: center;">Passed By</p> <p>The House of Delegates</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;">Passed By The Senate</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate