COMMITTEE ON PROTECTION OF PUBLIC SAFETY AND HEALTH

Materials Distributed

9/2 - 9/19

MAINE STATE SENATE
State House Station 3
Augusta, Maine 04333

September 20, 1991

Charlene Kinnelly, Co-Chair
N. Laurence Willey, Co-Chair
Committee on Protection of Public Safety and Health
Special Commission on Governmental Restructuring
SHS 13
Augusta, ME 04333

Dear Ms. Kinnelly and Mr. Willey:

I regret that a prior commitment out-of-state keeps me from being with you today, but I do appreciate the opportunity to share my views with the Committee. I offer the following reactions to your minutes.

Minutes of 7/29:

Regarding your first hypothesis, it is clear that sentencing policy is not tied to correctional resources in Maine. The increasing prevalence of mandatory minimum sentences has placed a particular strain on the corrections system and neither the Judiciary nor the Corrections Department can do anything about it. In short, sentencing policy and corrections policy must be better coordinated. To that end, the Corrections Committee held a criminal justice summit last winter under the aegis of the Maine Development Foundation. The purpose of the summit was to forge new relationships among the various interests in the criminal justice system: judges, legislators, victims, DOC officials, prosecutors, defense attorneys and law enforcement officials at all levels of government. We are working with the MDF and the Maine Council of Churches to organize a follow-up session this fall. Also, the Legislature created the Maine Criminal Justice Commission last session. The Commission will provide an ongoing forum for members of the criminal justice community to interact. Unfortunately, we were not able to fund the commission's activities, but provisions were made to allow private funding.

Your second hypothesis is obviously false. (I trust you have come to the same conclusion by now.) Although there is some disagreement as to what kinds of infrastructure we need (maximum security v. minimum security, for example), it is clear to all parties involved that infrastructure of the corrections system is woefully inadequate. I refer you to any of the many reports issued by the Joint Select Committee on Corrections.

Minutes of 8/9:

The second paragraph contains a discussion of the goals of the corrections system. The Corrections Committee achieved broad consensus on a set of beliefs and guidelines in 1987. I believe that work is still relevant, and I enclose an excerpt from our interim report (February, 1988) which may assist you in your deliberations.

Also in the second paragraph is a reference to coordination with other departments. The number of DOC clients who need mental health services has increased dramatically over the last decade, particularly if you include sex offenders in that category. An important question to ask is whether better coordination with the Department of Mental Health and Mental Retardation can address the unmet need, or whether the DOC should fully develop mental health services on its own. An historical problem in this area has been the difficulty of blending the expertise of the DOC (security) with that of the DMHMR (therapy). Substance abusers are another large group of DOC clients whose needs are not being met. The role of the Office of Substance Abuse is still evolving. OSA and the DOC should be encouraged to work together to strengthen substance abuse programs in the corrections system.

I agree with Commissioner Allen that greater emphasis must be placed on prevention. Enhanced early intervention with juveniles and their families is particularly important.

I also agree that we need a centralized intake, or "receiving" unit for those who do ultimately penetrate the system. This would allow for thorough client needs analyses to be conducted before any person is integrated into the inmate population, resulting in better placements.

Regarding the use of Loring Air Force Base as a prison, I would point out the obvious shortcoming of having a facility located so far from the population centers of the State. Perhaps a regional facility to serve northern Maine would make sense, but I think you should pay close attention to the costs of transporting inmates to Loring and the question of whether an adequate supply of therapeutic services is available there. The idea of using existing facilities is a good one, however. I would encourage you to look at sites in central and southern Maine, such as Oak Grove Coburn School in Vassalboro or Pineland Center in Pownal.

Regarding your first tentative conclusion on page 4, I must say that the Joint Select Committee on Corrections has from its inception advocated for additional resources for rehabilitation programs. The process of funding programs is driven by the executive branch; the Legislature can not act alone in this regard.

Minutes of 8/23:

Regarding the coordination of local and county law enforcement, I have enclosed a copy of P.L. 478, passed last session in an attempt to address what is indeed a very controversial issue. I would be interested in hearing examples of the "national trend...toward community-based" police programs.

I think it does make sense to create specialized response teams (p. 2, second paragraph), particularly in the area of child abuse. I have enclosed a proposal developed by the Program and Audit Review Committee which you may find helpful.

Regarding the issue of whether counties should play a greater role in corrections, I suggest that the committee consider the opposite point of view. LD 1447, carried over by the Corrections Committee, would transfer all county jails to the State.

I hope that these comments are helpful. Please feel free to call on me if I can provide any further assistance. I look forward to receiving the Committee's report.

Sincerely,

Beverly Minor Bustin

Sen. Beverly Minor Bustin, Chair
Joint Select Committee
on Corrections

Enclosures
#3026LHS

II INTERIM STUDY

During a Planning Seminar in May, 1987, the Committee identified the following underlying beliefs about the mission of corrections:

A. Public protection is the highest priority. It should be accomplished through a system of risk control.

B. Within the context of public protection, prisons, jails and probation should address those human needs of offenders which contribute to criminal behavior. They include alcohol and substance abuse, mental health, employment and education.

C. All corrections programs and strategies should be responsive to public concern about punishment. However, punitive strategies should be designed to restore the victim and the community rather than do further harm and damage to the offender. A primary goal in punishment should be restitution not retribution.

D. All correctional strategies should recognize the important concerns of the victim and the newly established place of the victim in justice decision making.

E. Cost is and will be a legitimate concern in determining correctional priorities. Prison and jail space represent a limited valuable resource which must be reserved and available for those who pose a threat to public protection.

Within the context of the above principles, the Committee recognized the importance of the following guidelines.

A. Corrections strategies should always incorporate the least restrictive measure necessary based on a belief in and use of systematic, formal risk assessment. Through analysis of information relating to criminal history factors, it is possible to categorize offenders by a measure of risk. Such analysis can be incorporated in decision making tools including pre-sentence investigations, classification instruments and pre-release procedures.

B. Corrections at the state and local level should incorporate a range, continuum, or set of strategies which provides multiple options for dealing with risk and need.

FROM Interim Report of the Joint Select Committee on Corrections, February, 1988.

C. With adequate resources and effective management practices it is possible to eliminate inmate idleness. The primary tools should be the development of work and educational opportunities within prisons and jails.

D. There should exist within the corrections system, a comprehensive classification system which formally and objectively assesses risk and need; and provides objective data for the basis of decision making at times of sentencing, institutional placement and movement, probation case management and pre-release.

E. There must be available within all institutions, programs and services sufficient to ensure constitutional compliance, humane treatment of offenders and adequate response to the problems of alcohol/substance abuse, mental health and employment.

F. In the development and maintenance of a range of corrections strategies, community resources should be maximized in the most efficient and cost effective way possible.

G. The staffing of institutions and probation should be in compliance with recognized professional standards.

H. There should exist training opportunities for staff in accordance with professional standards. In addition, opportunities for the development of supervisors and managers within the system, especially in a time of complex growth and change, should be maintained as a high priority.

I. Sentencing, classification and pre-release decision making should be premised upon a gradual re-entry to society.

J. The corrections field is changing rapidly, promoting a need for public understanding of the nature of offenders and the purpose of the corrections system. This demands a government investment in public education and communications strategies.

K. There exists a critical need to improve the data and information that is generated by sentencing and corrections agencies for policymakers, managers and the public. Primary among those needs is information about the risks and needs posed by offenders.

APPROVED | CHAPTER
JUN 21 '91 | 478
BY GOVERNOR | PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

H.P. 813 - L.D. 1167

An Act to Ensure that County Sheriffs Continue to Provide Rural Patrols for Small Towns in the Counties

Be it enacted by the People of the State of Maine as follows:

30-A MRSA §452, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

§452. Patrol

The sheriff in each county, in person or by the sheriff's deputies, ~~may--patrol--throughout--the--county,~~ to the extent the sheriff undertakes to patrol, shall patrol those areas in the county that have no local law enforcement but may not be required by law to patrol the entire county. The county commissioners, with the sheriff's agreement, may enter into a contract with a municipality under section 107 to provide specific patrol services by the sheriff's department in return for payment for these services.

Review of

- Child Welfare Services
- Maine Emergency Medical Services
- Miscellaneous

Joint Standing Committee on Audit and Program Review 1989-1990

CHILD WELFARE SERVICES

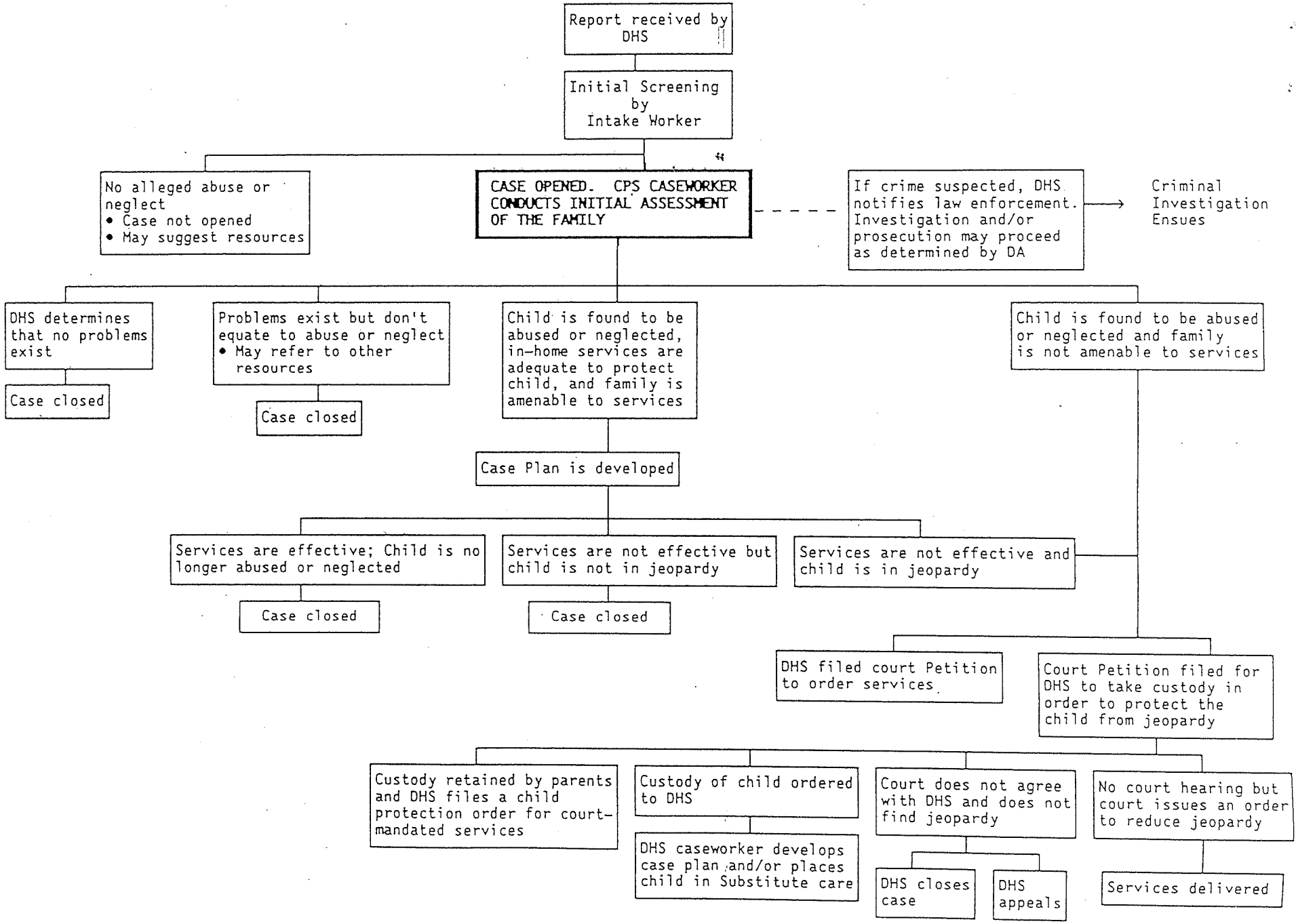
STATUTORY	1.	Establish a Coordinated Response System for child abuse referrals as a two-year model project in Penobscot and Piscataquis Counties, in order to improve the State's response to child abuse and neglect.

Maine's child welfare service delivery system is distinguished by the overriding significance that the initial assessment of a child abuse and neglect referral holds over the entire process. The Committee has found that every event and decision made throughout the service delivery system is strongly influenced by the quality of the initial assessment. Members of the child welfare community, as well as individuals personally involved in the system, unanimously testify to the need to ensure that the initial contact with the family and child is comprehensive, consistent, thorough, and objective.

The flow chart of the current assessment procedure which appears on the following page illustrates the importance of the initial assessment to all subsequent actions. As indicated, a single caseworker may often have sole responsibility for conducting the initial interviews and collaborating with others as needed (or available) for the purpose of deciding whether the child is at risk, the action needed to protect the child from harm, and whether law enforcement officials need be contacted to investigate an action that may constitute a crime. In other circumstances, a Department of Human Services's caseworker may sometimes be accompanied by an available state, county, or local law enforcement officer for the initial assessment of referrals involving alleged criminal acts of child abuse.

Despite carefully designed protocol, specialized training, commendable diligence, and highly motivated and competent caseworker and law enforcement professionals, the Committee finds that current practice is not satisfactory in providing consistent, objective, and thorough assessments of child abuse and neglect referrals. The Committee concludes that the fluctuating quality of assessments threatens the health and welfare of Maine children and families and fails to adequately uphold, in a fair and expeditious fashion, the State's responsibility to address child abuse and neglect.

CURRENT CIVIL INVESTIGATION PROCESS
– TO PROTECT THE CHILD FROM HARM –



To consider other alternatives, the Committee surveyed various types of team approaches to child abuse and neglect assessment that are being established in many communities around the country. Although the composition and specific purpose of these teams varies, one feature shared by all teams is the coordinated collaboration of relevant professional disciplines. Teams in such geographically disparate locations as Huntsville, Alabama; Cambridge, Massachusetts; Wheaton, Illinois; and San Diego, California all use some variation of this multidisciplinary team approach. Each locality reports similar benefits of improved case management expertise, not only within the team as a whole but also among individual team members. In addition, use of the coordinated team approach has facilitated interagency and cross-disciplinary communication and cooperation. Finally, service gaps within the community have been addressed more expeditiously through use of these teams.

To review the possible need for such a team approach in the State of Maine, the Committee consulted with and solicited testimony from many members of the child welfare community, which included the Child Welfare Services Ombudsman; DHS professionals; the mental health community; physicians; the legal, law enforcement, and judicial communities; service providers of all dimensions; and numerous advocacy groups.

As a result of these discussions and, in response to the compelling need for better assessment services, the Committee has designed a new and innovative system to assess child abuse and neglect referrals. The proposed System employs a separate assessment approach for each of the two categories of referrals; those which appear to be crimes and those which appear to rise to the level of abuse and neglect but which are not statutory crimes. The Committee's proposal, referred to as a **Coordinated Response System** for child abuse and neglect referrals, is a balanced and collaborative combination of assessment personnel and support services. As proposed by the Committee, the Coordinated Response System consists of six interrelated and integral components:

1. A three-team Child Abuse Assessment System;

2. Initial intervention, treatment, and support services;

3. Training for law enforcement and case worker professionals who will be part of the Assessment System;

4. An Advisory Committee to guide development and implementation of the Response System as a whole;

5. An Operational Planning Committee to plan for the practical implementation of the System; and

6. An evaluation of the model over the two year period.

The Coordinated Response System is an integrated system of people and services. The Response System consists of a highly trained and coordinated group of professionals representing disciplines with an interest or mandate in child abuse and neglect. The System is also a series of diagnostic and support services which will assist the child and family while ensuring speedy, comprehensive, and accurate assessments of child abuse referrals.

Due to the innovative nature of the proposal, the Committee further proposes that the System first be established as a model project in DHS Region IV, encompassing Penboscot and Piscataquis counties. The model is intended to operate for a two-year period to allow a full and complete evaluation of its effectiveness in improving the State's response to child abuse and neglect.

The following narrative, with an accompanying flow chart, provides a more detailed description of each of the six components of the Coordinated Response System.

Component #1 A three team Child Abuse Assessment System

- The first team in the Assessment System is called the Initial Assessment team. The Initial Assessment team has two separate components for two distinct purposes. The first component, referred to as the "criminal referral team", consists of caseworkers and law enforcement personnel, working in partnership to assess referrals of alleged crimes against children. The other component, referred to as the "civil referral team", consists solely of caseworker partnerships who will assess the referrals which involve alleged statutory abuse and neglect but which are not crimes. The overall Initial Assessment team shall have no ongoing social service delivery responsibilities.

  The "criminal" and "civil" referral teams will be composed of a total of 23 positions. The personnel for the Initial Assessment Team's two components are displayed below.

Composition of the Initial Assessment Team

"Criminal" referral team	"Civil" referral team
1 Supervisor	1 Supervisor
6 CPS Caseworkers	6 CPS Caseworkers
5 Law Enforcement officers	1 Clerk Steno III
1 Clerk Steno III	

For Both Teams

1 System Coordinator
1 Paralegal Assistant

The Department of Human Services will be authorized to contract with the district attorney for Penobscot and Piscataquis counties, who shall work in cooperation with state, county, and local law enforcement agencies to provide the law enforcement officers needed for the "criminal" assessment team.

- The second team in the Assessment System is referred to as the Diagnostic Team which will, as necessary, provide medical, psychological, social or developmental data to augment the initial assessment of the referral. The team will be composed of physicians, social workers, psychologists, child development specialists, and nurses.

- The third, and final team in the Assessment System is the Dispositional Team which is composed of experienced professionals from relevant disciplines. This team will analyze whatever data is presented to it by the Initial Assessment Team or Diagnostic Team and decide the most appropriate disposition of the case to not only protect the child from harm and support the family, but also to pursue any need for prosecution.

Component #2 Initial intervention, treatment, and support services.

The precise configuration of initial intervention, treatment, and support services will be decided by the Operational Planning Committee which is described below. However, within the limits of funds allocated by law, the Coordinated Response System will include, but not be limited to, such initial intervention, treatment, and support services as:

- **crises mental health services** consisting of mental health assessments and crises intervention to any family member in immediate need and victim trauma assessment;

- **case planning mediation** whereby families participate in an ombudsman-like process of negotiating the components of the family's case plan with the caseworker; and

- a **family shelter** option to provide an opportunity to learn parenting and life skills for the non-offending parent and child in a safe environment.

Component #3 High-level training in child abuse investigation will be provided for the law enforcement and caseworker professionals on the Initial Assessment Team, to ensure improved, comprehensive, and state-of-the-art assessments of referrals.

As raised by members of VOCAL (i.e. Victims of Child Abuse Laws), the Committee acknowledges and affirms the importance of comprehensive training that stresses objectivity and thoroughness. The Committee finds that the quality of the training to be provided as part of this proposal is critical to the proposal's ultimate success. The Committee recognizes that adequate training will remain a high priority not only for members of the Coordinated Response System but for all child protective personnel.

Component #4 An **Advisory Committee** limited to no more than 12 members will be created, consisting of the following members:

a. Child Welfare Services Ombudsman, co-chair;
b. Director of DHS's Division of Child Welfare, co-chair;
c. one Senator and two Representatives appointed by the President and the Speaker;
d. a mental health provider;
e. a physician;
f. a representative from the Court Appointed Special Advocate program;
g. a representative from the Maine Foster Parents Association;
h. one member from a victims'/survivors' advocacy group;
i. one member from a citizens' advocacy group; and
j. one representative from a law enforcement agency.

The purpose of the Advisory Committee will be to guide the development and implementation of the Response System by working with the Operations Planning Committee in solving problems and adjusting the operation of the Team to conform with Legislative

intent. The Advisory Committee may seek advice from and consult with members of the judiciary. The Committee will also consider the feasibility of expanding the model to other areas of the State. The co-chairs of the Advisory Committee will seek to fill the non-legislative membership positions with members who will work harmoniously and in good faith to fulfill the Committee's purpose.

The staff to the Coordinated Response System will submit a status report to the co-chairs of the Advisory Committee each month and refine the reporting mechanism at the direction of the Advisory Committee, as needed.

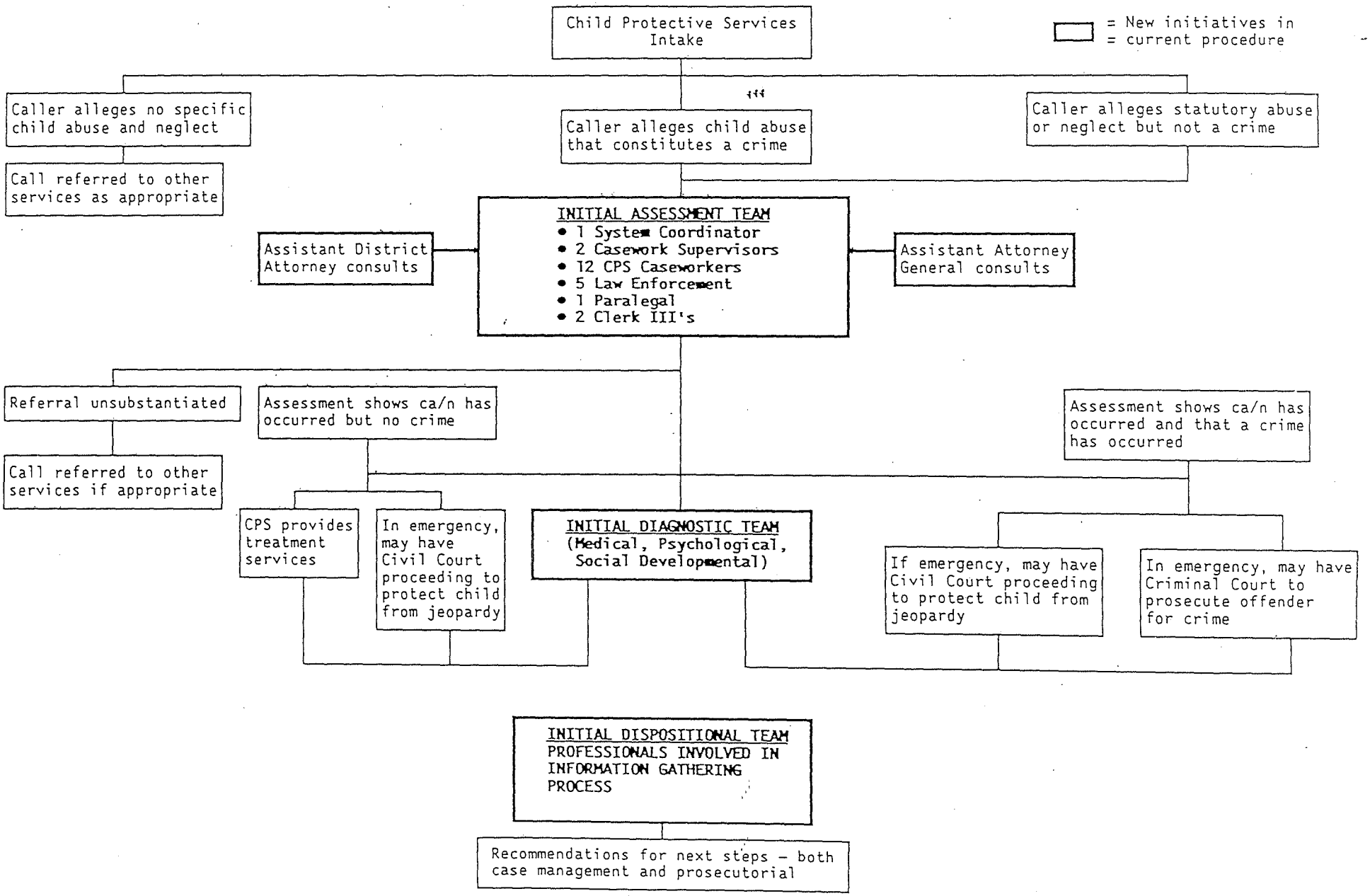
Meetings of the Advisory Committee will be held at the discretion of the co-chairs. Staff needed to carry out Legislative intent will be provided to the Advisory Committee by the Department of Human Services.

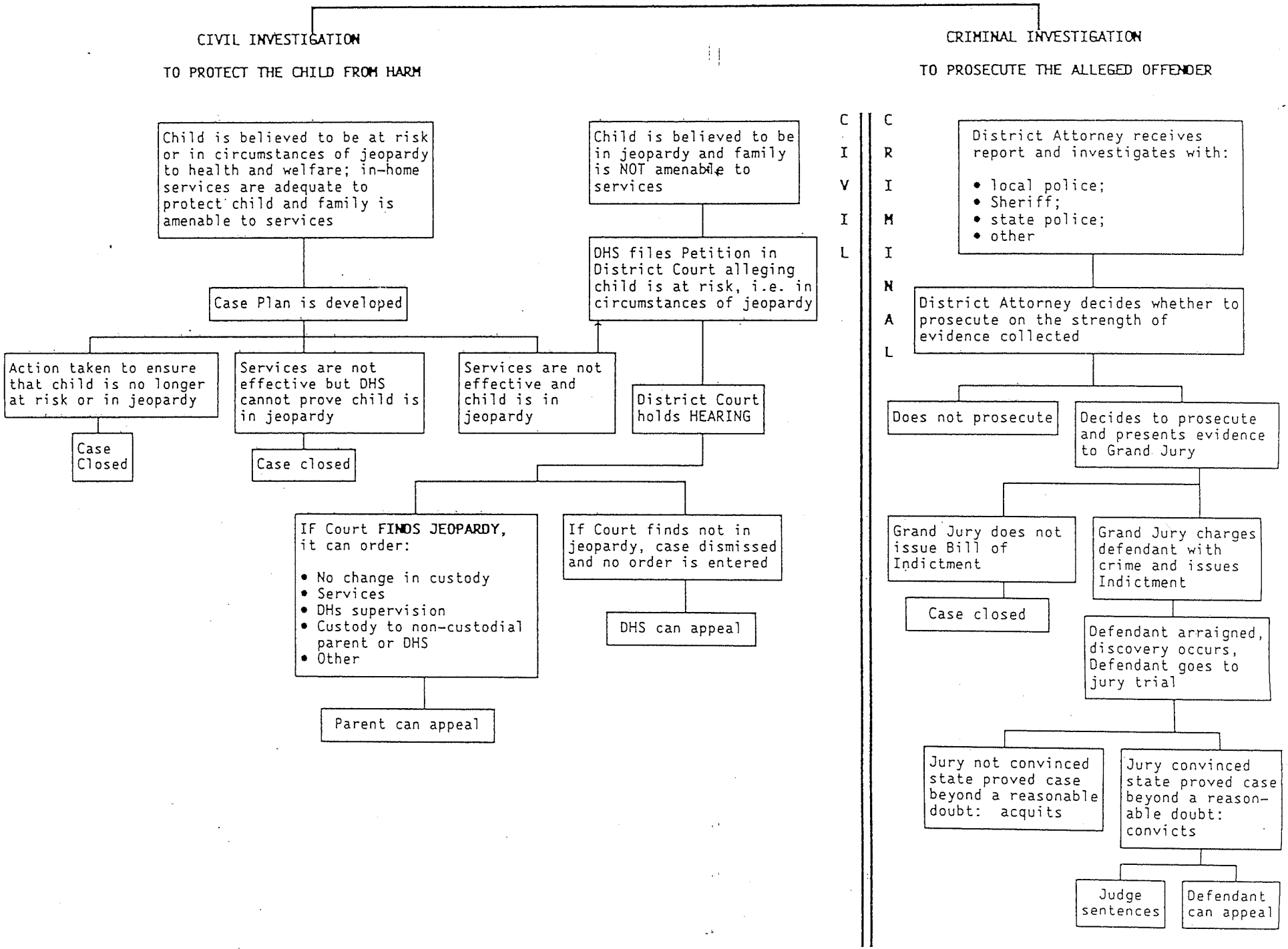
Component #5 An **Operational Planning Committee** will be created to plan for the practical implementation of the System. Permanent members of this Committee will be the DHS Region IV Program Manager (chair), the Director of DHS's Child Protective Services Unit, and the District Attorney (or designee) from prosecutorial District IV. Up to four additional members will be chosen by the permanent Committee members. Furthermore, as the model project develops, the Committee strongly encourages the use of videotape to record interviews conducted during the initial assessment of child abuse and neglect referrals. Nevertheless, the Committee recognizes that the use of electronic recording equipment is controversial and appears to have significant implications concerning the child and family members who are the subjects of a referral, the constitutional rights of a prospective defendant, and the prosecutorial process. Accordingly, the staff of the Coordinated Response System is charged with exploring the implications of videotaping initial interviews and identifying means to resolve apparent issues with the intent of incorporating videotaping as a tool used during the initial assessment phase of the investigation to record initial interviews of the child and family member.

Component #6 Evaluation. With the advice of the Advisory Committee, staff to the Coordinated Response System will submit an evaluation of the effectiveness of the Coordinated Response System to the Joint Standing Committees on Audit and Program Review and Human Resources, the Commissioner of Human Services, and the Office of the Executive Director of the Legislative Council at the end of the first two years of full operation. The report will contain a specific section on the status and effectiveness of employing videotape to record interviews during the initial assessment phase of child abuse and neglect

referrals. The report will also contain statistical data and information relevant to guide future decision-making in the Legislative and Executive branches regarding replicating the Coordinated Response System in other areas of the State.

COORDINATED RESPONSE SYSTEM
DHS REGION IV, PENOBSCOT AND PISCATAQUIS COUNTY




CIVIL INVESTIGATION
TO PROTECT THE CHILD FROM HARM
CRIMINAL INVESTIGATION
TO PROSECUTE THE ALLEGED OFFENDER
CIVIL
CRIMINAL
Child is believed to be at risk or in circumstances of jeopardy to health and welfare; in-home services are adequate to protect child and family is amenable to services
Case Plan is developed
Action taken to ensure that child is no longer at risk or in jeopardy
Case Closed
Services are not effective but DHS cannot prove child is in jeopardy
Case closed
Services are not effective and child is in jeopardy
Child is believed to be in jeopardy and family is NOT amenable to services
DHS files Petition in District Court alleging child is at risk, i.e. in circumstances of jeopardy
District Court holds HEARING
IF Court FINDS JEOPARDY, it can order:
• No change in custody
• Services
• DHs supervision
• Custody to non-custodial parent or DHS
• Other
Parent can appeal
If Court finds not in jeopardy, case dismissed and no order is entered
DHS can appeal
District Attorney receives report and investigates with:
• local police;
• Sheriff;
• state police;
• other
District Attorney decides whether to prosecute on the strength of evidence collected
Does not prosecute
Decides to prosecute and presents evidence to Grand Jury
Grand Jury does not issue Bill of Indictment
Case closed
Grand Jury charges defendant with crime and issues Indictment
Defendant arraigned, discovery occurs, Defendant goes to jury trial
Jury not convinced state proved case beyond a reasonable doubt: acquits
Jury convinced state proved case beyond a reasonable doubt: convicts
Judge sentences
Defendant can appeal

The Committee intends the multifaceted and multidisciplinary Coordinated Response System to serve as an innovative and effective turning point in the state's response to referrals of child abuse and neglect in Penobscot and Piscataquis counties, with possible statewide applications. Although the Committee recognizes that no administrative system can be expected to resolve all the disputes and anguish created by an investigation of alleged child abuse and neglect, the Committee anticipates the benefits of the Coordinated Response System to include, but not necessarily limited to, the following:

ANTICIPATED BENEFITS OF THE SYSTEM AS A WHOLE:

1. **The state's response to child abuse and neglect will be made by an experienced group of professionals representing relevant disciplines - social work, law enforcement, law, medicine, and mental health.** The Coordinated System will include every professional discipline which has an interest, a mandate, or an expertise in child abuse and neglect.

2. **The state's response to child abuse will be firmly based on information collected from all parties involved, and will reflect a thorough understanding of the law.** The Coordinated System will have the capability of collecting relevant data needed to make a fully informed decision to ensure the welfare of the child, the family, and society.

3. **Job stress experienced by caseworkers will be reduced.** Investigations to protect a child from harm will no longer be conducted by an individual caseworker but rather will be done by two professionals working together in a coordinated fashion. As a additional benefit, retention of caseworkers may improve, thereby resulting in a proportionate increase in experienced caseworkers.

4. **Maine's child welfare system will deliver improved intervention, treatment, and support services.** Comprehensive and accurate assessments of referrals, the increased availability of diagnostic data, and the inclusion of relevant professional disciplines in the decision-making process, as well as the provision of start-up money for new treatment services for children and their families, will serve to reduce trauma to families involved in the child protective system. Improved assessments will also provide additional support services to children and families thereby supporting family unity, and highlight the importance of protecting children in our society from abuse and neglect.

ANTICIPATED BENEFITS OF THE INITIAL ASSESSMENT TEAM:

5. **Initial assessments of referrals will be comprehensive and consistent.** The Assessment Teams will receive special training which crosses both social work and law enforcement disciplines. This cross-training will ensure comprehensive and consistent assessments of screened-in referrals.

6. **Redundant, duplicative interviews will be eliminated through the team interview process.** Referrals which appear to constitute a crime will be assessed jointly and concomitantly by law enforcement and caseworker personnel; other referrals will be assessed by a partnership of two caseworkers. Accordingly, needed information will be collected in a single interview and will satisfy the interests of all relevant disciplines.

7. **The trauma of child victims will be reduced.** Fewer interviews and immediate provision of support services will make the process less traumatic for children.

8. **The rights of individual Maine citizens will be preserved.** Through the routine involvement of law enforcement officers in the initial assessment, the criminal rights of individual Maine citizens will be protected and evidence will be preserved.

9. **Caseworkers will no longer have the dual role of investigating referrals and then delivering social services to the investigated family.** The Assessment Teams' sole responsibility will be to conduct assessments; the Teams will have no case management responsibility.

10. **The predominant role of caseworkers who are not part of the Assessment Team will be to deliver social services to families.** The job of most child protective caseworkers will be to provide case management supportive services to children and families.

ANTICIPATED BENEFITS OF THE DIAGNOSTIC TEAM

11. **A Diagnostic Team will be available to provide medical, psychological, social, or developmental data.** The Diagnostic Team, composed of community based professionals, will be called upon as needed to provide additional information of a medical, psychological, social, or developmental nature.

ANTICIPATED BENEFITS OF THE DISPOSITIONAL TEAM

12. **Decisions made regarding the future of a family involved in an allegation of child abuse and neglect will be made by a Team.** Any decision made to uphold the state's interest in protecting children from harm and to prosecute criminals will ultimately be made by a Dispositional Team of experienced professionals who, as part of its decision-making process, will review the data made available to it by the other two teams.

13. **Decisions will reflect the collective thought process of a trained group of professionals.** The team of professionals working together will ensure that the ultimate decision is objective and reflects the current law and the realities of the particular case as accurately as possible.

14. **The Team approach will improve the evidence gathering process.** The team approach to investigations will ensure a more comprehensive and thorough evidence-gathering process in order to increase the likelihood of successful prosecution, when appropriate.

ANTICIPATED BENEFITS OF INITIAL INTERVENTION, TREATMENT, AND SUPPORT SERVICES

15. **Support services will be more readily available.** The family shelter, crises mental health services, and case planning mediation will support the family in a timely manner.

Therefore, in response to the apparent need for improvement in the assessment of child abuse and neglect, the Committee recommends establishing a Coordinated Response System for child abuse referrals as a two-year model project in Penobscot and Piscataquis Counties.

STATUTORY	2.	In order to significantly increase the array of treatment services available in Maine to support children and their families, establish a revolving fund through use of a bond issue to provide start-up and first-year operating loans to facilities providing shelter, care, and treatment to children and their families.

Commission to Study the Future of Maine's Courts

CHARGE TO COMMISSION MEMBERS

Commission members are charged with making recommendations that will assure access for all to an equitable, responsive, and efficient judicial system. The recommendations should address not only the immediate problems facing Maine courts today but that will also provide solutions with sufficient flexibility to meet the needs of justice for the citizens of Maine for at least the next thirty years. The Commissioners should conduct both a microscopic and a telescopic examination of the courts and make recommendations that should be read as a proposal for a continuum of change. Such recommended changes may range from very narrow and specific recommendations for immediate change to a broad vision of major structural and administrative reforms to be accomplished by the 21st century.

The Commission shall identify the issues facing the courts, identify the research and information necessary to address these issues, and formulate recommendations from among alternate solutions proposed by consultants, experiences of other jurisdictions, and by the deliberations of the Commission's Task Forces.

The bulk of the work will be done in the Task Forces. The emphasis of each task force will be directed to a specific aspect of the justice system, but the concerns of all task forces will overlap and be interdependent. Broad issues relevant to the work of all task forces include:

1. What do you perceive to be the present needs of the courts? The future needs of the courts? Who will be the litigants and what kind of cases will be faced in the next thirty years that are different from today's docket?

2. What would an ideal court system look like? What would you hope to achieve by such a system?

3. What planning process should be implemented to enable the Judiciary to anticipate the future and respond effectively to changing demands and a changing world?

4. Would any proposed changes:
   a. Enhance the public's perception of justice and better serve the needs of the public?
   b. More fully satisfy the users of the court system?

5. Would any proposed changes achieve a better utilization of judicial personnel and resources?

6. What effect would the advancement of technology and its greater utilization have on these recommendations?

7. What effect would expansion of alternate dispute resolution mechanisms, both in the courts and within society, have on your recommendations?

8. In what type of case is the adversarial system essential? What kinds of disputes should be diverted from the courts? Or processed in an non-adversarial fashion within the courts?

9. Would any proposed changes eliminate delay and shorten the time frame needed to process cases?

10. Would any changes reduce the cost of litigation, both to the parties and to the courts?

11. How would you promote support for your recommendations? What opposition would you anticipate?

12. Has this suggestion been made before? What forces prevented it from being implemented?

TASK FORCE ON STRUCTURE

There should be a focus group charged with making recommendations as to the optimum structure and jurisdiction for Maine's trial and appellate courts. In making such recommendations the group should consider:

1. How should the present court structure be modified? What should be the time table for any proposed changes?

2. What should be the interrelationship among any new alignment of courts or jurisdictions?

3. Would any changes better utilize judicial time? Court resources? What would be the impact on judges? Clerks' offices?

4. What would be the fiscal impact of changing the configuration and jurisdiction of the present court structure?

5. Would any changes benefit the public in obtaining quicker, more economical, and more equitable justice?

Specific items the Structure Task shall consider are:

1. What is the desirability of creating a single tier trial court? If it is felt desirable, how should it be structured? How would the appellate function currently being carried out by the Superior Court be handled if there were to be a single tier trial court?

2. If court structure remains basically the same, should there be any closer amalgamation and integration of functions between the Superior and District Court? Consolidation of clerks' offices?

3. Should there be an intermediate appellate court if there is a single-tier court structure? If there are still courts of limited, general, and special jurisdiction?

4. Should there be a Family Court? If so, what should be included in its jurisdiction? Should it be a specialty court or placed in the court of general jurisdiction, limited jurisdiction, or in a single-tier trial court? What should the relationship of a Family Court be to the Probate Court as currently constituted or in any recommended realignment?

5. What can be learned from the Cumberland County Family Court Pilot Project? Is it a model that should be continued? Replicated in other parts of the State?

6. What should be the future of the Administrative Court? Should it survive as an entity or become the Family Court? How should its statutory caseload be processed if the Administrative Court becomes a Family Court?

7. Should changes be made in the structure of the Probate Court? If so, how should the present functions of the Probate Court be integrated into the present structure of Maine's courts or in any modified court structure?

8. Should Probate judges be full-time? If so, of which court should they become a part? What should be their jurisdiction?

9. What is the desirability of using magistrates to conduct arraignments and hear uncontested matters in the District Court? In considering this question, the Structure Task Force should coordinate the cost and fiscal aspects of using magistrates with the Productivity Task Force.
   - If desirable, should they be full-time? part-time?
   - If part-time, would they create the conflict or appearance of conflict of interest now attributed to the present part-time probate judges?
   - Would any magistrates use present court facilities? If not, where would they preside?

10. What has been the historical evolution of the present court structure in Maine?

11. Have your recommendations ever been recommended before? What are the reasons that these or other similar previously suggested changes have not been adopted?

12. What changes in the Constitution, statutes, or Rules of Court would be necessary to put your recommendations into effect?

TASK FORCE ON PRODUCTIVITY AND UTILIZATION OF RESOURCES

1. What are the present unmet needs of the Judiciary? What are the projected future needs of the Judiciary in the 21st Century?

2. What new resources or re-allocation of present resources will be necessary to meet present and projected needs?

3. What administrative and operational changes should be implemented to allow the courts to utilize limited resources most effectively?

4. How can the courts work smarter as opposed to harder?

5. What is the optimum allocation and utilization of resources?
   - Centralization versus geographical convenience. What is the proper balance?
   - Continued justification of District Court locations?
   - Necessity, desirability, convenience, and cost-effectiveness of both Superior and District Courts in same location.
   - Evaluation of caseloads per judge, distances to court, number and frequency of court days in each location. How much does it cost to process a case?
   - Disparity of caseloads in urban vis a vis rural locations
   - What is an ideal caseload? How do judges compare against this "ideal"?

6. Coordinate with Structure Task Force re fiscal impact of using part-time? full-time magistrates? What would be the trade offs?

7. How do Maine courts measure up in adherence to the Trial Court Performance Standards promulgated by the ABA?

8. What is the optimum relationship between the Judiciary and the other two branches of government?

9. Independence and Accountability of the Judiciary.
   - Is the independence of the Judicial Department threatened as a truly equal branch of government by the requirement that its budget must be approved by the Executive Department rather than be presented directly to the Legislature?
   - Would greater budgetary independence from the Executive Department result in the Judicial Department receiving more resources for its operation?
   - Can sufficient accountability for Judicial Department operations be achieved without the necessity for all its contracts and purchases being approved in advance by the Executive Department? (See 4 M.R.S.A. 26 as enacted by P.L. 1985, c. 733 § 1, eff. April 18, 1986).

- What would be the cost-savings of eliminating the duplication of effort involved in processing all Judicial Department contracts and purchases?

10. Are the courts being optimally run from a business, cost-effective point of view by accepted management criteria not losing sight of the fact that, when in conflict, equity must be paramount to economics? Are there ways in which it is possible to increase the latter without diminishing the former?
    - Administrative Structure—decision making
    - Chief Justice as head of Judicial Department
    - Role of the Administrative Office of the Courts
    - Administration of Individual Courts
    - Clerks Offices
    - Personnel, Purchasing, etc.

11. Examine the causes of delay. Can improvements be made in the operation of the courts to reduce delay and costs and to increase consumer satisfaction?

12. Evaluation of present use and future potential of technology.
    - What technology should be introduced to increase efficiency?
    - Are methods of keeping of records fully utilizing present technology and organized so that the courts can take advantage of technological changes that can be anticipated in the future?
    - Are methods of keeping of recording hearings fully utilizing present technology and organized so that the courts can take advantage of present capabilities and technological changes that can be anticipated in the future?
    - What is efficiency and cost effectiveness of different methods of recording?
        - Traditional Court Reporter?
        - Computer simultaneous reporting—transcripts available at end of day?
        - Cost of Workers' Compensation for Carpal Tunnel Syndrome?
        - Electronic recording?
        - Video recording?
    - How can technology be more fully utilized to enhance access, decrease:
        - Use of fax in filing cases?
        - Use of computers by parties or the public in filing cases, pleadings, to obtain information about status of case, motions, etc.?
        - Video arraignment?
    - Use of interactive television net work—in a variety of capacities?
    - What other hi-tech can enhance court productivity, decrease costs? Will hi-tech make present way of doing business obsolete?

13. What changes do you predict in types of cases and types of litigants as a result of such factors as: the aging of the population? life support decisions? reduction in the proportion of the population that are minors? new definitions of what is a family ? bio-ethics and genetic engineering technology? state of the economy? Increase in Asian, Hispanic, and Middle

East population in Maine's demographics? What impact will this have on the courts?

14. Are the courts, as presently constituted, equipped to handle complex, multi-party litigation?

15. What do you see as the cost consequence of an expanded ADR or other diversion of cases? Coordinate this with ADR Task Force.

16. Any recommendations about the jury system?

17. Coordinate with Access to Justice Task Force re cost effectiveness of Public Defender system.

18. What is the impact of pro se litigants on costs? Delay? Productivity?

19. Consideration of expanded use of referees? Coordinate with ADR Task Force. What cost savings would be realized by using referees?

20. What kind of short time? long term? strategic planning? futurist planning is being carried on by the courts? What should it be?

21. Examination of present court facilities (many are 100 years old)? What kind of facilities are needed? courtmobiles? moveable walls? structure of court house needed in view of telephonic or electronic access for arraignments? motions? filing pleading? hearings? role of faxes? Do we need courthouses?

22. Consideration of the Report of the Volunteer Business Committee and possible implementation?

23. Coordinate with Access to Justice Task Force on Equity in Court Filing Fees (L.D. No. 933)—Referred by the Joint Standing Committee on Judiciary Committee.

24. Consideration of $300 jury fee recently established?

25. County Law Libraries—usage, collections, regional (staffed libraries)?—Court Librarian.

26. Relieve judges of ministerial signing of reams of paper work—Judge McDonald.

27. Is there a better way to handle minor traffic infractions? District Court is now considering a centralized fine bureau.

CHARGE TO COMMISSION MEMBERS

TASK FORCE ON ALTERNATE DISPUTE RESOLUTION

1. Evaluation of the Court Mediation Program, other public ADR programs, and ADR pilot projects?

2. Availability of private alternatives to litigation?

3. Areas in which an adversary proceeding is necessary?

4 Expansion of court-sponsored mediation and arbitration?

5. Expanded use of references?

6. Expansion of mediation in public policy disputes to prevent litigation, i.e. regulatory negotiations, mediation of siting, environmental impact disputes, and disputes arising in communities.

7. Cost of ADR to courts? to parties? as opposed to litigation.

8. Challenges faced in bringing an expanded ADR program to rural areas?

9. Pitfalls of a system of private justice versus court-administered justice? Will courts be only for the poor and the criminal?

10. Feasibility of a multi-door courthouse model?

11. Role of hi-tech in ADR?

12. Possibility of a symposium on ADR?

13. Production of videos explaining ADR, ADR training?

14. Public's interest in ADR?

(If the Commission is successful in getting a supplementary National Institute of Dispute Resolution Grant, [NIDR] then the ADR component of the project can be materially expanded.)

TASK FORCE ON

—QUALITY OF JUSTICE AND ACCESS TO THE COURTS TASK FORCE

—RESPONSIVENESS OF THE COURTS AND THE JUSTICE SYSTEM TO THE PUBLIC

—RESPONSIBILITY OF JUSTICE SYSTEM TO THE PUBLIC

1. Evaluation of public perception, understanding of, and confidence in the court system;
   - Public's view of courts' accessibility, fairness, responsiveness, convenience, efficiency?
   - Public's view of predictability, uniformity versus great disparity?

2. Need for education about the courts, education about specific procedures?

3. Access:
   - Cost of litigation to the poor, near poor, moderately well off?
   - Geographical access to citizens in remote areas?
   - Physical access and accommodation for the handicapped, blind, deaf, multilingual needs (Asian, Spanish, Mid-Eastern)?

4. Removal of barriers identified by the Commission on Legal Needs? Implementation of the recommendations?

5. Bias in the Courts—Internal and external?
   - Gender
   - Ethnic
   - Economic
   - Racial

6. Effect on courts of increasing number of persons in population with low and marginal incomes?

7. Adequate representation: Court appointed attorneys? pro bono representation? persons who are unrepresented civil matters?
   - Advantages, disadvantages of a Public Defenders System? Coordinate with Productivity Task Force on Costs.

8. Public's interest in ADR?

9. Equity in Court Filing Fees (L.D. 933)—referred by Judiciary Committee

10. Exemptions from jury service?

11. Quality of the Judiciary
    - Qualifications—training, experience.

- Level of Compensation?
  - Should all trial judges be paid the same?
  - Fringe benefits.
- Judicial Education.
  - Initial Orientation.
  - Intensive basic curriculum.
  - Desirability of attending national education institute i.e. National Judicial College?
- Continuing Judicial Education.
  - National Conferences? State and National Professional Meetings?

12. What planning process should be implemented to enable the Judiciary to anticipate the future and respond effectively to changing demands and a changing world? To what extent should the judiciary take a leadership role?

13. This Task Force's vision may be in particularly unique in its design of what an ideal judicial system should look like.

Privatization of Prisons

A Managerial Perspective

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DRAFT March 20, 1988

Draft for Private Prisons and Jails, D. McDonald ed., Vera Institute of Justice/National Center for State Courts, 1988.

The authors are grateful for research support provided by the Vera Institute of Justice and the National Center for State Courts; the Pew Foundation and the Executive Education Programs in National Security at the John F. Kennedy School of Government. Our conclusions are our own. Please do not cite or quote without permission, but please do offer comments and suggestions.

Introduction

At first glance, the debate about privatizing penal institutions has two sides and two issues. Advocates contend that the private sector can produce better prisons and jails than the public sector. Unfortunately, privatization supporters seem to equate "better" with "cheaper, and no worse."1 Because of the almost exclusive focus on cost, even the most vocal advocates of privatization rarely show how privatization might improve the delivery of correctional services, not merely reduce system cost.

Opponents see privatization as an ill-conceived attempt by market-oriented ideologues to reduce the size of government at the expense of the current government-run correctional system, seeming to equate "privatization" with "do it all in the private sector."2 In this view of privatization, a self-contained prison, or even a system of prisons, is "moved" from public to private ownership and administration. The government closes down the existing correctional system, and a small remaining staff contracts with private suppliers for services formerly provided by government employees. By thus viewing privatization as a dichotomous choice while observing a more incremental approach to privatization in practice,3 we have failed to consider the numerous ways that privatizing pieces of the prison or jail system might improve the quality of correctional services beyond merely reducing their costs.

Not surprisingly, both advocates and opponents invoke normative as well as analytic arguments to support their claims. Behind these normative arguments we typically find the idea that certain social functions are intrinsically governmental and others are not: government "should" provide the army, the private sector "should" provide automobiles. According to this normative conception of privatization, we could decide whether to privatize the operation of correctional facilities simply by determining whether they are intrinsically governmental or intrinsically private.4

I. The Idea of Privatization

We reject each of these characterizations of prison privatization. In the world of practice (as opposed to the world of argument), we observe that (1) no product or service can be produced wholly in the private or in the public sector;5 and (2) no type of product or service is always in one sector or the other.6 As a result, "privatization" means something more incremental than the current talk of moving entire enterprises across the public/private divide would suggest.7 Privatization seeks quality improvement as well as cost reduction, and privatization decisions are little informed by ideology.

In even the most privatized industries, some activities inside government are essential to the enterprise,8 while at the same time, even the most nationalized forms of production depend on significant investment in private activity. The family farm in industrial society will fail without government agronomic research, weather forecasts, and roads; at the other end of the spectrum, the army and navy procure weapons, uniforms, and research in the private sector. Similarly, "public" correctional facilities presented as candidates for privatization, routinely obtain such fundamental services as buildings, food, clothing, medical care, and rehabilitative services on contract from the private sector.9

As to the absence of private or public "monopolies," we note that even typically "governmental" activities such as legislation and taxation are also common to private sector organizations. For example, private trade associations legislate standards for buildings and materials,10 and electric utilities impose excise taxes on themselves to support R&D activities in that industry.11 It is also true that few "private sector" activities are intrinsically private, although, by convention, many types of services are provided almost exclusively in the private sector.

As a practical matter, most productive activities can be carried out either by government agencies, private organizations, or both. The typical case is "both," even when we choose to label the production process "public" or "private." This would seem to be as true of corrections as anything else. What are prisons, after all, but conbinations of services such as housing, nourishment, confinement, punishment and rehabilitation? Housing and nourishment are routinely provided in the private sector, but so, too, are confinement -- as in private hospitals -- and punishment -- as when the commissioner of your favorite professional sport levies a fine or suspension on a violator of league rules, or your daughter's private school teacher "makes" her stay after school for violating a school rule.

We do not suggest a close analogy between a court's punishment of a criminal for assaulting a private citizen, and the National Hockey League commissioner's punishment of a player who assaults a member of another team with a hockey stick. But we do see much similarity between, say, the administration of the dormitory functions at the state prison and at the state university. Society is generally prepared to accept private housing at state universities without regarding public higher education to be thus privatized. This is not because dormitory activities are incidental to the education function, but because a private housing market may

provide options that are better suited to individual student needs than can a centrally administered housing office.

The public has implicitly recognized that so long as we see our options as moving an educational enterprise -- or even a prison -- intact from the public to the private sector, we miss two important truths:

o First, the borders dividing public and private activities required for the performance of any social function, including prison services, are often fuzzy, representing a continuum of alternative, not discrete choices. For example, state universities typically offer a mix of school-provided housing, private rental arrangements, and intermediate facilities such as co-ops and fraternities which are privately managed, but open only to students. Similarly, some functions in correctional settings are performed by the private sector in one jurisdiction and in the public sector in others. Some prisons produce much of their own food, while others produce none. Few prison systems generate their own electricity or physically construct their own facilities without the help of private contractors. Some systems have extensive job-training programs in private firms; others teach skills in-house. We do not encumber public consideration of these policy decisions with the term "privatization," but these are surely privatization decisions.

o Second, privatization, rather than being viewed as an outcome, might be viewed more usefully as a process. Parties who see privatization as an end in itself prefer contracting for prison support services to leaving them in the hands of the public sector, but tend to view such steps as no more than a partial victory. By contrast, those opposed to privatization tend to focus their attention on prison functions intimately connected to society's formal relationship with the prisoner, such as prison management, guarding, and prisoner evaluation. They often dismiss the question of which prison support services should remain in-house and which should be contracted-out, as peripheral to the debate -- an issue which can be resolved through classic cost-based, make/buy analysis.

Under the current terms of the debate one often sees the privatization of correctional functions as an outcome either to he ardently defended or vigorously opposed. From this frame of referenece, the debate tends to focus on three issues: 1) ideological or philosophical arguments for and against the wholesale privatization of coreectional services; 2) disputes about whether the public or private sector is hetter able to manage jails and prisons; and 3) discussion relating to contract compliance and enforcement. By focusing

on privatization as an outcome, however, we neglect what is perhaps the most important question facing the corrections field today: How do we do a better job of managing individual penal institutions and to what ends? John DiIulio recently addressed this issue in the conclusion to his book, Governing Prisons: "Based on our explanatory study of correctional institutions in three states, it appears that there is some relationship between administrative structure and prison conditions. The proper unit of analysis, however, is less the corrections agency as a whole and more the prison itself...12 Therefore, we believe that rather than viewing "prison privatization" as an outcome, we should think of it as a process. The problem, then, is not to "get the public-private line between the parts of the business of corrections in the "right place once and for all." Rather, the challenge is to define a specific set of benefits which correctional institutions are supposed to produce and continuously to seek new opportunities to relocate the boundary between public and private organizations in a manner that will capture the benefits being sought.

The important question we must address is: how are such movements likely to affect the work of corrections? Fortunately, when viewed as a process rather than an "all or nothing" proposition, correctional privatization takes on the character of many other "make or buy" decisions. Managers regularly face such decisions, which can modify and, clarify the boundaries between their organizations and the "outside" world. The basic text for such decisions is a Harvard Business School report dating back to 1942 which is still useful today.13

Sometimes these decisions are as routine and obvious as the decisions by prison officials to contract out for prison construction. Often, however, they are neither routine nor obvious, but instead go to the heart of an agency's strategic purpose. Decisions by auto makers, for example, to make or buy their own parts hardly seems to have the social significance of prison privatization, but from the perspective of managers and employees, such decisions are no less difficult or strategically important for the organizations involved.14 It might seem to be a merely administrative or cost-minimizing matter for the U.S. Marines to decide whether recruits or outside contractors should provide food and maintenance services at Parris Island, but instead, it is a choice that goes to the heart of our conception of what a Marine is.15

One of the seeming obstacles to analyzing corrections privatization is the lack of experience against which to judge these important policy decisions. However, once we see it as a special case of the more frequently encountered

make/buy challenge, our base of relevant experience expands dramatically. Throughout the rest of this chapter, we will use the make/buy experiences of others to help us think about how, and when, to privatize prisons and jails.

II. Boundaries as Managerial Instruments

Any productive enterprise that turns inputs into outputs, combines and moves resources: goods, services, information, and money. Sometimes movement takes place within a formally delimited organization, as when the head of marketing presents the sales forecasts to the head of production, or the governor appoints a new commissioner of corrections. Sometimes this movement is between organizations, as when a supplier delivers parts to a manufacturer or the government collects revenue from a taxpayer. The public-private boundary and the formal division between organizations (like those between the corrections department and the attorney general's office, or that between General Motors and the Jones Bolt Company,) are only part of the complex set of boundaries and divisions that crisscross a productive enterprise. In this section, we will identify some of these boundaries and explore their importance. Our purposes are two. First, it is important to see the make/buy boundary in the context of the other boundaries managers must attend to. Second, the importance of the make/buy boundary lies -- in part -- in the fact that other kinds of boundaries often follow it, whether intentionally or accidentally.

Viewed as a boundary problem, perhaps the biggest single organizational difference between making correctional services and buying them is that what moves across the boundaries of public and private organizations changes. When prison services are produced within government, many inputs -- labor, capital, physical materials -- must cross the boundary between numerous private organizations and the public sector. Information flows from the public to the private sector to initiate and consummate these transactions. Information also flows within government to coordinate production once the inputs are assembled.

At first glance, privatizing prisons and jails would seem to reduce the number of public/private "border crossings" -- because only the end product and not its inputs would have to cross the boundary from the private to the public sector. The resulting simplification of product and information flow alone would seem to argue for privatization. When we consider the information which must flow from government to the private provider to secure appropriate prison services, the conclusion is far less obvious: it may be far easier to assemble relatively homogeneous inputs like bricks and mortar to produce prison services within

government, than to specify the complex and sophisticated "product" that a prison really is in enough detail to buy it "ready-made," or to control the production process by contract.

Indeed, information flow, product specification, and control are the critical factors in the managerial analysis of privatization, and it is the boundaries within and among organizations that determine the various ways a manager can control and shape an enterprise. The study of these boundaries is almost equivalent to studying the reach of different kinds of managerial influence or spans of control. To put the public-private boundary in context, we will briefly tour some examples of different kinds of control or influence and the boundaries they typically reach.

A. Spans of Control

1. Employment Authority

One of our durable managerial myths is the image of the manager "in control," barking out precise orders to a diligent and obedient staff who carry them out to the letter. This is the kind of authority an employee grants by general contract -- accepting the job -- to management. To a first approximation, this sort of control appears tight in the sense that responses closely match stimuli. Prison supervisors can order corrections officers "below" them to do specific things.

As every manager knows, however, an orders whose authority is derived from general contract obligations between employer and employee must be consistent with organizational norms and explicit employment agreements: in a trivial case, for example, a manager can send the office assistant (but not a secretary or the comptroller) out for coffee and donuts (but not for laundry). In a less trivial case, the warden has employment authority to tell the correctional officers to put prisoners into solitary confinement or to treat inmates with respect, but not to order them beaten.

Moreover, the relationship between order and response is stochastic, not rigid. The office assistant in our simple example might rush out for coffee and donuts, but return an hour later (having combined the errand with a trip to the post office), only to deliver cold coffee, no cream, and a croissant (because the store was out of donuts). Similarly, what the corrections commissioner gets by ordering decent treatment of inmates is likely to be highly variable and possibly quite far from what the commissioner had in mind. We will see other practical limits to employment authority. At

this point, we note that public prisons do not ensure that they will deliver what the commissioner or the legislature want, just because employment authority can be invoked.

2. Informational Control

An entirely different kind of influence stems from the ability of an individual or agency to commit time to narrow segments of a productive process and consequently to develop command of detailed information. A subordinate's report to the commissioner on prison food costs can enormously influence corrections policy simply because the subordinate can select alternatives and supporting data. Indeed, since the last thing the commissioner wants is to know every detail about food services, such selection and, therefore, control, is unavoidable. In this case, the control works "up" rather than "down" the hierarchy.

Control of information differs from formal employment authority in another significant way: it does not stop at the official borders of a firm or agency. Also, this control, which can extend to legislatures, other organizations, clients, and suppliers, as well as to one's own employees, is often latent and delayed rather than explicit and immediate. Members of professional societies (doctors, lawyers or corrections officers) are under the influence of their training, disciplinary habits, jargons, professional associations and formal and informal codes of ethics in ways that limit individual freedom of action.16

The specific limits of different kinds of information authority result from both expertise, or specialized knowledge, and the channels through which information can move. A police officer's span of control is communicated in part by his uniform. The uniform as a channel of communication enhances the officer's authority with respect to crowd control, but diminishes the officer's effectiveness in undercover work. In short, the formal channel of communication improves effectiveness along some dimensions but reduces it along others. This is why orders from the warden not only travel through formal organizational channels, but through informal ones such as those maintained by the guards' union and the inmates.

Our discussion of information control demonstrates that the value gained by clarifying organizational boundaries extends beyond the formal make/buy decision. Management can clarify boundaries within organizations by giving one type of employee uniforms and another type "street clothes;" they can locate a particular staff function in a separate building or intersperse it with other activities17; they can

multiply job titles or eliminate employee titles altogether.18

All of these choices, however, are constrained by the location of the make/buy boundary. Thus, corrections officers who are private employees are different from those who are public employees, even if the scope of their formal authority appears to be the same. Moreover, because of differences in information and employment authority, and public perceptions, a public prison guard working in a private prison is different from that same guard working in a public prison.

B. Control Beyond Agency Boundaries

The limits of effective managerial control do not always match agency boundaries. In fact, some kinds of control are more effective beyond an agency boundary than within it. A political candidate with an important speech can affect the contents of a story in the newspaper more surely than the paper's own editor. A manager often hires a consultant precisely because the consultant's independent perspective buys the manager leverage which cannot be obtained from within.

The failure of limits of control to match agency boundaries has special significance for the prison privatization issue. For example, the power of prisoners to control their own environment is likely to vary greatly depending on whether security functions are performed by civil servants or contract employees. It is easy to imagine that the new patterns of information authority associated with turning to private contractors for prison management would improve prison services in some dimensions and damage it in others. For example, complaints of inmate abuse may receive more attention if the offending officer is employed by a private contractor. Complaints about the food in the dining hall, however, may fall on deaf ears if the contractor is bound to extreme economy by contract.19

1. Market Control

Purchasing outside an organization will often provide more rigid conformance of response to stimulus than employment authority can. "Send a gross of #2 pencils, stock number 546-141" will more likely get the expected result than "go for coffee." Of course, the boss could say, "Go for a medium Maxwell House with one sugar, 10 ml. of cream, and a chocolate glazed donut." But he won't, or at least not for long. Employees will not tolerate being treated like automata. One reason for the more precise response in the former case is that purchasing is by necessity accompanied by detailed specifications (in the pencil example, they are in

the words gross and stock number). The need for purchasers to provide precise procurement specifications is a consequence of the difficulty of communicating across organizational boundaries. Because the purposes and objectives of supplier and buyer diverge, clarity and specificity are essential to effective procurement. "Send some nice pencils" is a locution appropriate only to an interoffice transaction. The expense and awkwardness of contract enforcement across organizational boundaries also reinforce the need for detailed specification. The trick here is to use the apparent weakness of purchasing -- the conflict of interest between buyer and seller -- as an instrument to force specificity when it is desired.

The relevance of this observation to prison services is apparent. Unquestionably, one of the biggest challenges to effective corrections privatization will be to write contracts that assure the delivery of just what the public wants. This challenge, however, may prove to be one of the great hidden advantages of privatization: hard as it is, such a contract must be written, and doing so can compel a clarification of purpose that is now so lacking in corrections. More generally, establishing boundaries where none previously existed -- e.g., contracting out for prison services previously provided in-house -- may increase prison managers' effective span of control in some dimensions.

Sometimes, however, the imprecision and ambiguity of general obligation employment contracts are preferable to the clarity and specificity present in procurement agreements. The office assistant who brings back a croissant rather than a donut may well know something about the boss's preferences not specifically communicated in the order to "get coffee and donuts." Similarly, the subtlety of corrections issues, human rights matters, and justice, may make a precise contractual arrangement of the type prison privatization would require quite unattractive. Analysis of a prison privatization decision, accordingly, bears on where we draw the various boundaries, what they will be like and how they will contribute to the prison authority's strategic goals.

C. Life at the Edge

When the privatization question is viewed as a problem of choosing where to draw, and how clearly to highlight, the important public-private boundary, two implications stand out. First, if the pattern of information flow across the boundary is not well understood and consciously chosen, the decision will produce satisfactory results only by chance. Second, addressing privatization as a boundary-placing decision reveals the importance of the personal and organizational dynamics at the "edge" of any organization.

What are the fundamental differences between the productive environments on the public and private sides of the boundary? Does placing this type of boundary between the two sectors make a difference?

1. Differences Across the Boundary

Strategically important differences between the productive environments on the two sides of this public/private boundary fall into two categories: (1) differences attributable to operating conventions in the public and private sectors and (2) differences that intrinsically distinguish public from private organizations.

a. Differences in Convention

Operating conventions differ from the public to the private sectors without reference to constitutional principle, and sometimes even without statutory obligation. For example, unions in the private sector can legally strike, while many public sector unions cannot. Note that unions in both sectors can and do strike. The difference between the two sectors lies in the legality of the strike and consequently the willingness of individuals to strike, and the means managers can use in response to a strike, once pursued.

We call this a difference in convention because there may be nothing intrinsic to public and private activities which necessitates this distinction when applied to a particular activity. For example, school bus drivers in the City of Boston recently went on strike.20 One proposed solution to the problem was to make these employees of a private bus company public sector employees because public employees in Boston cannot legally strike. Since the City proposed to use the same drivers to drive the same buses in the same city, it is hard to see any intrinsic characteristic to public school bus driving that will make drivers less capable of striking. However, the different operating conventions in both sectors may effect the probability of a strike occurring, and they certainly alter the means for dealing with a strike when it does occur.

The no-strike convention in the public sector is no accident: some public activities are deemed so important as to necessitate such a provision of law. And the right to strike in the private sector is no accident either: in a competitive setting a customer can usually turn to more than one source of supply. Indeed, when public necessity argues against the right to strike in the private sector, government

intervenes, as in the Taft-Hartley injunctions against rail strikes.

What is relevant is not the rationale for any particular convention, but that the applicability of any particular convention is unlikely to coincide perfectly with the formal boundaries of the public and private sectors. The lack of coincidence between convention and formal organizational boundaries creates opportunities to improve economic performance whenever a mismatch occurs.21 Thus, if a no-strike rule is appropriate for most public activities, but not for all, it might be desirable to seek ways to privatize the exceptions and the allow the private sector convention to operate. Of the course, the convention could be modified to recognize exceptions, but this night undermine the integrity of the underlying policy. For example, the army might be quite prepared to deal with a strike of civilian food service workers at a local base, but object strenuously to giving military food services workers on that same base, performing the same tasks, the right to strike. Similarly, mismatches between organizational boundaries and operating conventions create opportunities for abuse. It is easy to believe, for example, that making private bus drivers public employees to prevent them from striking could undermine the integrity of the no-strike law. If labor organizations come to see the no-strike rule as a merely a convenience to stop legitimate employee actions, then there willingness to support no-strike rules where they are intrinsic to public health and safety may be jeopardized.

We choose the "strike issue" as an example of a difference in convention between the public and private sectors not only because it is a familiar one, but because it will require direct attention in any correctional privatization. At a minimum, a private contractor will have to make different arrangements to protect the enterprise against work stoppage than the department of corrections. The strike example points to the larger question at issue: in prison privatization, can adequate safeguards of the public interest be achieved through contractual arrangements?

Since the likelihood (as opposed to the legality) of a strike by public sector employees is conventional rather than intrinsic, however, the contractor who takes over a going state enterprise, employees and all, will find the strike problem very different from the one who supplants state employees with new ones recruited from the private sector. The willingness or lack of willingness of public employees to strike is only loosely correlated with the legality of the action, and culture plays an important role in determining their behavior. The time it takes to cultivate and establish a new working culture will determine whether this convention

will be a factor for or against privatization in any given case.

Indeed, the rigidity of long-established cultures may well be the argument for privatization. Just as constructive work cultures are difficult to establish, unconstructive ones are difficult to correct. It is sometimes easier to embark on the creation of an entirely new culture than to fix the one at hand. These opportunities, whatever their implications for any individual privatization decision, are unlikely to emerge in the cost-oriented analyses that typically accompany such public policy deliberations -- although the political process is often quite attuned to them.

A case in point is the reform of the Massachusetts Department of Youth Services (DYS) initiated by Commissioner Jerome Miller in 196x.22 When Miller took over the managenent of the DYS there was a pressing need for innovation in the delivery of youth services, but the existing culture was an overwhelming obstacle to change. As long as youth services were produced in state schools, a network of conventions, habits and expectations made it almost impossible to innovate in care delivery. The buildings themselves imposed an apparent obligation not to waste resources by housing offenders outside them. The communications links between school supervisors and legislators did not carry information about care delivery itself, and did not carry authorization to experiment. The civil service system gave implicit instructions, backed by legal force, to perform tasks according to written job descriptions that embodied the traditional way of delivering youth care.

Moreover, Miller was not able to specify the particular innovations needed to improve youth services. He was able to articulate things that should stop -- mainly, the abuse of youth -- but was not able to articulate things that should start. Thus, even if given a free hand, he did not know what to make or buy.

Rather than attempt to fix the existing system, Miller sought to create an entirely new one through the privatization of youth care services. Four critical things happened immediately.

First, it became not only possible, but obligatory, for care providers to find different ways to do their jobs. Only by distinguishing themselves from other providers competing for state contracts could they stay in business, and DYS made it clear that it was looking for new kinds of care and not just marginal cost reductions. The environment of care providers and potential providers changed from one that had rewarded innovation with indifference or punishment to one

that actually gave the inventor resources with which to refine and demonstrate it.

Second, privatization created different patterns of information flow about youth care. When the schools were state agencies, every administrative problem in community relations, food service, physical plant, etc., had an easy route to the Commissioner's office, both directly and through the legislature. Each of these was important to care delivery, but all of them together foreclosed attention to kinds of care by absorbing the attention of the Commissioner and his staff.

Third, under the old system, schools could be in the youth care business for years without anyone saying exactly what was being done for the youth in the important terms of training, socialization and affection. With privatization, there was a necessity to describe the care being provided beyond the most rudimentary elements of nutrition, beds and escapes. After privatization, every provider had to be dealt with by written contract. Providers and administrators alike had to confront a written promise of actions and responsibilities that forced both to think about what the youth really needed and what services might provide it.

Fourth, information began to flow between providers and the larger world of psychologists, educators, and social workers through the less focussed network of professional associations and relationships. By removing the formal division between providers and the rest of the world, privatization opened up opportunities for new ideas to circulate informally and at relatively low risk.

As Massachusetts' experience with privatization at the DYS indicates, many differences in operating convention between the public and private sectors make the boundary important. In addition to differences in personnel policy, there are differences in procurement systems and contracting arrangements and even differences in accounting practices. All are likely to be quite significant in any individual privatization decision. Because they are conventions, these differences can often be replicated or resolved by organizational reforms other than moving the public/private boundary. Thus, if public sector procurement methods do not provide prison food services in a cost-effective and responsible manner, we might want to privatize the prison so it can buy meals as a business does -- but we could also change our public procurement methods.

The wise manager, however, might learn from the Zen master and seek out opportunities to use conventional differences rather than fighting or undoing them. Other

things being equal, we think the opportunities afforded by privatization to free corrections from some of the most troubling rigidities and irrationalities of public managerial conventions are among the strongest arguments for experimentation in this area.

b. Intrinsic Differences

To this point we have considered implications of privatization that had little to do with the intrinsically public or private character of the service provider. Indeed, we noted that differences in operating conventions in the public and private sectors may say little about "publicness" or "privateness" per se. Some characteristics of public and private production, however, are not merely conventions, but are intrinsic to our conception of public and private institutions.

For the most part, these intrinsic differences exist in the heads of consumers and participants in the productive enterprise and not in the external manifestations of productive activity. What is intrinsically public about the actions of government has most to do with how people feel about it. These differences, it must be emphasized, are not illusions or "merely" symbolic. Portions of fried potatoes that cannot be distinguished by any physical means are different products when they come respectively from McDonald's, a soup kitchen, ARA Services, or your mother.

Intrinsic differences between private and public production have to do primarily with two factors. The first is the authority, mandate, and consent with which society invests them. Public actions come with the specific approval of the society as the consequences of collective choice: they represent the concrete manifestation of what we want to do as a group. The second, is the symbolic purpose they serve: public actions are what we want to see ourselves choosing to do as a group; they are a significant part of what it means to be a political collectivity rather than an atomistic plurality.

These intrinsic differences are the principal argument for our proposition that privatization cannot be an all-or-nothing choice. No matter how much of the daily activity of imprisoning is performed by people drawing paychecks from private firms, incarceration that begins with a judge's sentence will be a public act in the perception of the people it affects. It is, therefore, essential to look closely at the different pieces of the corrections business to see which activities most essentially symbolize the special relationship between the convict and the state, and which are peripheral. For example, some critics see the use

of deadly force or super-incarceration (solitary confinement or reassignment to a "tougher" institution) as being in this sense the kernel of publicness in the corrections business. If this view holds, we would look for ways to keep security and internal discipline within the public domain even if we had chosen to privatize a great deal of corrections production.

It may be impossible or unwise to distinguish particular activities in this way. Perhaps publicness is a diffuse integral property of corrections, and prison food is just as important in manifesting the public's concern with the convict's future as riot control. In this case, we would seek ways to imprint literally private acts with semantically public significance, as we have learned to do with private education (by accreditation, curriculum supervision, and the pledge of allegiance) and the private services of defense lawyers (by making them officers of the court.)

Intrinsic differences between the public and private sector not only impose obligations for policy design, but also help us predict the effect of privatization experiments. These differences lead to different expectations among workers and consumers, and ultimately to tolerance for different forms of inefficiency. For example, in many states, the public has a high level of expectation for service from local fire departments, but often a low level of expectation for the department of motor vehicles. To privatize a fire department will create the expectation that the profit motive will mean lower service quality; privatizing the licensing bureau may well yield the opposite expectation. Because expectations play an important role in service production -- and often are self-fulfilling -- these realities ought to enter the calculus of any analyst contemplating a make-or-buy decision.

The Zen master would again counsel us to take advantage of this reality by aligning the physical and institutional organization of production with our ideological conceptions of production. For example, when individuals enter a shelter for the homeless, it is typically necessary to frisk them for drugs and weapons. This inherently demeaning experience can sometimes be made more palatable if the search is conducted by a volunteer wearing street clothes and working in the basement of a church. The same act performed by a uniformed police officer in a state-owned institution is an intrinsically different activity, just as it would be different if the person doing the frisking were an employee of a for-profit firm under incentive contract with a municipality.23 In this instance, the same physical act of frisking is fundamentally altered by the redrawing of

organizational boundaries between the public and private sectors.

The opportunity to align the organization of production with ideological conceptions carries a corresponding risk -- that we will use ideology as an excuse to perpetuate existing organizational arrangements. Thus, we might admit that we would not invent the current postal service if it did not exist, but argue against its privatization on the grounds that the postal service played an important historical role in shaping our nationhood. There is some merit to this argument, but also some difficulty in deciding just how far to go with such reasoning. Trying to distinguish whether the public essence of the mails is found in a kernel activity or diffusely through the system can help.

A second danger is that we will not make privatization decisions on the basis of positive attempts to use ideological characteristics of organizations for social advantage, but instead will exploit stereotypes for short-run ideological self-interest. Thus, the fervor with which advocates of privatization make their case often seems motivated less by the desire to get the boundaries between the public and private sectors better aligned than by the desire to wipe out the public sector.

D. Consequences of the Boundary Itself

If public officials contemplating corrections privatization must consider operating conventions on both sides of the public/private boundary, they also must consider the organizational consequences of the boundary itself. These consequences derive from the ability of an organizational boundary to act simultaneously, and selectively, as a barrier and as a conduit, and as a processing step in itself.

At the outset, the public/private boundary separates an organization into two legal persons. The fundamental importance of this separation is the access it provides to the courts and the law of contracts, which in turn make the process of dispute resolution predictable and formal. When the corrections department engages the labor department to provide job training, through a memorandum of understanding, surprises and disappointments must be ironed out through negotiation or at the governor's desk. These are informal and relatively unpredictable processes, and both parties' knowledge of this uncertainty affects their behavior in a variety of ways. Conversely, purchasing job training from a school or factory involves a contract that will be interpreted as conditions change according to rules and precedents that both sides' counsels can predict with relative certainty.

As barriers, organizational boundaries filter certain kinds of information -- especially information normally transmitted informally and qualitatively. One of the most important managerial uses of a make-buy boundary is to protect an organization's ability to focus on what it needs to see clearly and ignore what it does not. In particular, most of the daily operational crises in a supplier's organization will be kept off the purchasing agency's director's desk. Of course, subtle alternatives in application of production methodology will be precluded as well.

Conversely, organizational boundaries are highly permeable to information fixed in goods and services or which can be described numerically, especially accounting information. A make-buy boundary forces an inventor to reduce a vague idea or proposal to a specific testable example, or to find a way to measure its improved performance in dollars (often as a reduced sale price) or countable efficiency improvements.

Finally, as a processing step, a boundary of this kind transforms products into inputs and vice versa. Whatever the supplier delivers across a make-buy boundary looks to him like a finished product, and this perspective is another opportunity for focus. It is also an opportunity for process innovation stimulated by competition between suppliers of inputs. In general, private sector organizations are taught to do their work better or faster by someone selling a product or service that makes the improvement possible.

Placing the make-buy boundary in the right place means locating the boundary where it is most useful to make inputs look like final products. This notion brings us to what we consider to be the most important issue bearing on prison privatization in the existing corrections context: how can privatization promote innovation in this industry?

III. Dynamics of Privatization: Procurement and Innovation

As is widely recognized, a most important quality of a make-buy boundary is that the selling side can be divided into many organizations. Creating the potential for supply by multiple vendors, in turn, makes competition possible. The primary benefit of this competition is product differentiation: the corrections commissioner can choose among more than one way to perform particular prison activities, each presented by someone who must make his offer distinctive in order to survive. But will the commissioner, instead, simply see four proposals for the same thing that

differ only in price? Or, by demanding that the private sector believe "just like government," will we waste the opportunity entirely? This last is our interpretation of the Tennessee fiasco, in which a 415 page Request for Proposal went begging.24

To answer these questions we need to consider two different kinds of innovation, kinds that private sector experience indicates are difficult to generate in the same organization [cite]: cost reduction and product improvement.

It would be a tragedy if the experiments in prison privatization that now seem imminent resulted in the same failures we have now, for a few dollars less or even for many dollars less. We are disheartened by the willingness of concerned parties to consider wholesale privatization of prison systems, especially to a single contractor, and by the relentless focus on cost rather than product quality as a motivation to privatize. One of our hopes is that privatization will be seized as an opportunity to fractionate the production of incarceration, making it possible to provide many different kinds of jails and prisons within a single administrative unit such as a state.

Indeed, one of the outstanding successes of the privatization of youth services in Massachusetts was to establish this polyvalent mode of operations. Like every important managerial decision, Miller's actions illustrate the necessity to affirmatively recognize and choose among vulnerabilities and advantages. As a procurement decision, the DYS story will serve again as an illustration of the dimensions of privatization, now in the context of dynamics, we consider most important.

Recall that Miller was unable to specify what kind of youth services he wanted, though he expected to be able to recognize improvement when he saw it. In inviting proposals from contractors, he deliberately took advantage of the variety of alternatives competition could provide. In selecting suppliers and signing contracts, the clarity and specificity that buying demands forced DYS to think specifically and consequentially about exactly what was being done for the youth under its care; both of these effects were to DYS' advantage.

However, as soon as contracts were in place, this same clarity and specificity posed a challenge that confronts every manager who obtains services by purchase: how to avoid constraining suppliers' innovative energies to focus only on cost. While operating under contract, a supplier is constrained not to innovate in product quality; anything very different from what was originally contemplated would violate

the contract. On the other hand, innovations that reduce the cost of the contracted service will pay off at once.

This tendency is reinforced if the contractor has the reasonable expectation that the next contract will be let in response to a request-for-proposals (RFP) that describes the existing product. This expectation is consistent with a sequential, two-step procurement process: first, the product is specified; and second, it is procured from the lowest cost competitive bidder. Of course, bids are not always let strictly on a cost basis, but the sequential process of specifying the product -- even if it includes the specification of non-price factors -- tends to sacrifice opportunities for individual competitors to differentiate themselves from their competition on their own terms; rather, they are constrained to compete on terms specified by the procurement agency.

Consider the actual experience of two real companies competing for the recently privatized service of cleaning government buildings: Company A provides cleaning services "on demand;" that is, they wash walls when they are dirty and wax floors when they require it. Company B, in contrast, provides cleaning services "on schedule;" that is, they wash walls and wax floors on some specified periodic basis, say, monthly. To make its strategy work, Company A uses sophisticated management information systems and relatively high-priced labor. Their total costs for keeping any building clean for a year are low, though their unit costs (for mopping a hundred square feet of floor, for example) are high. Company B needs less sophisticated information and uses lower skilled labor. Its unit costs are low, but because they must do more mopping and waxing for a given level of overall cleanliness than Company A, their total costs are about the same -- as might be expected in a competitive industry. Company A, however, is widely acclaimed for superior quality, consistency, and employee relations.

Now impose the governmental procurement process on these two competitors. If the procurement officer specifies cleaning "on demand," Company A will likely win the bid and Company B will cry "foul," arguing that it was effectively precluded from bidding. Of course, if the procurement officer specifies cleaning "on schedule," Company B will likely win the bid and Company A will do the complaining.

In the example cited, there would likely be only one bidder for either alternative. To get more bidders -- itself a goal of many procurement operations -- would require one of two things: either more competitors must pursue similar production strategies, or the RFP must be carefully crafted to allow varied definitions of the service being sought. In

the former case, differentiation will presumably be oriented to cost reduction. The second strategy, deliberately inviting product innovation through the procurement process, requires strong managerial commitment in the face of many countervailing forces. A "loose" RFP can appear to allow unaccountable or incommensurable proposals, and may be hard to defend to a hostile legislative committee or a suspicious journalist. Competitors may cry "foul," and the contract administrator will probably have to work harder to supervise the successful bidder. Managers of a procurement processes that generate innovation and experimentation will have trouble looking as though they run a tight ship and may even appear not to know what they are doing.

Our key point is that the information flows necessary to manage across the public/private divide may increase the attention paid to cost at the expense of innovation and quality over time unless these pressures are actively resisted. While cost focus may be appropriate for many governmental procurement situations, it may not be appropriate for procuring prison services. If policymakers believe that prison services could benefit from an innovation and quality stimulus, and expect privatization to provide that stimulus, they must take care that the procurement process does not undermine this strategic objective.

Whether redrawing the organizational boundaries of industry increases or decreases the pace of technological innovation, it almost surely changes it. Unless the analyst considering a prison privatization decision has carefully considered the implications of privatization for innovation, the analysis is incomplete.

IV. Conclusions

We have attempted to view prison privatization from a managerial perspective. In doing so, we conclude that there is no general prescription to privatize correctional services or not. Instead of a general rule about the direction of movement of the private-public boundary, we can offer something potentially more useful: a way of thinking about such opportunities as they arise. Our analytical approach to privatization has three key elements:

o We believe that it is important to think of privatization as an incremental process rather than a lumpy policy alternative.

o "Privatization" is a state of affairs that cannot be avoided (some part of corrections will of necessity be carried on in the private sector.) Nor, for that matter can prison privatization ever be achieved completely. Punishment

and rehabilitation of criminals is a governmental act no matter who signs the practitioners' paychecks.

Appreciation of this reality greatly enriches the menu of choice available to the public because it makes it much more difficult for ideologues and special interests on either side of this debate to eliminate otherwise viable policy options by a simple wave of the hand.

o The real privatization issue, as we see it, is one of fit between the strategic purposes that we seek to achieve through the prison function and the currently available means to do so. We need to start our deliberations not with a presumption for or against privatization, but with a list of the objectives we wish to accomplish. We can then ask where the public-private boundary ought best be positioned to achieve these ends -- not just in the abstract, but taking account the practical realities of the particular set of circumstances in which the question is posed.

Once we come to appreciate the extent to which the issue is one of fit, we also come to appreciate that the opportunities to shape the <u>various</u> boundaries that are moved when we engage in prison privatization are, in fact, much greater than those captured in the current privatization debate. Once again, this is an argument for innovation through experimentation and testing, not through wholesale commitment to any one way of doing the business of corrections. Such experimentation and testing should never end, for there will always possibilities for improvement. We should be searching constantly for ways to realign the boundaries between the public and private sector.

We can never guarantee that experimentation will allow us to get these boundaries right. We can guarantee, however, that our failure to experiment ensures that we will get them wrong.

A final observation:

As we noted at the outset of this chapter, practice and the average citizen may well be ahead of theory when it comes to understanding the realities of privatization. In our analytical efforts to construct simple models and keep research tractable, we may miss the richness of public and private organizational forms already available to us in the real world. If we focus on prison privatization as a dichotomous decision between public and private provision of a specified set of services the corrections system already provides, we will miss the essence of both the opportunities and pitfalls of privatization.

The choices are not dichotomous and the goods and services are not specified. The service we now call a prison is itself conditioned by the means of its production. Many other analysts are undoubtedly prepared to describe how society can use privatization to lower the cost of the prison services we now provide. We certainly do not object to cost reduction. We prefer, however, to view privatization as a means to improving the delivery of prison services. If we succeed in using the full range of possible public and private collaborations to do a better job than we are now doing in operating this nation's penal institutions, cost reduction will merely be a pleasant dividend.

The many untested available alternatives make a strong case for privatization as a way to proliferate new means for delivering prison and jail services. Today's policy debate over prison privatization affords an excellent opportunity for society to embark on a path of innovation in the delivery of correctional services by making better use of its private as well as its public institutional base.

ENDNOTES

1. The American Bar Association summarizes this point in its policy statement on privatization: "The private sector, advocates claim, can save the taxpayers money. It can build facilities faster and cheaper than the public sector can, and it can operate them more economically and more efficiently." Testimony of Robert Evans, "Privatization of Corrections," Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 99th Congress, November 13, 1985 and March 18, 1986,p. 113. While not himself a proponent of privatization, Edward Koren of the American Civil Liberties Union has expressed this "no worse" position of privatization advocates quite well. When testifying about the role of privatization on civil liberties, he stated, "prisoners must not be placed in any worse situation in terms of their treatment care, and legal status than those prisoners confined to public institutions." op. cit., p. 5. Among the proponents of privatization at these same hearings was Richard Crane of the Corrections Corporation of America. In his list of the advantages of privatization at the outset of his testimony, all benefits related to lower costs. [pp. 31-35.]

2. Mocking the privatization concept with a clear reference to the notion of prison privatization as a dichotomous choice, Dave Kelly, President, Council of Prison Locals, American Federation of Government Employees, stated before a Congressional committee: "...if the committee decides that the function of punishment is an appropriate realm for the profit incentive, we hope that it recommends to the states to privatize all the punishment functions. We have not seen a cost estimate on the death penalty. But whatever it is, we know of "entrepreneurs" who will do it for less. We see them everyday in cell blocks across the country." [p. 18 "Privatization of Corrections," Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 99th Congress, November 13, 1985 and March 18, 1986.

3. Jacqueline M. Moore provides a good dscussion of how privatizing prison health services can improve managerial focus in "Privatization of Prison Health Services, "Privatization Review (Fall 86) p. 12.

4. An alternative approach is to try to identify what elements of production determine the intrinsic publicness or privateness of an activity. John DiIulio, for example,

argues that the central issue in prison privatization is who manages the prison and by what authority. He contends that prisons management is an intrinsically public activity for two reasons. First, only the state can legitimately balance competing notions of the proper role and function of prisons systems. Second, private administration of punishment diminishes the symbolic importance of the punitive act. Privatizing prison management, in essence, undermines the notion that crime and society's response to it are inherently public acts. DiIulio suggests that the question of privatizing prison functions other than management is important, but not central to the philosophical debate. John J. DiIulio, "Sell The Walls: A Critical Perspective on Historical, Political, Administrative, and Philosophical Issues in the Private Management of Prisons and Jails," Chapter___ of this volume. While we neither endorse nor reject DiIulio's conclusions, we believe that his approach leads to an important insight -- the privatization of a production function should be seen as an incremental process and not a wholesale volleying of enterprises (in this case prisons) across the public/private boundary.

5. At the extreme, so long as labor is freely supplied and not conscripted or enslaved, there will always be a "private" component of any publicly produced good or service.

6. A 1982 survey of 1433 cities and 347 counties conducted by the International City Management Association made this point clear. Of thirty different public services, only four were "solely public" among 75% or more of the respondents: snow plowing, code enforcement, payroll, and secretarial services. Services directly related to state powers of taxation -- such as assessment and delinquent tax collection -- were solely public only 54% and 59% of the time. One activity involving incarceration, rehabilitation and physical restraint -- mental health facilities -- was "solely public" in only 13% of the cases. International City Management Association, Alternative Approaches for Delivering Public Services, Urban Data Service Report Vol. 14, No. 10, October 1983.

7. Typical of the current approach is E.S. Savas' Privatization: The Key to Better Government, Chatham House, New Jersey (1987) 308 pp. Savas provides an interesting and valuable discussion of the various consumer services which can be produced by the public and private sectors (chapter 3, pp.35-57), and generic strategies for efficent delivery of these services (chapter 4, pp. 58-92). Savas fails, however, to suggest how public managers and elected officials might assess proposals to privatize particular elements of the production chain. Such analysis would enable public

officials to draw public/private boundaries which optimize managerial performance, along dimensions that advance the public agenda where consensus exists, and that effectively balance competing interpretations of the public interest where it does not. Savas opts instead for a prescription, made explicit in the title: where possible, privatize.

8. See Robert A. Leone, Who Profits, Basic Books, New York 1986, p. 32.

9. A survey limited to 54 state correctional agencies revealed that 52 of the 54 had at least one contract with the private sector. Private Sector Involvement in Prison Services and Operations, a report by the Criminal Justice Institute, South Salem, NY, February 1984, under contract to the National Institute of Justice, U.S. Department of Justice.

10. The National Fire Protection Association and Underwriters' Laboratory are two common examples of private organizations whose decisions (the National Electrical Code and product "listings," respectively) take on the force of law in many jurisdictions.

11. The Electric Power Research Institute, the major research arm of the electricity industry, is funded by such a tax-like charge and industry's share of the new Sematech project in the semiconductor industry will be financed in a similar fashion.

12. John J. DiIulio, Jr., Governing Prisons, Free Press, MacMillan, Neww York (1987) p. 237.

13. James W. Culliton, "Make or Buy: A Consideration of the Problems Fundamental to a Decision Whether to Manufacture or Buy Materials, Accessory Equipment, Fabricating Parts, and Supplies," Harvard University Graduate School of Business Administration Business Research Studies Volume XXIX, Number 4 (December 1942).

14. Even these deliberations can take on a larger political significance, as in the case of "domestic content" legislation for automobiles.

15. "Mess And Maintenance at Marine Boot Camp," John F. Kennedy School of Government, Harvard University, Cambridge MA, 1987, Case No. C96-87-792.0, (by William Rosenau, under the Direction of Robert A. Leone, Lecturer in Public Policy).

16. Indeed, as evidence of this, the editor of this volume insisted that the term "prison guard" be replaced by "correctional officer." This concern for title and image and the possible conveyance of stereotypes illustrates the manner in which even informal norms of expression and behavior shape organizations.

17. DiIulio has addressed the significance that attaches to symbols which clarify the boundaries of the corrections function: "The badge of the arresting policeman, the robes of the judge, and the state patch of the corrections officer are symbols of the inherently public nature of crime and punishment. "Sell the Walls," p. 39 Boundary clarification, however, has more than symbolic meaning. The literature on manufacturing focus suggests that the production function should be organized along lines which advance the strategic purposes of the firm -- which may well be symbolic -- rather than simply aiming for lowest unit cost, based on often elusive economies of scale.

Techniques for developing proper focus include physically dividing space in a production facility along product lines, segregating production facilities by manufacturing process, and developing separate production facilities as a means of supporting products whose production requires incompatible work cultures within the same organization (i.e., custom work versus standard production runs). See, for example, Robert H. Hayes and Roger W. Schmenner, "How Should You Organize Manufacturing," Harvard Business Review (January-February 1978), pp. 105-118. Roger Schmenner, "Before You Build a Big Factory," Harvard Business Review (July-August 1976) pp. 100-104. Roger Schmenner, Production/Operations Management: Concepts and Situations (Third Ed.), Science Research Associates (SRA), 1987 pp. 693-699. Wickham Skinner, "The Focused Factory," Harvard Business Review (May-June 1974), pp. 113-121. With respect to prisons, the literature on manufacturing focus suggest to us that as managers we would gain more from experimentation with different forms of correctional facilities targeted at different needs than we would from a strategy aimed at cost-reduction through wholesale privatization of state prison systems to a single supplier.

18. An example of the latter case is W.L Gore & Associates, which has one job classification: Associate. The organization which manufactures Gore Tex believes that job titles inhibit communication and effective job performance. Similarly, the company's recently deceased founder believed strongly that production could not be effectively managed in units involving more than 200 people. The company's philosophy is described in Tom Peters and Nancy Austin, A Passion For Excellence, Warner Books (1985) pp. 239-40. A

more exhaustive description of the firm and its "lattice" management structure can be found in a memo from Vieve Gore to "the Associates" entitled, "The Lattice Organization - a Philosophy of Enterprise," W.L Gore & Associates, Inc. (May 7, 1976).

19. The consequences of prisoner quarrels with performance have periodically erupted in violence. For example, an uprising at Rikers Island in New York in early 1988 was prompted by issues including abuse by guards, the quality of food and the temperature of the cells. New York Times, "Hundreds of Inmates Take Over 12 Dormitories on Rikers I." (February 19, 1988) pp. B1 & B4. New York Times, "Rikers Island Warning Signals," Editorial (February 20,1988). This type of uprising prompts us to ask two questions. First, would the riot have had different social, legal and moral implications had it taken place under private watch? Second, much of the privatization debate revolves around whether guarding is intrinsically different from food, laundry and health services. Knowing if this is the case in the minds of the prisoners, and along what dimensions, seems to be crucial to evaluating the strategic benefits and liabilities associated with privatizing this aspect of the incarceration function.

20. See Boston Globe: "Wilson wants drivers to be city employees," (September 25, 1987, p.1; "Flynn backs idea to hire drivers," (September 26, 1987) p.1; "Putting the children first," Editorial (September 29, 1987) p. 18.

21. In many markets, the inevitable short-run disequilibria can exist have created a whole industry of arbitragers whose role is to exploit, and thus eliminate, these disequilibria. The process of continuously reshaping the public and private boundaries in an industry is an analogous process.

22. "Jerome Miller and the Department of Youth Services (A), (B) and Part (B) sequel," Harvard University, Kennedy School of Government Teaching Cases C14-76-101.0, C14-76-102.0, C14-76-102.1, (by Phillip Heyman, Professor of Law).

23. We respectfully acknowledge differences of opinion on this point. Edward Koren of the American Civil Liberties Union has testified, "From a civil liberties perspective it is irrelevant whether the correctional officer carrying a truncheon on the tier is wearing a badge with a star or a badge with a dollar sign." "Privatization of Corrections," Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 99th Congress, November 13, 1985 and March 18, 1986, p. 6. Ironically, Mr. Koren follows this statement with an enumeration of the ways private and public guards <u>are</u> different.

24. Cite CCA experience here.

August 1991

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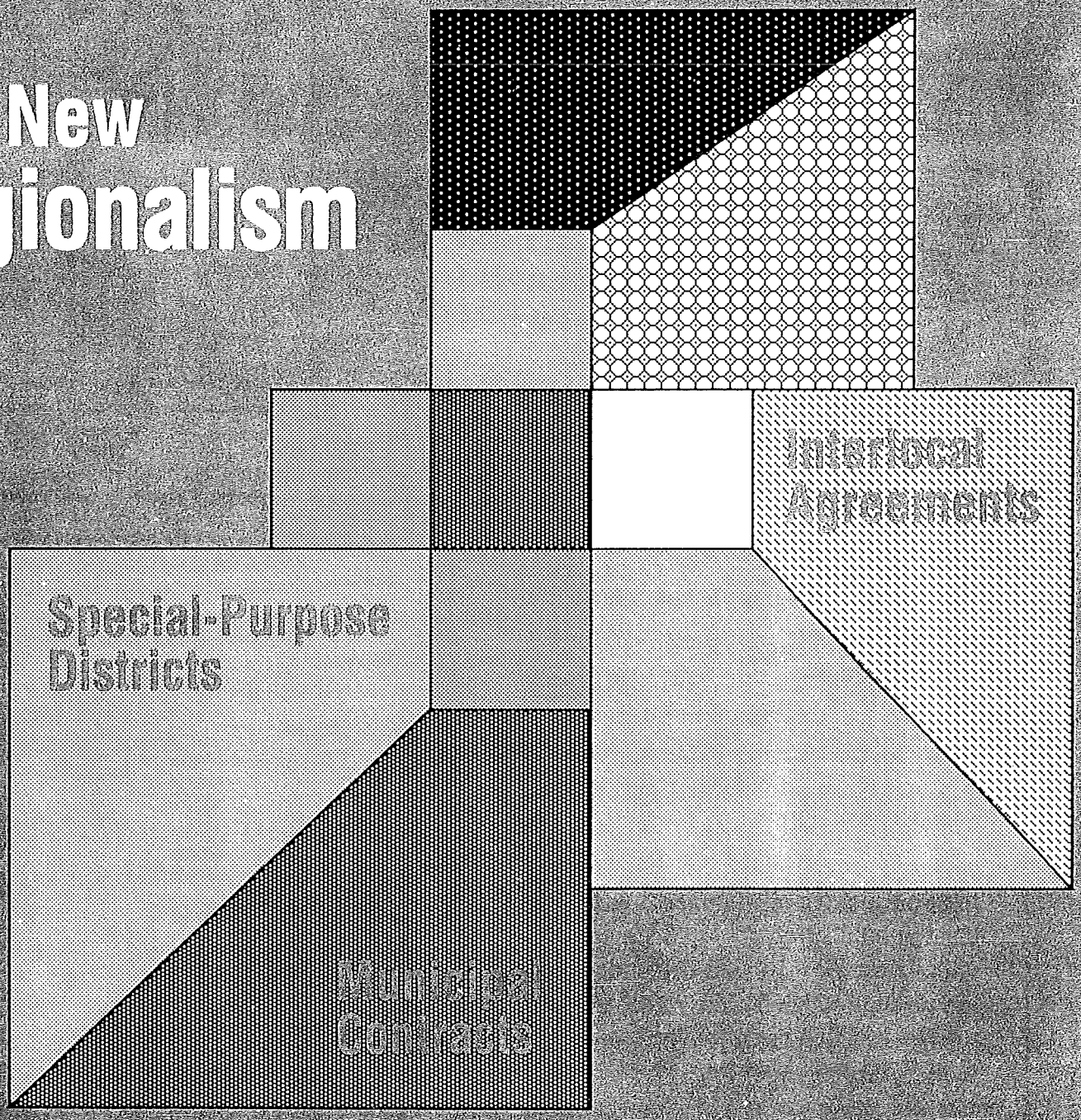

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Interlocal Cooperation

Options Which Are Available

By Geoff Herman
MMA Paralegal

Although municipal government is clearly superior to larger units of government with regard to efficiency and accountability, it is not always the case that a task facing municipal government is most efficiently accomplished by each town or city standing alone. Some issues of municipal concern show a complete disregard for town boundaries. A sanitary district may beg formation in just the village area of a large, rural town. Similarly, lake watersheds establish their own geographical determinates, and a comprehensive approach to watershed protection demands some level of interlocal cooperation.

With regard to other tasks or challenges facing municipal governments, it is not always easy to determine if there is an advantage offered by multimunicipal cooperation. Towns may freely choose to either independently tackle their solid waste disposal responsibilities, for example, or they may create a multimunicipal entity for that purpose through a process of *districting, incorporation* or *interlocal agreement*, or some combination of these processes. The advantages or disadvantages of working independently rather than joining forces with your neighbors are sometimes difficult to compare or compute, primarily because an essential tension exists between the value of local control versus the economy-of-scale efficiencies that are allegedly available to a multimunicipal entity. Tension also exists between the pride of ownership associated with undertakings initiated solely on the local level versus the state's growing interest in, and therefore support for, the creation of regional structures, especially for the purpose of solid waste management.

This article concerns the structural and practical differences between the various types of formal intermunicipal cooperation: simple interlocal agreements, interlocal agreements which lead to the creation of *multimunicipal corporations*, and *special purpose districts*. Enabling law provides no shortage of opportunities for two or more municipalities to cooperatively contribute their resources and administrative energies to achieve a commonly desired purpose. The element of interlocal cooperation that is sometimes in short supply is the degree of mutual trust necessary to create a legal entity with a life of its own. Multimunicipal districts are characteristically less accessible and accountable than the primary municipal subdivisions from which they are born, and history teaches us that such an offspring, without adequate parenting, can become a problem child.

To a significant degree the accountability, and therefore the trustworthiness, of a multimunicipal entity or arrangement will depend on the controls that are designed into the structure of the entity during its formation. This article surveys some of the more significant differences between two models of intermunicipal relationship: the special purpose district and the interlocal agreement-corporation. Placed in particular focus will be the differences between these models which are significant enough to rise to the level of advantages or disadvantages from a practical, political, structural or procedural perspective.

This article does not undertake a complete description of every procedural step that must be taken to create a district or develop and implement an interlocal agreement. MMA publishes a *Handbook For Interlocal Cooperation Agreements in Maine* which discusses in some detail the procedural and substantive issues associated with developing and implementing interlocal agreements, and district formation is so exhaustively controlled by statutory detail that its recitation yields nothing but regurgitated statute. Indeed, the successful formation of a multimunicipal relationship is not achieved by a perfunctory adherence to the details of process. The potential for success is found in the particular written details of the formal relationship as those details define and protect from subsequent alteration such primary issues as the purpose of the relationship, the vestment of power in created legal entities, the distribution of power among membership, and the opportunity for withdrawal.

Interlocal Agreements

Maine's Interlocal Cooperation Act, now found at 30-A MRSA § § 2201-2207, was originally enacted in 1963. In its seven elegantly brief sections of statute (as compared to the turgid density of district enabling law), the Act enables a municipality to exercise jointly with one or more other municipalities, quasi-municipal corporations or agencies of the state or federal governments, any "power, privilege or authority" the single municipality is capable of exercising. In substance, the Act expressly permits municipalities to enter into written agreements with other municipalities (or other public agencies) which have the effect of establishing a *combined legal authority* to administer a particular governmental function. An interlocal agreement is simply a contract between two or more municipalities or public agencies. Outside of the Interlocal Cooperation Act, Maine law occasionally either expressly or implicitly encourages the utilization of interlocal agreements, such as for the creation of River Corridor Commissions (30-A MRSA § 4463) or multimunicipal General Assistance districts (22 MRSA § 4304(2)).

As discussed more fully below, the written agreement must contain certain details, and the legal authority of the joint power created by the agreement is subject to certain limitations, but by and large the Act, in its sweep and brevity, openly encourages all municipalities to join together wherever, whenever and for as long as they may wish to creatively and cooperatively perform their individual responsibilities together. In fact, one subsection of the Act declares that the authority to create interlocal agreements be "liberally construed", which means that the purpose of the Act may not be frustrated by

insignificant technical or procedural inconsistencies. In explanation of the reason why the Interlocal Cooperation Act is to be liberally construed, the law states that it is "the intent of the Legislature to avoid the proliferation of special purpose districts and inflexible enabling laws." The essential characteristic of the interlocal agreement is its flexibility.

Very simple interlocal agreements can be created to govern the sharing of a single municipal official, such as a code enforcement officer or general assistance administrator, between two towns. Entire municipal departments, such as a public works or fire department, can be shared under the terms of an interlocal agreement. On the other end of the spectrum, separate legal entities comprised of, for example, 25 or more municipal members (and which otherwise look very much like county-wide refuse disposal districts) could be entirely created by means of the interlocal agreement. To add to the possibilities, interlocal agreements can create legal relationships between one or more municipalities and independently-created municipal corporations or districts, such as School Administrative Districts or Refuse Disposal Districts. By such a hybrid of legal relationships, towns can control their degree of involvement with a multimunicipal entity they might not entirely trust. Another "hybrid" legal relationship joining municipalities is an interlocal agreement which also acts as the articles of incorporation for a nonprofit corporation. This occurs when interlocal agreements create a separate legal entity to govern the joint undertaking. For that separate governing body to have any legal existence, it must be incorporated. The process of forming regional planning commissions or councils of government, as described at 30-A MRSA § § 2301 et seq., closely resembles this model of intermunicipal relation, and Regional Waste Systems, Inc., the waste incineration facility located in Portland, was created in this manner.

While interlocal agreements are flexible, every such agreement must be written and must contain certain provisions:

— The purpose of the agreement;

— The duration of the agreement;

— The precise organization, composition and nature of any separate legal or administrative entity created by the agreement;

— The power delegated to any separately-created legal entity;

— Provisions governing the administrator or joint board responsible for administering the undertaking if no legally separate entity is created by the agreement;

— Provisions governing the acquisition, holding and disposing of real and personal property used in the joint undertaking, if no legally separate entity is created by the agreement;

— The method by which jointly held property will be disposed upon termination of the agreement;

— The manner of financing the agreement and the manner of establishing and maintaining a budget for the undertaking;

— The method used to partially terminate (i.e., breach or withdraw from) or completely terminate the agreement; and

— Any other "necessary and proper matters", and most interlocal agreements do contain other provisions concerning such issues as personnel management, remedies when commitments made by the agreement are not honored, and amendment procedures.

The precise details of each provision are left up to the municipalities drafting the agreement. As will be seen, many of these required provisions are also found in district enabling legislation, except that in the case of district enabling legislation, the details of the various components of the interrelationship tend to be prescribed.

The Two Types of Interlocal Agreement. Even though interlocal agreements can be created to accomplish any number of municipal functions, in another sense there are only two types of agreement: the type that creates a separate legal or administrative entity (the interlocal corporation) and the type that does not.

Where no separate legal entity is created, all revenue contributions and borrowing or bonding decisions will be performed by the separate legislative bodies of each participating municipality. Each municipality will also retain all rights and responsibilities regarding property ownership and legal liabilities.

If the interlocal agreement creates an interlocal corporation, that entity will have the power and rights, unless expressly limited by terms of the agreement, to borrow money; issue bonds or notes; purchase, own and sell property; and prosecute and defend in civil actions.

Interlocal agreements cannot, as a matter of law, grant taxation authority to separately created legal entities, so each member municipality retains the ability to raise and appropriate money to support the interlocal corporation. This limitation represents the principal difference between interlocal corporations and special purpose districts. Most special purpose districts have either express or potential authority to assess member municipalities for revenue contributions in much the same manner as the Treasurer of State or the counties assess municipalities for their tax obligations. There exists, therefore, a certain awkwardness in the structure of an interlocal corporation. The interlocal corporation is empowered to incur debt, at least to any limits provided in the terms of its establishment, but the willingness of the underlying municipal legislatures to honor future debt retirement obligations can never be guaranteed.

As a matter of composition and organization, the governing body designated by an interlocal agreement that creates a separate legal entity may be identical to the governing body designated by an interlocal agreement that does not. As a matter of practice, however, more financial, property and liability questions must be taken to the voters of each member municipality where no legally separate governing entity exists. In this situation, the municipal delegates on the governing board may find themselves trooping back and forth between the governing board and their municipal legislatures, seeking ratification for the property and financial decisions made by the governing board under its limited authority. Separate legal entities can more efficiently borrow and spend money, acquire property, and defend themselves in court. The downside of creating a separate corporation is that each member municipality gives up a greater degree of control over money and property.

The Interlocal Corporation. The question of whether the interlocal agreement should create an interlocal corporation must be very carefully considered. Such an agreement is both practically and politically different — by several orders of magnitude — from the more modest and traditional interlocal agreement that undertakes, for example, the joint sharing of a building inspector.

As discussed above, the creation of separate legal entity has little to do with which individuals make up the board governing the joint undertaking. The make-up of the governing board is a matter of negotiation during the formation of the any interlocal agreement, and the composition of the governing board could be exactly the same whether or not a separate legal entity is created. Rather than the make-up of the governing board, the primary issues surrounding the creation of a separate legal entity concern matters of financial administration and liability.

Generally, the factors which support the creation of a separate legal entity are: (1) the joint undertaking requires extensive financial and operational administration; (2) some liability is associated with the joint undertaking, so that the chain of liability should be disconnected between the interlocal corporation and the underlying municipalities; (3) the interlocal agreement involves so many municipal members that informal joint governance would be cumbersome at best; (4) the interlocal agreement describes an undertaking which will involve the acquisition, holding and disposal of a significant amount of real or personal property; and (5) the interlocal agreement includes municipalities that are very different with regard to population, demographics, industrial base, wealth, or governmental structure. There very well may be some irony associated with this last factor. Just because it is sometimes the case that very dissimilar municipalities do not completely understand or trust each other, it might appear irrational to create a separate governing entity out of such a union of

misunderstanding and distrust. On the other hand, if between two distrustful municipalities there is going to exist any functioning relationship at all, it had better be a *formal* governing arrangement; the efficient administration of the joint undertaking is not likely to occur otherwise.

Interlocal Corporations and Taxation. Corporations created by interlocal agreement have no authority to assess or levy taxes. This is done by the member municipalities in accordance with the funding provision in the agreement.

The real and personal property of special purpose districts is exempt from taxation by declarations to that effect in their enabling legislation. One partial exception is the land (but apparently not other real property) of Refuse Disposal Districts, which is not exempt.

For interlocal corporations, 36 MRSA § 651(1)(D) exempts from property taxation "the property of public municipal corporations of this State *appropriated to public uses*, if located within the corporate limits and confines of such public municipal corporations." It is this subsection of tax law which exempts purely municipal property from taxation. Similarly, the property belonging to a *nonprofit* corporation formed by an interlocal agreement is in all probability exempt under this subsection, provided the corporation's property was "appropriated to public uses." As an example, Regional Waste Systems enjoys an exemption from property taxes in Portland, although RWS does pay the City for services on a fee basis in lieu of taxes. Because multimunicipal corporations can be formed as profit-making entities, their exemption from property taxes is not automatic; that is, an incorporated conglomerate of entities which are all individually exempt from taxation is not itself exempt by virtue of the exempt status of its members. Its exemption comes from its purpose and function.

For sales tax purposes, 36 MRSA § 1760(2) provides a sales tax exemption to "the State or any political subdivision...or *to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them.*" Therefore, the interlocal corporation would enjoy a sales tax exemption.

The nonprofit interlocal corporation would be exempt from federal income tax under federal revenue code 26 USC § 501(c)(2), and the state's piggyback exemption found at 36 MRSA § 5102(6).

The Distribution of Power Within Interlocal Agreements. The composition and organization of the governing board of an interlocal corporation will probably generate the hottest debates and cause the greatest amount of frustration during the development of the interlocal agreement because this determines the distribution of power among the member municipalities. Some of the questions to be addressed during the formation stage include: Will the governing board be made up of an equal number of representatives from each member municipality, or will representation be weighted by municipal population, production, valuation or performance? Will each representative to the governing board be granted one vote, or will some municipalities be granted more than one vote, again according to some factor such as population or performance? Is the formula which yields each member's prorata financial obligations the same as the formula driving the distribution of power? What extra benefits or "perks" are granted the host municipality?

The Interlocal Cooperation Act, like the district enabling laws discussed below, only requires that each member municipality or agency be represented on a governing board, but the distribution of power on that board is subject to negotiation during the development of the agreement. Just as the final agreement should fairly allocate power throughout the member region, it is also the case that care should be taken during this negotiation to protect the distribution of power from uncontrolled shifting after the agreement has become effective.

Delegating Powers to Interlocal Corporations. Where an interlocal agreement creates a separate governing entity, a list of powers granted to that entity must be detailed.

There are three powers that may not be granted to an interlocal corporation: essential legislative powers, taxing authority, and the power of eminent domain. In consideration of these limitations, even special purpose districts have no essential legislative powers, and eminent domain is an authority that few political entities are quick to utilize, which leaves the essential difference between special purpose districts and interlocal corporations, as noted above, the district's statutory authority to raise revenues by taxing its members.

Sample interlocal agreements typically list a number of the standard powers that are necessary for any legal entity to exist, such as the right to hold and dispose of property, the right to prosecute and defend in civil actions, and so forth. Sometimes the boilerplate adopts by reference the powers granted to non-capital stock corporations at 13 MRSA § § 901 et seq. Beyond the enumeration of these boilerplate powers, the agreement may list, or list with conditions, such powers as employing necessary personnel, entering into contracts, applying for and receiving grants, accepting gifts and contributions, creating rules and regulations governing the use of corporate property, and so forth. The primary "power" consideration that must be carefully addressed is the power to incur indebtedness by borrowing money or issuing bonds or notes in anticipation of revenues.

Because all municipal members of an interlocal arrangement will necessarily be responsible for their prorata share of any debt incurred while members, the details of an interlocal agreement regarding the financial authority of its governing body should be carefully reviewed to ensure (a) that any appropriate debt ceilings are put in place, and (b) that capital financing is endorsed by the affected taxpayers prior to the encumbrance of any debt.

Interlocal Agreement "Boilerplate". There are any number of model or sample interlocal agreements that a committee representing the interests of potential member municipalities might use in drafting their interlocal agreement. Just as is the case with sample or model ordinances, such "boilerplate" should be examined with a critical eye. It is, for example, not uncommon for boilerplate samples to describe the purpose of the agreement in hazy and imprecise terms, or attribute to the agreement a larger purpose than necessary. MMA's *Handbook For Interlocal Cooperation Agreements in Maine* goes so far as to recommend being imprecise or broad with regard to the purpose statement so as not to stifle the creative possibilities of the agreement and its governing board. With respect to modest agreements where no separate legal entity is created, perhaps this advice is warranted. Vagueness or imprecision in the areas of purpose, powers, or amendment is not advised, however, for agreements which lead to the incorporation of a separately governing entity. The absence of precision with regard to the purpose and scope of any interlocal agreement may make it difficult to later evaluate if actions of the governing board are in accordance with the purpose of the arrangement. A loosely-defined purpose statement may also lead to similar imprecision concerning the powers granted the governing body of the joint undertaking. If the municipalities that are coming together under an agreement wish only to explore and research the development of a contemplated project, the purpose section of the agreement should state that in unequivocal terms. It is probably far better to accomplish a large, complicated undertaking by way of a series of integrated interlocal agreements than it is to establish a vague, over-inclusive purpose, grant to the governing authority vague powers, and simply hope for the best.

The "Critical Mass" of Interlocal Agreements. All interlocal agreements must state their duration and detail the conditions by which members can withdraw. Herein lies another difference between interlocal agreements and special purpose districts. The special purpose district is not designed to cease to exist. In some cases there is no clear method of municipal withdrawal from such districts or district dissolution.

Typically, the duration clause in an interlocal agreement is to either a date certain or when fewer than a certain number of

municipalities are members, whichever comes first. Municipal withdrawal is typically allowed provided adequate notice is given and the withdrawing municipality discharges its financial obligations to the corporation. Inherent in any arrangement that involves many towns is a theory of "critical mass"; that is, the required membership level from which there can be extracted the necessary resources to sustain the joint undertaking. Some interlocal agreements have provisions which trigger the dissolution of the arrangement when membership falls below a defined critical mass level. An interlocal corporation that goes out to borrow money or issue bonds or notes in anticipation of revenues or grants may find that the borrowing leverage or the marketability of the bonds or notes will be influenced by the apparent longevity or stability of the entity created by the agreement. This could in part be reflected in the provisions of the agreement dealing with duration, withdrawal, remedies (i.e., what happens when a member fails to honor its commitments), and termination. On the basis of their taxing authority and their designed permanence, it would appear that special purpose districts have a competitive edge with regard to the marketability of their instruments of indebtedness.

Adopting an Interlocal Agreement. After the terms of an interlocal agreement have been finalized, the process of adopting the agreement begins.

All interlocal agreements must be sent to the regional council or councils within whose areas of jurisdiction any member municipalities are located. The authority of the regional councils is to render an advisory report within 30 days of receipt which describes the regional significance of the proposed agreement. 30-A MRSA § 2342(6).

In addition to seeking the review of the regional council, the Interlocal Cooperation Act requires that any interlocal agreement which deals with "the provision of services or facilities with regard to which an officer or agency of the State Government has statutory powers of control" must be submitted to that state officer or agency for review and approval before the agreement can become effective. Interlocal agreements dealing with solid waste disposal or recycling, therefore, must be submitted the Maine Waste Management Agency. An interlocal agreement establishing a General Assistance district would be submitted to the Department of Human Services.

The state agency's review of interlocal agreements is limited to substantive matters where the agreement grants or undertakes, or fails to grant or undertake, any powers or responsibilities in conflict with the state agency's responsibilities under state law. Since interlocal agreements are primarily concerned with procedural rather than substantive matters, the state agency review — and authority to disapprove an interlocal agreement — will be limited in scope. A state agency reviewing an interlocal agreement could not, for example, disapprove of an agreement because the agency felt that the membership of the agreement was too small or too large, or that the agreement was not economically viable, or that power or representation within the agreement was disproportionately allocated.

The Interlocal Cooperation Act requires that before any interlocal agreement can become effective, "the governing bodies of the participating public agencies must take appropriate action by ordinance, resolution or other action under law." Therefore, in order to effect an interlocal agreement, the municipal officers of each participating town should follow the same process of adoption as they would with an ordinance. Although a public hearing is not required as a matter of law, the municipal officers should hold a public hearing after finalizing the terms of any proposed interlocal agreement of substance. This should draw out any major problems and allow them to be resolved. The proposed agreement should be then filed with the municipal clerk, posted with the town meeting warrant at least 7 days before the town meeting, and an article should be included on the warrant reading something to the effect of, "To see if the town will vote to enter into an interlocal agreement with the municipalities of such and such for the purposes of such and such."

As soon as the action of the various municipalities is sufficient to establish the agreement, the enacted agreement must be filed with the clerks of each participating municipality and the Secretary of State before it can become effective.

Special Purpose Districts

A variety of multimunicipal special purpose districts can be created by means of the process detailed in the district enabling law pertinent to the particular undertaking. District enabling law has itself evolved as an alternative — and in some cases a replacement — method for the creation of special districts by Private and Special acts of the Legislature. Beyond the processes detailed in Maine law for the creation of the various types of school districts (e.g., School Administrative District or Community School District), there exists enabling law for the creation of the following multimunicipal special purpose districts:

— Lake Watershed Protection Districts (38 MRSA § § 2001 et seq.)

— Refuse Disposal Districts (38 MRSA § § 1701 et seq.)

— Sanitary Districts (38 MRSA § § 1061 et seq.)

— Municipal Electric Districts (39 MRSA § § 3901 et seq.)

— Municipal Transportation Districts (30-A MRSA § § 3501 et seq.)

Special purpose districts are a different animal; separate political subdivisions that are more difficult to conceive than the interlocal corporation, and more difficult to extinguish. As has already been discussed as a contrast to the interlocal corporation, special purpose districts do not have prescribed lifetimes, but are instead designed to more or less perpetually perform the functions delegated to them by law. The actual or potential authority of special purpose districts to assess participating municipalities for their revenue contributions is another characteristic which distinguishes special purpose districts from interlocal corporations. This combination of structural permanence and positive access to revenues leads to the not-unwarranted perception by lending institutions, grant-issuing entities and state and federal agencies that special purpose districts are more stable than their incorporated interlocal cousins.

District Formation, An Overview. Despite the fact that each type of special purpose district has its own district formation statutes, the process of district formation is fairly uniform. Approximately 100 pages of Maine law, in fact, could be consolidated into but a dozen or more with the simple creation of a generic district enabling law. It is a description of the generic district formation process which follows.

Unlike interlocal agreements, which are unfettered by any significant review and approval from above, special purpose districts are created when the various municipalities jointly apply to a particular state agency for permission to form as a district.

The process begins with the filing of an application to the appropriate state agency. The application describes the district organization in some detail and proposes district formation. There is some ambivalence to the role of the state agency in this formation process. In one sense the state agency is chaperone to the fledgling district, if not sponsor. In another sense, the state agency has a policy-making influence over the ultimate design of the special purpose district.

To create a Refuse Disposal District, application is made to the Maine Waste Management Agency. To create a Lake Watershed or Sanitary District, application is made to the Board of Environmental Protection. Transportation Districts are formed under the watchful eye of the Department of Transportation, and municipal Electric Districts are formed with the permission of the Public Utilities Commission.

Prior to the submission of the application to form a Refuse Disposal District, there must be a public hearing on the proposal in each participating municipality. Common sense recommends holding such public hearings prior to applying for the formation of any district, even when such hearings are not required by law.

Upon receiving an application, the agency then holds one public hearing on the proposal somewhere in the geographical limits of the proposed district. After the public

hearing, the agency, according to criteria of need and feasibility that are only vaguely referred to in the law, determines whether the proposal is sound.

In contrast to the state's limited role in approving interlocal agreements, a state agency's role in approving or disapproving an application for district formation is substantial. State agencies may use their authority of disapproval as an instrument of leverage to negotiate designed changes in special purpose districts which would conform the district more to the state agency's agenda, and which might simultaneously lead those districts in directions not naturally followed. A state agency's disapproval, then, of an application for a special purpose district would present itself as a natural opportunity for the member municipalities to reconsider their approach, and push instead for the formation of an interlocal agreement.

If the state agency determines the proposed district is sound, the agency gives notice to all participating municipalities of the date, time and place of the district formation meeting, to which each municipality can send representation. There is some variation with regard to the representation that can be sent to these district formation meetings. For Refuse Disposal Districts, each municipality can send one delegate. For Sanitary and Lake Watershed Districts, the entire board of municipal officers can represent the municipality.

The charge to the formation team is to determine the number of directors/trustees to be appointed or elected to the governing board by each municipality, and establish their initial terms of representation by staggering them in preparation for subsequent 3-year appointed (Refuse Disposal/Transportation Districts) or elected (Watershed/Sanitary Districts) terms.

For Watershed and Sanitary Districts, the distribution of power within the district is entirely determined by the designated number of directors or trustees to the district. For Transportation Districts, the allocation of representation is established by statute on the basis of population, with each municipality getting one director for every 10,000 municipal inhabitants. Refuse Disposal Districts fall somewhere between these two models. The number of directors from each municipality is a subject of negotiation, but the number of votes granted to each municipality is based on municipal population *unless the formation team elects to establish a different basis for the allocation of voting power.* This bifurcated allocation of representation on a Refuse Disposal District's governing board, where the number of representatives may not accurately represent the municipality's voting strength, can be misleading.

After the formation team has made its decisions on the number of directors and term length, that decision is submitted to the state agency which, in turn, orders that the question of formation be submitted to the legislative bodies (i.e., town meeting or councils) in each municipality for consideration. The wording of the articles to be placed before the various municipal legislatures is provided in the enabling statutes.

For most districts, all participating municipal legislatures must affirmatively vote to join in order for the district to be established. For Refuse Disposal Districts, however, when not all municipalities elect to join, the agency is allowed to determine that a sufficient number of municipalities voted to form a district such that a critical mass exists. When that occurs, the agency issues a certificate of organization and gives one final notice to the appointed or elected directors of the time, date and place of their first meeting. At the first meeting, the agency formally delivers the district's certificate of organization and all district authority is then vested in the directors. The agency's direct influence on the district ends.

Special Purpose Districts and Taxing Authority. Generally, special purpose districts have an express or potential authority to assess their municipal members for revenue contributions, but for each type of district, the authority of taxation is different.

The revenues collected by sanitary districts are user based; operating revenues are earned through user fees, but the sanitary district is expressly authorized to also assess the beneficiaries of construction projects for a portion, up to 50%, of the district's capital

costs. The sanitary district's ability to collect those assessments is powerful, rivaled only by the municipal authority to collect unpaid taxes.

The authority of Watershed and Transportation Districts to assess their municipal members for revenues is express, and after such districts are formed, the trustees do not need to seek approval for such authority from the voters. Revenue contributions are assessed in the same manner as the Treasurer of State assesses municipalities for taxes, or the counties assess municipalities in their jurisdiction.

The authority for a Refuse Disposal District to assess its members for revenues exists only if the voters in all the member municipalities vote affirmatively — at the time of formation or at any subsequent time — to grant the district such authority.

District Bonding Authority. Of all the special purpose districts, Sanitary and Refuse Disposal Districts are expressly granted the broadest possible bonding authorities. Some protections from overindebtedness are built into this authority. The district directors are required to hold a public hearing when a proposed bond issue is greater than $150,000 for Sanitary Districts, and $1,000,000 for Refuse Disposal Districts. The public hearing is merely for the purpose of giving notice of the proposed bond issue to the affected taxpayers. A special election to approve or disapprove of the bond proposal can be forced by the voters only by submitting a petition within 7 days of the public hearing signed by 5% of the district's registered voters.

Special Purpose Districts, Withdrawal and Dissolution. The laws enabling the formation of Watershed and Sanitary Districts have no provisions for municipal withdrawal or termination of the district.

Municipalities may withdraw from Transportation Districts fairly easily. One year's written notice must be given, during which time the municipality must discharge its current indebtedness to the district. New capital expenditures or borrowing created during the term of the withdrawal notice will not become the responsibility of the withdrawing municipality. Withdrawal will occur at the end of the year's notice if the municipality has paid off all its matured debt to the district and provided a written agreement to honor any longer term debt when those payments become due.

A Transportation District is dissolved by a two-thirds vote of its board of directors, provided all its obligations have been discharged and provisions have been made to retire its long term debt.

The withdrawal and dissolution provisions governing Refuse Disposal districts are somewhat contorted. If the district has not issued any bonds or notes which mature more than a year in the future, municipal withdrawal is accomplished by a vote of the municipal legislative body, but the law requires that for the withdrawal vote to be effective, it must pass by a two-thirds margin. A statutory requirement that a two-thirds vote of a municipal legislature is necessary to take an action is unusual.

If the Refuse Disposal District has issued an instrument of indebtedness with a date of maturity greater than one year, which is very likely to be the case, a member municipality may withdraw from the district only with the district's permission and after satisfying any conditions the district may place on the withdrawal. Upon any request to withdraw, the directors must consider the impact of the withdrawal on the remaining members, and the directors may require the withdrawing municipality to mitigate that impact by agreeing to either pay the district or secure alternative waste for the district's use so that no impact is felt by the remaining municipalities for a period of five years from withdrawal. Again, after the directors vote to allow a municipality to withdraw, the voters of that municipality must vote on a question to that effect, which will pass only with a two-thirds margin.

To dissolve a Refuse Disposal District, either all participating municipalities must vote to withdraw, in the manner discussed immediately above, or the directors can recommend dissolution. Upon such a recommendation, the question is put to all the participating legislative bodies, and if two-thirds of the participating municipalities (each by a two-thirds vote) elect to dissolve the district, dissolution follows.

Conclusion

There are three ways that a cluster of municipalities may enter into formal relationships. The most flexible is the simple interlocal agreement, which is commonly employed when there are only two or three municipalities involved or the joint undertaking contemplated is relatively modest in scope and requires little in the way of financing or common property. The simple interlocal agreement does not create a separate legal or administrative entity, and so the substantive financial or property related policy decisions that are made to implement the agreement must be approved by the various legislative bodies of the agreement's membership. Given the extraordinary growth of the General Assistance program over the last two years, and the concomitant administrative pressures, municipalities may begin to consider using the simple interlocal agreement to create small General Assistance districts, as they are expressly allowed under General Assistance law.

The second level of complexity and status is the interlocal agreement that creates a separate legal or administrative entity - the interlocal corporation. Examples of this approach are Regional Waste Systems, Inc., in Portland, Mid Maine Waste Action Corporation, in Auburn, and the Sandy River Waste Recycling Association, in Franklin County. Advantages to this approach are flexibility and local control over the structural design of the separate legal entity created, which can lead to a acceptable balance of the corporation's power to operate efficiently with the need of the participating municipalities and their inhabitants to have influence over corporation decision making.

The most permanent intermunicipal relationship is created with the formation of a special purpose district. Examples from the world of solid waste management include the Penobscot Valley Regional Refuse Disposal District, the Boothbay Area Refuse Disposal District, the Southern Aroostook Solid Waste Disposal District, and the newly formed refuse disposal district in Washington County. The advantage of creating a special purpose district is its power, which is also its disadvantage. Although lending institutions, grant-issuing entities, and state and federal agencies may find greater potential or security in the special purpose district with its structural permanence and ability to guarantee revenues, these very same qualities may give the municipalities and municipal inhabitants which are served by such districts reason to pause.

Beyond these three formal arrangements, hybrid relationships can be formed between single municipalities or municipal clusters and already existing interlocal corporations or special purpose districts. The mechanism to create such a hybrid relationship is the interlocal agreement.

The act of forming a multimunicipal entity is similar to participating in a game that social psychologists call the "prisoner's dilemma". The game is played with two or more participants, each of whom, without the benefit of communicating with the others, is asked to either inform on their fellow prisoners or remain silent. If none of the prisoners sell their colleagues out, a minor penalty is applied to all. If all the prisoners inform on each other, a severe penalty is applied to all. If some inform but others do not, the informants are rewarded and those that hold their silence are severely punished. The outcome of the prisoner's dilemma game is entirely dependent on the choices of the participants and the degree of cooperation and silent trust they display. Similarly, with respect to the formation and implementation of multimunicipal arrangements, the less trust and cooperation that exists among the participants, and the more each municipality attempts to protect or maximize its particular interests, the more likely it is that any advantage that is to be gained from the relationship will be disproportionately allocated, and the relationship will fail. Fortunately for us, and unlike the prisoner's dilemma game, towns can communicate with their participating colleagues during the formation of any interlocal arrangement and protect their legitimate interests by forging them into the terms of the agreement itself.

New Regionalism

Opinions, Issues and Operations

By Jo Josephson
Assistant Editor

There's a "new" regionalism sweeping the State of Maine these days, as municipalities struggle to comply with the state's solid waste mandates and goals.

Under the hammer of the Department of Environmental Protection (*read* landfill closures), the carrot of the Maine Solid Waste Management Law (*read* recycling goals and recycling grant preference for regional associations) and the demands of the private sector (*read* increased tipping fees), municipalities are, for the most part, abandoning (or putting on hold) their historic antipathy toward regionalism and joining forces with their near and not so near neighbors at an unprecedented rate.

In doing so they are going far beyond the interlocal agreements of the past where one fire department shook hands with a neighboring department and promised to come "to its aid." Municipalities are not only signing contracts and interlocal agreements with each other, they are also forming and joining solid waste corporations and refuse disposal districts, complete with by-laws and wide-ranging powers. (see Geoff Herman's article in this issue).

Some of the associations they enter into agreement with are single purpose, cooperating in recycling or jointly owning and operating a transfer station or landfill or incinerator. Some are multi-purpose. This has resulted in municipalities joining more than one in order to meet all of their needs, or pulling out to form new broader based alliances.

Some of the associations have few members, others many. The formulas they have derived for equality are simple, and complex. But not all members are equal or want to be.

To say that there is no neat package, no neat definition of the "new" regionalism in solid waste here in Maine, other than to call it the "new regionalism," is an understatement.

It is also by design and it is still evolving.

If you doubt it, check Maine's now not-so-new solid waste management law. It contains very few references to regional associations, points out David Blocher of the Maine Waste Management Agency.

"It was a conscious decision, in keeping with Maine's tradition of home rule. Rather than mandate regionalism, we are promoting it with financial incentives — casting our bread (or carrots) upon the waters, so to speak — giving preference to regional associations for recycling grants and seeing who bites," says Blocher, who administers the agency's recycling grants program.

Don Meagher of the Penobscot Valley Regional Refuse District was one of those who argued against original proposals to carve the state up into six solid waste regions when the Maine solid waste management law was being hammered out. "It would have been an artificial exercise that threw some communities together that shouldn't be and separated some that should have been together," Meagher told a gathering of the Maine Bar Association last year.

Arguing against what is referred to as the "top down" style of regionalism that is occurring in a number of states, Meagher made a case for the "bottom up " born of necessity breed of regionalism. As he saw it given Maine's traditional distrust of big government, regionalism would be much more successful in Maine if it developed from "choice rather than by mandate."

Left to their own devices to chart their own course, municipalities are creating and joining a wide variety of associations. The direction has not always been clear nor the road smooth.

This article looks at some of the issues they are currently confronting; it also looks at the operations of some of the more "veteran" associations to glean some understanding of the subtle and not so subtle reasons for their success.

Opinions/Issues

To Join or Not?

There are those who are totally sold on the new regionalism, saying it is cost effective. There are those who remain skeptical saying it is not cost effective and even if it is, you have to give up too much control (it's hard enough controlling the school districts they argue). There are those who say it's worth the loss of control if you have no other options.

It all depends on where you sit. If you have a viable landfill, one not slated for closure, you can afford to go it alone. If you have a good tax base, a major industry or a high summer population that contributes to your tax base you can also afford to go it alone and control the show if and when others seek to join you.

But if you have a limited tax base and face imminent closure of your landfill, like many Maine communities, your choice has been made for you. It's then just a matter of doing your homework and creating or shopping around for the best existing deal to fit your needs.

The Town of Belgrade is a current example of the dilemma. Faced with the closure of their landfill next year, it has at least three options, according to Town Manager Scott Cole: (1) go it alone and build their own transfer station; (2) build their own and contract with neighbors Rome, Mercer and New Sharon to their northwest; or (3) join with neighboring Oakland in its plans to build a transfer station with Sidney and Fairfield.

"Oakland will build with or without us. And we can also go it alone; we've done decent cost projections," says Cole. Until a straw vote taken at a recent public hearing indicated that the residents were interested in exploring some kind of association with Oakland, Sidney and Fairfield, officials in Belgrade were looking into going it alone.

Prior to the straw vote, Cole had pointed out to the TOWNSMAN that joining Oakland meant a loss of control (among other things, Oakland would have an additional vote because it was the host town), loss of convenience (given the abundance of lakes in town, the road system is anything but direct; at least a third of Belgrade's residents would have to drive 15 miles to the Oakland site), and there would be no significant savings (Cole argues that capital and operating expenses are not where the major costs are, transportation and tipping are).

There was good reason to be skeptical of a joint solution based on their experience with their school district. Of the three (Belgrade, Oakland and Sidney), Belgrade, which has a lot of shorefront property, has the highest state valuation at $192,750,000 and pays 42 percent of the school bill. However, it only has three seats on the school board. Neighboring Oakland pays 37 percent with a state valuation of $169,150,000 but has seven seats on the board because of its population. Sidney also has three seats but only pays 21 percent of the budget with a $95,100,000 state valuation.

So why did the straw vote indicate the residents were willing to go along with the regional approach? News reports of the hearing indicated that money appeared to be a major factor: a tax rate that jumped 33 percent this year was cited; a reliance on user fees and not taxes was proposed. The "Not In My Backyard" syndrome could have been another factor as there were reports of a opposition to some of the potential sites for the transfer station should Belgrade build its own.

Since the straw vote, Cole has had one meeting with the other three towns. He is frustrated with the lack of hard data. "One of the major obstacles is getting good information to make a decision," says Cole who has offered some of the $20,000 the town set aside for its landfill closure costs to obtain that data."You've got to get hard data to arrive at a starting point; right now it's like we are all circling the gym floor and no one is dancing," says Cole.

How To Go About It

While Belgrade is just beginning it journey towards a regional approach to solid waste disposal, six towns in Washington County have just formed the Washington County Solid Waste Disposal District. Approval of the district's charter by the Maine Waste Management Agency was granted on July 29.

The six towns — Princeton, Cherryfield, Cutler, Eastport, Baileyville, Princeton and Whiting — representing a cross section of the county, organized the district on behalf of the whole county, according to Jerry Storey, former town manager of Princeton and the new manager in Milbridge. Storey expects all 27 municipalities in the county to join eventually.

While they have formed the district, the group has yet to determine what direction it wants to go in, purposely. Had they done so prematurely, Storey says there might have been too many excuses for not joining like saying it cost too much money or the site was unacceptable. "We didn't want to give them excuses for not joining," explains Storey.

Rather the group worked on identifying their immediate problem (closure of their landfills) and how joining the district could help them (buy time and space from DEP and have an answer for their taxpayers when asked: What are you doing,) The time and space was critical; they needed it to determine just what they would do. They also agreed that no one municipality could do alone what the group could do together.

Storey, who has considerable experience in group dynamics having served once as head of interagency communication for the Tennessee Valley Authority is high on process, saying if you pay attention to it, trust and the appropriate solution will result.

He warns those getting involved in a regional venture not to be sidetracked by the definition of the "thing " they are creating. The "thing" is merely the "tool" for accomplishing what they want to accomplish, he says. Success tends to occur where the group first defines what they want and then seeks the appropriate tool to bring it about.

How Not to Go About It

What happens when you try to force it? When you try to bring groups with a sometime shaky political past together and the timing is bad and their goals are different? When you try to "top down" or mandate the regionalism, rather than let it come about by choice from the bottom up?

It happened earlier this year in Franklin County when the Maine Waste Management Agency tried to arrange a shotgun wedding between the town of Jay and the rest of Franklin County, when it tried to get them to sit down together to apply for a joint recycling grant.

Despite a $300,000 carrot, local attempts at mediation between the two groups and a last ditch "trash summit" in Augusta between the two parties, the joint application, grant, and facility never came into being.

"It was a matter of timing and politics," says Wilton Town Manager Richard Davis, who points out that Jay had begun work on a transfer station and recycling center long before the county association got started, long before the grant process was created.

"They were building a much more expensive facility than the rest of the county could afford. It made sense for them because they have a broader tax base," says Davis. Compared to the rest of the county, Jay is wealthy, with a state valuation in 1991 of almost $600 million; with the mill paying more than 80 percent of its taxes; and with Jay in turn paying approximately 50 percent of the county's taxes.

"There was a difference of philosophy on what we were building, " says Charles Noonan, Jay's town manager. "Some said we were buying a Cadillac and they wanted an inexpensive Chevrolet. Jay was building for Jay; it was to be an asset to the town; it was to last for 20 to 30 years," says Noonan.

There was also a difference of philosophy about ownership. The Association was heading toward an interlocal agreement and a publicly-owned corporation; Jay was looking at a contract arrangement where it would have the final word.

Then there was the politics of big-town, small-town that was a side issue, says Davis. "There were those who said, if it's going to be in Jay, we don't want anything to do with it." But both he an Noonan note that there were those who did want to go along with Jay and that the idea wasn't necessarily doomed from the start.

Meanwhile, Noonan notes that perhaps the future of cooperation lies to the south, with neighboring towns in Androscoggin and Kennebec, where he already has contracts with the towns of Livermore and Fayette. As to his neighbors to the north, he says he still sees room for cooperation in joint marketing.

Accountability/Efficiency

If you do go regional in your approach, there are several options, as Geoff Herman's article in this issue indicates. One of those options is to form a new unit of government, a refuse disposal district. Arising from enabling legislation in the mid 80's, there are currently four in Maine: Boothbay Region Refuse Disposal District, Washington County Solid Waste Disposal District, Southern Aroostook Refuse Disposal District, and the Penobscot Valley Refuse Disposal District.

Not everyone agrees they are the way to go, including John Nickerson, a political scientist at the University of Maine, Augusta, who has been following local and state government trends in Maine for a number of years.

Calling the newly created single purpose government refuse disposal districts in Maine the "height of folly," Nickerson argues that "we have already fractured government too much."

Nickerson says he is suspicious of single purpose governments (read districts). He claims they are hard to access; that they are unresponsive; and because of their zeal do not know how to stop spending money. He argues they are not subjected to the checks and balances built into general purpose government.

"If we are to emphasize regional concerns, we should strengthen existing general purpose government, like county or state government, " says Nickerson, and not create yet another unit of government.

While he acknowledges a place for special purpose districts, Nickerson says they are limited to areas that deal with environmental issues, like air and water, that do not fit within the boundaries of existing general purpose governments. (See sidebar).

Alex Dmitrieff who oversees the operation of the Boothbay Region Refuse Disposal District, which broke away from the Lincoln County Recycling program, is a strong advocate of the refuse disposal district.

He defends the district, saying "it doesn't get involved in municipal morass of interlocal agreements, where everybody has to vote. "When decision time comes, it's boom . . . we have the advantage of manageability and simplicity of decision making. We have six people whose one public service function is solid waste, unlike selectmen who are torn . . . This is our one focus, our one business," says Dmitrieff.

To emphasize his point he notes that BRRDD was the first association to be awarded a recycling grant. "A general purpose government doesn't have the time to investigate the rapidly changing development that characterizes the field," he says.

Future of Regional Efforts

Penobscot Valley Refuse Disposal District's Don Meagher says that when it comes to solid waste, he believes regional efforts will eventually, inevitably be eclipsed by the state in developing new solid waste disposal facilities because of the cost, complexity and antagonism associated with it.

"In the 1980's Maine municipalities carried the torch of responsible solid waste management largely through the economies of scale

Some General Advice

• In the beginning be sure to pay attention to the process, the product will emerge. First define what you want and then seek the appropriate tool to achieve it . . . **Jerry Story, Washington County Solid Waste Disposal District**

• You have got to spend money to get the technical information needed to make the hard intelligent decisions . . . **Don Gerrish, Bath Brunswick Refuse Disposal District**

• Make sure the project meets all the needs of its potential members . . . **Don Gerrish,Bath Brunswick Refuse Disposal District**

• Start small and simple; give yourself time to grow with the tasks. It's a process that takes a long time. Be conservative; take time to get it right. Success grows slowly . . . **Eric Root, Regional Waste Systems**

• Keep you focus narrow; don't get dispersed all over the place; do what you do well . . . **Don Meagher, Penobscot Valley Refuse Disposal District**

• People will tell you it is the money but in the final analysis it is control and past political ill-will. Some towns will just never work together . . . **David Blocher, Maine Waste Management Agency**

• You must have a "community of interest," be it proximity, socio-economics, geography, history but above all a common goal . . . **Eric Root, Regional Waste Systems**

• You need an advocate, champion, driver, someone in town who supplies the energy and keeps it going . . . **David Blocher, Maine Waste Management Agency**

• Don't get complacent after you've been formed. Keep the lines of communication open . . . **Alex Dmitrieff, Boothbay Region Refuse Disposal District**

• Outside pressure, membership continuity and a sense of humor are part of what makes it work . . . **Alain Ouellete, NARIF**

of regional associations. They have run the triathalon, if you will, of closing landfills, building waste incinerators, and establishing transfer stations. In the 1990's the torch will be passed, to some extent, to state government," Meagher told the Maine Bar Association last year.

"Solid waste management is becoming so complex, so expensive and so time consuming and so antagonistic that it is fast outstripping the abilities of even large and mature regional associations," he says. As such, when the solid waste management law was being crafted he advocated the creation of the Maine Waste Management Agency for siting new landfills to meet present and future capacity needs.

Despite the importance of the state's role, Meagher continues to believe that the regional associations have a valuable role to play:

- Early warning: By being locally based regional associations are more likely to recognize a problem before it becomes a crisis
- Economy of scale: Cooperative ventures on mid-range facilities such as transfer stations, recycling facilities, demolition debris landfills and very small municipal solid waste landfills can be more cost effective
- Public information: A regional association can be a very credible and believable organization in the public eye.

Operations

The remainder of this article looks at the operation of a few "veteran" groupings, focusing on what brought them together, what keeps them together. It looks at what Eric Root of Regional Waste Systems calls a "community of interest" — the common need or goal, that is reinforced by historical linkages, proximity, geography — that brings them together. It also looks at the arrangements they have created to keep them together.

Disposal Districts

Boothbay Region Refuse Disposal District. Geographically it's neat. It's a nice neat manageable entity, says Alex Dmitrieff describing the peninsula-bound district that contains the four members (Boothbay, Boothbay Harbor, Edgecomb and Southport) that comprise the Boothbay Region Refuse Disposal District. All formerly members of the Lincoln County Recycling Program, three (Boothbay, Boothbay Harbor and Southport) were faced with the closure of their landfill in 1986. "According to DEP we were the fourth nastiest landfill in the state," says Dmitrieff. He admits that the fours towns were not always congenial. "But it (the District) was an easy sell because of the state leaning on them," he says.

The District provides its members with a transfer station, a full recycling menu, and a compost and chipping operation. Voting power in the district is determined by population. The two largest towns, Boothbay and Boothbay Harbor, each are represented by two directors; Southport and Edgecomb have one director each. Each director has one vote.

The current cost to the four towns in the district is $700,000. Each town's assessment, paid four times a year, is based on a "sharing formula" that factors actual tonnage of waste generated by three segments of the population: year round residents, summer residents and a third catagory that includes waste generated by transients (restaurants and motels). Under this formula, Boothbay currently pays 33.9 percent; Boothbay Harbor, 39.7 percent; Edgecomb, 10.4 percent; and Southport, 16 percent. The formula can be easily adjusted each year as accurate data is recorded and the complexion of the towns change (population, business base, etc.).

The district rejected user fees because among other things they were too costly to implement and administer; they also rejected cost sharing formulas used elsewhere that were derived by averaging population and valuation percentages because they did not properly account for the high percentage of hotel/restaurant derived trash during the summer months, principally from Boothbay Harbor.

Dmitrieff says there is a real danger in becoming complacent about communicating with your member municipalities once you become a district. "We are the town's business; they are paying us; therefore, we have got to keep in touch," he says. Dmitroff says he works hard to keep the lines of communication open; board meetings are open to the public; he tries to make sure there is an item in the local newspaper every week. And to make sure the citizens take an active role, there is a citizen's recycling advisory committee.

Penobscot Valley Refuse Disposal

Watershed (Protection) District

With the mandates of the federal Safe Drinking Water Act breathing down the neck of many a municipality and water district to filter their water supply or prove they can protect it, watershed protection districts could become an important tool.

Enabling legislation to form lake watershed districts with considerable powers was passed in 1987 (MRSA 38, Chapter 23) but to date there have been no takers, just interested parties, says Tom Gordon, the director of the only watershed district in Maine: the Cobbossee Watershed District, which covers 217 square miles and 28 lakes.

"In general Maine voters are very suspicious of regional government," says Gordon, adding "But watershed protection transcends municipal boundaries; it's a problem that is too big for one town to solve by itself and like skinny dipping everyone has got to do it."

Chartered by a special act of the legislature in 1971, the Cobbossee Watershed District has twelve members: nine municipalities and three water districts. All but one of the towns in the watershed are members of the district. "There is always one town that stays to itself," says Gordon.

Membership and assessment are straightforward in watershed districts, says Gordon. In the Cobbossee District members are assessed not by population but by their share of the waterfront (valuation) in the district. If a town pays more than 15 percent of the district's budget it gets two votes, otherwise it has one vote. Winthrop, where the district is headquartered, has two votes as it pays 35 percent of the $95,000 municipal assessment and includes nine of the 28 lakes. "We try to keep the assessment down to less than one percent of each town's total municipal tax bill," says Gordon, who adds that the district has received hundreds of thousands of dollars in federal grants for its work over the years.

While the charter gives the district considerable powers, Gordon notes that the district has made very "conservative" use of its wide ranging powers. "We have not gotten carried away with our authority. We decided early on not to exercise the power of regulation but to enhance voluntary compliance with the existing regulations," he explains, adding "we spend a lot of our time making the permit process work."

Gordon says that in forming a watershed district it pays to clearly spell out its scope before the vote: what it is going to do, how it is going to do it, and how much it will cost. "Maine voters have a tremendous fear of the unknown. It is translated into "no" votes. You must eliminate as many of the unknowns as possible in advance. A lot of the issues must be explored and defined before the district is created. Work it out in advance of the vote," recommends Gordon.

A strong supporter of regional cooperation, Gordon says, if the district won't fly, try something else, like an interlocal agreement or a watershed ordinance or a lake association. But for long-term permanence nothing beats a district.

District. The 33 current members of the Penobscot Valley Refuse Disposal District spill over into four counties: Penobscot, Waldo, Hancock, and Piscataquis. With many hugging the banks of the Penobscot River in its run to the sea, they are part of what is generally called "Central Maine" or the "Greater Bangor Area." Until recently, all sent their trash to PERC, with the District serving as the administrator of their PERC contracts.

When it was established in 1986, the four core members were Bangor, Brewer, Old Town and Bucksport. Having abandoned their orginal idea to own and operate their own regional incinerator (the private sector stepped in and did that), they focused their attention on establishing a "strong administrative entity," says administrator Don Meagher.

Meagher says they were able to overcome the fears and suspicion of the district as being "yet another level of government" by narrowly focusing the district's authority. "It was to be a vehicle for making decisions, mainly, to act as an adminstrative agent for its members' contract with the privately owned PERC," he explains. It was also to serve as a liaison' between the member communities and the regulatory agencies. Back in 1988, for a short time, it wore the hat of lobbying when the Maine Solid Waste Management Act was being born.

Meagher says that whenever the idea of getting into recycling and transportation has been broached, the directors have strongly opposed the idea, saying they are the exclusive domain of the municipalities. And while the district is currently in the process of developing two demolition debris landfills for its membership, it will merely own but not operate them. We will let the private sector take care of that, says Meagher.

The narrow focus has worked well, says Meaghar. "What we do, we do quite well, we don't get dispersed all over the place."

With a current budget of $140,000, the district now assesses it members at a rate of $2 per ton of guaranteed waste that it sends to PERC. This is separate from the tipping fee each pays to PERC.

The 33 members are allotted two directors and two alternates each on the board of directors. However those directors have *weighted votes*, so that the four largest communities which represent 85 percent of the tonnage sent to PERC have less than half the votes. Weighted votes aside, Meahger says there was only one instance to date in which they actually had to count votes. "It surprises me how well people are able to reach consensus," he says.

The first major departure from that consensus occurred recently when four members refused to sign the new contract for higher tipping fees with PERC. "Everyone was free to do what they wished; each side respected the others decision, but it is our first major departure," says Meagher. He credits the years of consensus in keeping the organization together, but says at some point the district could diverge, as the basis for membership is the contracts with PERC.

Contracted Host

Lincoln County. The Lincoln County Recycling Program, founded by the Lincoln County Commissioners, is now in its 13th year of operation and claims to be the oldest county-owned and operated recycling program in New England. But recently it has begun to overspill its borders and contract with municipalities in neighboring counties. So it wears two hats: one as a county program, the other as a contract host to non-county entities.

Funded through the county taxes at approximately $1.80 per capita, it taxes all communities in the county, whether or not they are served by the program. That same per capita cost is used in its contracts.

Four communities — Boothbay, Boothbay Harbor, Edgecomb and Southport — broke away in 1988 to form their own multi-purpose refuse disposal district, when their landfills were shut down. And just last month Wiscasset, the largest wealthiest member, reportedly completed a $1.6 million transfer and recycling station to replace its recently closed landfill.

But as county municipalities have left to construct more comprehensive facilities,

those in the adjacent counties of Knox, Kennebec and Sagadahoc have sought to join by signing contracts.

"They were interested in coming into a program that was already up and running and had a track record of success, rather than start their own," says Director Gerald R. Silva, who is credited for getting the program back on the fast track after years of no growth.

Silva, who serves as the liaison between an advisory board made up of representatives from each community and the commissioners, admits that his county-run program is unique in Maine. County government in New England does not have the history that it does in the south or the west, he says.

Presque Isle. There are no formal written agreements between Presque Isle and the six communities that utilize its landfill and recycling facilities, says Dana Fowler, of the Presque Isle Department of Solid Waste.

When seven Aroostook County towns — Presque Isle, Mapleton, Chapman, Castle Hill, Washburn, Wade and Perham — got together to replace the 60 year-old dump they had been sharing, the plan had been that all were going to be part owners.

"But there was too much foot dragging so Presque Isle decided to build and own it and let the others use; it is billing them on the basis of their population," says Fowler. On that basis Presque Isle contributes to two-thirds of the budget.

Aside from sharing the old dump, there were other factors that joined them. Located within close proximity to each other, Perham is the farthest at 20 miles, several of the towns were also members of School Administrative District 1. It also helped that one manager, Duncan Beaton, served three towns.

While noting that the arrangement works well for Presque Isle — when you own it you have instant decision making, Fowler confesses that the other side of the coin is the criticism that the other towns have "no say." He says he works hard to keep communication open and to consult the other towns managers on "the big issues." As to what keeps them together and happy, Fowler points to the economic benefits. "At the time we built the secure landfill in 1982, it was expensive; today it is much more expensive."

While saying that "regionalism works well up here because the populations are so sparse," Fowler admits that it didn't work when the MWMA tried to get a regional recycling program going in central Aroostook County between two existing regional groups that were being served by interlocal agreements: the seven-town operation in Presque Isle and the twelve town operation known as the Tri Community Recycling and Landfill in nearby Fort Fairfield.

Despite a $114,000 carrot, TRC voted 4-3 not to join with Presque Isle in a recycling grant indicating that there is more to cooperation than common need, geographic proximity; that the flip side of geographic proximity can be rivalry and competitiveness that no amount of money can override.

Interlocal Agreement

Camden/Lincolnville/Hope/Rockport Solid Waste Facility. The geographic ties that bind here are several including the fact that they border each other even though they are located in two counties; three are in Knox County one is in Waldo. Megunticook Lake is located in Camden and Linconville with a small portion in Hope.

There is also a history of cooperative ventures, says Don Willard of Rockport, who as the town manager in Rockport serves on the four member executive committee. Among other things they are all connected by School Administrative District 28; two are regular members; the other two pay tuition to the school district. Then there is the interlocal agreements between Rockport and Camden for sewage treatment.

While acknowledging instances of rivalry between the four towns — saying that every community wants its own facility — Willard

says they overcame the differences by coming up with an "equitable formula and fair representation."

The equitable sharing formula is derived by averaging population and state valuation percentages to come up with an overall sharing percentage of cost. As such, the four towns currently are assessed as follows: Camden 47.4 percent, Rockport 30.1 percent, Lincoln 14.9 percent, and Hope 7.6 percent.

The responsibilities for the operation of the transfer station-recycling center are divided among the three larger towns. The Rockport town manager serves as the solid waste agent and has overall responsibility for the facility including personnel administration. The Camden town manager serves as finance officer and is responsible for day-to-day financial management as well as budgeting. The town administrator of Lincolnville is responsible for all recycling and solid waste management activities.

An executive committee of the three managers and the chairman of the Hope Board of Selectmen meet regularly to discuss operation, financial and policy development issues. The 18 selectmen who represent the four member towns meet periodically to vote on major policy issues and financial decisions.

NARIF. As Fort Kent Town Manager Alain Ouellette sees it, the Northern Aroostook Regional Incinerator Facility, which serves the communities of Frenchville, Madawaska and Fort Kent, is bound together by the common geographical and cultural ties of the St. John Valley and a common problem: the closing of their landfills back in 1981. Their bonds were strengthened recently when the incinerator they built to replace the landfills came under attack from the Environmental Protection Agency and they had to come up with an alternative.

While control is in the hands of the three towns, six other towns including Eagle Lake, Wallagrass, New Canada, Clayton Lake, Portage and St. Agatha are served by a contract which carries no voting rights. Currently the group is investigating becoming a corporation with voting rights for other towns, as it purchases Maine's first Lundell Recycling System to replace its incinerator.

But for now, each of the three towns is represented on the board by a manager and a councilor/selectman. Ouellette sees that as the key element to the groups success; "its continuity with other town functions." With echoes of Nickerson's bias toward general purpose governments conducting regional enterprises, Ouellette says: "We don't and can't make decisions in a vacuum." He also attributes its success to what he calls "continuity of membership," noting that several of the key officials have served for many years. And finally, he credits the importance of a sense of humor and the value of "going out for a beer together after the meeting."

A Regional Sampler

The following listing of those who have received recycling grants from the Maine Waste Management Agency indicates the variety of agreements and associations municipalities have entered into to solve their solid waste problems. Not listed are the individual cities and towns that have received grants. They are listed according to the type of legal arrangement: Disposal District, Solid Waste Corporations, Interlocal Agreement, Contracted Host.

Disposal Districts

Boothbay Region Refuse Disposal District

Boothbay
Boothbay Harbor
Edgecomb
Southport

Southern Aroostook Solid Waste Disposal District

Cary Plt.
Crystal
Hammond Plt.
Hodgdon
Houlton
Weston
Littleton
Ludlow
Orient
Weston
Danforth

Solid Waste Corporation

ABC's Community Recycling Cooperative

Athens
Brighton Plt.
Cambridge
Cornville
Hramony

Coastal Recycling Corporation

Franklin
Gouldsboro
Hancock
Lamoine
Sorrento
Sullivan
Winter Harbor

Kennebec Valley Regional Waste Corp.

Anson
Bingham
Moscow
Starks

Mid-Maine Solid Waste Association, Inc.

Corinna
Dexter
Exeter
Ripley
St. Albans

Mid-Maine Waste Action Corporation

Auburn
Minot
Poland
Wales
New Gloucester
Raymond
Monmouth
Buckfield
Lovell
Sumner
Sweden
Bowdoin

Norway/Paris Solid Waste, Inc.

Norway
Paris

Oxford County Regional Solid Waste Corp.

Bethel
Gilead
Hartford
Newry
Paris
Waterford
Canton
Greenwood
Lincoln Plt.
Norway
Stoneham
Woodstock

Regional Waste Systems, Inc.

Durham
Cape Elizabeth
Cumberland
Gray
North Yarmouth
Bridgton
Casco
Falmouth
Harrison
Portland
Pownal
South Portland
Yarmouth
Limington
Ogunquit
Scarborough
Windham
Hollis
Lyman
Waterboro

Sandy River Recycling Association

Avon
Carthage
Dallas Plt.
Farmington
Kingfield
Rangely Plt.
Strong
Weld
New Portland
Carrabassett Val.
Chesterville
Eustis
Industry
Rangely
Sandy River Plt.
Temple
Wilton

Unity Area Regional Recycling

Dixmont
Freedom
Montville
Troy
Burnham
Knox
Thorndike
Unity

Waterville-Winslow Joint SWD Facility

Waterville
Winslow

Interlocal Agreement

Town of West Bath

Arrowsic
Georgetown
Bath
West Bath

Town of Bucksport

Bucksport
Orland
Castine

CRLH Solid Waste Disposal Facility

Camden
Lincolnville
Rockport
Islesboro
Hope
Owl's Head
Monhegan Plt.

Kennebunk Recycling Center

Arundel
Kennebunkport
Kennebunk

Town of Kittery

Kittery
South Berwick

North Aroostook Incinerator Facility

Clayton Lake
Fort Kent
Guerrette
Nashville Plt.
Portage Lake
Wallagrass
Eagle Lake
Frenchville
Madawaska
New Canada
Square Lake
Winterville Plt.

North Oxford Regional Solid Waste Board

Byron
Mexico
Roxbury
Dixfield
Peru
Rumford

Penninsula Recycling Project

Blue Hill
Hancock
Brooklin
Sedgwick
Brooksville
Surry

Tri-County Recycling And Sanitary Landfill

Caribou
Connor
Fort Fairfiled
Limestone
Stockholm
Westmanland Plt.
Caswell Plt.
Easton
Hamlin Plt.
New Sweden
T16R4
Woodland

Contracted Host

City of Augusta

Augusta
Hallowell
Gardiner
Manchester

Town of Dover-Foxcroft

Atkinson
Dover-Foxcroft
Bowerbank

Town of Fort Fairfield

Fort Fairfield
Presque Isle

Town of Jay

Livermore
Fayette
Jay

City of Lewiston

Greene
Lewiston
Turner
Leeds
Sabattus

Lincoln County Recycling Project

Richmond
Alna
Bristol
Dresden
Newcastle
Somerville
Waldoboro
Whitefield
Georgetown
Cushing
Bremen
Damariscotta
Jefferson
Nobleboro
South Bristol
Westport
Wiscasset
Woolwich

Town of Lubec

Cutler
Trescott
Lubec
Whiting

City of Old Town

Alton
Bradley
Old Town
Argyle
Milford
Penobscot I.R.

Town of Palmyra

Detroit
Palmyra

Town of Pittsfield

Detroit
Pittsfield
Palmyra
Skowhegan
Kennebec Valley Regional Regional SWC

Presque Isle Recycling Center

Castle Hill
Mapleton
Presque Isle
Washburn
Chapman
Perham
Wade

Town of Skowhegan

Pittsfield
Skowhegan
ABC's Community Regional Recycling
Kennebec Valley Regional SWC

Public Safety

Police Services At Crossroads

By Michael L. Starn
Editor

Over the last twenty years, a lot of money, time and effort has been directed toward the idea of revamping the delivery of police services in the State of Maine. Yet, today, the structure and delivery of police services in Maine remains pretty much the same as it was 20 years ago.

A three-tiered police services structure still exists in Maine. It consists of one State Police department, 16 county sheriffs and 120 (full-time) municipal police departments. Each possesses essentially the same full police powers, but each is limited by geographical jurisdiction, personnel or other resources with respect to the amount and quality of police services actually provided. Also, there are about 50 Maine communities that employ part-time law enforcement officers, who have varying degrees of responsibilities and powers.

There seems to be no middle ground when it comes to talk of regionalizing police services in Maine. Some people think it makes perfect sense and are solidly behind it; others are adamantly opposed to the idea and feel it would impersonalize police services.

Municipal police services have received an unusual amount of attention in recent months. The residents of the Town of Lebanon in York County voted (twice) to disband their police department, saying "they could no longer afford it." Several municipalities have contracts with the county sheriff's department to provide direct police coverage: some of those communities have been scrutinizing their contracts and asking for greater accountability; others are asking for proposals from the county to compare against the funding of a municipal police department; and some signed contracts with the county sheriff's department for the first time. A few municipalities contract with larger municipalities, with police departments, for police coverage.

With all of this happening in municipal land, it seemed an appropriate time to revisit a study of police services commissioned during the early 1970's. A lot of dust has gathered on those reports, but in spite of the time that has passed, and before any new studies are funded, it might be useful to look back at what those studies found and recommended.

The Early Studies

Back in the early 1970s before the Federal Government started running up such huge deficits and when grants to state and municipal governments were much easier to come by, a study of "Police Services in the State of Maine" was conducted through the Maine Law Enforcement Planning and Assistance Agency with funding from a federal LEAA (Law Enforcement Assistance Administration) grant.

Clyde LeClair, a former municipal police chief in Falmouth and Old Town with over 25 years of service, was the chairman of the advisory committee for the study. Now living in Augusta, and currently serving as the director of the State Animal Welfare Board, LeClair estimates that over $100,000 was spent on the study (actually the estimate is based on two separately funded studies, Phase I and Phase II).

The study of Maine police services was structured as a three-phase effort with the following broad objectives: Phase I was to determine what police services are presently provided in the state; Phase II was to determine how police services could best be provided; and Phase III was to provide a master plan for the implementation of the Phase II recommendations. The Phase II recommendations caused such an uproar that Phase III was never started.

Phase I concluded that all the citizens of Maine were not receiving an equal level of police services, and furthermore that extensive fragmentation in the delivery of police services existed. The Phase I report stated that approximately 30 percent of Maine citizens received less than a full range of professional police services.

Phase II validated the findings of Phase I and further recommended that a simplified, two-level structure for providing police services in Maine should be created. The heart of its recommendations, and the part that sounded its "death knell", was a proposal to combine the existing 129 county and municipal police departments into approximately 20 consolidated (regionalized) police departments. Each of these public safety districts would have full police powers, and each would provide a full range of police services that would collectively cover the entire state.

The first study (Phase I) concluded that police services within the State of Maine were highly decentralized, resulting in fragmented and limited services to many Maine communities. That study further concluded that this fragmentation increased the level of non-service or limited service being provided to citizens. Moreover, considering the inverse relationship that non-service or limited service has on the overall quality of police services in Maine, the study concluded that a substantial upgrading of the quality of services and functions was needed.

During the same time period when the Maine police services studies were being performed, studies in other states were reaching similar conclusions. One particularly relevant conclusion reached by these national studies was that there is a direct relationship between police effectiveness and the size of the unit providing the police services. Various studies agreed that police departments of less than 10 officers could not, by virtue of their size, offer a full line of professional grade police services.

In 1974, 70 percent of the police departments (municipal and county) in Maine employed less than 10 officers, according to the study report. Today, according to the Maine Criminal Justice Academy, 80 percent of Maine's municipal police departments operate with less than eight full-time officers.

The Phase II study report offered a number of specific recommendations to address what was seen as deficiencies in Maine police services delivery. They were as follows:

1) Maine should merge all of its municipal

and county law enforcement functions into approximately 20 consolidated police departments.

2) A Board of Police Commissioners would be created to provide civilian supervision and control over the aforementioned district police departments.

3) Law enforcement duties and responsibilities would be defined for the newly created district police officers, redefined for the State Police, and eliminated for the county.

4) A Central Police Recruitment, Standards and Training Commission to professionally staff department personnel would be created.

5) A uniform police salary and pension structure would be established.

6) A full-time police legal advisor would be appointed.

7) Laboratory services to all police departments would be provided through the State Department of Public Safety.

8) Detention facilities should be kept outside law enforcement responsibilities.

"I thoroughly agree with the findings and recommendations of those reports even today," says LeClair. He acknowledges that political reality is what killed them. Municipal and county police officers vigorously opposed the studies.

The biggest argument against the studies and their recommendations, according to LeClair, was "(municipal) police chiefs would lose their identity and (county) sheriffs' departments would be relegated to being jail keepers."

"A lot of good work went into those studies," says LeClair. The Police Services Study Committee, which LeClair chaired, was an advisory board set up to oversee the project. LeClair points out that the committee worked hard and aggressively analyzed the consultants findings and recommendations. "We were not a rubber stamp board," he says.

Maurice Harvey, director of the Maine Criminal Justice Academy in Waterville, has some strong reservations about regionalizing police services. "I am firmly convinced that the best law enforcement is local enforcement," he says.

What you may gain in cost and effectiveness (with regionalization), you lose in the personal nature (of law enforcement), says Harvey. Local police officers are committed to the community, to helping people out with their problems, and being active in what Harvey calls, "community policing." "That's what it's all about," he says.

Struggling Over Law Enforcement

Two questions regarding municipal law enforcement must be answered affirmatively: (1) do we truly need it and (2) can we afford it? Small and medium sized municipalities continue to struggle with these questions. The answers differ.

In Lebanon, residents on two separate occasions this year, said "no" to continuing its municipal police department. This issue didn't seem to revolve around whether or not the townspeople wanted or needed a municipal police department; the vote appeared to more clearly reflect the feeling that "the town couldn't afford a police department."

After the most recent vote August 9, First Selectman Gilbert Zinck said, " It was a vote against taxes rather than a vote against the police." In a record turnout, the Lebanon residents voted 873-708 not to fund the municipal police department.

According to reports in the *Biddeford Journal Tribune*, one third of the Lebanon's taxpayers are delinquent in paying this year's taxes. The editors of the *Journal Tribune* in a August 12th editorial said, "In these lean times, Maine taxpayers are taking nothing for granted. That may make life difficult for government officials at times, and for government workers who, like the members of the Lebanon police force, find themselves out of work. But, carefully and thoughtfully applied, the "old assumption" test may be the most effective and most equitable way to decide what we can and cannot do without."

Other towns, like Richmond, are willing to pay extra for the extra protection of a municipal police force. At this year's town meeting, Richmond residents passed by a 6-1 margin the local police budget of $150,000, which according to Town Manager Nancy Churchill averages out to about $100 for each household.

"The town's very forward-thinking and that's why I don't think it's as much of an issue here as it is in other towns," said Churchill. "The police have been very good for Richmond," she adds.

Churchill points out that the Town of Richmond places a a lot of emphasis on community relations with its police department. "(Townspeople) have tremendous personal relations with our police officers," she said. Citizen participation to help police in their investigations and complaints has also increased.

Several towns contract with the county to provide more intensive police protection services than are provided generally to rural communities. This summer, the Town of Lubec in Washington County added its name to the list of those contracting for county police services. Under a contract signed in June, two deputies from the Lubec area were to be hired under the Washington County Sheriff's Department's resident deputy program. Full-time police protection would be provided by the deputies with additional support coming from locally hired reserve officers working on a part-time basis.

The contract with the county in Lubec was in lieu of a three-officer municipal police department which had been in place. The estimated annual cost of the county contract is $79,730.

The agreement provides county use of the municipal office, cruisers and other town facilities. The town will be required to pay for telephone service and to provide clerical assistance. The contract can be terminated by either party with a 60-day written notice.

About three years ago, the Town of Winter Harbor decided to explore options for municipal police services. At the time, the town employed a single police officer who was always on call. The arrangement for a variety of reasons was not working out.

A solution to the problem was reached with the two communities joined forces. Winter Harbor contracted with neighboring Gouldsboro for police services. Winter Harbor contributed a fully-equipped cruiser, which Gouldsboro now maintains, and Gouldsboro offered the services of its one full-time police officer and three part-time officers, plus its own two crusiers. Winter Harbor pays Gouldsboro approximately $25,000 annually for round-the-clock police availability.

Police services were greatly improved, the police officers are more visible, there has been better follow-up on police matters, recordkeeping has improved, and citizen reaction has been largely positive, says Allan Smallidge, town manager of Winter Harbor.

Conclusion

Property taxes are a problem for many Maine communities. Those that support a municipal police department, without a large tax base, generally have higher taxes than those of comparable size who do not. When looking for ways to reduce the property tax burden, police services will be scrutinized, perhaps more closely than other municipal services.

The ability of the county sheriff and state police to provide police services to the rural communities continues to be debated. Both have limited resources, and both have responsibilities other than rural patrol. There continues to be concern among the municipalities with their own police departments that they bear an unfair financial burden in their support of the county sheriffs' budget, when compared to the services they receive.

In the last ten years, the ratio of police officers to Maine citizens has been declining. A decade ago there were 1.66 police officers per 1,000 Maine residents; in 1990 the ratio was 1.63 per 1,000.

Whether or not the police services studies of the 1970's have any relevance today is not the real issue. The real issue is that given today's economic situation and the growing concern over property taxes, innovative and different approaches to providing police services in Maine will have to be explored.

INSTITUTE for INMATES at WORK

September 4, 1991

Mr. Roger Hare
P.O. Box 2469
West Buxton, Maine 04093

Ms. Charlene Kinnelly
P.O. Box 1106
Gardiner, Maine 04345

Mr. Laurence Willey
27 Howard Street
Bangor, Maine 04401

Dear Committee on Protection of Public Safety and Health:

I am writing to introduce the Institute for Inmates at Work and the Maine Corrections Corporation as a preface to following the the government restructuring endeavor.

The Institute for Inmates at Work (IIW) is a non-profit corporation formed to develop rehabilitation oriented corrections programs in Maine. Our long-term objective is to develop and demonstrate the cost-effectiveness of a "real-work"-centered rehabilitation institution. A summary of the IIW concept is enclosed.

The Maine Corrections Corporation (MCC) is a private corporation formed to provide a more cost-effective means of financing, designing and building correctional facilities than the unpredictable state bond process. MCC was originally incorporated to provide a mechanism for developing a facility for the IIW rehabilitation program, but could also serve the state in the development of correctional facilities that would be operated by the Department of Corrections.

I would appreciate the opportunity to meet with you individually to discuss IIW and MCC in depth and to share my views with your committee on the question of privatization. I will attend your meeting on Friday, September 6th, and look forward to meeting you.

Sincerely,

Donald W. Perkins, Jr.
President

cc: Deborah Friedman
Enclosure
DWP/mse

INSTITUTE for INMATES at WORK

REHABILITATION INSTITUTE

PROGRAM SUMMARY

Introduction

Maine's corrections system is embroiled in a dual crisis. The most apparent crisis is that of capacity, the implications of which have been well publicized. The forgotten crisis is the correction system's lack of adequate resources for rehabilitation and the consequential costs of recidivism.

data to link ↳ recidivism to rehab?

In response to this lack of rehabilitation resources, the Institute for Inmates at Work (IIW) is pursuing the development of a community corrections program in Maine that will house 50-70 inmates and provide an innovative, aggressive rehabilitation program.

This institution will target the medium term and end of term segments of the inmate population. IIW will operate the facility under contract with the State of Maine, providing both security and a demanding rehabilitation program.

Mission

The Institute for Inmates at Work is a non-profit corporation dedicated to developing and operating rehabilitation facilities and programs that prepare inmates for a productive role in society.

Rehabilitation

The Institute for Inmates at Work was founded on the proposition that rehabilitation is a critical function of the corrections system. IIW maintains that rehabilitation is both a cost-effective and humane long-run strategy for addressing our current corrections crisis.

IIW has designated its target population as medium term inmates (two to seven years) and end of term inmates (minimum of two years remaining) on the assumption that inmates incarcerated for a medium term and inmates anticipating release from custody will be the most motivated to take advantage of IIW's demanding rehabilitation program.

The IIW rehabilitation program is comprised of the following elements:

1. Work:

Success at work is critical to success in society, both in terms of satisfying basic physical needs and in terms of self-respect. Therefore, work is the central component of the IIW program.

Each IIW inmate will be required to hold down a job, thereby acquiring invaluable work skills and enjoying the success symbolized by a paycheck. Inmates will pay for restitution, family support and a portion of incarceration costs with 80% of their earnings. The remainder will be deposited as personal savings for use upon release.

IIW believes that the most practical way to provide real work, combined with effective training and supervision of inmates, is to develop in-house joint ventures with manufacturing or service companies. IIW will contribute space, a dependable labor resource, and work skills training to such ventures. The joint venture partner will contribute management, market, production and financing resources.

Such joint ventures will subject IIW inmates to a real world, competitive work environment. They will provide inmates with access to relevant training and experience for post-release employment in other manufacturing or service operatins owned by the venture partners. (IIW will actively encourage venture partners to hire IIW graduates.) And finally, the joint ventures will enable IIW to retain direct control over the supervision and training of inmates.

IIW joint ventures will be required to pay a market wage to IIW inmates in order to compete fairly with private sector competitors.

2. Physical Discipline:

The Insitute for Inmates at Work will begin each day with outdoor exercise for inmates and staff (with the exception of security staff). IIW believes that physical training is an important contributor to individual self-discipline, physical health and self-respect.

3. Education:

The Institute for Inmates at Work will offer a comprehensive evening education program. To this end, IIW will utilize the resources of skilled educators, educational software, television media and volunteers to

offer an individualized program from basic through college level.

4. Substance Abuse/Group/Family Counseling:

The Institute for Inmates at Work will develop and maintain an aggressive substance abuse, group and family counseling program. IIW recognizes that substance abuse is a fundamental problem for the majority of the inmate population; that an inmate's peers are the best source the honest, tough reflection and support required to stimulate behavioral change; and, that an inmate's family is the most powerful locus of support support for long-term behavioral change. IIW will integrate its counseling program with existing local resources, such as Alcoholics Anonymous, that have a successful track record.

5. Survival Skills Training:

The Institute for Inmates at Work will offer a "survival skills" training course for inmates preparing to complete their sentences. Training will target the range of basic skills necessary to successful mainstream living, including job search, personal financial management, and conflict resolution skills. A primary focus will be the initiation of a job search to secure post-release employment.

6. Post-Release Support:

The Institute for Inmates at Work recognizes that the transition from institution to society is difficult and complicated for even the most able inmates. IIW will develop graduate support groups and a crisis counseling resource to stand by inmates and their families through this transition. IIW's support and crisis resources will be integrated with existing state and local resources.

The work, physical training, education, counseling and follow-up components of the IIW program will be managed with an emphasis on taking advantage of a unique opportunity to develop the work skills, social skills and personal attributes needed to lead a productive life in mainstream society.

Staff

The Institute for Inmates at Work recognizes that it will succeed or fail through the capabilities of its staff. Thus the development of a capable management team and operations staff will be IIW's highest priority. To this end, IIW

anticipates Department of Corrections review of IIW's key job descriptions and staff training programs.

Security

The Institute for Inmates at Work views protection of the public from inmates and inmates from each other as its first responsibility. This philosophy will be reflected in facility design and program management.

Financing

The Institute for Inmates at Work will fund the operation of its rehabilitation program with an innovative mix of sources. Core operating expenses (security, basic living expenses, medical care, administrative costs) will be funded through DOC contracts and inmate wage contributions. Inmate job training will be funded with public sector grants. Rehabilitation program components (joint venture development, education, substance abuse/peer/family counseling, survival skills training, post-release support) will be funded with foundation and public sector grants until their efficacy has been demonstrated. Ultimately, IIW intends to demonstrate the cost-effectiveness of its rehabilitation program to the State of Maine and secure long-term funding through state contracts and inmate wage contributions.

Implementation

The Institute for Inmates at Work is currently pursuing the implementation of a demonstration institution for 50-70 inmates, as described above. Pending successful demonstration, IIW will replicate the demonstration to the degree demanded by Maine's corrections system and will pursue implementation of similar programs in other states.

August 15, 1991

About the National Institute of Justice

The National Institute of Justice is a research branch of the U.S. Department of Justice. The Institute's mission is to develop knowledge about crime, its causes and control. Priority is given to policy-relevant research that can yield approaches and information that State and local agencies can use in preventing and reducing crime. The decisions made by criminal justice practitioners and policymakers affect millions of citizens, and crime affects almost all our public institutions and the private sector as well. Targeting resources, assuring their effective allocation, and developing new means of cooperation between the public and private sector are some of the emerging issues in law enforcement and criminal justice that research can help illuminate.

Carrying out the mandate assigned by Congress in the Justice Assistance Act of 1984, the National Institute of Justice:

- Sponsors research and development to improve and strengthen the criminal justice system and related civil aspects, with a balanced program of basic and applied research.
- Evaluates the effectiveness of justice improvement programs and identifies programs that promise to be successful if continued or repeated.
- Tests and demonstrates new and improved approaches to strengthen the justice system, and recommends actions that can be taken by Federal, State, and local governments and private organizations and individuals to achieve this goal.
- Disseminates information from research, demonstrations, evaluations, and special programs to Federal, State, and local governments, and serves as an international clearinghouse of justice information.
- Trains criminal justice practitioners in research and evaluation findings, and assists practitioners and researchers through fellowships and special seminars.

Authority for administering the Institute and awarding grants, contracts, and cooperative agreements is vested in the NIJ Director. In establishing its research agenda, the Institute is guided by the priorities of the Attorney General and the needs of the criminal justice field. The Institute actively solicits the views of police, courts, and corrections practitioners as well as the private sector to identify the most critical problems and to plan research that can help solve them.

James K. Stewart
Director

U.S. Department of Justice
National Institute of Justice
Office of Communication and Research Utilization

Work in American Prisons
The Private Sector Gets Involved

by

Barbara J. Auerbach
George E. Sexton
Franklin C. Farrow, Ph.D.
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May 1988

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

Prepared for the National Institute of Justice, U.S. Department of Justice, by Criminal Justice Associates under subcontract with Abt Associates Inc., under contract #OJP-86-C-002. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Tables and Map

Chapter 1

Introduction

During the last ten years correctional administrators and private business men and women in a number of states and counties have developed private-sector prison industries. These experiments, in which goods and services produced by prisoners are sold on the open market, are worthy of serious attention because of the rare opportunities they offer to generate positive change inside the prison while providing a valuable resource to the private sector and to society.

Private-sector jobs inside prison walls can produce benefits for prisoners and for society at large and meaningful work experience will help men and women leaving prison to adjust to the mainstream of American life. To be most effective, jobs held in prison must teach both the responsibilities and the benefits of the real-world workplace: a task made to order for the private sector.

Two important factors influence the potential for success of public-private initiatives: (1) private-sector prison industries are supported both by prisoners and by prison staff; and (2) unlike many reform attempts in the past, there is broad-based ideological support for private-sector involvement in prison work—liberals and conservatives alike endorse meaningful work for prisoners.

This appears to be the rare case in which everyone can benefit:

- The department of corrections gains a program that provides meaningful work for a segment of its prison population, usually at little cost to the prison and generally at a quality level that is difficult to achieve under solely public auspices.

- The prison gains access to private-sector expertise and also benefits from the presence of private-sector personnel, which helps to "normalize" prison life.
- By earning a real-world wage during incarceration, prisoners are able to provide financial support to their families, and the training and experience gained through private-sector employment enhances the possibility of being hired upon release. As one prison administrator said: "We want the private sector in here because they are the state of the art. They know what it takes to hold a job out there."
- The taxpayer benefits from private-sector prison industries in that funds generated through wage deductions for room and board contribute to state revenues. Funds contributed to victim compensation programs and family support create direct benefits for recipients. State and federal income taxes withheld from prisoner wages add to the general revenue.
- Private-sector businesses, confronted in the mid-1980s with overseas competition and the need for workers who can meet fluctuating production and service needs, gain a valuable labor resource.

Opportunities for the Future

Opportunities that could lead to expansion in the size and number of private-sector prison industries over the next decade include: (1) flexibility on the part of labor and business interests; (2) governmental and political support; and (3) economic trends.

Flexibility of Labor and Business

Officials of organized labor and the Chamber of Commerce interviewed for this study indicated a willingness to be flexible in their positions on private-sector prison industries. Both groups acknowledge that they have some responsibility to help solve the prison crisis, and both recognize that the total number of jobs involved is relatively small.

The AFL-CIO in particular has had a long-standing interest in the rehabilitation of prisoners, as witnessed by the apprenticeship programs it has sponsored in prisons over the years. Leaders of that organization have made it clear that they do not oppose private-sector prison industries but wish to be involved in their development, both because of the knowledge they bring to the subject of work and because active involvement would help to ensure that projects avoid the displacement of organized labor's membership.

Leaders of the U.S. Chamber of Commerce have been similarly encouraging. Eighty percent of the Chamber's membership is made up of small businesses whose concerns lie more with Federal Prison Industries and traditional state prison industries than with private-sector prison industries (Federal Prison Industries and many state prison industries have priority in the procurement of government contracts, in many cases shutting out small businesses that wish to bid on such contracts). Chamber officials want to be consulted for the same reasons that organized labor officials do, and their expertise would be equally valuable in the development of private-sector prison industries.

Governmental and Political Support

The assistance and encouragement of the Justice Department have been remarkably consistent for more than a decade, and there are strong indications that the department will continue to be supportive. The National Institute of Justice and the Bureau of Justice Assistance currently are working to assist in the development of private-sector prison industries. On the political level, the idea that private-sector expertise can be brought to bear on the problem of prisoner idleness holds great appeal. During the last decade both conservative and liberal political leaders have found the concept promising, and there has been little opposition except in states experiencing extreme economic hardship. At a time in our history when political leaders are searching for positive approaches to crime and corrections, private-sector prison industries clearly provide one answer.

The National Association of Counties has worked to inform and assist its membership in the development of private-sector prison industries, and there is evidence that the concept works well on the county level. The George Washington University's National Center for Innovation in Corrections[1] reports a significant number of inquiries from private-sector companies. The Correctional Industry Association, made up of state prison industry representatives, regularly discusses private-sector prison industries at its regional and national meetings.

Economic Trends

According to labor and economic experts consulted for this study, the aging of our population will lead to a shortage of younger workers, probably by the mid-1990s. Moreover, it is widely noted by such experts that attitudes toward some kinds of work are changing. Fewer workers are content with

with routine jobs, even though their training does not prepare them for work of a more complex nature. Workers increasingly are interested in flexibility in the workplace, shortened hours, and other quality- of-worklife issues, which are particularly important in labor-intensive jobs where negative attitudes can have drastic consequences for the quality of the product or service.

In addition, the impact of automation on the labor force has been, and will continue to be, the creation of distinctly separate types of work. There will be an increasing need for educated professionals to design and build manufacturing and service systems, for competent middle-level technicians to maintain those systems, and for less skilled workers to operate the systems at the entry level. Displacement is occurring at the middle level, but at the entry level there is an increasing need for workers. As the nation moves to a service economy, new opportunities at the entry level inevitably arise. Finally, American manufacturing and service operations moving overseas are largely labor-intensive operations whose managers claim they can no longer operate profitably in the U.S. labor market.

Most of these trends present opportunities to examine the potential of prison labor in helping to meet some of the nation's economic needs. Prisoner workers on the whole are young, and, for the foreseeable future, there will continue to be a large prison population. Experience with private-sector prison industries has shown that prisoners' attitudes toward meaningful work under fair conditions are extremely positive—during their incarceration most are eager for the opportunity to be engaged in private-sector jobs. Given the limited education and experience of most prisoners, coupled with the high turnover in the prison population, it is not realistic to train prisoners for highly skilled occupations. However, it is realistic to aim at entry-level positions that can translate into better jobs upon release.

The flight of labor-intensive businesses overseas, driven by the search for lower costs, may be partially offset by private-sector prison industries, which can offer incentives in terms of rent and utilities, may be geographically closer to the current plant site, and do not require that the business adjust to a new country with all of the political and social frustrations that such moves often entail.

There are negative aspects to these trends as well. Might not machines take over the kinds of work that are likely to be available to prisoners in the future? Why should the state subsidize the private sector by providing health care coverage to prisoner workers at no cost to the private sector? Perhaps most important, if labor-intensive American companies are moving overseas because of high labor costs, how can the prison compete, given the need to pay comparable wages to avoid unfair competition and exploitation?

Other negative trends may diminish opportunities for prison labor. It is now estimated, for example, that approximately seventeen million leased and part-time workers are in the labor force, and they will compete with prisoners for entry-level jobs. Many of the ten to fifteen million illegal aliens who now work at entry-level and other jobs are acquiring legal status under new immigration laws. Structural unemployment has resulted in an increase in the number of chronically unemployed; if discouraged workers and underemployed workers are added to the unemployment statistics, it might reveal a more dire labor picture than is now commonly accepted. Evidence of the creation of a permanent underclass in the United States, with a concomitant decrease in the middle class, will mean more competition for low-skill jobs.

These disquieting developments in the free-world economy are set forth here primarily because of the potential for competition between private-sector prison industry workers on the inside and entry-level workers in the free world. Private-sector prison industry workers, once released, face an uncertain reception in the job market. It is important to recognize that the employment of released prisoners is as much a function of community resources and attitudes as it is of the experience and skills of an individual worker. However, the chances of being hired upon release, as well as long-term employment prospects, clearly are enhanced for those inmates with private-sector work experience prior to release.

Many types of businesses can succeed financially in the prison setting if they have a clear-cut business reason for using prison labor, can tailor their production processes to the prison setting, and provide effective supervision. The use of inmate labor is not a solution for poorly managed operations, but, with adequate training and supervision and appropriate production processes, inmates can produce at quantity and quality levels equal to a free-world work force. Departments of corrections can meet a variety of goals if they are willing to respond to private-sector needs and to commit the necessary resources—generally space and staff diverted from other uses. Both private businesses and corrections departments must consider the costs and benefits of private-sector prison industries to make a realistic assessment of their value.

In order for the private sector to make the best possible use of the prison labor force, what is now needed is a coordinated effort by the states and the federal government. The simultaneous occurrence of the social and financial crises caused by prison overcrowding and the need for entry-level labor in the nation's industries opens a window of opportunity for growth in private-sector prison industries. If society can "win" by increasing prisoners' ability and desire to join the work force, and if each of the parties to the venture

can "win" through the creation of prison jobs, then it is time to give serious consideration to the establishment of such ventures on a broad scale.

Scope of the Report

This report describes current developments in private-sector prison industries, analyzes costs and benefits for both the public and the private sectors, and suggests strategies for future growth. The information it contains is intended to help public- and private-sector managers take advantage of opportunities mentioned earlier and build on the costs and benefits of private-sector prison industries. The report informs policy makers about critical issues and problems that must be addressed if these ventures are to expand in the future.

The report is based on the findings of a nationwide survey of current private-sector prison industries. Project staff reviewed the literature, surveyed all fifty states by telephone or mailed questionnaire, and interviewed public and private participants in five jurisdictions: Arizona, California, Minnesota, Nevada, and Hennepin County, Minnesota. Arizona was selected because of the rich variety of its experiments with private-sector prison industries; California because of its planning process and because it hosts the only project involving youth; Minnesota because it has the most projects and the longest history of private-sector involvement; Nevada because it illustrates the powerful influence of local conditions on private-sector prison industries; and Hennepin County because it is the only local jurisdiction with significant experience over several years.

Information also was gathered from experts in labor, business, economics, and corrections who gave thoughtful consideration to the question of how private-sector prison industries could fit into shifting economic trends and become a mainstay in the nation's prisons. Finally, the report draws on a wealth of information collected by the authors in the course of providing technical assistance to prison industries over the last decade.

Chapter 2 discusses the current status of private-sector involvement in the prison workplace, describes the background against which private-sector prison industries have been developed, and sets forth important considerations that practitioners and policy makers should bear in mind as they consider such projects.

Chapter 3 describes state and county experiences with private-sector prison industries, showing how important issues have been handled in selected settings. Chapter 4 details the major findings of the research in a cost-benefit format designed to assist those considering the development of private-sector prison industries. Chapter 5 presents recommendations for promoting the development of such ventures and proposes a model for private-sector involvement in prison industries. Appendices set forth a summary of historical developments, with an emphasis on legislation (Appendix I); court cases on the status of inmate workers and the wage and benefits issue (Appendix II); planning steps (Appendix III); an action plan outline (Appendix IV); issues that have arisen in negotiating contracts for private-sector prison industries (Appendix V); and an annotated bibliography (Appendix VI).

Endnotes

1. Due in part to the strong interest of Chief Justice Burger, the National Center for Innovation in Corrections was established at The George Washington University to provide a base for the furthering of cooperative ventures in prison industries. The Center was partially funded by the National Institute of Corrections and the National Institute of Justice.

Chapter 2

Background

History

Private-sector involvement in prison industries is not new. During the first half of the twentieth century the unregulated use of prison labor led to exploitation of prisoners and unfair competition with free-world labor. By the 1940s Congress had restricted prison industries to what came to be known as the "state-use" market—the provision of goods and services to state and local government agencies.[1] In the 1950s and 1960s prison industries were further devalued with the ascendancy of the correctional treatment model. Education, vocational training, and counseling programs were seen as more directly related to rehabilitation. Overcrowding and the attendant need to keep prisoners occupied led to severe overstaffing, thus adding to the inefficiency of production in most prison shops.

In the 1970s tremendous growth in the prison population and increasing fiscal problems reawakened prison administrators' interest in the possibilities of prison industries as a cost-effective method of reducing idleness. The widely held belief that the correctional treatment model had failed and the rising popularity of the theory of "just deserts" also helped to create new interest in work programs. The passage of federal legislation and the support of the U.S. Department of Justice brought legitimacy as well. Riots at Attica in New York, McAllister in Oklahoma, and Pontiac in Illinois dramatically heightened political concerns about the administration of the nation's prisons. The perceived relationship of inmate idleness to violence in prisons underscored the value of all programs, but especially work programs.

Support from the Department of Justice for research and technical assistance to broaden and strengthen the role of state prison industries began in the early 1970s and continues to the present. From the beginning the rationale for change has been two-pronged: (1) private-sector methods, attitudes, and involvement are necessary to overcome state prison industry problems of limited market, unskilled staff and workers, undercapitalized plant and equipment, and an atmosphere more akin to a sheltered workshop than a factory; and (2) a pay system for prisoners based on productivity, rather than the stipend system, is necessary to give prisoners a stake in successful operations. In addition, research has stressed the potential of "reformed" prison industries to bring a healthy, free-world reality to the lives of inmate workers and the institutions in which they live.

Once private-sector methods had been identified as worthy of emulation, the logical next step was the development of a model program incorporating key private-sector concepts that could be tested by the states. The Free Venture model was created as part of an in-depth study by the U.S. Department of Justice's Law Enforcement Assistance Administration (LEAA) of the problems and potentials of prison industries.[2] Ultimately this model included the following elements: (1) a full work day for prisoners; (2) wages based on production, with the base wage significantly higher than traditional payments to prison industry workers; (3) productivity standards comparable to free-world industry; (4) final responsibility for hiring and firing industry workers resting with industrial (not prison) management; and (5) self-sufficient to profitable shop operations within a reasonable period of time after start-up.

The Free Venture model was implemented with LEAA funding in Connecticut in 1976 and subsequently in Colorado, Illinois, Iowa, Minnesota, South Carolina, and Washington. Direct awards to the seven states, totaling more than $2 million, were made to implement industrial and administrative improvements. By the time federal funding ceased in 1980, and attention shifted to more substantial involvement of the private sector, a good deal of progress had been made in most of the Free Venture states, and the program was judged a successful effort.[3]

In 1979 Congress removed federal restrictions on the sale of prisoner-made goods in interstate commerce, an essential step in promoting private-sector involvement in prison industry since most markets today span state borders. The legislation, known as the Percy Amendment after its sponsor Senator Charles Percy of Illinois,[4] set forth minimum conditions under which interstate shipment of prisoner-made goods could take place. Those conditions include: (1) inmates working in private-sector prison industries must be paid at a rate not less than that paid for work of a similar nature in the locality; (2) prior to the initiation of a project, local union organizations must be consulted; and (3) the employment of inmates must not result in the displacement of employed workers outside prison, must not occur in occupations in which there is a surplus of labor in the locality, and must not impair existing contracts for service. These conditions sought to reduce the threat of competitive imbalance that was the impetus for earlier anti-prison labor legislation.

The Percy Amendment authorized but did not mandate deductions of up to 80 percent of a participating inmate's gross wages for taxes, room and board, family support, and contributions to the state's victim compensation fund. Finally, inmates could not be denied, on the basis of their status as inmates, other state and federal employment benefits such as workers' compensation.

The new law authorized the establishment of seven Prison Industry Enhancement (PIE) pilot projects and subsequently was amended to allow twenty such projects. Congress gave responsibility to LEAA for certifying that a state met the conditions of the Percy Amendment. As of January 1987, seven states and one county, encompassing fifteen separate projects, had been certified. There are non-certified projects as well, including those that need not be certified because they operate solely within state boundaries and do not place products in interstate commerce; those that provide services and not products; and those that place products in interstate commerce but for some reason have not been certified and are therefore operating in violation of the interstate commerce prohibition. As of January 1987 there were twenty-three non-certified projects in operation.

At the state level there has been a great deal of activity as well. In less than a decade, more than half the states have passed legislation authorizing private-sector involvement in the prison workplace (see Table 1 and map, below).

The Current Context

One of the purposes of the research undertaken for this report was to identify any clear themes that might emerge from analysis of past and present projects. The benefits outlined in Chapter 1 were one result of that analysis, but two major problems emerged as well. The first concerned the legal status of inmate workers and the issue of wages and benefits. The second was the widespread difficulty departments of corrections have experienced in attracting private-sector partners. Both of these problems are likely to confront current and potential participants in private-sector prison industries.[5]

States with Private Sector Prison Industries

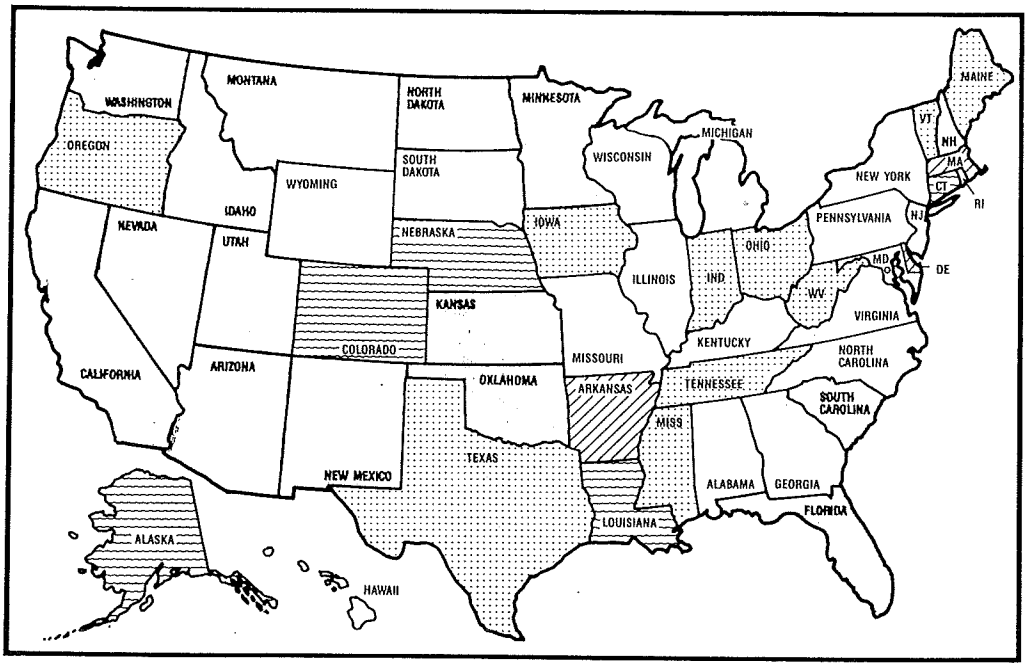

Table I Prison Industries Statutory Analysis

	AL	AK	AZ	AR	*CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Private sector employment authorized			●	X	●	●	●	X	●				△	●	●	●		●			X	△	●	△			●	●		△	●		△	●	●	●	△				●	●	●			●			
Private sector contracting authorized		●	●	X	●	●	●	X		△			△	●	●						X	△	●	●		●	●	●		△	●	△		△	●	●	△			△	●	●	●	△		●		△
Private sector sales authorized	△	●	●	X	●		●	X	△	△	△	●	△	●	●	●	△	●	●	△	X	△	●	●	△		●	●	●	△	●	△	△	●		●	△	△	●	△		●	●	△	●		△	△
Incentives for private sector authorized														●																																●			
Prevailing and/or minimum wages authorized			●											●	●	●		●					●	△			●								●	●						●		●		●			
Unemployment Compensation authorized					●		●						△	●				△												△											△			●				
Workers' Compensation authorized		△			●		●					△			●	●		●			●		●			●	●		●		△	●			●	●			●			●		●		●	●	●	●
Prisoner voluntarism mandated		●					●									●		●						△						●												●		●				
Project's impact on free world labor addressed		●					●							●	●	●												●																●				
Rent/lease of property authorized			●						●					●	●								●	●			●	●							●	●								●				
Wage deductions authorized		●	●			●			●					●		●	●	●					●				●	●	●	●					●	●								●		●		
Employee status of prisoners addressed		●							●			●			●									△							●																

● = Legislative Authorization Exists
△ = Legislative Prohibition Exists
Blank space indicates that legislation neither specifically authorizes nor prohibits
X = Legislation Unclear
*For wards of the Youth Authority only

Wages and Benefits: The Fairness Issue

In crossing the line from traditional prison industries (in which prisoners produce goods and services under state supervision for state consumption) to the arena of the open market (in which prisoner-made goods and services compete with those of free-world laborers) new forces are set in motion. Prison administrators may assume that correctional considerations continue to be primary in determining the conditions of inmate employment. Competitor manufacturers and free-world workers, however, will see the matter quite differently. Employment laws also come into play, restricting the freedoms traditionally available to correctional administrators in decisions about prison industries.

The status of inmate workers and the wages and benefits they should receive are central themes in the history of prison industries (see Appendix II). Prohibition of interstate commerce in prisoner-made goods in the 1930s and 1940s resulted from pressures from organized labor and competitor manufacturers who perceived themselves as threatened by low or non-existent wages paid to prisoners working for private-sector companies. The problem persists in the present as well: two of the early projects developed under the Percy legislation (described in Chapter 3) were forced to cease operation because they were perceived to be competing unfairly with free-world labor and industry.

The setting of wages for private-sector prison industries is a difficult task. Strong arguments can be made for a number of different positions. Organized labor has long insisted that only union wages (or at least national prevailing wages) for inmate workers will ensure that free-world labor and industry are protected from unfair competition. Taking an opposite position, many in the corrections community argue that payment of lower wages is required if prisons are to attract private-sector industries and compete effectively with overseas operations. Given the additional costs of doing business in prison (described in Chapter 4), some private-sector firms are eager to pare wages as much as possible. There is also some feeling among citizens that providing jobs at high wages to prisoners is inappropriate when workers on the outside are unemployed. Prisoners themselves tend to appreciate the sharp increase private-sector wages provide over their traditional stipends and have not argued vociferously for comparable wages, perhaps out of fear that private-sector jobs will disappear.

The Percy legislation is quite definite on the subject of wages: inmates in certified projects must receive wages comparable to those paid for similar work in the area in which the project is located. The legislative history accompanying the bill makes it clear that Congress saw comparable wages as the best compromise among competing positions. But what about non-certified projects? Even here there is existing law that must be considered in making wage and benefit decisions.

For American workers today, wages and benefits are regulated by the Fair Labor Standards Act (FLSA),[6] the basic employment law in the United States. Whether or not prisoners qualify as employees under the FLSA, and thus are entitled to wages and benefits defined by that law (e.g., the federal minimum wage and time and a half for overtime), is still an open question. The applicability of the FLSA to inmate laborers working under the joint supervision of a prison and a private employer has been a recurring subject of litigation for nearly forty years. Although early cases tended summarily to dismiss inmate claims for coverage, recent cases demonstrate that the courts are now likely to make more probing factual inquiries into the relationship between the parties involved and to recognize that inmates may be employees under the FLSA.[7] A discussion of court cases dealing with this issue is found in Appendix II.

Recruiting the Private Sector

The other major problem facing private-sector prison industries is the difficulty corrections departments experience in attracting private-sector partners. The problem has two parts. First, there is a lack of information available to potential private-sector participants and, second, the incentives now available to states and counties have not been sufficient to attract many private-sector firms.

Private-sector companies are generally unaware of prisoners as a potential source of labor. In spite of the publicity generated by former Chief Justice Warren Burger's campaign for "factories within fences," none of the private-sector participants interviewed for this study had heard of the idea through television or the print media. Most had conceived of their ventures independently of outside input.

A number of corporate executives involved in private-sector prison industries have suggested that a critical mass may need to be reached; that is, the number of businesses that will seriously consider the prison as an option will substantially increase only when the number of existing private-sector prison industries reaches the point where the concept becomes an "idea in good currency"—something one's peers are doing successfully and thus not to be feared, or something that must be done to avoid being left behind.

Even when companies become aware of the possibilities, they may hesitate because of deeply embedded negative stereotypes of prisons and prisoners. Most private business people think of prisons, when they think of them at all, as extremely violent and unpleasant places in which an inflexible

bureaucracy prevents any kind of normal activity. Their initial reaction to the suggestion of doing business inside the prison is to reject the idea out of hand. The perception persists that prisons are "off limits" to employers and not worthy of serious consideration as a site for manufacturing or service enterprises. As a result, most states, except those with extremely healthy economies, have had a difficult time recruiting the private sector.

Incentives to the private sector are an important element in any recruitment effort because of the additional costs of doing business in the prison. Those costs stem from prison security procedures, the prison plant and layout, and the unskilled nature of the prison work force. Incentives such as free or low-cost space and utilities, training subsidies, and tax benefits are available in some cases. But the generally limited incentives so far have not been sufficient to attract enough private-sector companies to allow departments of corrections much latitude in their choice of partners.

Private-Sector Prison Industries Today

The Percy legislation did not specify the types of public-private relationships that would meet its requirements, and states and counties have continued to experiment with diverse approaches. Research undertaken for this report found that in January 1987 there were thirty-eight private-sector prison industry programs employing inmates of twenty-six prisons in fourteen state correctional systems and two county jails.[8] In the projects reviewed for this study the private-sector participant plays one of three roles:

- Customer—the private sector purchases a significant portion of the output of a business owned and operated by the state but has no other role in the business;
- Controlling customer—the private sector purchases all or virtually all of the output of a shop owned and operated by the state corrections department and also plays a central role in the capitalization and/or management of that business;
- Employer—the private sector owns and operates a business using inmate labor to produce goods or services and has control of the hiring, firing, and supervision of the inmate work force.

Although no current examples exist today, in recent years three other models were observed:[9]

- Investor—the private sector capitalizes or invests in a business operated by a state corrections agency but has no other role in the business;
- Manager—the private sector manages a business owned by a corrections agency but has no other role in the business;

- Joint venture—the private sector and the corrections agency jointly own and operate a business.

Private-sector firms also work with prison industries in a variety of other ways. In many prisons, for instance, private-sector advisory groups work with vocational education and prison industry programs to assure the relevance of training offered and assist managers in the application of sound business practices. Or a prison industry may be licensed to manufacture and sell a product designed and engineered by a private firm. In other cases, a private-sector firm or individual may be paid a fee to market products or services produced by a prison industry. In some states there has been a transition from traditional inmate hobby programs to a more commercial form of self-employment, with inmates selling items they produce through a prison-based store. And in one state, Florida, a private non-profit organization has assumed control of the traditional prison industries program.

The basic characteristics of the thirty-eight projects in operation in January 1987 are listed in Table 2. Over 1,000 inmates worked in these projects for wages ranging from $.25 to $12. per hour. In twenty-three projects inmate workers were paid at least the federal minimum wage. In all fifteen of the projects in which prisoners were paid less than the minimum wage the state department of corrections was the actual operator of the enterprise. The state with the most activity was Minnesota with nine projects in four prisons employing 330 inmates.

All of the projects in Table 2 fit the pattern of either the employer or the customer model. Where private firms serve as customers for products manufactured by a prison industry, their roles take various forms. Casual arrangements under the employer or customer models include the sale of goods and services to prison employees and the sale of agricultural produce to the public. Under more formal arrangements, as in New Mexico, the prison shop regularly sells small amounts of goods and services to private customers and to public agencies. In other states, such as Utah and North Dakota, the proportion of shop output consumed by private-sector sales is significant. In Minnesota virtually the entire output of the metal fabrication plant goes to private purchasers through farm implement dealers, as does a significant portion of the products of the state's other prison industry shops. The job shop in Minnesota's Hennepin County Jail produces entirely for the private sector.

Where the private company is the actual employer of prisoner workers, variety is also the norm. In some cases, such as Zephyr Products, Inc., in Kansas, inmate workers are bused daily to a work site in the community. Such an arrangement is easily confused with traditional work release programs.

Table II Private Sector Prison Industries

Program Characteristics / State or County	MINNESOTA								
Company Name	Various	Various	Various	Dalton Co.	Various	Various	Various	360 Dealers	Stillwater Data Processing
Role of Company	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Employer
P.I.E. Project? [1]	No	No	No	No	No	No	No	Yes	Yes
Product or Service	Micro Filming	Job Shop	Printing Bookbinding	Data Entry	Assembly Services	Oak Furniture	Printing	Farm Machinery	Data Processing
Prison	Oak Park Heights	Oak Park Heights	Oak Park Heights	Shakopee	Shakopee	Lino Lakes	Lino Lakes	Stillwater	Stillwater
Start-up Date	1984	1984	1984	1980	1980	1978	1978	1981	1975
Average Work Force	11	23	37	16	12	98	27	93	13
Hourly Wage Range	$ 1.34	$ 1.03	$ 1.27	$ .45 - 5.00	$ .45 - 2.25	$ .55 - 2.65	$ .55 - 2.65	$ 1.50 - 4.15	$ 3.35 - 9.35
Full Cost Recovered?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Table II (Contd.) Private Sector Prison Industries

Program Characteristics / State or County	CALIFORNIA					ARIZONA		
Company Name	Trans World Airlines	Olga Manufacturing	Public/Private Partnership	Olympic Tools	North County	Best Western	Classic Coil	Barker Blinds
Role of Company	Employer	Employer	Employer	Customer	Customer	Employer	Customer	Employer
P.I.E. Project? [1]	Yes	Yes	Yes	Yes	Yes	No	No	No
Product or Service	Travel Reservations	Lingerie	Micro Filming	Metal Fabrication	Road Barriers	Travel Reservations	Wire Products	Window Blinds
Prison	Ventura	Ventura	Youth Training School	Youth Training School	Paso Robles	Arizona Center for Women	Perryville	Arizona Center for Women
Start-up Date	1986	1986	1986	1986	1987	1981	1986	1986
Average Work Force	10	10	50	11	8	30	10	6
Hourly Wage Range	$ 5.67	$ 3.35 - 5.91	$ 3.35	$ 3.35	$ 3.35	$ 4.50 - 8.53	$ 3.35	$ 3.35
Full Cost Recovered?	Yes	No	Yes	Yes	Not Available	Yes	Not Available	Yes

Table II (Contd.) Private Sector Prison Industries

State or County / Program Characteristics	KANSAS			WASHINGTON			MONTANA		NORTH DAKOTA	
Company Name	Jensen Engineering	Zephyr Products	Heatron Inc.	Flotation Technology	Inside Out	Redwood Outdoors	Office Products	Louisiana Pacific	Various	Various
Role of Company	Employer	Employer	Employer	Employer	Employer	Employer	Customer	Customer	Customer	Customer
P.I.E. Project? [1]	Yes	Yes	No	No	Yes	Yes	No	No	No	No
Product or Service	Industry Drafting	Metal Fabrication	Heating Elements	Metal Fabrication	Garments	Garments	Office Furniture	Timber Clearing	Road Signs	Office Furniture
Prison	KSP [2]	KCIL [3]	KCIL [3]	Shelton	Purdy	Monroe	MSP [4]	MSP [4]	NDP [5]	NDP [5]
Start-up Date	1984	1979	1985	1984	1982	1983	1985	1986	1981	1981
Average Work Force	7	11	12	8	35	50	18	6	12	65
Hourly Wage Range	$ 3.35 - 12.00	$ 3.35 - 3.60	$ 3.35 - 3.60	$ 3.35 - 9.20	$ 3.35 - 5.63	$ 3.35 - 9.00	$ .30 - .50	$ .30 - .50	$ 1.43	$ 1.43
Full Cost Recovered?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Table II (Contd.) Private Sector Prison Industries

State or County / Program Characteristics	OKLAHOMA		FLORIDA	IDAHO	NEVADA	NEW MEXICO
Company Name	Le-Key Manufacturing	Three Rivers	U.S. Sugar	Idaho Quartz	Vinyl Products	Various
Role of Company	Employer	Employer	Customer	Customer	Employer	Customer
P.I.E. Project? [1]	No	No	No	Yes	Yes	No
Product or Service	Fishing Lures	Ornamental Shrubs	Sugar Cane	Stone Tiles	Water Beds	Office Furniture
Prison	Joseph Harp	McLeod	Glades	ISCI [6]	NNCC [7]	NMP [8]
Start-up Date	1985	1987	1984	1986	1985	1986
Average Work Force	5	5	100	5	94	80
Hourly Wage Range	$ 3.35	$ 3.35	$ .50 - 1.00	$ 3.35	$ 3.35 - 4.00	$ .25 - 1.25
Full Cost Recovered?	Yes	Not Available	Yes	Yes	Yes	Not Available

Table II (Contd.) Private Sector Prison Industries

State or County Program Characteristics	SOUTH CAROLINA	UTAH	HENNEPIN COUNTY, MN		STRAFFORD COUNTY, NH	TOTAL 14 States 2 Counties
Company Name	AT&T Metals	Various	Shingobee Enterprises	Various	GFS Manufacturing	Various Types
Role of Company	Customer	Customer	Customer	Customer	Customer	15 Employers 23 Customers
P.I.E. Project? [1]	No	Yes	No	No	Yes	15 Yes 23 No
Product or Service	Material Salvage	Road Signs	Wood Products	Job Shop	Output Chokes	28 Products 10 Services
Prison	Kirkland	Utah State Prison	ACF [9]	ACF [9]	SCJ [10]	26
Start-up Date	1987	1981	1986	1981	1986	1975 - 1987
Average Work Force	40	13	25	25	13	1094
Hourly Wage Range	$ .33	$ 3.35 - 4.00	$ 3.55	$ 3.55	$ 3.35	$ .25 - 12.25
Full Cost Recovered?	Yes	Yes	Yes	No	Yes	31 Yes 2 No

FOOTNOTES

[1] The Bureau of Justice Assistances' Program for certifying states and counties which meet all legal requirements for the interstate shipment of prison-made goods.

[2] Kansas State Prison

[3] Kansas Correctional Institution at Lansing

[4] Montana State Prison

[5] North Dakota Penitentiary

[6] Idaho State Correctional Institution

[7] Northern Nevada Correctional Center

[8] New Mexico Penitentiary

[9] Adult Correctional Facility

[10] Strafford County Jail

But work release usually is available only to inmates in the final stages of incarceration and generally involves only a small number of inmates at a given community site. Zephyr employs an all-inmate work force of prisoners who have at least a year remaining on their sentences. More typically, the private company locates inside the security perimeter of the prison, either in existing prison space, as has Best Western International in Arizona, or in space constructed specifically for the cooperative venture, as has Inside-Out in Washington.

Inmates working directly for private companies are paid at least the federal minimum wage, and in some cases considerably more. Interestingly, as is evident from Table 2, where prisoners work directly for a private-sector firm they are generally paid a wage comparable to outside workers performing similar tasks. Where the project is run by the department of corrections, and workers are employees of the state, their wages are about half what they are in other projects.

Endnotes

1. For a full discussion of historical developments and federal legislation regulating private-sector involvement in prison industries, see Appendix I of this report.
2. Econ, Inc., *Study of the Economic and Rehabilitative Aspects of Prison Industry*, Volumes 1-7 (Princeton, N.J.: 1978).
3. U.S. Department of Justice, Law Enforcement Assistance Administration, *Impact of Free Venture Prison Industries Upon Correctional Industries* (Philadelphia, Pa.: January 1981).
4. Public Law 96-157, Sec. 827, now codified at 18 U.S.C. 1761(c).
5. It is important to note that private-sector prison industries are not linked to the broader issue of "privatization" of prisons. Private-sector operation and management of correctional facilities present a totally different set of issues as well as potential liabilities and benefits.
6. FLSA, 29 U.S.C. 201 *et seq.*
7. To determine whether inmate workers are protected by the minimum wage provisions of the FLSA, the courts first consider whether they are covered "employees" within the meaning of the FLSA. If prisoner workers are found to be covered employees, then federal minimum wage provisions do apply, even though state minimum wage law may not be considered applicable.

The FLSA defines "employee" broadly: "Any individual employed by an employer." It also defines "employer" broadly: "Any person acting directly or indirectly in the interest of an employer in relation to an employee..." The courts have tried to develop a more specific and more useful definition to clarify who is and who is not an employee or an employer for purposes of the FLSA. This has resulted in a test of "economic reality," which examines the role of the worker in the company's operations.

Some issues frequently cited by the courts as integral to determining the economic reality of the relationship between a prisoner worker and a private company include:

- the company's ability to determine the size of its work force and to hire its workers (Who places the worker in the job, the company or the prison? Can a worker be assigned to the company without its consent?);
- the company's ability to discipline and fire its workers (Who removes workers from assignments? Can a worker be removed from the job without the approval of the company? Can the company remove a worker from the job without the prison's approval? Is the worker involved voluntarily?);
- the company's ability to control the supervision of its work force (Are the hours worked by prisoners regulated by prison authorities or by the company? Is the supervision of inmate work performance subject to final control by prison authorities?).

8. A project is defined as a business enterprise operated by either a private firm or a correctional agency using inmate labor to produce goods or services sold on the open market.
9. Criminal Justice Associates, *Private Sector Involvement in Prison-Based Industries: A National Assessment*, November 1985. Produced under Grant #83-IJ-CX-K451 from the National Institute of Justice.

Chapter 3

Experience with Private-Sector Prison Industries

The experiences of four states and one county—Arizona, California, Minnesota, Nevada, and Hennepin County, Minnesota—illustrate both the successes and the failures in private-sector prison industries and some of the relationships that may exist between corrections departments and private firms in operating these ventures. A number of other good programs might have been included: for example, in Kansas a single individual dedicated to change in the state's prisons operates two industries employing inmates outside the prison walls; in Utah state-run industries have had good results selling goods and services on the open market; and Washington hosts a number of successful private-sector prison industries located on prison grounds.

The projects highlighted here each offer lessons of their own, but some common threads are seen: the importance of planning and an overall strategy; the power of outside interest groups; the importance of economic profitability; the need for experienced management and for production tasks matched to skill levels of workers. The forces operating at state and local levels also appear to be more potent than those at the national level. The attitudes of state governors and legislators have had more direct bearing on the success of private-sector prison industries than those of Congress. State unemployment rates have meant more than the national employment picture. The problems of a state correctional system, or even a single prison, and the viewpoints

of correctional administrators have been more significant determinants of action than the generalizations of writers and researchers. Finally, the best interests of a specific company in a particular location at a given time ultimately have determined the decisions and actions of that company's management.

Arizona

The Arizona Department of Corrections hosts one of the longest-running and most successful private-sector prison industries in existence today, and much can be learned from its successful operation. Several early projects failed, however, and from these there are lessons to be learned as well. Prison overcrowding and the lack of a clearly articulated strategy in the past may have contributed to failure, but outside forces played the major role.

In 1981 Governor Bruce Babbit signed into law S.B. 1191, which created Arizona Correctional Enterprises (ARCOR) as a division of the Arizona Department of Corrections. This legislation encouraged private-sector involvement not only by authorizing private-sector employment of prisoners and contracting with the private sector for the production of goods and services, but by establishing a policy board composed of representatives of the private sector.

In July 1981 Arizona received provisional certification from the Law Enforcement Assistance Administration for a project in which prison inmates would be hired to work in a Phoenix slaughterhouse that was being closed by its owners, Cudahy Food Co., in a move to cut costs. Since this was the only pork slaughterhouse remaining within the state, the Arizona Pork Producers Association proposed to purchase the plant and use prisoner labor to staff it. However, although the state labor union had accepted the proposal, the national union opposed it, largely because of its opposition to similar cost- cutting moves by the parent company throughout the country, and the project therefore was not initiated.

The ROBE Program

ARCOR subsequently activated the PIE certification for its Resident Operated Business Enterprises (ROBE) program. The ROBE program was an association of small businesses owned by prisoners and licensed by ARCOR to operate within the prisons. Association members paid rent and utilities and a monthly membership fee of 2 percent of sales, for which they received technical assistance from ARCOR in establishing and operating their small businesses.

By January 1983 there were fifty-two ROBEs operating inside Arizona's prisons. They employed a total of 103 inmates in thirteen categories of handicraft and service-oriented businesses. Most of the service businesses had prison staff as their principal clientele, while the handicraft enterprises sold the majority of their wares to dealers in the Phoenix area.

Eventually, primarily because of inmate gang activities, the ROBE program became too difficult to administer and ARCOR sharply reduced its scope in 1984. At the same time, the corrections agency voluntarily relinquished its PIE certification to the Department of Justice.

Projects at Perryville

In 1983 and 1984 two Phoenix-based firms established cooperative ventures with ARCOR inside the Arizona Correctional Training Facility at Perryville. Commercial Pallet Company contracted with ARCOR for the manufacture of wooden shipping pallets. Twenty-six inmates worked in the pallet project during 1983, producing $70,000 in sales. ARCOR terminated its contract with Commercial Pallet in 1985 because the company would not pay inmate workers at the minimum wage level as required by departmental policy for all such enterprises.

A second project, jointly operated by ARCOR and Wahlers Manufacturing Co., represented a unique relationship between corrections and the private sector in that the company's role in the latter part of the contract was limited to that of an investor. Wahlers, a subsidiary of Prestige Systems, Inc., is a Phoenix-based manufacturer of office furniture that had been hiring inmates on work release for some years. The company wanted to augment its civilian work force and decided to help capitalize a small plant inside Perryville. In 1983, with an average daily work force of fifteen inmates who earned $3.50 per hour, the shop generated over $700,000 in revenue through the sale of office partitions and computer tables in both the state-use and open markets. Wahlers eventually pulled out of the shop because of its failure, in the opinion of company management, to generate sufficient return on investment.

In January 1987 three cooperative ventures were operating inside Arizona's prisons. Barker Blinds, Inc., employs fifteen women in its plant near the Arizona Center for Women in the manufacture of a diverse line of window shades and blinds. Classic Coil, Inc., contracts with ARCOR for the assembly of wire products at Perryville, and Best Western International, Inc., operates a travel reservations center at the Arizona Center for Women.

Best Western's Reservations Center

In 1981 Best Western International, Inc., had a problem: its international marketing and reservations center in Phoenix needed a readily available work

ce of trained telephone reservations agents to handle the overflow of phone lls for room reservations during peak call volume periods and on holidays d weekends. Best Western staff approached the Arizona Department of orrections with the idea of hiring prisoners. About six months later ACW isoners were booking Best Western rooms for guests calling from throughout e country on the chain's toll-free line.

The company has since installed additional computer terminals, and curntly the ACW center has thirty work stations staffed by inmate employees. y November 1986 the center had processed more than 2.5 million calls presenting more than $72 million in room reservation sales. On a given day ie women at ACW process about 10 percent of Best Western's total domestic alls.

The ACW center operates from 5 a.m. to midnight or as needed accordng to call volume. Reservations agents work twenty to forty hours per week nd are supervised by a Best Western operations manager and three Best Vestern supervisors. The institution screens all applicants and maintains a ool of eligible candidates who are interviewed by Best Western Human Resource Management staff for job openings. Selection criteria for the ACW eservations agents are the same as those for agents at the main reservations enter. Starting salaries are the same as those for reservations agents at the main center: $4.50 per hour, with an increase of up to 12 percent after nine months. ACW agents also are eligible for Best Western employee incentive programs. Employees at ACW are subject to the same policies and procedures as all Best Western employees, including those governing disciplinary actions and job requirements. Each ACW employee, in addition to paying federal, state, and social security taxes, contributes 30 percent of her net wage to offset the costs of incarceration. Since 1981 ACW agents have had $182,000 withheld in taxes and have paid over $187,000 to the state for room and board. Over $112,000 has been paid in family support.

Since start-up in 1981 Best Western has hired more than 175 women at ACW. The company also has hired fifty of its ACW employees upon their release from prison. Policies have been adjusted to treat post-release employment as a lateral transfer rather than a new hire, thus preserving benefits earned prior to release. Twenty-four former ACW reservations agents currently are working at Best Western headquarters. Nine have been promoted to clerical positions in marketing, membership administration, and reservations.

Largely because of the manner in which Best Western has managed this operation, it represents one of the most positive illustrations of the potential of private-sector employment of inmates. The reservations center serves a demonstrable purpose for the company. Best Western staff have made a conscious commitment to treating inmate workers as employees in every sense

of the word. Institution management has recognized the value of the program and has taken the necessary steps to ensure its success. The center serves as an incentive to the general inmate population, many of whom hope for a job here before release. In short, the institutional climate is positively affected by the presence of the center and the opportunities it offers.

California

The experience of California with private-sector prison industries is instructive because of the unusually thorough planning undertaken prior to startup and because the inmate workers involved are juveniles. In 1981 the California legislature amended the Welfare and Institutions Code to allow the Department of the Youth Authority to establish industrial programs for its wards. Passage of this legislation was particularly interesting in light of the long-standing opposition of labor and business to similar legislation for adult offenders. The California Prison Industry Authority in the Department of Corrections is still restricted to the state-use market.

In 1982 the Youth Authority Department's Ward Employment Program Review recommended that youthful offenders be given the opportunity to develop employment skills in real work settings provided through partnerships with private industry. The following year the director of the department commissioned a fourteen-member task force composed of representatives of the private sector, organized labor, the public, and the Youth and Adult Corrections Agency to develop a plan for the implementation of Free Venture-Private Industry.[1]

The first two Free Venture industries were established in the Preston School of Industry in 1985. Preferred Assembly Services, a sheet metal prefabrication company, employed wards to assemble housings for electronics equipment. Vanson Trailers contracted with the department for the assembly of metal boat trailers and three-wheeled off-road vehicles. Preferred Assembly and Vanson operated for only a year, but the department nonetheless was encouraged by these initial experiments because the reasons for their short tenure were related to business conditions and not to shortcomings in the correctional agency itself. The department realized that the challenge it faced was to identify, recruit, and select the most appropriate private-sector firms to locate inside its facilities.[2]

TWA at Ventura

Trans World Airlines has proved to be an ideal example of a private-sector partner for the Youth Authority Department. Influenced by the success of Best Western's reservations center at the Arizona Center for Women, TWA began employing male and female youthful offenders at the Ventura Train-

ing School in January 1986. As does Best Western, TWA views its institution-based reservations center as a practical solution to a perplexing business problem—quickly rallying a work force to absorb surges in reservations calls. The Ventura reservations center, located about fifty miles from TWA's Los Angeles center, has been designed to handle 175,000 calls per year—all from marginal overflow traffic.

The Youth Authority Department constructed a building, which it is leasing to the airline, and the airline brought in telephones and computers. Sales at the Ventura center in 1986 were $934,000, and the cost of sales was about $1.00 per call cheaper than TWA's other reservations centers.

The ten to twenty wards employed by TWA at Ventura are paid the same wage as the airline's other reservations agents: $5.67 per hour. They are guaranteed a minimum of two hours work per day and, by virtue of their status as provisional employees, are limited by TWA to a maximum of 900 hours per year. Their provisional status also disqualifies them from receiving benefits to which full-time employees are entitled. Prior to employment as a reservations agent, each ward must complete an eighteen-week junior college accredited training course taught by Youth Authority Department education staff.

During its first year of operation the Ventura reservations center had a total payroll of nearly $90,000. From these wages the wards paid over $13,000 in taxes, $15,000 in room and board, and $11,000 in victim compensation. In 1986 two of the six reservations agents recommended by the airline for special achievement notice were from the Ventura center.

TWA is the only unionized private-sector participant in a private-sector prison industry directly employing inmate workers. In 1986 the airline flight attendants struck the company for several months and claimed that the Ventura reservations agents, who, like their counterparts in TWA's other reservations centers, were not unionized, were being used as strike breakers. As a result of this job action a California assemblyman held hearings on the issue and proposed legislation that would have severely restricted the Youth Authority's ability to develop future private-sector prison industries. However, when the hearings confirmed that the wards were not being used as strike breakers, the proposed bill was shelved by its sponsor and the union withdrew its protest.

Other Free Venture Projects

Also joining the Free Venture program in 1986 were Olga Manufacturing Co., Public/Private Partnerships, Inc., and North County Industries. During the year in which it operated at Ventura, Olga Manufacturing employed ten wards in a power sewing operation and paid them $3.35 to $5.91 per hour,

the same rates as its free-world employees receive. The Ventura shop's gross payroll for 1986 was nearly $82,000. From their wages the wards paid FICA and state and federal income taxes in addition to the Youth Authority Department's mandated deductions of 15 percent of gross wages for victim compensation and 20 percent for room and board. However, Olga was not able to operate its Ventura plant profitably, and in the second quarter of 1987 it moved the operation to Mexico, where approximately half of the company's production is carried out. The Work-Rite Corp., a manufacturer of uniforms, has subsequently taken over Olga's space at the institution.

Public/Private Partnerships, Inc., is a private non-profit corporation that employs fifty youthful offenders at the Youth Training School at Chino in the microfilming of medical records. An unusual feature of this operation is its use of Job Training Partnership Act funds[3] by the employer, who provides a mandatory six-week training program. Wards in training are not paid, but at completion they receive a $500 stipend. Those who successfully complete the course are offered full-time employment in the microfilm unit.

Olympic Tools contracts with the department for the manufacture and assembly of metal tool boxes at Chino. North County Industries contracts with the Paso De Robles facility for the construction of wooden road markers and barriers. The wards in each of these shops work for the department and are paid the minimum wage.

The experience of the California Youth Authority demonstrates the value of a formal planning process, not only as a means of anticipating potential problems and developing realistic goals, but also as a means of generating the necessary degree of support at all levels of the department. In a department with no experience with industrial programs and thus a need to adapt institutional programs, policies, and procedures to accommodate the requirements of private employers, the overwhelming staff acceptance of this new effort has been impressive. On the other hand, the California experience shows that even with extensive planning, not all problems can be avoided.

Minnesota

The Minnesota Department of Corrections has a long tradition of private-sector involvement in its industrial program. Unlike most state correctional industry programs, Minnesota Correctional Industries never lost the legal authorization to sell goods and services on the open market within the state.

As early as 1972 the Minnesota Department of Corrections was utilizing the assistance of the Governor's Loaned Executive Action Program Task Force to bring private-sector management techniques and practices to its industrial operations. In 1973 the legislature authorized private-sector operation of businesses on prison grounds, and at one time in the mid-1970s three

small privately owned firms operated inside Minnesota's prisons. The only surviving member of this original trio of privately owned and operated businesses is Stillwater Data Processing, Co., which operates under certification by the Bureau of Justice Assistance.

Established in 1975 with a $55,000 grant from a consortium of foundations and corporations in the metropolitan area, Stillwater Data Processing is a private, non- profit corporation that provides custom computer programming, software development, and disk duplication services to the private sector in the Twin Cities area. The company is managed by two civilians and has a work force of thirteen inmates who earn between $3.35 and $9.35 per hour. During the twelve years in which the company has been operating it has employed hundreds of prisoners with a total gross payroll of almost $1.5 million of which over $450,000 has been withheld in taxes.[4]

A second non-profit corporation, Insight, Inc., employs eighteen prisoners in Stillwater and Lino Lakes correctional facilities. The primary mission of Insight is to provide post-secondary educational opportunities for Minnesota prisoners. The company performs telemarketing for the private sector and provides computer instruction to the long-term, homebound disabled to pay the costs of educating prisoners participating in its college programs.

Subcontracts with Private Firms

But the real story of Minnesota's involvement with the private sector lies in the various subcontracting relationships it has developed over the years with companies throughout the state and the sale of its own diversified line of goods and services on the open market. In the late 1970s Minnesota Correctional Industries performed a variety of light manufacturing, assembly, and finishing services for several large businesses. Prisoners at Lino Lakes refurbished telephones for Western Electric Co., assembled valves for Cornelius Co., and de-burred metal products and provided warranty service repairs for Toro, Inc. Certainly the largest and most visible of these subcontracting relationships, however, was the disk drive assembly plant sponsored by Control Data Corp. (CDC) at Stillwater.

In 1980 CDC was faced with a problem—how to deal with the employment impacts of technological breakthroughs. Magnetic Peripherals, Inc., a subsidiary of CDC, was manufacturing disk drives using a process technology that was changing significantly and rapidly. Given the uncertainties inherent in such a market, the company wanted to buffer its work force through the use of supplemental contractors whose workers would not be severely inconvenienced if production were interrupted from time to time. CDC decided to use inmate workers for its disk drive assembly process because of the flexibility inherent in such a labor force.

CDC provided technical assistance to MCI in setting up the plant, which was located in vacant industrial space inside the prison, and trained the MCI civilian supervisory crew and inmate work force in the assembly process. Initially the plant employed fifty workers producing disk drives. In later years of the contract the production of wire harnesses was added, employment levels rose to a high of 150, and the purchase order between MCI and the company called for sales of up to $2.5 million per year. The project was certified by BJA, and workers earned wages ranging from $3.35 to $5.96 per hour.

The MCI electronics assembly plant won both production and quality awards during its tenure, and CDC management was pleased with its performance. However, in late 1985 the company shifted the assembly process to western Europe to be closer to the primary market for its products.

Other MCI Shops

Each of the state's other adult correctional facilities also hosts MCI shops that either contract with the private sector or sell inmate-made goods and services directly on the open market. For example, at the newly opened women's facility in Shakopee up to twenty prisoners work in MCI's data entry program converting B. Dalton & Co.'s purchase orders into receivables files in a disk-to-tape system. Eleven women work in the facility's subcontract/assembly operation, which has performed a variety of light manufacturing and assembly services for hundreds of small and large companies in the state. Several female prisoners also have recently begun conducting telemarketing research surveys for the Safeway Food chain. This particular project appears to be working better than the telemarketing sales contract MCI had for a year with Transcontinental Telemarketing, Inc., because the degree of difficulty is not as great in conducting surveys as it was in successfully completing the sales called for in the Transcontinental project.

Prior to receiving PIE certification in 1981, the metal fabrication plant at Stillwater restricted the sale of its diverse line of farm machinery and support equipment to dealers within the state. Now the Minnesota Line is sold by five MCI sales staff and 330 dealers in seven Midwest states.[5] In addition to selling heavy equipment under its own brand name, MCI also manufactures and markets farm machinery under the Viking label through a system of thirty dealers affiliated with Associated Merchants, Inc. The shop employs ninety-three prisoners who perform a variety of metal fabrication processes, including design, foundry work, cutting, shearing, shaping, and welding, and also sells metal products other than farm machinery to numerous large and small businesses. In 1986 total sales for Stillwater's metal fabrication plant amounted to about $3 million. In the last four years the plant has had a total prisoner worker payroll of over $1.3 million, of which nearly $45,000 has been

withheld in taxes. Over the same period inmate workers in the plant have contributed almost $41,000 from their wages to compensate crime victims. Minnesota is generally regarded as the foremost exponent of the involvement of the private sector in correctional industries. It has the longest unbroken tradition of serving private-sector markets. The Control Data shop represents a major success story. In contrast to most other correctional agencies, Minnesota's industrial program is highly decentralized, with each institution largely responsible for the success of its own industrial activities, including those involving the private sector. There has been limited departmental planning, and each institution has developed its own objectives and methods of implementation.

Minnesota has had experience with both the customer and the employer models and relies heavily on private-sector involvement in four institutions. It has therefore contributed significantly to the growing body of knowledge about private-sector prison industries.

Nevada

Nevada, a pioneer in the initiation of private-sector employment of incarcerated offenders, has had a great deal of recent experience with private industry. Nevada turned to the private sector for inmate employment out of expediency. The Department of Corrections has a very small prison industry program, and state corrections officials in the past relied heavily on work release for inmate work assignments. In the 1980s, as the number of prisoners ineligible for work release increased with the state's soaring prison population, correctional staff looked to the private sector as a means of combating inmate idleness.

In 1982 Key Data Processing, Inc., installed computer equipment inside the Nevada Women's Correctional Center in Carson City and employed twenty-five female offenders in data processing applications for a year before it ceased operation due to a lack of demand for its services.

In 1983 General Household Items, Inc., (GHI) was purchased by an entrepreneur who already owned and operated a plasma processing center in the Northern Nevada Correctional Center. After purchasing the broom and mop company, its new owner, who also hired the company's free-world plant manager, moved the operation from Oklahoma into the Southern Desert Correctional Center forty miles outside Las Vegas. By spring 1984, shortly before it shut down, GHI had a mixed work force of civilians and twenty prisoner employees.

GHI's management, which had no prior experience in the broom trade, and its plant manager, who had no prior experience in supervising a prisoner work force, failed to anticipate the difficulty of maintaining a pool of trained workers who could master the complex techniques of mass production of corn brooms in a prison with a high turnover rate. Because inmates routinely failed to meet production quotas on schedule, GHI hired experienced civilian broom makers to work alongside its prisoner employees. The majority of prisoner workers were unable to produce at even the company's base piece rate, which was tied to the federal minimum wage, and the company instituted a "training" period of several months and a corresponding "training" wage of $1.00 per hour. Unfortunately, GHI sold the brooms produced by its prisoner-trainees in interstate commerce, a clear violation of the wage requirements of the Fair Labor Standards Act since the employees who produced the brooms were paid less than the federal minimum wage.

In 1984 a California-based competitor of GHI complained to Congress through the National Broom and Mop Manufacturers' Association about the sale of GHI's products in that state. This complaint eventually led to an investigation of the company's payroll practices by the Department of Labor's Wage and Hours Division, which subsequently levied a penalty of more than $90,000 against GHI for payment of back wages to its inmate employees. GHI ceased operations shortly after imposition of the fine.

GHI's experience exemplifies the lesson learned by many private companies and correctional agencies: private-sector involvement is not risk-free for either party. Industries that have critical production tasks requiring lengthy training periods—in GHI's case the winding and cutting of corn brooms—will require a stable, long-term labor pool that can be trained and retained long enough to become productive and efficient. Institutions with high turnover rates are not the best candidates to host industries with these kinds of labor requirements. GHI's experience also serves to underscore the fact that prior management experience in the industry to be located in a prison is critical to the success of the business. It is unrealistic to expect a manager to learn both a new industry and the problems of operating in a prison at the same time.

Las Vegas Foods, Inc., began employing up to thirty prisoners inside the Southern Desert Correctional Center in 1983 in the cleaning, mixing, and packaging of salads for sale to casinos. The company continued to operate inside the prison until the end of 1986 when the institution did not renew its lease because of a more critical need for the space the enterprise was occupying.

Vinyl Products, Inc.

By 1985 the Northern Nevada Correctional Center (NNCC), on the outskirts of the state capital of Carson City, faced serious problems of over-

crowding and idleness. Opportunities for productive work were scarce and program dollars to support the expansion of existing industries or the development of new ones were virtually non-existent.

Vinyl Products Manufacturing Co., a producer of waterbeds located in downtown Carson City, had a problem too. The company could not find enough workers to keep up with increasing demand. Many of Vinyl Products' competitors, facing similar problems, had located production facilities overseas but had experienced serious problems with product quality.

Vinyl Products had been hiring prerelease inmates from NNCC since 1978 to work its graveyard shift. When it asked for more workers in the mid-1980s the institution was able to provide only a few minimum-security inmates. At that point Vinyl's president directed his production staff to examine the feasibility of opening a feeder plant inside the prison.

Just thirty days after its initial proposal to establish a plant inside NNCC, Vinyl Products was employing twenty-five inmates inside the prison. Two years later the company had increased its prison-based work force to nearly 120 employees on three shifts. This increase was accomplished without a single layoff in the company's downtown plant.

Vinyl's prisoner employees perform the same manufacturing tasks as their co-workers outside: cutting, sealing, inspecting, and packaging a diverse line of mattresses. Originally the company restricted inmate workers to the production of its simplest product line; however, their satisfaction with both productivity and quality levels led them to add to the NNCC plant the manufacture not only of the full product line but of custom mattresses as well.

Vinyl's prisoner employees and downtown workers earn the same pay rates ($3.35 day shift, $4 night shift) and receive the same benefits, including paid holidays and vacations, although health care costs are paid by the state. Production at the NNCC plant is supervised on each of three shifts by Vinyl production managers, who evaluate prisoners' job performance every ninety days, just as they do with employees in their downtown plant.

Since the start of business inside the prison in 1985, Vinyl has hired nearly 200 prisoners. These inmate employees have paid over $167,000 to the state's general fund in the form of room and board charges, provided an estimated $127,000 in support to their families and over $34,000 in compensation to victims, and have had over $112,000 withheld in taxes.

Like Minnesota, the Nevada Department of Prisons has operated its industrial program under a management philosophy of decentralization, with each institution head largely responsible for the success of industrial activities. At the Northern Nevada Correctional Center, the warden has played an influential role in the development of private-sector prison industries. His

willingness to adapt institutional procedures to meet the needs of private employers has contributed significantly to the success of the Vinyl Products operation. The fact that NNCC had a stable institutional environment with no history of violence made it easier for the necessary adjustments to be made.

At Southern Desert, on the other hand, the problems of opening a new institution and the difficulties of training staff (both new hires and those transferred from other institutions) exacerbated the problems faced by an entrepreneur trying to start a new business without adequate management experience.

Hennepin County, Minnesota

Although private-sector prison industries have been of primary interest to state correctional agencies, counties have shown increasing interest as swelling jail populations and local funding problems make jail administration more difficult. The mixture of sentenced and unsentenced prisoners, the short stays even of sentenced prisoners, and the lack of suitable space for industrial activities complicate the development of successful private-sector prison industries in jails.

Hennepin County's Adult Correctional Facility in suburban Minneapolis established its industrial program in 1981 to meet the needs of local manufacturers for labor- intensive functions such as cleaning, sorting, assembling, and packaging that are typically contracted out to job shops. The county's ACF Industries provides work for a co-ed work force of twenty-five inmates who are paid the state minimum wage of $3.55 per hour. Customers are charged a burden rate of $6.00 per hour for finished work. The shop, which is managed by a former district sales manager for Allis-Chalmers, Inc., concentrates on securing work that is generally too difficult for sheltered workshops to complete successfully but not so complex that it cannot be mastered by a work force with built-in high turnover rates.

ACF Industries, with total sales of $30,000 a month in 1987, competes with other job shops on the basis of its competitive rates, quality work, and timely delivery. Over the years it has performed a variety of services for large and small firms in the area, including cleaning silverware for Northwest Orient Airlines, packaging records and tapes for Viking Records, and repairing damaged microwave ovens for Litton Industries. Since 1981 ACF's prisoner workers have contributed more than $133,600 toward the cost of their incarceration.

In 1986 Shingobee Enterprises entered into a cooperative arrangement with Hennepin County whereby the county provides space and labor and the company provides equipment, materials, management, and production super-

vision for the manufacture of cedar plant holders, bird feeders, and other garden ornaments. The twenty inmates working in the shop earn $3.55 per hour and work for the correctional facility, which bills the company for their labor.

Shingobee, originally located in a small town in northern Minnesota, moved its operation to the Minneapolis area after market expansion pushed its production demands beyond the capacity of the local labor force. The firm's owner was attracted to the county jail because of its willingness to provide space and to bear the cost of workers' compensation and liability insurance.

Endnotes

1. The California Youth Authority operates under a legislative mandate different from that of the Adult Department of Corrections. The 1981 law enables the Youth Authority to "manufacture, repair, and assemble products . . . for sale to or pursuant to contract with the public . . ." However, Article X, Section 6, of the state constitution (adopted in 1879) says that "The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation . . ."

   There is no comprehensive definition of "convict" in the constitution, and when the Youth Authority was considering this issue some policy makers speculated that it could be argued that youthful offenders or wards are not "convicts" covered by the constitutional provision since the prohibition was adopted prior to the existence of the Department of the Youth Authority and, by extension, prior to the existence of "wards." However, a review of the remarks of the convention delegates revealed that their intent in passing the prohibition was to protect the community from unfair competition resulting from contracts for "cheap" institutional labor. Age would therefore seem to be irrelevant.With this in mind, the Youth Authority Department has adopted the position that its contracts with the private sector are for the supply of goods and services rather than the supply of youthful offender labor. Further, the Youth Authority has adopted a policy guaranteeing that wards employed in Free Venture Industries will be compensated at prevailing wages for their services.

2. In its approach to private-sector prison industries, the Youth Authority differs from the adult Corrections Department in two key respects: it has no prior experience with industrial work programs (either state-use or oriented to the free market); and its primary motivation in establishing such industries is not to combat idleness but to enhance its education programs by providing general employment skills to its wards. The latter partially explains why Free Venture Industries have been placed under the Youth Authority's education staff.

3. The Job Training Partnership Act provides federal funds through the state Office of Economic Development for vocational training for certain categories of disadvantaged citizens, including inmates.

4. Unlike most other states that have private-sector prison industries, Minnesota does not collect room and board fees from its inmate workers. The department found it cumbersome to collect the fees and difficult to determine a fair rate since its inmate workers live in widely varying types of housing. To avoid charges concerning equal protection under the law the department decided to abandon its room and board charge policy, even though a federal court had found, and the Eighth Circuit Court of Appeals confirmed, that such policies did not violate equal protection laws.

5. The Minnesota Line is sold in Illinois, Iowa, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

Chapter 4

Implementation Issues

A variety of issues must be considered by private- and public-sector decision makers interested in the development of private-sector prison industries. These issues are of two kinds: those of importance in deciding whether to proceed with such a venture and those affecting its success. The discussion below focuses first on issues surrounding the decision to proceed and then on issues affecting success. The discussion in each case is divided into issues for private-sector decision makers and issues for public-sector decision makers. The material in this chapter was developed primarily from survey and interview information. As such, it constitutes the major findings of the study.

The Decision to Proceed

In making the decision whether to create a private-sector prison industry, both public- and private-sector managers should undertake an analysis of costs that may be incurred and benefits that may be realized. The issues to be considered in such an analysis are different for the two parties to such an arrangement, and they are discussed separately below.

Issues for the Private Sector

In deciding whether to proceed with a private-sector prison industry, the overriding consideration for private-sector managers should be the economic viability of such an enterprise. There must be a clear and compelling business reason for developing a private-sector prison industry. Where the private firm has become involved solely for the purpose of meeting a social need the result

has often been failure or near-failure until the viability of the business was realized. Social motivations have been helpful in that they assist participants in overcoming discouragement during the often difficult startup phase. However, such motives have been secondary in successful enterprises. Where the purpose has not been predicated on business-related reasons, there has been a tendency for the venture to be run on a less than business-like basis.

The decision to proceed is made by comparing the benefits and costs of a private-sector prison industry with those of an equivalent operation in a setting other than a prison. It is useful to express benefits and costs in common quantitative terms. The most evident benefits and costs the private sector may expect when it enters into a private-sector prison industry are described below. Most of these factors can be expressed in dollars.

Benefits

There are significant benefits that certain kinds of businesses have realized through use of a work force comprised entirely or partially of prison inmates. Such benefits derive from two characteristics of a prison work force that often distinguish it from a free-world work force: flexibility and dependability.

Inmate workers have demonstrated considerable flexibility in terms of when and how long they can work. Provided arrangements are made with prison management, the hours worked can vary seasonally, monthly, weekly, or even daily to accommodate fluctuations in workload demand. In those instances where, for certain periods of time, the workload demand drops to zero, the work force need not be used at all. This flexibility has produced savings in direct costs similar to the savings that motivate companies to lease labor. While such layoffs are obviously not desirable to inmates, the higher wages associated with private-sector prison industries and the respite from institutional life they provide make private-sector employment attractive even with shortened hours.

A prison work force also is flexible in the sense that if a firm has a sudden, perhaps unexpected, need for labor, prisoners can be called in on short notice since, in contrast to a community work force, prisoners are always at a known location in close proximity to the workplace. This advantage has been particularly important to Best Western and TWA, as noted in Chapter 3. Surges in incoming phone calls to the reservations center have been met by additional workers who were available in a matter of minutes, unlike workers in major metropolitan areas such as Phoenix and Los Angeles.

Dependability is the second characteristic that distinguishes a prison work force from free-world labor. Barring certain emergency situations arising in a prison (which usually have had minimal impact on work schedules), the

private firm can be reasonably sure that the work force will appear for work as needed and on time. Prison inmates live in a tightly controlled environment. While all prison work programs today are voluntary, once inmates are scheduled to appear for work they must appear unless excused for illness or some other condition mutually agreed to be legitimate. There is little of the Monday morning fall-off experienced by so many employers in the community. In addition, compared to their free-world counterparts, inmate workers are relatively drug and alcohol free. These characteristics of the inmate work force translate into cost savings for certain kinds of businesses.

Private-sector prison industries also may provide a variety of other cost savings for the private firm, such as the cost of space, which is often a significant consideration, particularly for new businesses. Usually a prison has provided suitable space at no or low cost to the private company, either within the prison or in other facilities on prison grounds. Space generally has been made available quickly and on short notice.

Prisons also have been willing to pay all or some of the costs of utilities and in some cases to provide bookkeeping services or the training inmate workers require. Further cost savings are realized where the prison system assumes inmate employee health care costs, property/liability insurance costs, and workers' compensation costs. Finally, cost-reducing incentives are often available to the private company that employs prison inmates. These may include local tax credits, incentives available through the Job Training Partnership Act (JTPA) and, in certain cases, Targeted Jobs Tax Credits (TJTC).[1]

A common misconception is that businesses employing prison inmates can reduce costs by paying lower wages than those paid to outside workers. In fact, if the products move in interstate commerce, federal law requires that wages paid to inmate employees be comparable to those paid for similar work in the community.

Private-sector companies employing prison inmates also have realized public relations benefits. This study found only two extreme occurrences of negative publicity resulting from the private sector's use of a prison work force: the TWA flight attendants' strike, which did not prove fatal to the operation; and the Arizona Pork Producers proposal, which did. But on the whole, private-sector prison industries have been found to generate positive publicity, and in some cases this has had a significant favorable effect on corporate public image. A Best Western spokesperson claims that the reservations center at the Arizona Center for Women has "done more for our corporate public image than any other single thing we have done." That company has received positive responses not only from the public but also from its hotel-owner members. Most companies have tried to take a low-profile position with regard to their use of prison labor, but even under these circumstances public reaction has been positive.

Costs

While private firms have realized cost savings through the employment of prison inmates, higher costs have been incurred as a result of the need for greater supervisory time than normally is required for comparable operations in the community. Such costs are inherent in doing business in a prison and usually are related to complying with security requirements, constraints imposed by the physical plant and layout, employing a work force that tends to be more manipulative than a free-world work force, and employing a work force that has minimal education and few work skills. In addition to such costs, the private firm generally also has borne the cost of equipping the venture since this is an expense most prison systems are unwilling or unable to assume.

Certain costs that the private firm might be expected to bear in participating in a private-sector prison industry actually are minimal or nonexistent. For example, although decreased efficiency might be expected from a prison work force, under close supervision and with clear work standards prison inmates can produce at a level competitive with free-world labor in terms of both quality and productivity. This is particularly true if the operations involved are labor intensive and repetitive with changes introduced slowly. A metal shop set up to make custom products in Kansas, for example, may have been an unwise choice for a private-sector prison industry because high turnover and the lack of appropriate work skills resulted in higher costs than anticipated.

One also might expect to find a higher incidence of pilferage and sabotage in shops employing prison inmates. This assumption has been found to be groundless as well; in fact, most supervisors interviewed for this study stated that pilferage and sabotage were, if anything, more common on the outside.

Summary

Whether benefits exceed costs to the firm involved in a private-sector prison industry will depend on the nature of the business and the characteristics of the prison system. Certain kinds of businesses, however, are more likely than others to realize a net benefit. These are businesses that require a low-skill work force and can obtain value from the flexibility and reliability of an inmate work force or from the financial benefits their employment offers. Such businesses include:

- those experiencing rapid, short-term, largely unpredictable changes in workload demand;
- those experiencing significant seasonal changes in workload demand;

- those likely to experience significant changes in workload demand as a result of market or technological changes;
- those needing entry-level, unskilled workers but finding a shortage of reliable, stable workers of this type in the community;
- those considering opening an extension of a business in a new geographic area or considering starting a new business but wanting to do so initially on a trial basis;
- those introducing a new product requiring expansion of the work force or physical plant but having to contend with market uncertainty;
- those having a need to lease labor or contract out work.

Among the industrial activities that seem best suited for ventures employing prison inmates are light mechanical assembly, sewing of pre-cut clothing, buffing, grinding, welding, soldering, gluing, spray painting, cleaning, and sorting. Computer-related services such as data entry and the handling of incoming telephone sales also are well-suited to the prison labor force.

Issues for the Public Sector

Whereas the dominant issue for private-sector firms considering the employment of inmates in a private-sector prison industry is whether it makes economic sense, for the public sector legal considerations are primary. Before correctional managers decide to proceed with such a venture they should review all statutory restrictions with legal staff. Without legal authority, it will not be possible to create a private-sector prison industry.

Cost-benefit analysis of such arrangements is more complex for the public sector than for private companies because the costs and benefits cannot be expressed in common quantitative terms and the alternatives are less clear. Should the private- sector prison industry be compared to a traditional prison industry operation, to some other programming option, or to a combination of both? What goals is the department of corrections trying to achieve? In any case, it is important to understand the benefits and costs of such enterprises for the public sector.

Benefits

There are two kinds of benefits the public sector should consider: benefits to the prison system and benefits to inmates in the system.

Most prisons are overcrowded with limited funding for programs, and severe idleness, which enhances the potential for violence, is a problem with which many prison systems must contend. Private-sector involvement in

ınmate employment represents one means of addressing this problem and in-eed has been a primary motivation for administrators of adult correctional ystems considering private-sector prison industries. Involvement of the private ector also opens up markets for prisoner-made products and services not ırdinarily available to traditional state-use industries and represents a source ıf capital that frees the system from sole dependence on limited state budgets.

Anecdotal information obtained during this study suggests that private-ector prison industries can have a positive effect on inmate behavior. This s true not only of inmate workers but also of other inmates who hope to ɔe hired by the project in the future. This effect is much stronger when the ɔnterprise is located on prison grounds because more inmates anticipate the ɔossibility of employment. Off-site work is reserved for those in minimum-ɔecurity classifications, but almost all inmates are eligible for on-site work, ɔo the eligible pool is much larger.

Deductions for room and board usually are taken from the wages of inmates employed in private-sector enterprises. Although such deductions could be taken from the wages of inmates engaged in any prison work program, it is more practical in ventures involving private firms because wages generally are higher. These deductions, when credited to a prison system's budget, produce a direct financial benefit to the system in the form of a reduction in the costs of incarceration.

Private-sector involvement in the operation of a prison industry is one of few situations, indeed perhaps the only situation, in which a normal outside activity is replicated in prison. As a result, prisons have been affected indirectly through the introduction of "real-world" attitudes and concerns into the prison or directly through provision by the private sector of workshops, technical literature, and other resources for prison staff. Inmates have benefited because they are able to work for "real-world" employers in an environment where normal work expectations are imposed and products and services are offered in private-sector markets. This is especially significant for inmates whose first job is in such a project.

Work in private-sector prison industries also may help inmates after they are released. Private-sector work normally has involved higher wages than those paid in traditional prison industries or in institutional work, enabling inmates to accumulate larger savings on which to rely after release. Moreover, if the private-sector employer for whom an inmate works in prison has an operation on the outside and the inmate has a satisfactory work history, then the inmate has an advantage over other applicants in obtaining a job with that employer after release. In any event, a history of successful work for a private-sector employer while in prison is a plus for an ex-inmate in obtaining a job, in terms of both specific experience and general work skills

development. Project staff found only anecdotal evidence suggesting that these factors reduce the likelihood of recidivism, but such a relationship seems reasonable. It is these "rehabilitative" aspects of enterprises involving private firms that make them particularly appealing for youthful offenders.

Costs

To attract private-sector employers a corrections system should be able to provide free or low-cost space. Unfortunately, acceptable industrial space is scarce in most institutions. The availability of such space not only can determine whether there is any possibility a project will be located on prison grounds, but also influences the type of product or work process involved and the number of inmates employed. Requirements for storage of raw materials and finished products have caused unexpected problems where they have not been anticipated in planning. If proper care is not taken, a prison can find itself with an enterprise that occupies an amount of space disproportionate to the number of inmates it employs.

In the absence of existing space, the ability of the institution to quickly provide new space has contributed to its ability to attract companies. In California the legislature appropriated a lump sum to the Youth Authority Department for use in constructing inexpensive space in institutions in which private-sector prison industries were established. This enabled the department to erect a prefabricated metal building promptly for the TWA reservations center at Ventura. It is important to note that the space need not be within a prison building but could be provided in a separate structure located on prison grounds.

Also valuable in attracting the private sector has been the assumption by the prison system of utility costs and the costs of training inmates in the skills necessary to qualify for employment.

Another cost associated with a business venture employing inmates is the risk inherent in any cooperative project. Some private companies, especially small ones, have experienced problems because of poor management, fluctuating markets, or under-capitalization, any of which could adversely affect the operation. Even companies with good track records have encountered unexpected difficulties, including changes in general economic or market conditions over which they have no control. Private-sector managers often are forced to respond quickly to resolve such problems, and this may result in abrupt changes in operations that require the institution to make rapid adjustments as well. Some of the very reasons why a company may be attracted to a prison in the first place, such as cyclical workloads and short product life, may increase the likelihood of such changes.

There are also several commonly anticipated public-sector costs that do not seem to be associated with private-sector prison industries. A concern often expressed, for example, is that the disparity between wages paid in a private-sector prison industry and wages paid in traditional prison industries or in institutional work programs will produce discord in the prison. Experience has shown, however, that a wage disparity appears instead to motivate inmates to seek employment in the private-sector enterprise.

In general, administrators of prisons hosting private-sector prison industries do not perceive security considerations as any more problematic in the planning and operation of such ventures than in the planning and operation of traditional prison industries. In fact, the most frequently expressed concern of administrators is not security but the ability of the institution, including the inmate work force, to meet the needs of the private sector.

Another concern sometimes expressed by public-sector managers is that enterprises involving private firms will elicit significant negative public reactions. This does not seem to be the case. In the rare instance where such reactions do occur, they have been defused by drawing attention to the positive aspects of the project, for example, the fact that inmates are working and paying some costs of incarceration, taxes, family support, and, in some cases, victim restitution from their earnings.

Summary

States and counties with the legal authority to do so have found that significant benefits can be derived from private-sector prison industries. The principal costs have been in providing space, in planning for such ventures, and in making the adjustments they require. Institutional disruption, unusual security problems, and significant negative public reactions have not been found to occur in the private-sector prison industries observed in this study.

Conditions for Success

Once a decision to proceed with a private-sector prison industry has been made, it is important for both private- and public-sector participants to understand the conditions that may be critical to its long-term success. A number of such conditions are discussed below, again from the different perspectives of the private and the public sectors.

Issues for the Private Sector

The most positive action the private sector can take to ensure the success of a prison-based venture is to employ competent, qualified supervisors. It is important that supervisors of these shops be especially capable in terms

of their managerial, technical, and communications skills. If a supervisor does not have the skills necessary to manage an operation employing a civilian work force, then that individual certainly does not have the skills to manage an operation employing prison inmates.

There is a need for especially strong supervisory skills because company headquarters often is at a location separate from the private-sector prison industry. The supervisor is therefore involved in a broader range of problems and decisions than are supervisors who are not physically separated from company managers. One company assigned a supervisor to a private-sector prison industry because of his technical skills, but this was his first supervisory job. Both he and the company later agreed that his lack of previous supervisory experience had hampered his performance and that of the project. Of course, technical skills cannot be neglected. The training of inmates requires strong technical skills on the part of the supervisor. Good technical skills also enable the supervisor to gain inmate respect by demonstrating operational competence.

The establishment of a private-sector prison industry provides a company with an opportunity for a major staff development assignment. The high visibility of the operation and the breadth of experience it provides can make such an assignment a career-enhancing move. The company has an opportunity to test, under demanding conditions, employees whose potential they have already recognized. Supervisors who have been successful in operating private-sector prison industries believe that their careers have been helped by the experience.

Supervisors in private-sector prison industries must understand the characteristics of an inmate work force. For example, despite the generally favorable attitude that inmates appear to have toward private company supervisors, they will test the limits of authority on the job. Shortly after one project was initiated the inmate workers indicated their intent to alter work rules and made veiled threats about a work stoppage if the supervisor did not comply. A prompt, strong response on the part of the supervisor averted further moves by workers. The most effective supervisors set clear limits for inmate workers from the beginning, require the observance of those limits, initiate disciplinary action promptly where appropriate, and behave consistently.

Several supervisors have noted that as a group inmates are more manipulative than workers in the community. Much of this manipulation is directed toward trying to involve the supervisor in problems in the prison rather than the work setting. Some supervisors cited instances of inmates apparently seeking to manipulate outsiders for the sheer enjoyment of it, almost as a game. These supervisors stressed the need to guard against being drawn too deeply into inmates' personal problems, a tendency that at least some

inmates seem to exploit.

One unpleasant aspect of supervising inmate workers involves firing unsatisfactory workers. In the community the supervisor is unlikely ever to encounter the dismissed person again. In the circumscribed environment of the prison, however, the fired worker is likely to be encountered again, leading to the possibility of unpleasant confrontations.

In order to provide a better understanding of the characteristics of an inmate work force and an appreciation of the need for prison policies and procedures, the supervisor (as well as other private-sector staff who frequently visit the institution) should attend an orientation program of the kind usually provided by prisons for new employees. This training should cover institutional regulations and security requirements and provide guidance in interacting with inmates. In one case where such training was not offered, an incident in which a private company supervisor was subjected to a routine pat-down search almost precipitated a walk-out of company staff.

Most private-sector prison industries encounter some resistance from institutional line staff, which is common when change of any kind is introduced. It is important for private-sector supervisors to understand institutional concerns and to create channels of communication with line officers, including those in housing units. Most successful private-sector supervisors have made an effort to be seen as part of the institution team. As one successful supervisor said, "Most people think of me as a prison employee."

Although heavily dependent on the performance of on-site supervisors, successful private-sector prison industries have had continued involvement of private-sector managers as well. Some situations are handled more effectively by management than by shop supervisors. Close cooperation between management of the private company and the prison is, of course, essential in the planning of a private-sector prison industry. Expectations on both sides must be discussed at the start of negotiations, and any problems requiring the intervention of private- or public-sector management should be addressed promptly.

The conditions necessary for the success of any business apply to a business that employs prison inmates as well. Employing prison inmates does not free the private firm from making realistic business plans and using commonly accepted business practices. A discussion of important steps in planning for private-sector prison industries is contained in Appendix III. An action plan outline appears as Appendix IV, and a list of common contract issues is contained in Appendix V.

Issues for the Public Sector

For the public sector the factor most responsible for the success of a private-sector prison industry is the level of commitment to the enterprise by top management of the institution, specifically the warden or superintendent. Success is most likely when top management is responsive to the needs of the company and understands that efficiency and productivity must be given high priority.

Frequent communication between company and institutional management is vital. The ability of company staff to reach the warden or deputy warden quickly when problems develop also is helpful in heading off serious trouble. The attitudes of middle management and line staff are shaped by their perceptions of the attitudes of top management toward the project. The warden who makes it a practice to visit the work site regularly makes clear to staff the importance with which he or she regards the project. Also important is the extent to which line staff are informed prior to the initiation of a private-sector prison industry about the nature of the project and the need for their help in ensuring the project's success.

For the most part, successful private-sector prison industries have developed because of the interest and energy at the local rather than departmental level, and in these cases the strong support of institutional management is sufficient for success. However, in cases where a correctional agency has made a commitment to establish projects in several institutions, it is vital that the head of the agency demonstrate support. One means of doing so is to create a departmental entity to plan and implement the project. The most successful of these efforts have resulted from the participation of several segments of the department in order to generate the broad commitment needed to implement change (see Appendix III).

Creation of successful private-sector prison industries often has depended on the interest and energy of a public- or private-sector advocate with sufficient organizational status to achieve results. That person may be the warden, superintendent, or a key staff member. In some cases the individual is from the private sector. Fred Braun of Zephyr Products in Kansas and Joan Lobdell of Inside-Out and Redwood Outdoors in Washington are examples of private-sector managers who have been the driving forces in the establishment of projects because of their personal commitment to the concept.

Successful private-sector prison industries also require flexibility on the part of the prison and a willingness to modify institutional policies and procedures. Adjustments in classification and assignment procedures, meal

cheduling, program scheduling, and security measures—including counts, ockdowns, vehicle searches and clearances, space shakedowns—may be ıecessary to maintain a full work day for inmate employees. The ease with vhich policy and procedural changes are accommodated is directly related o the commitment of top management to the success of the venture.

One of the public sector's most difficult tasks will be to find a private-ector partner. Most recruitment efforts have not been clearly conceptual-zed, largely because correctional agencies have had insufficient experience vith similar situations to develop the skills required. As a result, most ex-sting private-sector prison industries have been the result of serendipitous :ircumstances to which the agency has responded, rather than a result of con-;cious outreach.

As outlined earlier in this chapter, there are certain kinds of businesses 'or which a private-sector prison industry can make economic sense; thus, t is possible to target recruitment efforts rather than engage in a "shotgun" ıpproach. However, the idea of working with prisoners is still sufficiently ıovel to most business people that they need the reassurance of knowing that ;omeone else has already demonstrated how it can be done. TWA, for exam-ple, made the decision to work with the California Youth Authority only after visiting the Best Western operation in Arizona to see its advantages first-hand.

Misconceptions about prisons and inmates may influence the thinking of business executives when the possibility of private-sector prison industries is raised. Private-sector managers may be similarly apprehensive about working with a government bureaucracy and the possibility of changes in the political climate. The opportunity to see such a project in operation and to talk to the people involved can allay at least some of these fears. As more projects achieve higher visibility in the business community, there is likely to be more opportunity to dispel the misconceptions so that business people can concentrate on the economic aspects of private-sector prison industries in making a decision to proceed.

The background and characteristics of the person selected to do the recruiting are critical to the conduct of a successful recruiting effort. Ideally, this person should:

- have prior department of corrections experience (important because the liaison must have the confidence of institutional administrators and must understand institutional requirements and concerns);
- be aggressive, energetic, articulate, and task-oriented;
- understand the workings of a governmental bureaucracy and know how to get things done in such a setting;

- understand the problems of business, know how a prison work force can address these problems, and be able to interact comfortably and effectively with business people.

The risks and benefits of private-sector prison industries examined in this chapter make it clear that such enterprises, like all business ventures, will be successful only if both partners approach them with the care and concern necessary whenever new concepts are implemented. There is no magical solution for the private sector in the prison, nor will the public sector's needs be met by private-sector involvement without the hard work required to make any program successful. When properly conceived and implemented, however, private-sector prison industries have met the needs of both parties.

Endnotes

1. The JTPA is described in Chapter 3, footnote 3. The Targeted Jobs Tax Credits legislation (P.L. 95-66, November 6, 1978, as amended by the Tax Reform Act of 1986) allows an employer of specified categories of disadvantaged workers to be reimbursed of 60 percent of the first year's gross wages earned by year-round employees.

Chapter 5

A Prospectus for the Future

The survey undertaken for this report shows that the number of private-sector prison industry projects is increasing and more states are hosting such projects today than ever before. A study conducted for the National Institute of Justice in 1985 found twenty- six projects operating in seventeen prisons in nine states;[1] two years later there were thirty-eight projects in twenty-six prisons in fourteen states and two counties. Yet the total number of inmates working in private-sector prison industries is small (about 1,000) and has remained virtually constant despite the increase in the number of projects.

Private-sector prison industries are almost all small businesses, averaging twenty to twenty-five workers each. Given the fiscal constraints facing most departments of corrections, which deflect resources from new programs, and the high failure rate of small businesses generally, the amount of growth in the number of private-sector prison industries in the past two years suggests the strength of the concept and its long-term potential. The question facing policy makers and practitioners is how that potential can be achieved. How many prisoners could reasonably be involved in private-sector industries, and how might the number of projects and participating institutions be expanded?

Minnesota provides a source of information from which reasonable estimates of potential growth can be developed. Of all the states with existing projects, Minnesota has the most favorable set of circumstances: a long and uninterrupted history of private-sector involvement in prison industries; strong institutional and corrections department support for the concept; experience with a variety of models that have been well integrated into institutional life;

and broad enabling legislation. With nine private-sector prison industries, Minnesota has the largest number of currently operating projects.

Minnesota's average total adult prison population during 1986 was approximately 2,290,[2] of which 330 (14.4 percent) were employed in private-sector prison industries. Using a total national state prison population of about 500,000, and assuming that Minnesota's experience could be replicated nationwide, this would mean that perhaps as many as 70,000 inmates could be employed in private-sector prison industries.

This chapter identifies strategies for overcoming barriers to growth as a first step in expanding private-sector prison industries. An industry model is provided that will enable practitioners and policy makers to examine the potential benefits to both the public and private sectors.

Overcoming Barriers to Growth

Strategies for consolidating and expanding private-sector prison industries can be divided into long-term and short-term approaches. When Congress passed the Percy legislation in 1979 it created a separate category of prisoner workers, setting forth various protections in an attempt to ensure that such workers would not compete unfairly with free-world labor and not be exploited in the prison workplace. This report has presented a number of case studies showing how these protections have worked in practice. The report has revealed a great deal of variation among projects and a lack of coordination and consistency in employment policies for private-sector prison industry workers.

Long-Range Strategies

Ultimately, private-sector prison industry workers should be integrated into the larger work force. This eventually will ease fears of exploitation and unfair competition because, as part of the outside labor force, private-sector prison industry workers will be subject to the same laws and regulations as other workers. But a healthy transition cannot occur unless a number of existing ambiguities are clarified:

The Issue of Wages and Benefits.

Accurate determination of wages for workers in private-sector prison industries is extremely difficult. As the administrative agency within the Department of Justice responsible for the implementation of the Prison Industry Enhancement (PIE) certification program, the Bureau of Justice Assistance (BJA) is responsible for oversight of PIE projects through its certification mechanism. No project within a state is certified until the state department of labor (which determines comparable wages by occupation and geographic area) has notified BJA in writing that the proposed project wage falls within the comparable wage range for the locality in which the work is being performed. BJA therefore is forced to rely on the ability of state departments of labor to assess accurately the skill levels of inmate workers and to understand the tasks involved (which may have been redesigned to accommodate inmate workers). This is a difficult assignment for departments that generally have had no previous experience with prisoners as employees. Department of Labor policies regarding the calculation of wages and hours have never been evenly applied to private-sector prison industries. While a small number of certified projects have been reviewed by the DOL, none of the non-certified projects has been contacted. Thus the Justice Department, which does not have expertise in wage and hours calculations, has responsibility for its certified projects, and the Labor Department, which does have the expertise, is not involved.

Social Security Coverage.

Deductions for Social Security have been interpreted differently by the states, so that in some jurisdictions workers in such enterprises have payroll deductions taken for that purpose while in others they do not.

The Targeted Jobs Tax Credit.

Current IRS regulations and interpretations exclude employers in private- sector prison industries from coverage under the TJTC provisions of the Internal Revenue Code. Those provisions grant generous tax credits to employers of "economically disadvantaged ex-convicts."[3] The Internal Revenue Service and the Department of Labor (DOL) have interpreted the category to include only released convicts, not those currently incarcerated. BJA initiated staff contacts among the Department of Justice, the Department of Labor, and the IRS to explore whether current prisoners, working in partnerships with the private sector, could be included within the scope of the entitlement, but no change has been forthcoming. A reinterpretation of existing law, or an amendment bringing currently incarcerated inmates within its ambit, would offer a substantial inducement to private businesses considering the use of prison labor. The TJTC has been renewed for a three-year period under the new federal tax legislation, but no reinterpretation as to the inclusion of currently incarcerated prisoners has been issued. Various provisions in the new tax code also may work against private-sector investment in prison-based ventures and should be explored for possible alignment with Justice Department policy in this area.

Incentives for the Private Sector.

Incentives for the private sector are needed to offset the extra costs of doing business in the prison. Some are already in place, but American businesses have options other than the prison. Businesses can, for example, take advantage of the Enterprise Zone concept, which offers tax and other economic advantages, or they can lease labor, look to home-bound workers, or move to other countries in search of cost savings.

Consideration must be given to the creation of incentives in the prison that will be meaningful to the private sector. At the same time, it is important not to create an artificial economic climate inside the prison by over-subsidizing the private sector. To avoid long-term economic failure and unfair competition with free-world labor and business, an appropriate balance must be struck. For example, incentives might be offered for a two- or three-year period, after which time the company would receive no further special treatment.

The Fair Labor Standards Act.

As noted in Chapter 2, the question of whether prisoners employed by private-sector prison industries are covered by the FLSA is of central importance to the future of such projects. The courts continue to rule on cases as they arise, apparently moving in the direction of increased recognition of full employee status. But more direct action should be taken to seek clarification of the issue through Congress. A strong case can be made that workers in private-sector prison industries differ in no substantial way from their community counterparts and thus are eligible for the protections the FLSA provides. Without such protection, gains made to date may prove illusory in the long run.

Regulatory Mechanisms.

It is important that participants understand the regulatory mechanisms that govern the interstate transport of prisoner-made goods. If a project falls under the certification program, it must abide by the Percy Amendment; if not, the interstate transport of such goods is clearly prohibited. In either case, lack of enforcement has led to confusion and, as a result, many states and counties have come to believe that they need not take the interstate commerce requirements seriously.

Legislation: The Hawes-Cooper Act and the Percy Amendment.

A major reason for the success of recent initiatives has been the sensitivity of those supporting expansion of private-sector prison industries to political interests with a stake in the issue, including organized labor, private industry, correctional administrators, and public interest groups supporting or opposing inmate employment. Gradual change allows all parties to adjust to new circumstances more comfortably.

One cause for concern, however, is the Hawes-Cooper Act. This Act was not amended under the 1979 Percy legislation, and thus it is still possible for states that prevent the open-market sale of prisoner-made goods within their borders to prohibit the entry of prisoner-made goods from other states, even though they are produced in certified projects. Hawes-Cooper holds that a state may treat all prisoner-made goods entering its borders in the same way that it treats goods produced by its own state prisoners.

The Percy Amendment may also be in need of change. The current Percy legislation authorizes up to twenty state or county certifications. While that number has been sufficient to date, new legislation expanding the number of possible certifications will be needed if real growth is to occur. Finally, there may be other laws now on the books that are in conflict with the intentions of the Percy legislation. These laws also should be coordinated with the Percy requirements.

Short-Range Strategies

While these broad-based issues should be addressed over the next several years, there are steps that can be taken in the short run to promote the growth of private-sector prison industries. Two major problems to be addressed are the need to protect free-world labor and management from unfair competition and private-sector prison industry workers from exploitation and the need to market the concept of private-sector prison industries to the private sector.

Promoting and Enforcing Certification

The wages and benefits issue must be resolved in such a way that fairness to all is ensured. Nothing will threaten the future of private-sector prison industries more than the suspicion that unfair labor practices are taking place.

The Percy legislation represents a satisfactory compromise that strikes a balance between the position of organized labor and that of supporters of much lower wages for inmate workers. The specter of unfair competition and displacement of free-world workers is avoided, while the inappropriateness of paying union wages to unskilled labor in a setting that itself imposes some

restrictions on productivity is recognized. The complaints of those who see high wages for prisoners as inappropriate when outside workers cannot find jobs can be mitigated to some extent by requiring that some percentage of inmates' income be subtracted to pay for taxes, room and board, and, in appropriate cases, family support and victim restitution.

If all private-sector prison industries—even those not technically bound to do so—were to seek certification under the Bureau of Justice Assistance's PIE program, a number of problems could be dealt with more equitably than is now the case. The history of private-sector involvement with prisoner labor is clear. Practices that are unfair and exploitative to free-world labor, competitor manufacturers, and prisoners, will result in accusations of wrongdoing and opposition from those who feel threatened by private-sector prison industries. Certification offers the best vehicle for ensuring that private-sector prison industries will be perceived as equitable by all parties involved.

There are a number of projects that are of questionable legitimacy in that by law they should be, but are not, certified under the Percy legislation. The requirements of certification are being avoided, presumably because of the comparable wage and benefits requirement. These projects endanger the survival of all private-sector prison industries. Avoidance of certification requirements will result in suspicion and opposition among many who might otherwise support the concept. Enforcement of legal requirements is therefore essential.

Information and Marketing

The Bureau of Justice Assistance has made periodic efforts to alert corrections officials to the opportunities available through the PIE program, including a recent survey reminding the states of the availability of PIE certifications and inquiring about the kinds of technical assistance that could encourage their participation. The National Institute of Justice also has assisted departments of corrections interested in private-sector prison industries by providing technical assistance in project planning.[4] Such efforts to inform and encourage states and counties should be continued.

Many potential private-sector participants remain unaware of the possibilities of the prison. It is essential that steps be taken to alert private companies to their options. Growth in private-sector prison industries has been steady but slow, and this slow pace is likely to continue if efforts are not made to better inform the private and public sectors. A core group of business leaders who support private-sector prison industries would be a strong inducement for other private companies to consider such ventures themselves.

The concept of private-sector prison industries is relatively new, and it will need more extensive testing. But until current ambiguities are resolved, states and counties may be unable to achieve the "critical mass" that is crucial to the transition to a more mature program. Decisive action on the recommendations made here, both by Congress and by public- and private-sector managers, is an essential first step in that process.

A Model for Private-Sector Prison Industries

Resolving the wages and benefits issue, promoting and enforcing certification, enhancing incentives, passage of enabling legislation, federal encouragement and assistance, and dissemination of information are all ways of removing barriers to the expansion of private-sector prison industries. But the question remains as to the best approach for moving forward once the path has been cleared. Local circumstances will primarily determine the nature of the public-private relationship involved, but experience to date suggests elements of a model project with good chances of success.

The proposed model represents the optimum strategy from the public policy point of view. However, it may not be feasible or appropriate for a given jurisdiction at a particular time, and it may not meet the needs of some private-sector firms. Public-sector managers with a large investment in traditional prison industries will continue to use those resources to provide products to the private sector through the customer model in an effort to increase and stabilize employment opportunities for the inmate work force and to improve cost-effectiveness. Ultimately, the model adopted must reflect local conditions and needs.

The proposed model constitutes maximum involvement of the private sector in the prison environment. It represents the highest degree of interaction of any of the arrangements identified in the survey, and it assumes that the private sector has a sound business reason for entering the prison. For the private company, it also involves the greatest risk in terms of investment, the greatest dependence on the venture for success, and the greatest sharing of responsibility and authority with prison management. At the same time, the arrangement promises maximum potential benefits to both parties. The model's key elements are described below.

Private sector management of the operation.

Private-sector control of the hiring, firing, and job supervision of inmate workers increases the likelihood that working conditions will mirror those of the outside world, and it lessens public-sector costs as well. Under the model proposed here, legal authority for management of the operation and employment of inmates rests with the private sector. This clearly established authority assures the con-

tinuing on-site presence of company representatives, including a unit supervisor. Responsibility for the financial success of the venture is unequivocally that of the private sector. One of the significant benefits of private-sector management is the sense of the real world of work that it brings to the prison environment. This affects the behavior of both staff and inmates. Inmates working for the private sector see themselves—and are seen by others—as productive members of the labor force, an important difference from the way in which inmates in other work programs are perceived. Inmate workers in private-sector jobs are held accountable for the same results as workers outside, often for the first time. At the same time, institution management is encouraged to adjust the life of the institution to the realities of the work day instead of the reverse. The institution's regimented pattern has a less stultifying effect on inmates, and their subsequent adjustment to unstructured life outside is eased, when work concerns influence institutional life.

Comparable wages with a wage floor of at least the federal minimum wage.

Only when wages start at this level can accusations of unfair competition or inmate exploitation be refuted. The Percy legislation requires comparable wages for certified projects. In addition, only at this level will wage deductions be meaningful. The level of inmate pay is the litmus test of the model proposed here. It has been demonstrated that an inmate work force can produce at competitive quality and quantity levels under favorable circumstances. It is also true that there are certain unusual costs associated with the prison environment and the skill and experience limitations of the inmate population. However, those costs should be offset through incentives, not a reduction in wages. Many private-sector prison industries have been based on entry-level, unskilled labor where minimum wages are appropriate. However, in other cases higher wages are justified and should be paid. Comparable wage levels for inmate workers can be calculated easily when the private-sector prison industry has been established as a satellite or counterpart of a company operation in the community and inmate workers are performing essentially the same tasks and producing at the same quality and quantity levels as outside workers.

Combined public and private capital investment.

When both parties invest, both maintain an interest in the project's success and both gain a financial advantage. Public-sector investment may be limited to providing an already existing building within

which the venture is housed, in which case no additional funds are required. On the other hand, substantial building modifications or even construction of a new building may be necessary. Although funding of building modifications by a private company is not uncommon, capital investment by the private sector generally takes the form of providing all or most of the production equipment. As a result of joint investment, both parties achieve a measure of fiscal relief. Corrections authorities need not rely on strained corrections budgets to equip the venture, and private companies are given access to space and utilities as well as training resources in some cases.

Treatment of Inmates as Employees.

Non-discrimination against prisoners in the provision of employee benefits and payment of taxes is an additional requirement of the Percy legislation, but it also is necessary if the work experience is to reflect free-world conditions. Federal and state legal requirements for the payment of taxes and provision of employee benefits must be observed. Inmate workers must meet their legal obligations of income, social security, and other federal, state, and local taxes required in the area in which they work. The employer must handle the necessary paperwork. The employer also must meet state requirements for worker benefits, such as workers' compensation. Optional benefits, such as sick leave and vacation pay, are dependent on individual circumstances. Most private-sector prison industries are small businesses that provide few if any optional benefits for their employees. When larger companies are involved, a benefit package similar to that offered civilian employees of the organization would provide ample protection against charges of inmate exploitation.

Location on prison grounds.

The largest number of prisoners will be eligible to work in the venture if it is located inside the prison perimeter. At least one successful operation is based in the community with inmates transported daily to and from work, but this arrangement seems to have little effect on the prison itself. Operating on prison grounds results in a high degree of project visibility, permits inmates of higher security classifications to work in the project, and results in more positive impact on behavior of the inmate population as well as on the flexibility of the institution and its operating procedures.

From a public policy perspective the location of a business on prison grounds represents the ultimate evolution of private-sector

involvement in the prison work program. Part of the value of private-sector involvement is in helping to instill in the institutional environment some important elements of the outside world and in bridging gaps between the prison and the community. The benefits of maximum private-sector involvement also include educating representatives of the outside world to the realities and problems of prisons and inmates. For the sake of staff and inmates alike it is important for society to maintain close ties with the prison.

There are benefits for the private company as well. The experience of joint ventures created in the business world to transfer technology to developing countries is instructive here.[5] There is a marked similarity between such enterprises and private-sector prison industries of the kind envisioned in this model. Like the government of the foreign country involved in a joint venture for technology transfer purposes, the prison administration imposes certain conditions on the private company and also must adjust to the firm's business-related needs. Each learns from the other, and the two must work together harmoniously if the venture is to succeed. In the process, the culture of the prison (and possibly also of the firm) is altered as inmates and prison managers absorb the productivity ethos and adopt the profit motivation of the private-sector world. The result may be increased efficiency and productivity of the prison-based enterprise.

Summary

Tremendous energy could result from developing strategies such as those discussed at the outset of this chapter. Perhaps the most important strategy for those interested in the long-term expansion of private-sector prison industries is to be cautious about over-selling the idea. Private-sector prison industries are not a panacea for the ills of correctional systems. Limits set by space, security requirements, geography, and the ability and willingness of corrections departments to commit the necessary resources will affect participation. Private-sector prison industries will not provide opportunities for all inmates, and, even for those for whom they do provide a chance, they are no guarantee of success after release. Nor will they rescue American business from changes in the economy.

However, private-sector prison industries can offer important benefits to each of these groups. Today, when governments at all levels are unable to support costly social experiments, private-sector prison industries offer an unusual opportunity to address some of the challenges facing the public sector with private-sector expertise. These ventures are an obvious testing ground, given the public sector's need and the private sector's expertise.

The findings of this report show that private-sector prison industries can generate positive results:

- Such ventures make good business sense for certain types of companies;
- Corrections agencies have had positive results from such ventures to date;
- Prisoners seek opportunities to work for private firms and are capable of producing quality goods and services;
- Taxpayers benefit in tangible and intangible ways; and
- The idea is politically appealing for a variety of reasons.

Nonetheless, entry of the private sector into the prison workplace is a controversial idea. Historically it has been handled badly, and even modern experiments sometimes have had unpleasant consequences. Private-sector prison industries have generated much comment and can easily raise false hopes and false fears. On the other hand, the concept is extremely powerful—work has always been seen as an answer to social problems in the United States, and the crisis in the prisons is one of the nation's most serious. The private sector knows how to operate a business better than anyone else and exposure to the methods and standards of private business is valuable experience for inmates who wish to engage in productive work upon release.

It is never simple to effect a shift in labor policy, even where, as in this case, the total number of jobs involved would be less than one-half of one percent of the jobs currently held by free-world workers. Change usually is difficult, and this is no exception. Public- and private-sector managers are uneasy about such partnerships, and those who must compete with the new ventures are instinctively wary, unsure of what they might lose in the process.

In fact, there will be both winners and losers in the short run. Virtually any job performed by a prisoner is a job not performed by a non-prisoner, which is why the prospect of widespread expansion of private-sector prison industries is a matter of concern for policy makers. If the nation is serious about providing opportunities for change to the men and women who fill the prisons—for the benefit of inmates and of society—will the necessary adjustments be made? The ultimate goal is a societal one: to use private-sector business expertise to open a pathway for those at the very bottom of the social order who might otherwise continue to fail at their own and society's expense. No one questions the need for creative approaches to the growing prison crisis, or the need for all segments of society to share responsibility for the development of positive options for prisoners.

Future growth in the number of private-sector prison industries will require the support of both the public and the private sectors. However, in the long run, the primary energy will have to come from the private sector. The nation's prisons and jails are filled to overflowing with men and women who are, for the most part, representative of society's underclass. Resources for housing them, let alone programs that might improve their chances of becoming productive citizens, are stretched to the breaking point. Moreover, prison administrators as a group are neither entrepreneurs nor economic developers. But most of those who have hosted private-sector prison industries consider them a success, want more of them, and are willing to make what accommodations they can for their development.

Economic conditions also will play a role. In a robust economy threats to organized labor and private enterprise are minimized, and the climate for favorable legislation is enhanced. Conversely, difficult economic conditions portend difficult political conditions.

There is no doubt that opportunities will continue to exist for the prison labor force in the changing national economy. The question remains whether those opportunities can be realized by private-sector prison industries competing fairly and equitably in the business world.

Endnotes

1. Criminal Justice Associates, *Private Sector Involvement in Prison-Based Businesses: A National Assessment*, November 1985. Produced under grant #83-IJ-CX-K451 from the National Institute of Justice.
2. American Correctional Association, *Directory*, College Park, Md., 1986.
3. P.L. 95-66, November 6, 1978, as amended by the Tax Reform Act of 1986.
4. Connecticut, Nebraska, South Carolina, and Strafford and Belknap Counties, N.H., are taking part in NIJ's planning effort.
5. For more information on the technology transfer process, see: J.A. Jolly, J.W. Creighton, and P.A. George, *Technology Transfer Process Model and Annotated Selected Bibliography*, (Monterey, CA: Naval Postgraduate School, August 1978).

Appendices

Regional Police Services

by

Frank A. Hackett

November 27, 1989

Instructor: David Mercier

Kennebec County, like the rest of the counties in Maine, contains a proliferation of municipal police departments, a sheriff's department and the state police.

Of Kennebec County's 29 organized municipalities approximately 8 cities and towns will have police departments consisting of one or more full-time officers. Towns without an organized police department will receive police services from the sheriff's department, state police or constables.

It is difficult to generalize about Kennebec County police departments since they vary so much in size. Some of the larger departments handle practically all criminal investigations within the municipality, some of the smaller departments routinely rely on the sheriff's department, state police or constables to perform this function. It is noticeable that the smaller municipalities have difficulty maintaining efficient police departments. The multiplicity of small police departments results in excessive duplication of facilities and staff positions.

The solution to police services is not easy. Various possibilities will suggest themselves.

The time is certainly ripe to think about the problems of police work. Anyone who starts to examine the police in Kennebec County immediately notice some areas of concern.

Law Enforcement in Kennebec County is conducted on three

levels, the sheriff, the state police and the municipal police departments. Thus, for any given crime (except murder which is handled by state police) there may be three separate police agencies with jurisdiction to investigate. Whether they cooperate may be a matter of chance or a questions of the personality of the individuals involved. The existing system at times has lead to duplication of effort, inefficiency and waste of resources.

There are numerous possibilities for remodeling the police services in Kennebec County. For a plan to be developed that is best suited to meet the needs of the county, political compromise should be avoided.

All of the problems in the police area are interrelated. The solution to the problems would depend on how great of a role the county is prepared to assume.

In 1970 a special committee of the (MCJPAA) Maine Criminal Justice Planning and Assistance Agency recommended that its funding for that year be devoted to an intensive study of the criminal justice system in Maine. It was unfortunate that the board did not appreciate the value and need for such a study and focused its energy elsewhere. The MCJPAA identified and evaluated the services demanded of and delivered by our police agencies in Maine - municipal, county and state. The study looked at the demographic characteristics of the state and the crime pattern of the state and determined the most effective

means of delivering the services required. The study outlined several alternatives which included dividing the state into 20 law enforcement districts.[1] This plan now sits on a shelf at the Maine Criminal Justice Academy library in Waterville.

Let's look at how a plan like this might work in Kennebec County. In the process of beginning to organize the county police services it will be important to establish a direction. The direction should be as follows.

A. Improvement of police services

B. Reduction of crime

This direction will require major organization and operational improvements. This of course will involve some type of funding. However, funding alone will not guarantee that the crime rate will be reduced. Funding must be the product of plans developed to address complex questions such as:

1. What are the problems and solutions?
2. What are the reasons for agencies being unsuccessful in curbing crimes?
3. What organizational and or operational changes and improvements would be necessary to strengthen the effectiveness of the county law enforcement agencies in coping with major crime problems?
4. What will the cost be for changes?
5. How will these changes be financed?

6. What agency or agencies will implement them?[2]

Many of these questions will be difficult to answer and, more importantly their solution cannot be implemented effectively by a single agency or a single community acting alone. For the purpose of improving Kennebec County's law enforcement services, two major objectives should be considered.

1. Reducing the incidences of non-service and limited service.
2. Upgrading the quality of services and functions.[3]

As mentioned earlier a concern about consolidating police agencies is political compromise. The general acceptance by the county in general is public opinion. In making this assessment, four types of groups should be included if a group is formed to study the regionalization concept. They are:

A. Members of the law enforcement community (i.e., Sheriff, County Commissioners, Police Chiefs, and Town Managers)
B. Local elected officials and/or designated law enforcement liaison from recipient jurisdictions.
C. Citizens who have had contact with local police departments (i.e. persons who have filed a complaint, reported a crime or requested a service).
D. Members of the media, especially editors of local newspapers.

These groups with their involvement and discussions will

recognize that at some point in the future the rising costs of government will create a need to consolidate or contract services. Under this definition, a contract city is one that believes that certain major services are more economically and efficiently provided on a regional basis; and that regional services, unlike regional government, do not eliminate or erode local control or the home rule concept. Contract law enforcement services will provide the following:

Lower costs for services

These are some of the advantages for contracting law enforcement services. Major start-up costs can be avoided which include building, purchasing or leasing a police station, vehicle and equipment purchases, and administration. Money can be used in towns for capital improvements such as street improvements or other capital improvements.

Consistent level of service

When contracting for police services, cities receive a specified number of units (number of patrol cars) to patrol city streets and to perform traffic enforcement. This type of contract allows for cities to agree on services provided at a maximum of 24 hours per day.

Personnel Management

Cities with contract law enforcement services need not use

their city resources to handle personnel management matters such as labor negotiations, disciplinary hearings, recruitment, training, supervision and payroll. In addition, the cities are not subject to claims or lawsuits against the police department. These management responsibilities and liabilities are included in the contract rate for police services.

Equipment and Vehicle Utilization

Cities with contract for law enforcement services are guaranteed a specified number of vehicles and equipment. If police cars malfunction or are out of service for maintenance, the down time needed does not adversely affect the city's access to police cars. Also, by paying a unit rate, the city need not budget separately for the replacement and the maintenance cost of their vehicle fleet.

Management control of police expenditures

Cities may have more control of police expenditures with a contractual arrangement because they can negotiate the amount and type of police services that will be provided and funded within their city. The expenditure is predictable throughout the year, and any variance or cost is reported to the city.

Flexibility of changing police officer assignments

Individual officers can be moved to a new area if there is dissatisfaction with their performance or personality conflicts.

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Gaining Public Acceptance

It will be important to gain public acceptance in order to merge police services. The process of gaining this acceptance must be directed towards informing the public about the concept and it must be accomplished in such a way that the arguments against the merger are addressed.

The people who will oppose smaller agency consolidation will vary. They will include persons who disagree with the concept; persons who are generally uninformed about the concept and resistant to change; and, persons who feel they will be adversely affected by the change. This group includes the police chiefs and police officers of agencies that will be abolished; elected officials whose span of authority includes the local police department; and, residents and merchants who feel that reorganization will reduce the quality of patrol coverage.

Although valid in some instances, the arguments of the opposition are frequently uninformed. One sided views of the costs and negative stories of police services should be expected.

When dealing with the arguments opposed to consolidation, it is important to remember that many people may have or will have an incomplete understanding of the facts. Citizens who may be in favor of law enforcement improvements, may oppose consolidation because they did not fully understand the pros and cons of the concept. In order to avoid professional confrontations,

harshness and bickering between proponents and opponents public acceptance must be based on positive merits.

Several steps can be taken for gaining public acceptance in a positive fashion. These include the following:

* Obtain comprehensive media coverage so that the pubic is regularly informed about the pros and cons of the merger.

* The campaign should be well organized and should seek the support and involvement of people well-known and respected in the community.

* The public should not be told that the consolidation will cost less. Realistically mergers can, at best, provide improved levels of service at a cost less than would be possible under individual local law enforcement agencies.

* "Fact sheets" should summarize the key features of the merger in an easy to understand format. The "fact sheets" should also discuss why consolidation is needed, and the problems that this approach will resolve.

* Through public presentations, as well as other means, discussion of consolidation should be explained with examples of why the current system is in need of change (i.e. investigations mismanaged because of interjurisdictional conflicts, etc.).[4]

Law Enforcement Contract Model

With all towns and municipalities agreeing, the Kennebec County Sheriff's Department could with their help consolidate all local law enforcement agencies and provide county-wide contract services. The state police would remain separate and would be responsible for highway patrol and specialized services.

The Sheriff's Department could be divided into five divisions and five field locations, each commanded by a captain who reports to the Sheriff.

The Department's five field locations perform patrol services in contract cities and rural towns. The Department's remaining five divisions are the Administrative, Court Services, Custody, Detective and Technical Services. These divisions support the contract law enforcement locations.

The Department's investigative and patrol services are performed on a twenty-four hours basis from the five field locations.

Regional detectives investigate local crimes in their regions while crimes such as rape, narcotics, and arson are investigated by a separate detective division.

The captain fills the role of Chief of Police for the contract cities served by his or her region and maintains a close relationship with the city officials. It is the captains responsibility to ensure that the needs and desires of contract city officials are addressed and that an adequate level of

service is provided.

In addition to providing patrol and investigative services, the Sheriff's Department offers a broad spectrum of support services which are readily available from the nearby regional centers and from specialized divisions. Uniform operating procedures, common radio frequencies, and a united command structure, enable the Sheriff's Department to function as a highly efficient law enforcement agency when handling local emergencies and county-wide disasters. Support services provided by the department include:

-- Emergency Operations Bureau (disaster planning services)

-- Consolidated records, communications and automotive management systems.

-- Special Enforcement Bureau

A. Child Sex Abuse

B. Narcotics

C. Arrest Warrants

D. Prisoner Transportation

E. Drunk Driving Enforcement

F. Child Safety Programs

-- Special Services Bureau

A. K-9 (police Dogs)

B. Snowmobiles

C. Boats

Cities do not necessarily need to contract services with the Sheriff's Department. They may contract from city to city. Law enforcement programs may vary from two cities sharing a single patrol car, to several large cities sharing the costs of numerous patrol units.

1. Regional law enforcement programs eliminate the need to deploy patrol cars strictly to city jurisdictional boundaries; therefore, cities can benefit mutually by sharing adjacent resources.

2. Patrol cars can be deployed more effectively according to each cities needs during different hours of the day.

3. The cost of each participating city is decreased because of the total costs of police personnel is utilized more efficiently.

Regional costs are distributed among the participating cities. The most reliable way to base regional costs is on the actual records of law enforcement services performed during a prior period of time. Present performance then becomes a predictor of future cost allocations.

Summary

Dwindling economic resources and pervasive crime patterns will force cities with established police departments and higher per capita law enforcement costs to explore alternative policing

models. In order to save money and improve the cities ability to deliver municipal law enforcement services contracting for law enforcement services will offer a viable approach to reducing costs, while retaining high quality service.

MAINE SHERIFFS' ASSOCIATION

Frank A. Hackett, President
Sheriff, Kennebec County

Dear Sheriff:

Each year, the State of Maine Department of Public Safety publishes a Uniform Crime Report to law enforcement agencies known as UCR.

The UCR reports the following crimes: murder, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson. The report identifies crime, county by county, rural and urban, and complaints handled by municipal departments, sheriff's departments, and state police.

The following report examines the number of crimes reported to sheriff's deputies and state troopers and includes a comparison of the number of personnel assigned to patrol and civilian duties.

From 1984-1990, a total of 48,645 crimes were reported to both sheriff's deputies and state troopers. During this seven year period, 32,634 or 67% of crimes were answered by sheriff's deputies while 16,011 or 33% were answered by the state police. (see pages 1-8)

A breakdown for each county during this seven year period is included. (see pages 9-12)

In the year 1984, the number of patrol deputies in Maine totalled 251, while the state police employed 334 troopers. Six years later, in 1990, the patrol deputies decreased by 19% to 201, while the state police increased by 5% to 350. Combined, 551 deputies and troopers are responsible for patrolling rural areas of the State of Maine. While the deputies respond to 68% of the reported crime, they are doing so with just 36% of the work force. The state police, who respond to 33% of the reported crime, are doing so with 64% of the work force. (see page 13)

The civilian work force identifies a loss of employees for sheriffs' departments, while an increase in employees for state police. In 1984, sheriffs' departments employed 128 employees, while the state police employed 140 employees. Six years later, in 1990, sheriffs' departments employed 80, while the state police employed 136. The percentage of change indicates a 38% reduction in county employees since 1984, while the state police

decreased its civilian force by 3%. (see page 13)

According to the UCR report for 1990, the 16 Maine Sheriffs' Departments answered 68.18% of reported crimes in the rural areas. Although the average percentage of crimes reported to the sheriffs' departments vs. the state police from 1984-1990 is 67%, the 1989 and 1990 percentage of crimes reported was higher than the seven year average.

In summary, sheriffs' departments employ 201 deputies and 80 civilians for a total of 281 employees, while the state police employ 350 troopers and 136 civilians for a total of 486 employees. This comparison shows that sheriffs' departments are 37% of the combined patrol-civilian work force responding to 68.1% of the reported crimes, while the state police are 63% of the combined patrol-civilian work force responding to 31.9% of the reported crimes.

Report prepared by: Sheriff Frank A. Hackett
August 15, 1991

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1984-1990	48,645
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	32,634
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	16,011
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	67%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	33%

Index crimes include the following reported crimes:

Murder	Burglary
Rape	Larceny
Robbery	Motor Vehicle Theft
Aggravated Assault	Arson

1990 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
ANDROSCOGGIN	90	313	78	22	244	69
AROOSTOOK	90	652	27	73	173	479
CUMBERLAND	90	845	88	12	734	111
FRANKLIN	90	465	91	9	421	44
HANCOCK	90	509	90	10	456	53
KENNEBEC	90	806	45	55	366	440
KNOX	90	322	81	19	262	60
LINCOLN	90	265	87	13	230	35
OXFORD	90	549	82	18	450	99
PENOBSCOT	90	907	70	30	635	272
PISCATAQUIS	90	201	90	10	181	20
SAGADAHOC	90	209	96	4	201	8
SOMERSET	90	539	62	38	335	204
WALDO	90	259	65	35	168	91
WASHINGTON	90	261	55	45	145	116
YORK	90	737	47	53	344	393

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1990	7839
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	5345
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2494
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	68.18%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	31.82%

Index crimes include the following reported crimes:

- Murder
- Rape
- Robbery
- Aggravated Assault
- Burglary
- Larceny
- Motor Vehicle Theft
- Arson

1989 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
DROSCOGGIN	89	358	83	17	297	61
OOSTOOK	89	569	22	78	127	442
MBERLAND	89	788	90	10	706	82
ANKLIN	89	388	96	4	374	14
NCOCK	89	525	91	9	480	45
NNEBEC	89	670	51	49	339	331
OX	89	227	67	33	151	76
NCOLN	89	263	75	25	198	65
FORD	89	193	51	49	99	94
NOBSCOT	89	861	72	28	622	239
SCATAQUIS	89	145	87	13	127	18
GADAHOC	89	242	93	7	224	18
MERSET	89	461	70	30	324	137
LDO	89	216	56	44	121	95
SHINGTON	89	386	55	45	212	174
RK	89	683	54	46	371	312

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1989	6,975
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,772
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,203
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	68.4%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	31.6%

Index crimes include the following reported crimes.

Murder	Burglary
Rape	Larceny
Robbery	Motor Vehicle Theft
Aggravated Assault	Arson

1988 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
NDROSCOGGIN	88	382	81	19	311	71
ROOSTOOK	88	454	30	70	105	349
UMBERLAND	88	713	86	14	650	63
RANKLIN	88	343	71	29	244	99
ANCOCK	88	492	89	11	436	56
ENNEBEC	88	646	31	69	198	448
NOX	88	161	58	42	93	68
INCOLN	88	198	67	33	133	65
XFORD	88	249	67	33	167	82
ENOBSCOT	88	717	67	33	477	240
ISCATAQUIS	88	111	85	15	94	17
AGADAHOC	88	261	97	03	252	9
OMERSET	88	463	63	37	290	173
ALDO	88	219	58	42	128	91
ASHINGTON	88	436	61	39	268	168
ORK	88	593	64	36	378	215

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1988	6,438
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,224
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,214
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	65.6%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	34.4%

Index crimes include the following reported crimes.

- Murder
- Rape
- Robbery
- Aggravated Assault
- Burglary
- Larceny
- Motor Vehicle Theft
- Arson

1987 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
ANDROSCOGGIN	87	324	83	17	269	55
AROOSTOOK	87	558	20	80	110	448
CUMBERLAND	87	818	87	13	713	105
FRANKLIN	87	473	82	28	342	131
HANCOCK	87	535	84	16	452	83
KENNEBEC	87	474	24	76	113	361
KNOX	87	169	52	48	88	81
LINCOLN	87	186	75	25	141	45
OXFORD	87	196	44	56	87	109
PENOBSCOT	87	691	34	66	453	238
PISCATAQUIS	87	144	83	17	119	25
SAGADAHOC	87	250	96	4	239	11
SOMERSET	87	367	74	26	273	94
WALDO	87	228	68	32	155	73
WASHINGTON	87	451	60	40	269	182
YORK	87	583	60	40	347	236

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1987	6,447
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,170
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,277
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	64.6%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	35.4%

Index crimes include the following reported crimes.

- Murder
- Rape
- Robbery
- Aggravated Assault
- Burglary
- Larceny
- Motor Vehicle Theft
- Arson

1986 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
ANDROSCOGGIN	86	396	80	20	316	80
AROOSTOOK	86	623	26	74	164	459
CUMBERLAND	86	922	91	9	842	80
FRANKLIN	86	449	71	29	318	131
HANCOCK	86	398	83	17	341	57
KENNEBEC	86	495	22	78	107	388
KNOX	86	238	60	40	144	94
LINCOLN	86	169	79	21	134	35
OXFORD	86	268	79	21	213	55
PENOBSCOT	86	642	66	34	425	217
PISCATAQUIS	86	132	85	15	112	20
SAGADAHOC	86	264	95	5	252	12
SOMERSET	86	383	64	36	246	137
WALDO	86	237	80	20	189	48
WASHINGTON	86	348	66	34	230	118
YORK	86	660	70	30	465	195

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1986	6,624
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,498
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,126
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	68.0%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	32.0%

Index crimes include the following reported crimes.

Murder	Burglary
Rape	Larceny
Robbery	Motor Vehicle Theft
Aggravated Assault	Arson

1985 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
NDROSCOGGIN	85	391	88	12	344	47
ROOSTOOK	85	637	28	72	181	456
UMBERLAND	85	925	90	10	828	97
RANKLIN	85	472	69	31	325	147
ANCOCK	85	461	75	25	345	116
ENNEBEC	85	610	37	63	221	389
NOX	85	229	66	34	152	77
INCOLN	85	252	88	12	223	29
XFORD	85	479	83	17	398	81
ENOBSCOT	85	637	60	40	387	250
ISCATAQUIS	85	198	86	14	171	27
AGADAHOC	85	281	95	5	267	14
OMERSET	85	381	65	35	247	134
ALDO	85	373	76	24	282	91
ASHINGTON	85	291	56	44	163	128
ORK	85	590	67	33	393	197

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1985	7,207
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,927
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,280
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	68.0%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	32.0%

Index crimes include the following reported crimes.

- Murder
- Rape
- Robbery
- Aggravated Assault
- Burglary
- Larceny
- Motor Vehicle Theft
- Arson

1984 UCR REPORT

COUNTY	YEAR	# INDEX CRIMES	% SHERIFF	% STATE	# SHERIFF	# STATE
ANDROSCOGGIN	84	384	88	12	337	47
AROOSTOOK	84	592	29	71	171	421
CUMBERLAND	84	848	85	15	718	130
FRANKLIN	84	429	58	42	247	182
HANCOCK	84	514	84	16	434	80
KENNEBEC	84	681	46	54	297	384
KNOX	84	168	57	43	95	73
LINCOLN	84	205	81	19	167	38
OXFORD	84	449	76	32	341	108
PENOBSCOT	84	682	58	42	397	285
PISCATAQUIS	84	182	85	15	155	27
SAGADAHOC	84	300	95	5	284	16
SOMERSET	84	327	55	45	181	146
WALDO	84	376	77	23	291	85
WASHINGTON	84	380	53	47	200	180
YORK	84	598	64	36	383	215

TOTAL NUMBER INDEX CRIMES REPORTED FOR YEAR 1984	7,115
TOTAL NUMBER INDEX CRIMES REPORTED TO SHERIFFS	4,698
TOTAL NUMBER INDEX CRIMES REPORTED TO STATE POLICE	2,417
PERCENT OF CRIMES REPORTED TO THE SHERIFFS	66.0%
PERCENT OF CRIMES REPORTED TO THE STATE POLICE	34.0%

Index crimes include the following reported crimes.

- Murder
- Rape
- Robbery
- Aggravated Assault
- Burglary
- Larceny
- Motor Vehicle Theft
- Arson

UCR REPORT OF YEARS 1984 - 1990

COUNTY	YEAR	# INDEX CRIMES	# SHERIFF	% SHERIFF	# STATE	% STATE
ANDROSCOGGIN	84	384	337	88	47	12
	85	391	344	88	47	12
	86	396	316	80	80	20
	87	324	269	83	55	17
	88	382	311	81	71	19
	89	358	297	83	61	17
	90	313	244	78	69	22
AROOSTOOK	84	592	171	29	421	71
	85	637	181	28	456	72
	86	623	164	26	459	74
	87	558	110	20	448	80
	88	454	105	30	349	70
	89	569	127	22	442	78
	90	652	173	27	479	73
CUMBERLAND	84	848	718	85	130	15
	85	925	828	90	97	10
	86	922	842	91	80	9
	87	818	713	87	105	13
	88	713	650	86	63	14
	89	788	706	90	82	10
	90	845	734	88	111	12
FRANKLIN	84	429	247	58	182	42
	85	472	325	69	147	31
	86	449	318	71	131	29
	87	473	342	82	131	28
	88	343	244	71	99	29
	89	388	374	96	14	4
	90	465	421	91	44	9
HANCOCK	84	514	434	84	80	16
	85	461	345	75	116	25
	86	398	341	83	57	17
	87	535	452	84	83	16
	88	492	436	89	56	11
	89	525	480	91	45	9
	90	509	456	90	53	10

UCR REPORT OF YEARS 1984 - 1990

COUNTY	YEAR	# INDEX CRIMES	# SHERIFF	% SHERIFF	# STATE	% STATE
KENNEBEC	84	681	297	46	384	54
	85	610	221	37	389	63
	86	495	107	22	388	78
	87	474	113	24	361	76
	88	646	198	31	448	69
	89	670	339	51	331	49
	90	806	366	45	440	55
KNOX	84	168	95	57	73	43
	85	229	152	66	77	34
	86	238	144	60	94	40
	87	169	88	52	81	48
	88	161	93	58	68	42
	89	227	151	67	76	33
	90	352	262	81	60	19
LINCOLN	84	205	167	81	38	19
	85	252	223	88	29	12
	86	169	134	79	35	21
	87	186	141	75	45	25
	88	198	133	67	65	33
	89	263	198	75	65	25
	90	265	230	87	35	13
OXFORD	84	449	341	76	108	32
	85	479	398	83	81	17
	86	268	213	79	55	21
	87	196	87	44	109	56
	88	249	167	67	82	33
	89	193	99	51	94	49
	90	549	450	82	99	18
PENOBSCOT	84	682	397	58	285	42
	85	637	387	60	250	40
	86	642	425	66	217	34
	87	691	453	34	238	66
	88	717	477	67	240	33
	89	861	622	72	239	28
	90	907	635	70	272	30

UCR REPORT OF YEARS 1984 - 1990

COUNTY	YEAR	# INDEX CRIMES	# SHERIFF	% SHERIFF	# STATE	% STATE
PISCATAQUIS	84	182	155	85	27	15
	85	198	171	86	27	14
	86	132	112	85	20	15
	87	144	119	83	25	17
	88	111	94	85	17	15
	89	145	127	87	18	13
	90	201	181	90	20	10
SAGADAHOC	84	300	284	95	16	5
	85	281	267	95	14	5
	86	264	252	95	12	5
	87	250	239	96	11	4
	88	261	252	97	9	3
	89	242	224	93	18	7
	90	209	201	96	8	4
SOMERSET	84	327	181	55	146	45
	85	381	247	65	134	35
	86	383	246	64	137	36
	87	367	273	74	94	26
	88	463	290	63	173	37
	89	461	324	70	137	30
	90	539	335	62	204	38
WALDO	84	376	291	77	85	23
	85	373	282	76	91	24
	86	237	189	80	48	20
	87	228	155	68	73	32
	88	219	128	58	91	42
	89	216	121	56	95	44
	90	259	168	65	91	35
WASHINGTON	84	380	200	53	180	47
	85	291	163	56	128	44
	86	348	230	66	118	34
	87	451	269	60	182	40
	88	436	268	61	168	39
	89	386	212	55	174	45
	90	261	145	55	116	45

UCR REPORT OF YEARS 1984 - 1990

COUNTY	YEAR	# INDEX CRIMES	# SHERIFF	% SHERIFF	# STATE	% STATE
YORK	84	598	383	64	215	36
	85	590	393	67	197	33
	86	660	465	70	195	30
	87	583	347	60	236	40
	88	593	378	64	215	36
	89	683	371	54	312	46
	90	737	344	47	393	53

	COUNTY SHERIFF			STATE POLICE		
YEAR	Patrol	Civilian	Total	Patrol	Civilian	Total
1984	251	128	379	334	140	474
1985	236	96	332	347	189	536
1986	180	72	252	379	190	569
1987	188	62	250	373	201	574
1988	186	78	264	371	227	598
1989	197	77	274	360	223	583
1990	201	80	281	350	136	486

PATROL

Date	Total	Sheriff %	State %
1984	585	43%	57%
1985	583	40%	60%
1986	559	32%	68%
1987	561	34%	66%
1988	557	33%	67%
1989	557	36%	64%
1990	556	36%	64%

CIVILIAN

Date	Total	Sheriff %	State %
1984	268	48%	52%
1985	285	34%	66%
1986	262	27%	73%
1987	263	24%	76%
1988	305	26%	74%
1989	300	26%	74%
1990	216	37%	63%

U.S. Department of Justice
National Institute of Justice

National Institute of Justice / Research Report

James K. Stewart, Director

Issues in Contracting for the Private Operation of Prisons and Jails

U.S. Department of Justice
National Institute of Justice

Issues in Contracting for the Private Operation of Prisons and Jails

by
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October 1987

NCJ 104330

National Institute of Justice

James K. Stewart
Director

This project was supported by grant number 85–IJ–CX–0068 awarded to The Council of State Governments by The National Institute of Justice, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Assistant Attorney General, Office of Justice Programs, provides staff support to coordinate the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

Abstract

Prison and jail crowding is a priority State legislative agenda item. There has been an increasing interest in the potential of reducing the cost of government and the size of the public payroll through the use of private contracts for the operation of State and local correctional institutions. The authors, researchers from the Council of State Governments and the Urban Institute, provide practical recommendations to public officials for their consideration before and after choosing the contracting option.

This research discusses a variety of trends in contracting for State correctional facilities and provides the reader with experiences of other public entities that have made a contracting decision. It also clarifies important issues that have developed in the privatization effort.

The major issue areas involve the legal aspects of contracting, policy and program planning, requests for proposals and contract agreements, and contract monitoring and evaluation methods.

The study will be a valuable tool to public officials in the decisionmaking process of contracting, as well as in the planning, implementation, and evaluation efforts. Recommendations are provided where there is agreement among the experiences of government officials, where there are strong advantages or disadvantages to certain approaches, or where legal precedents have been set.

Acknowledgments

The authors are indebted to the many State and local officials who contributed their time, thoughts, and perspectives throughout the course of the study. Special thanks are due to Doug Sapp and Cheryl Roberts of the Corrections Cabinet in the State of Kentucky for graciously consenting to let us use their experiences as a case study, and for carefully reading and commenting on earlier drafts of this report. We also wish to thank the many representatives of private firms who provided information for the report. They are full partners in new partnerships with government, and demonstrated a noteworthy willingness to share their experiences with us.

We appreciate the support and interest of many individuals at the National Institute of Justice, and their reviewers, who offered advice during the study. Ms. Voncile B. Gowdy, our project monitor, was a valuable resource throughout our work.

While the report is very much the product of all members of the research team, we acknowledge the following primary authors: Chapter II, Trends in contracting for State correctional facilities by Keon Chi; Chapter III, Legal issues in contracting for State correctional facilities by Edward D. Feigenbaum; Chapter IV, Policy and program issues before deciding to contract by Robert B. Levinson; and Chapter V, Requests for proposals and contract issues, and Chapter VI, Contract monitoring and evaluation by Harry P. Hatry. Joan Allen's hard work in preparing extensive reviews of the literature and providing issue-specific references is also gratefully acknowledged. Team members reviewed and commented on all sections, making valuable contributions to each from their own perspectives.

The reader is invited to use this work as a preliminary analysis, a place to begin, and to learn from other's experiences. Each issue could be the subject of indepth research, and is not intended to be an exhaustive treatment of the subject. We thank the State and local government officials who will read this report, learn from it, and become the future innovators.

Executive summary

Scope

The problem of correctional facility crowding has been high on the legislative agendas of many States during recent years. During the last 5 years, we have also seen increasing interest in the potential of reducing the cost of government and the size of the public payroll through the use of private contracts for public service delivery.

This study presents an analysis of the policy and program implications of one of the more controversial applications of the private contracting method to public services: contracting with the private sector for the operation and management of correctional facilities. The authors have examined the experiences to date of State and local governments that have chosen the contracting option, and provide suggestions for other public officials to aid their consideration of contracting options.

No attempt is made to evaluate the merits of various contractors, nor does the report presume to prescribe a method which all public entities should follow. Nor did this study attempt to conduct a cost-effectiveness analysis of these early efforts, since very few data are available.

A question-and-answer style presentation allows the reader to distinguish the various aspects of the contracting decision, learn from the experiences of other public entities, and clarify the issues in his or her own situation. Recommendations are provided when the authors found agreement among experiences of government officials, strong advantages or disadvantages of a certain approach, or clear-cut legal precedents.

Methodology

The research team was composed of staff of the Council of State Governments, the Urban Institute, and a consultant experienced in criminal justice matters. The Council of State Governments is a policy research and information agency of the 50 State governments whose team members brought experience in contract management, program design, legal research, and privatization analysis. The Urban Institute is a Washington-based policy research organization whose team members brought experience in local government privatization research, evaluation research, and contract analysis.

The research methodology involved an extensive review of the literature, including both scholarly research and the popular press. We also reviewed studies on contracting correctional services from 22 States. Documents, such as contracts, requests for proposals (RFP's), and inspection reports provided much information about the initial contracting efforts. A final source of data for the study was interviews conducted with corrections agency personnel, contractor personnel, purchasing officials, legislators, and legislative staff. The interviews were conducted both in-person and by telephone and provided the anecdotal data used by the research team in preparing this report.

States and local governments have considerable experience in contracting with private firms for various correctional services such as training, medical care, or even halfway-house operation. However, State and local experience in contracting for the entire operation and management of a secure adult institution is quite limited.

Documents on contracting correctional services were available from twenty-two States: Alabama, Alaska, Arizona, California, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Wisconsin.

We also examined experiences in contracting adult, and some juvenile, secure facilities in both State and local government. These included a State of Kentucky minimum security institution for adult males; Florida, Massachusetts, Pennsylvania, and Shelby County, Tennessee, facilities for severely delinquent youth; an adult facility in Dade County, Florida, (not secure); the Bay County, Florida, jail; a Ramsey County, Minnesota, facility for adult females; and a workhouse in Hamilton County, Tennessee. Both government officials and private vendor staff were contacted. Corporate officials in each of four private, for-profit companies managing corrections facilities were interviewed:

- Corrections Corporation of America.
- U.S. Corrections Corporation.
- RCA Services, Inc.
- National Corrections Management, Inc.

The research methodology included three principal tasks:

1. Development of key issue areas.
2. Examination of existing experiences.
3. Analyses and recommendations.

A consistent interview protocol was used by the research team members and included the following elements:

- History of the contracting effort.
- Scope and size of the facility.
- Security issues.
- Monitoring techniques.
- Problems and solutions.
- Opinions regarding the success of the effort.
- Recommendations.

Table A

Prison privatization: The issues in contracting for State correctional facilities

Legal issues in contracting for State correctional facilities (Chapter III)

1. What are the legal issues in contracting?
2. What liability protection will a government agency and contractor need?
3. How should the responsibility and authority for security be divided between the contracting agency and private operator?
4. What provision is there for protecting inmates' rights, including a mechanism for inmates to appeal decisions affecting them?

Policy and program issues before deciding to contract (Chapter IV)

5. What specific preanalysis should a State undertake prior to the contract decision (e.g., cost analysis, legal issues analysis)?
6. What are the reasons for considering or not considering contracting prison operations with private enterprise, particularly with for-profit firms?
7. How should publicity regarding a change to private operations be handled (e.g., agency, media, public)?
8. Should contracting be done for (a) existing facilities; (b) a new institution replacing an existing facility; and/or (c) a new institution not replacing an existing facility?
9. What level of offender should be assigned to the contracted facility? What are the differences in attempting to contract minimum- versus medium- versus maximum-security facilities? Are there different considerations for contracting facilities for specific populations (i.e., service versus geography, protective custody, mentally ill, women, deathrow, mothers, and children)?
10. How many inmates should the contractor be expected to house? What provisions should be made for fluctuations in that number? What control does the contractor actually have over the number of inmates? Should minimums and/or maximums be established in the contract?
11. How will inmates be selected? Will the private organization be able to refuse certain inmates (e.g., AIDS victims, psychologically disturbed offenders)?
12. What authority and responsibility should a private contractor have for discipline and for affecting the release date of inmates? What will be the relationship of these decisions to the State board of parole?

Requests for proposals and contract issues (Chapter V)

13. Should contracting be competitive or noncompetitive? Are there enough suppliers to provide real competition? What are the relative merits of for-profit and nonprofit organizations as prison operators?
14. What criteria should be used to evaluate private proposals (e.g., percentages for cost and quality of service)?
15. How should the contract price be established and on what basis (e.g., single fixed price, fixed unit-price award, cost plus)? What should be included in the contract price (e.g., unit costs, provisions for price increases or decreases, extent of government control for total costs annually, performance and incentive contracting)?
16. What provisions should be made to reduce service interruptions and their impacts (e.g., problems with transition periods, defaults by contractors, work stoppages, fallback provisions)? Should there be provisions to protect the private contractor (e.g., government obligations)?
17. What standards should be required in RFP's and contracts?
18. What should be the duration of the contract and provisions for renewals?
19. What provisions are needed for monitoring in the RFP and contract?
20. What provisions should be made to address concerns of public correctional agency employees (e.g., disposition of laid-off public employees after private takeover)?

Contract monitoring and evaluation (Chapter VI)

21. How should contractor performance be monitored, and to what extent?
22. What results can be expected from contracting (e.g., cost, service effectiveness and quality, work stoppages, illegal activity, timing of the alleviation of crowding, effects on other prisons in system)?
23. How should government evaluate the results of contracting?

Each interview, trip, document, and publication was coded according to the issue to which it pertained. Documents, particularly requests for proposals issued in each jurisdiction, were reviewed. Performance evaluation material was reviewed when available.

An initial list of issues was established by the research team and refined during the course of the project. The final list of decision areas addressed in the report is provided in Table A on the previous page.

The resulting examination of the many decisions faced by public officials provides sound guidance for State officials, without prescribing any single answer to the question: Should we contract? However, the research resulted in many recommendations on policy and procedure that were reviewed and commended by State officials in Kentucky and Florida.

Major conclusions and recommendations

A summary of the conclusions and recommendations of the researchers follows. Each recommendation refers to the issues under which the topic discussed may be found.

1. **Liability.** It is evident that private prison contractors will not be able to escape liability under Section 1983 of the Civil Rights Act, and that the contracting government entity will be unable to protect itself from suits resulting from the wrongful acts of the operator it selects, but it may reduce its exposure.

2. **Type and size of facility.** States that have decided to use private contractors would avoid a series of problems if they were to limit contracting to additional minimum-security beds. "Special needs" prisons also seem relatively well-suited to the contracting option.

Contracts should set maximum and minimum inmate population levels and specify the consequences if these are exceeded. A tiered price structure stating per diem costs for vacant as well as occupied beds is advisable. Finally, the contract should establish a mechanism for resolving disputes.

3. **Contracting.** Thus far, most State and local government agencies have not used fully competitive procedures when contracting for the operation of correctional facilities. This lack of competition does not appear to have been a major obstacle to obtaining good service, costs, or quality. Over the long run, however, it is not the best contracting practice and could lead to major problems. The one State-level secure adult institution contract, Kentucky's Marion Adjustment Center, did involve fully competitive contracting.

At present, few vendors are experienced in operating secure correctional institutions. And there are few government agencies with experience in contracting for the operation of these facilities. Efforts thus far should be characterized as "experimental."

4. **Monitoring and evaluation.** The State's method for monitoring the contract should be specifically stated and should, for larger (e.g., 150-inmate or more) institutions, include an onsite staff member. Costs to house this individual should be agreed to and documented in the contract.

All the contract efforts we examined were weak when detailing provisions for monitoring vendor performance. This applied both to provisions in the contracts (where little was said) and to the agency's subsequent monitoring procedures (which were not well-formulated). Formal performance criteria were usually vague while procedures for conducting the monitoring were limited. Standards included in the contracts dealt with process, but paid little attention to specifying outcomes.

We found only one systematic, indepth evaluation of any of these contracting efforts. This was an evaluation of the State of Florida's Okeechobee school for severely delinquent male youth, funded by the Federal government. Nor did we find plans for indepth assessments of the contract effort in any of the other jurisdictions studied. However, on occasion there were plans, especially at the State level, for periodic reviews of the contractor's performance. The State of Tennessee's Legislature, as part of its May 1986 authorization of a trial contract effort for a medium-security facility, is requiring that an evaluation of comparative costs and service quality be done after the first 2 years. Evaluation is a prerequisite to renewing the contract for an additional 2 years. These examples are all primarily experimental efforts; there is little past experience to go by anywhere in the country. Since the number of private firms available to undertake these efforts were few, some new organizations were formed to bid on and operate the secure correctional facilities.

5. **Impacts.** While based on limited information, our observations indicate that initial contract operations have been reasonably successful—at least in the opinion of the government officials. It is not, however, clear that they have been successful from the perspective of profitability for the private firms. Vendor organizations appear to have made major efforts to do the job correctly.

In only one case, the Okeechobee School for Boys in Florida, was there evidence that major problems existed early in the effort. Even there, a followup visit indicated that many, if not most, of the problems had been corrected. A county workhouse that changed from public to private management initially had substantial staff turnover problems (Hamilton County, Tennessee), but this apparently did not result in major reductions in service quality. This special effort to do a good job is probably due to the private organizations finding themselves in the national limelight, and their desire to expand the market.

6. **Avoiding future problems.** Although a lack of full competitive bidding and careful monitoring of performance may be understandable for the initial trials, second phase efforts will require more attention to establishing: (a) more credible competitions, and (b) comprehensive, formal monitoring requirements and procedures. This applies to future contracts for current providers as well as new private efforts.

Government agencies need greater assurance—for themselves, for elected officials, and for the public—that contracting activities will be administered in a fully appropriate, cost-effective and accountable manner. A strengthened contracting process should not be offensive to the private organizations themselves. Most of the officials of these firms supported full monitoring of their work.

Each interview, trip, document, and publication was coded according to the issue to which it pertained. Documents, particularly requests for proposals issued in each jurisdiction, were reviewed. Performance evaluation material was reviewed when available.

An initial list of issues was established by the research team and refined during the course of the project. The final list of decision areas addressed in the report is provided in Table A on the previous page.

The resulting examination of the many decisions faced by public officials provides sound guidance for State officials, without prescribing any single answer to the question: Should we contract? However, the research resulted in many recommendations on policy and procedure that were reviewed and commended by State officials in Kentucky and Florida.

Major conclusions and recommendations

A summary of the conclusions and recommendations of the researchers follows. Each recommendation refers to the issues under which the topic discussed may be found.

1. **Liability.** It is evident that private prison contractors will not be able to escape liability under Section 1983 of the Civil Rights Act, and that the contracting government entity will be unable to protect itself from suits resulting from the wrongful acts of the operator it selects, but it may reduce its exposure.

2. **Type and size of facility.** States that have decided to use private contractors would avoid a series of problems if they were to limit contracting to additional minimum-security beds. "Special needs" prisons also seem relatively well-suited to the contracting option.

Contracts should set maximum and minimum inmate population levels and specify the consequences if these are exceeded. A tiered price structure stating per diem costs for vacant as well as occupied beds is advisable. Finally, the contract should establish a mechanism for resolving disputes.

3. **Contracting.** Thus far, most State and local government agencies have not used fully competitive procedures when contracting for the operation of correctional facilities. This lack of competition does not appear to have been a major obstacle to obtaining good service, costs, or quality. Over the long run, however, it is not the best contracting practice and could lead to major problems. The one State-level secure adult institution contract, Kentucky's Marion Adjustment Center, did involve fully competitive contracting.

At present, few vendors are experienced in operating secure correctional institutions. And there are few government agencies with experience in contracting for the operation of these facilities. Efforts thus far should be characterized as "experimental."

4. **Monitoring and evaluation.** The State's method for monitoring the contract should be specifically stated and should, for larger (e.g., 150-inmate or more) institutions, include an onsite staff member. Costs to house this individual should be agreed to and documented in the contract.

All the contract efforts we examined were weak when detailing provisions for monitoring vendor performance. This applied both to provisions in the contracts (where little was said) and to the agency's subsequent monitoring procedures (which were not well-formulated). Formal performance criteria were usually vague while procedures for conducting the monitoring were limited. Standards included in the contracts dealt with process, but paid little attention to specifying outcomes.

We found only one systematic, indepth evaluation of any of these contracting efforts. This was an evaluation of the State of Florida's Okeechobee school for severely delinquent male youth, funded by the Federal government. Nor did we find plans for indepth assessments of the contract effort in any of the other jurisdictions studied. However, on occasion there were plans, especially at the State level, for periodic reviews of the contractor's performance. The State of Tennessee's Legislature, as part of its May 1986 authorization of a trial contract effort for a medium-security facility, is requiring that an evaluation of comparative costs and service quality be done after the first 2 years. Evaluation is a prerequisite to renewing the contract for an additional 2 years. These examples are all primarily experimental efforts; there is little past experience to go by anywhere in the country. Since the number of private firms available to undertake these efforts were few, some new organizations were formed to bid on and operate the secure correctional facilities.

5. **Impacts.** While based on limited information, our observations indicate that initial contract operations have been reasonably successful—at least in the opinion of the government officials. It is not, however, clear that they have been successful from the perspective of profitability for the private firms. Vendor organizations appear to have made major efforts to do the job correctly.

In only one case, the Okeechobee School for Boys in Florida, was there evidence that major problems existed early in the effort. Even there, a followup visit indicated that many, if not most, of the problems had been corrected. A county workhouse that changed from public to private management initially had substantial staff turnover problems (Hamilton County, Tennessee), but this apparently did not result in major reductions in service quality. This special effort to do a good job is probably due to the private organizations finding themselves in the national limelight, and their desire to expand the market.

6. **Avoiding future problems.** Although a lack of full competitive bidding and careful monitoring of performance may be understandable for the initial trials, second phase efforts will require more attention to establishing: (a) more credible competitions, and (b) comprehensive, formal monitoring requirements and procedures. This applies to future contracts for current providers as well as new private efforts.

Government agencies need greater assurance—for themselves, for elected officials, and for the public—that contracting activities will be administered in a fully appropriate, cost-effective and accountable manner. A strengthened contracting process should not be offensive to the private organizations themselves. Most of the officials of these firms supported full monitoring of their work.

Recommendations

Contract goals

1. Before contracting, States should undertake a systematic, detailed pre-analysis to determine if, and under what conditions, contracting is likely to be helpful to the corrections system. This analysis should include an examination of whether statutory authority exists, of current State prison costs, crowding, performance, legal issues involved, availability of suppliers, ways to reduce the likelihood and consequences of contractor defaults, and the attitudes of various interest groups (Issue 5).

2. If a government's goal in contracting is to obtain new beds quickly, the private sector offers an attractive alternative. However, if the government seeks a more economical operation, the minimal evidence available to date suggests that contracting does not necessarily save a significant amount of money (Issues 6 and 22).

Protection of inmates/States

3. Careful attention must be devoted to ensure that each contractual component provides adequate protection of the inmate's rights and protects the State from unjust liability claims (Issues 2 and 4).

4. The government can reduce but not eliminate its vulnerability to lawsuits when contracting by specifying in the contract that the government be indemnified against any damage award and for the cost of litigation (Issue 1).

5. The government should consider requiring that a significant performance bond be posted or a trust fund established in order to indemnify it in the event of contractor financial, or other, problems. The agency should, however, determine whether the protection is worth the cost of the bond (Issue 16).

Contracting process

6. Governments should use a competitive bidding process if they decide to contract. This will avoid accusations of cronyism, fraud, and the like. To maximize the number of bidders, the government can:

- Advertise in major State newspapers and national correctional journals;
- Develop and maintain a list of potential bidders;
- Permit both in-State and out-of-State private nonprofit and for-profit organizations to bid (Issue 13).

7. Governments should include information about the bid evaluation process in the RFP. Suggested evaluation criteria include, but are not limited to:

- Firm's experience and past success in similar undertakings;
- Staff qualifications;
- Proposed programs;
- Firm's financial condition and references;
- Cost (Issue 14).

8. A method for resolving any contractual differences that may emerge should be agreed to and be specified in the contract before activation of the facility (Issue 10).

Contract provisions

9. The requests for proposals and subsequent contracts should explicitly specify: (a) who is responsible for what expenditures, and (b) what levels of performance are expected (including: compliance with minimum standards as to policies, procedures, and practices; results on such performance indicators as maximum numbers of various "extraordinary occurrences"; and compliance with fire, safety, medical, health, and sanitation standards). The RFP's and contracts should also identify sanctions or penalties that will apply for inadequate performance (Issues 15 and 19).

10. A tiered fee, or variable cost structure that is fair for both parties should be built into the contract so that there will be no future misunderstandings regarding cost for vacant beds and/or additional inmates beyond the specified ceiling (Issue 15).

11. Rebidding of prison contracts should occur approximately every 3 years. State laws and regulations should be checked before including this specification, since they may suggest a different maximum contract length (Issue 18).

12. Governments should include special provisions in their contracts to require that the contractor provide advance notice of the end of a union contract period, the onset of labor difficulties or major worker grievances that could result in a work stoppage or slowdown (Issues 1 and 16).

New and existing facilities

13. Contracting for new or retrofitted institutions entails many fewer problems (such as personnel problems) than turning over an existing facility to a private firm, and thus should be given preference in a government's initial contracting efforts (Issue 8).

14. Governments contracting to replace existing facilities should take steps to ameliorate personnel problems including:

- Require contractor to give employment preference to displaced staff;
- Provide transfer, retraining, and outplacement services to employees not choosing to work for the contractor;
- Carefully calculate, and make provisions for, disposition of benefits (especially retirement and vacation/sick leave accrual) (Issue 20).

15. Governments establishing a new contracted facility should develop a public relations plan. Good public relations are crucial for community education. The government should fully inform community leaders and should also keep correctional employees fully informed of any contracting deliberations. The media should be made aware of the

contracting initiative at an early stage. Once awarded the contract, the private firm should use community resources for operating the facility, whenever possible by, for instance, hiring local people and buying supplies and services locally (Issue 7).

Selection of inmates

16. Both the RFP and subsequent contract should be explicit in describing the type and level of offender for which the State is seeking a private contractor and the major architectural features the public agency deems necessary to confirm the prisoners appropriately. The contract should be based on the State's current inmate classification policy and its operational definitions of the privileges and level of supervision to be accorded the type of inmates at the proposed contracted-for custody level (Issue 9).

17. States should contractually obligate the private vendor to accept all prisoners in certain specifically designed categories (e.g., minimum security) for the duration of the contract period up to the agreed maximum number of inmates to be incarcerated at any given time (provided for in the contract). This would protect the State against the prospect of selective acceptance (Issue 10).

18. Selection of inmates for placement in a private facility, and decisions about their movement, is the government's responsibility. The bases for these selections should be written into the contract. Criteria should be mutually agreed upon to avoid future misunderstandings (Issues 10 and 11).

19. The contract should include a provision that permits the State to make the decisions about inmate reassignment or reclassification in the event that contractual capacity is reached (Issue 10).

20. Both a minimum and maximum prisoner population level should be stated in the contract in order to facilitate planning and cost estimates.

21. States contracting for large institutions should specify in the RFP and the contract that the selected private vendor can use unit management, that is, can subdivide the total number of beds into a number of smaller semiautonomous units (Issue 15).

Level of authority

22. Government officials must ensure that disciplinary hearings conducted by the contractor follow legally required practices when discipline problems occur. A private firm should adopt the policies and procedures utilized by the unit of government. Significant disciplinary actions should be formally approved. The State should consider permanently stationing one or more of its own staff members at large (e.g., 150 inmates or more) private facilities—or at least provide for frequent visits. This individual's responsibilities would include participation in all disciplinary hearings concerning major rule infractions, the definition of these having been spelled out in written policy statements (Issue 12).

23. Private companies given authority over inmates—authority that otherwise would have been that of the governmental entity if the contract did not exist—should closely adhere to the same type of procedures that the government agency would have normally used. Where possible, private contractor discretionary actions involving inmate rights and discipline should be made in the form of a recommendation to the appropriate government agency or official for ratification (Issues 3 and 4).

24. In the event of an escape attempt, private prison employees should use reasonable and appropriate restraint in the absence of any other specific statutory or case law. Once an inmate has left the facility's property (unless the private prison employees are in hot pursuit or have been deputized), law enforcement officials should become responsible for the ultimate capture and return of the escapee (Issue 3).

25. Although individual practices may differ in regard to the degree of involvement of the public correctional agency with release decisions, insofar as the private sector is concerned, its contribution to this process should be limited to a presentation of the facts pertaining to the inmate's level of adjustment during the period of confinement in the private facility. Public officials should make the decision (Issue 12).

Monitoring

26. The State should plan (before the RFP is issued) and implement (after contract award) an effective system for continuous contract monitoring. This should include:

(a) regular timely reports (showing tabulations and analyses of extraordinary occurrences and other significant performance indicators and the results of onsite inspections);

(b) regular onsite inspections (at least monthly and preferably weekly), using prespecified checklists, rating categories, and guidelines on how to complete the ratings;

(c) periodic documented fire, safety, health and medical, and sanitation inspections;

(d) provision for regular interviews with samples of inmates to obtain feedback on such performance elements as treatment of prisoners, amount of internal security, drug use, and helpfulness and adequacy of educational, work, and recreational programs;

(e) annual indepth, onsite inspections by a team of experts, covering the various procedures used and the results of periodic reports on the facility's quality of services based on precontract specified outcomes/results indicators;

(f) explicit provision for prompt review by government officials of the written findings from each of the above procedures with prompt written feedback to the contractor, and identification of what needs to be corrected and by when (and subsequent followup to determine the level of compliance); and

(g) provision for supplying information obtained from the monitoring process by the time contract renewals and

rebidding are scheduled—so this material can be used effectively.

The same monitoring procedures should be applied to publicly operated and contractor-operated facilities. Governments with comparable facilities can then use the resulting information as a basis for comparisons—and thus obtain a better perspective on the relative performance of the contractor (Issue 21).

27. From a State, local and national perspective, it is highly desirable to obtain systematic, comprehensive evaluations of the costs and effectiveness of contracting secured correctional facilities. A government should require that a comprehensive evaluation be made, within 3 years of contract award, of the degree of success of its contracting effort. Where possible the contracted facility should be compared to publicly operated facilities. Other than the philosophical issues, most of the debate over prison contracting can be greatly enlightened by empirical field evidence concerning its elements. It is a great waste of resources if innovative trials of prison contracting are undertaken without including appropriate evaluations from which States and local governments, and society, can learn: Does contracting work, and under what conditions? (Issue 23).

Contents

Chapter I: Introduction, scope, and methodology

Introduction and scope

In this work we report on our findings from an examination of key issues that States need to consider regarding contracting for the operation and management of State prisons. This study was conducted during the period of November 1985 through September 1986.

We examined the specific issues listed in Table A, and discussed in the later chapters of this report. These issues appeared explicitly or implicitly in our preliminary examination of the literature on prison contracting, State and Federal legislative hearing reports, reports prepared by a number of State governments, and our own past experience with public sector contracting.

The report's objective is to help State officials in the executive, legislative, and judicial branches by providing guidance in their deliberations regarding contracting prison facilities. For States proceeding with contracting, the report offers guidance by suggesting ways to alleviate potential problems and make the effort as successful as possible.

Materials that are currently available on contracting State or local correctional facilities primarily have taken three forms:

1. Arguments as to the advantages and disadvantages of contracting correctional facilities.

2. Surveys covering contracting of individual services (such as medical, food, work training, and education) as well as the management and operation of total facilities.

3. Brief newspaper-type writeups and reporting on interviews with officials of government and private firms.

Very little information is available concerning early experiences that might shed light on the issues and complications involved. This report tries to reduce this gap. The paper draws from some of the early experiences in contracting to provide information that may help officials identify the policy and program considerations in contracting and ways to alleviate those problems. We suggest elements that seem appropriate for inclusion in requests-for-proposals, the contracting process, and the final contract.

This work, however, is not a cost-effectiveness analysis of correctional facility contracting experiences. Most contracting cases are relatively new, lacking sufficient operational time to allow meaningful evaluation. Thus, the study does not attempt to evaluate whether the experiences to date have been successful or not. In Issue 22 we provide some, mostly qualitative, judgments about the quality and costs of the contracting efforts that we have examined. Issue 23 contains suggestions for procedures that State agencies and others might use to make such assessments in the future.

Contracting experiences concerning full operation of secure adult facilities by State governments are extremely rare. As of this writing, there is only one that appears to fit this category—a minimum security facility, Kentucky's Marion Adjustment Center, which began operation in January 1986. The analysis draws on some State experiences in contracting secured facilities for juveniles and some experiences at the local level of government, including examples of contracting for adult jail-like operations and secure juvenile facilities for severely delinquent youths.

This paper does not attempt to cover Federal experiences (e.g., Immigration and Naturalization Service contracts), partly because of a lack of time or resources to include Federal facilities, and also because the INS appears to have substantially different types of inmates than State and local secure facilities. For similar reasons many experiences throughout the country with the contracting of community halfway houses have not been examined. However, we found that the experiences of local jails and county and State secure juvenile correctional facilities shed important light on many of the issues discussed in this analysis, and thus such examples have been included.

Methodology

We used the following nine procedures to examine the contracting issues:

1. We obtained documents from 22 States regarding their activities and studies relevant to the contracting of State prisons. Items of direct relevance to this study are listed in the bibliography.

2. Twenty individuals were interviewed regarding State trends and policy perspectives about contracting for corrections institutions. The 12 in-person interviews and 8 telephone interviews were conducted using an open-ended format. The following jurisdictions were contacted:

- **State of Kentucky.** It participated throughout the study. Contacts were made in the Corrections Cabinet, Division of Purchases, Legislative Research Commission, and with selected State legislators.

- **State of Tennessee.** It provided information in January of 1986. Contacts were made in the Governor's Office, Department of Corrections, Legislative Research Agency, and with a member of the State Legislature. Officials of Corrections Corporation of America were also interviewed.

- **State of Florida.** Information was provided by the Legislative Committee on Corrections, Office of the Attorney General, and the Department of Corrections. We also interviewed an official from National Corrections Management, Inc.

3. A wide variety of published materials were reviewed, including law journals, corrections periodicals, newspaper reports, testimony in a variety of both congressional and

State legislative hearings, and reports and memos from interest groups such as the American Civil Liberties Union, the American Bar Association, the American Federation of State, County, and Municipal Employees, National Governors' Association, National Association of Counties, and National Sheriffs' Association. A particularly useful source was the National Institute of Corrections-funded report of an evaluation undertaken of the State of Florida's School for Boys at Okeechobee. This is an institution for approximately 400 severely delinquent male juvenile offenders. First awarded in September of 1982, the contract is with the Eckerd Foundation (a nonprofit organization), and the contract is administered by the Florida Department of Health and Rehabilitative Services.

4. We conducted a total of 34 interviews with representatives of the public and private sectors involved in contracting activities in eight jurisdictions. For each setting except those in Massachusetts, we interviewed by telephone at least one representative of the government agency that was contracting the facility and at least one representative of the private organization. In Massachusetts only public officials were interviewed. In total, we interviewed 20 representatives of the public sector and 12 personnel representing private vendors. The telephone interviews took 45 to 75 minutes, with an average of approximately 1 hour. The contracting sites are:

- State of Kentucky Marion Adjustment Center. Adult males, 200 beds, minimum security. First contract year began January 1986. (Contractor: U.S. Corrections Corporation.)

- State of Pennsylvania Weaversville Intensive Treatment Unit. Severely delinquent male youth, 22 beds. First contract year began 1976. (Contractor: RCA Services, Inc.)

- Bay County, Florida, Jail and Annex. Adult male and female, approximately 350 beds, minimum security. First contract year began October 1985. (Contractor: Corrections Corporation of America.)

- Hamilton County, Tennessee, Silverdale Detention Center. Workhouse for adult males and females, approximately 340 beds. First contract year began October 1984, 150 beds. (Contractor: Corrections Corporation of America.)

- Shelby County, Tennessee, Shelby Training Center. Severely delinquent male youth, 150 beds. First contract year began April 1985. (Contractor: Corrections Corporation of America.)

- Ramsey County, Minnesota, Roseville Regional Correctional Center. Women, minimum security, 42 beds. First contract year began 1984. (Contractor: Volunteers of America, a nonprofit organization.)

- Massachusetts Department of Youth Services. Secured treatment facilities for juveniles, 15-20 beds each. Contracting for several years. (Approximately 7 of its 11 secured facilities are contracted to private nonprofit organizations; the other 4 are operated by State employees.)

- State of Florida Beckham Hall Community Correctional Center (located in Miami). Adult males, 171 beds. First contract year began October 1985. (Contractor: National Corrections Management, Inc.) This facility was added late in our study when we received information that it might be a secure adult facility. The facility, however, is primarily a work release program and probably should not be labeled a secure facility. Some of its experiences, however, are relevant and are included in this report.

All but the Kentucky interviews were conducted by telephone. The Kentucky interviews were conducted in person in Frankfort and at the facility in Marion. A semistructured interview guide was used with different versions for the private and public officials. In each interview we sought the following information: the history of the contracting effort, the scope and size of the facility, security issues, how monitoring was undertaken, what problems had arisen at the facility, and how respondents thought the problems could be solved. We also asked opinions about the success of the effort and what recommendations officials would make to other agencies. In general, we sought information on the issues identified in Table A.

It was expected that the vendors would express favorable opinions toward the efforts, but identification of problems was encouraged and was evident. We expected the onsite people to have more mixed reactions. Most of the public officials that were interviewed were not those persons responsible for deciding to contract. In two instances, we explicitly chose to interview officials understood to be negative toward the effort in order to identify problems as perceived by all concerned.

5. For each of the eight jurisdictions and the Florida School for Boys we requested and reviewed documents relating to the effort, particularly requests for proposals, the subsequent contracts, and materials reporting on performance. Those documents were a major source of information for this report.

6. For Kentucky's Marion facility we conducted a series of onsite interviews in mid-May of 1986. This institution appears to be the first contracted facility that can be labeled a State prison with adult State inmates. It is a facility that thus far has housed the least dangerous State prisoners; it is a minimum security facility with no perimeter fence. Organizationally, the contract is monitored in Kentucky's Corrections Cabinet by the Community Services rather than the Adult Correctional Facilities division.

We interviewed seven officials of the Kentucky State government, including the onsite monitor, four persons representing the private vendor, and the executive of the county in which the facility is located. Our preference would have been to interview personnel on site for each of the locations we examined, but limited resources prevented this.

7. Others we interviewed were corporate officials representing three companies in the private for-profit operations: Corrections Corporation of America, U.S. Corrections Corporation, and RCA Services, Inc. We sought their perspective on experiences with contracting to operate correctional facilities.

8. Evidence from the government agencies and private firms relating to performance evaluation was collected, but this type of information was particularly scarce. Since we were not attempting to do cost-effectiveness analysis, officials

were not pressed for information regarding performance, nor did we try to develop it ourselves.

9. We coded the information from interview reports, trip reports, and various documents and publications as to which issue each pertained. Then we abstracted and synthesized the material relevant to each issue discussed in the report. The resulting information was used to prepare this report.

Report overview

Chapter II summarizes the present status of State contracting for correctional facilities. Chapter III discusses the legal issues that governments should consider before deciding whether to contract for management of correctional facilities. Chapter IV discusses the program and policy issues. The requests for proposals and contracting processes are covered in Chapter V. Chapter VI discusses contract monitoring; it provides suggestions regarding how individual governments or others might evaluate contracting efforts and gives our qualitative impressions of the effects to date of the contracting efforts. Chapter VII presents our major findings and recommendations.

When discussing each issue in Chapters III, IV, V, and VI, we attempt to define the issue, present the principal findings based on the materials that we reviewed and the interviews conducted, and provide recommendations based on those findings.

This report will not make contracting decisions for States. Nor is it likely to make such decisions easier. We hope, however, that the information provided will help public officials to make better decisions and, if they proceed with contracting, will help them to implement a process that will be more effective for all concerned.

Chapter II: Trends in contracting for State correctional facilities

According to our survey, States appear to be moving slowly and extremely cautiously toward contracting for the operation of their correctional facilities. This survey was conducted in the fall of 1985 and spring of 1986. Our analysis shows that States consider contracting for facility operation as one way to cope with prison crowding. Yet proponents and opponents tend to disagree on almost every issue regarding advantages and disadvantages of contracting.

This chapter summarizes the present status of State activities in contracting for the operation of State correctional facilities. Information used in this chapter was collected from a literature survey, testimony, interviews, and documents and staff reports prepared by State agencies in both the executive and legislative branches. Specifically, the chapter highlights the findings of our survey, presents examples of prison contracting, discusses statutory provisions for prison management, and presents arguments for and against contracting for correctional facilities. Before discussing these four topics, however, a brief introductory section might be useful. This section addresses the issue of contracting for correctional facilities as an alternative to prison crowding and trends in contracting in other areas of public services.

Prison crowding

Prison crowding has been a major problem at all levels of government, but particularly at the State level. Today, more than one-half million inmates are behind bars in State prisons. A majority of the 550 State correctional facilities hold between 10 to 30 percent more inmates than their prison's capacity. Entire correctional systems in nine States are under court order to ease prison crowding, as are individual facilities in 25 other States.

Various measures have been taken by States in their efforts to reduce prison crowding. These include new construction, renovation of existing facilities, use of military facilities, use of local jails, pretrial diversion, probation, community work release and treatment centers, and early release under governors' emergency powers acts.

Recently a few States have initiated new approaches to prison crowding. For example, Florida and Kentucky have implemented "house arrest" programs as a diversionary alternative to prison incarceration. Other States, including Kentucky, have begun intensive supervision programs under which offenders are released to the community to find gainful employment, pay restitution, and participate in self-improvement programs. Minnesota and Wisconsin have signed interstate agreements for additional bedspace.

As another option for coping with prison crowding, several States have considered greater use of private firms to manage and operate State correctional facilities for adult and juvenile prisoners. Private sector involvement in State correctional services is not a new trend. One recent study prepared for the National Institute of Corrections reported that a variety of correctional services was provided by private companies in 39 States, the most frequent services being health, education and vocational training, halfway house and aftercare programs, and staff training.[1] In the correctional industry area at least eight State corrections departments have contractual arrangements with private firms.[2]

Use of a private firm to operate and manage an entire correctional facility raises additional legal, political, and administrative questions for State policymakers, program administrators and employee organizations. In 1985 the American Federation of State, County and Municipal Employees (AFSCME) officially withdrew from the American Correctional Association (ACA) because of ACA's recently adopted policy concerning contracting for correctional services. AFSCME President, Gerald W. McEntee, stated, "As little as 12 months ago the idea of contracting out for correctional services was being laughed off as a pretty harebrained idea; not today. American business has invaded the corrections field."[3]

Correctional services is one of several areas that government contracts out to private firms. Over the past few years, interactions between government and the private sector have been intensified due primarily to Federal deficits, revenue limitations, and perceived public attitudes against "big, costly and inefficient" government.

Since the creation of the Task Force on the Private Sector Initiatives in 1981, the Reagan Administration has increased its efforts to contract out public assets and services—loans, insurance, transportation, postal services, resources, public safety, welfare, and other commercial activities. The list of local services provided by private firms is getting longer. Many localities contract for such services as garbage collection, street maintenance, police and fire protection, wastewater treatment, transportation, and parks and recreation.

States have not been as quick to contract out as localities, but several States have begun experimenting with alternative service delivery methods involving the private sector in health and mental health, social services, employment and training, environment, energy, transportation, facility management, and corrections. Corrections has received a great deal of public attention, however.[4]

Until recently, most contracts by State agencies were for capital construction and professional services. A 1985 survey of State general services officials conducted by The Council of State Governments showed that a majority of the States contract for legal, medical, engineering, technical, and professional services.[5] Contracting for nonprofessional services is now receiving serious attention by State policymakers.

State trends

In an effort to identify trends in contracting for State correctional facilities, we conducted a 50-State survey of State correctional directors and legislative service agency directors between December 1985 and July 1986. The survey asked State officials to send The Council of State Governments relevant studies regarding: contracting out secure, adult, State and local corrections facilities; contracting out particular correctional services; laws or policies enabling State or local governments to contract out; and other options to address the problems of prison crowding. In some instances, State officials were interviewed for further information and updates. The following are the results of the survey to which all the 50 States responded.

1. Most States had conducted studies on prison crowding. Yet documents (statutes, staff reports, papers, memoranda, etc.) on contracting for corrections were available from only 22 States: Alabama, Alaska, Arizona, California, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin.

2. Most of the contracting studies had been conducted in the past 2 years. Some studies heavily relied on the prison "privatization" reports prepared for the National Institute of Justice and the National Institute of Corrections.[6]

3. States tended to use the term privatization as a proxy for contracting. The following are some examples of definitions used by various States for privatization:

Alabama. Privatization: a practice where the applicable government or authority gives up its traditional roles in construction and/or routine management of prisons or jails and relies upon private sector businesses to do the job for a fee.

Arizona. The process whereby governmental entities contract with private sector corporations to provide penal custody and services.

California. The term "privatization of prisons" refers to the process whereby all or portions of the public jurisdiction's penal system is contracted out to private and generally profit-motivated vendors.

Connecticut. The term "privatization" is used to describe the private sector's participation in the renovation, construction, and then ownership and/or operation of needed public facilities.

4. States had conducted studies on contracting for prison management primarily because of prison crowding, cost savings, and the difficulty of receiving voter approval to raise capital for prison construction. At least two States reported on why they have not considered privatization:

Minnesota. Minnesota currently is not confronted with the serious crowding experienced in many States—although populations have been on a steady increase since the mid-1970's. Minnesota has the lowest rate of incarceration in the Nation, which may be attributed to a number of historical factors. These include a strong probation system, our State community corrections system, our system of sentencing guidelines, Minnesota's relatively low rate of violent crimes, etc.

New York. . . . we do not have, in our State, the level of problems . . . faced by other States. Indeed we may be crowded, but we are not overcrowded. We have no double celling anywhere in our system of 36,000 inmates. We do not have a funding or cost reduction problem, nor are our programs or services in need of major improvements . . . we have no intention of contracting out the operation of any of our facilities.

5. Several States had considered contracting for the operation of facilities for selected offenders or inmates, usually for those requiring minimum security, parole supervision, or work release. Connecticut and Iowa have considered privately operated facilities for drunk drivers.

6. At least two States attempted cost comparisons.

Alabama. A study prepared for the Governor in July 1985 compared costs per day of a State facility and a privately run juvenile facility. The study reported that "costs per inmate per year at Staton Correctional Facility are $2,694 lower than the same costs at Okeechobee Juvenile Facility in Florida." The report compared the two facilities because "Staton Correctional Facility is closely aligned with Okeechobee as to size and mission." The Alabama study concluded that "privatization of correctional facilities in Alabama would significantly raise costs, not reduce them . . ."

California. The Department of Corrections tabulated costs of State-operated programs with comparable private correctional programs and found that costs for State-operated programs in 1984 were higher than privately operated programs in terms of actual per capita cost.

7. Private financing of prison construction had been considered by at least eight States: California, Connecticut, Florida, Illinois, Iowa, Michigan, Missouri, and South Carolina. In July 1986 Missouri entered into construction contracts with private firms for a 500-bed maximum-security facility. The lease/purchase agreement stipulated that the private firms would design, construct, finance, and lease the facility to the State for 40 years. Recent changes to the tax code may have made contracting a less attractive investment for private firms.

8. Several State studies have identified concerns and made specific recommendations about private contract correctional facilities.

The following are (a) a list of concerns prepared by the California Assembly's Commission on Public Safety, and (b) recommendations by Florida's Legislative Committee on Corrections, Probation and Parole.

Figure A

California's concerns:[7]

- Cost-effectiveness: Where and how are the economies achieved in the privately run facilities? Do the savings accrue from reduced services and/or lower employee wages and benefits?
- Public accountability: Are privately run facilities more or less responsive to the concerns of the public and their elected representatives? How are contract conditions to be enforced short of contract cancellation?
- Civil liability: How can the contracting by public agencies be insulated from civil liability for the malfeasance of the contractor and his employees? Is there a danger of bankruptcy to the private company in the face of multiple or excessive damage judgments?
- Use of force and deadly force: In the absence of peace officer status, will private contract employees be free to use reasonable force to ensure inmate compliance? Will the private employees be able to apply deadly force to prevent escapes?
- Quality of services and facilities: What ensures that inmate employees are adequately trained and that the private facilities are not substandard?
- Displacement of civil servants: Should private contractors be able to directly or indirectly displace civil servants? Should contractors be obliged to hire displaced civil servants?
- Contract decision irreversibility: Once significant reliance has been placed upon a contractor, is cancellation or nonrenewal of the contract a viable option in light of (a) the limited number of private providers; and (b) the long lead time needed to rebuild the civil service capability?
- Skimming the cream of the inmates: If private contractors are limited to low-risk, low-custody, tractable inmates, do the public facilities become more unmanageable due to a higher concentration of more difficult inmates?
- Punishment vs. corporate motivation: As a matter of social or legal philosophy should the administration of justice be placed in private, profit-motivated hands?

Figure B

Florida's recommendations[8]

- The Department should conduct background checks on the private vendor's competence and solvency prior to contract negotiations.
- Uniform competitive bidding procedures and selection committees that represent multiple interests should be employed. The selection committee should be composed of at least one member from the Department of Health and Rehabilitative Services and one member from the Department of General Services.
- The Department should develop a model RFP and contract that thoroughly addresses occupancy minimums and maximums, incentives to keep costs low, characteristics of offenders placed, control over admission and release decisions, staff qualifications, staffing patterns, training standards, insurance requirements, and confidentiality of records.
- The Department should fund an evaluation of the private contractor's operation, 1 year after start of operations contract. The evaluation should be conducted by an objective, outside evaluator and should compare pre- and post-contracting measurable standards of performance. A rigorous assessment of the costs and benefits of private versus public management should be included in the evaluation.
- Contract length should be statutorily limited to 2 years.
- The Department should clearly state in the contract that the private contractor has no direct authority over gain time or disciplinary report decisions or any decisions that affect release or transfer decisions.
- The Department should list in the contract expected performance standards that will be monitored and measured. These performance standards should include such items as: escapes; number of GED's earned; inmate on inmate or inmate on officer assaults; use of isolation or restraints; use and availability of innovative programs; staffing patterns; procedures for security and control; use of inmate labor; and food and medical service requirements. Penalty clauses for nonperformance and reward clauses for high performance should also be included in the contract.
- The Department should provide a report to each vendor on the past and pending on-the-job injury claims, worker compensation claims, liability suits, as well as past and present regulatory reports. Penalty and reward clauses should be in the contract to reduce or maintain at a constant level the volume of such claims and suits.
- The Department should list in the contract governmental services that are to be discontinued under the contract.
- If the contract entails the management takeover of an existing and staffed facility, the Department should provide a contract provision regarding the placement of existing employees.
- In keeping with the code of ethics for public officers and employees, no firm should contract with a State agency and receive State funding that employs ex-public employees that made policymaking, staffing, or contracting decisions within the last 2 years for the contracting agency.
- The legislature should mandate that vendors provide the same curriculum and training to private correctional officers as provided by the Criminal Justice Standards and Training Commission.

Examples of privately operated correctional facilities

To date, State experiences in contracting for private management of adult inmates in secure facilities are very limited. Private firms managed juvenile facilities in at least 12 States: Florida, Massachusetts, Michigan, New Mexico, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Washington. Two States, Florida and Kentucky, recently contracted with for-profit private firms for the operation and management of minimum-security correctional facilities for adult inmates. Illinois and Wisconsin used not-for-profit organizations to manage community adult correctional centers. In Alaska, a restitution center is operated by a private firm, while California uses private beds to alleviate prison crowding. The Tennessee Department of Corrections filed a request for proposals (RFP) for a medium-security prison for adult inmates, but receiving no responsive proposals, is, as of this writing, considering a revision and reissue of the RFP.

Florida

In Florida (in October 1985) a private firm, National Corrections Management, Inc., assumed the operation of the Beckham Hall Community Correctional Center, a minimum-security work release facility under direct State jurisdiction. Since Beckham Hall operates a nonsupervised work release program, it is not secure. The Center, with a capacity of 158 adult inmates, is currently housed in facilities leased under a use permit from Dade County for $1 per year. The term of the contract is for a 3-year period; the rate of payment for the first year of the contract is $20.81 per inmate, per day. The Beckham Hall contract was a result of Florida's attempts to find new alternatives in dealing with prison crowding. The Florida Department of Corrections is currently evaluating the performance record of the privately run correctional facility.

Kentucky

In October 1985 Kentucky awarded a contract for an adult facility to a private firm, Bannum Enterprises, Inc. Under this proposal, the private firm was expected to convert an existing facility, International Harvester Administration Complex in Louisville, to a 200-bed minimum-security prison. However, the site was not available for use as a prison. In December a contingency contract was signed with another private firm, U.S. Corrections Corporation, for a private prison at another site. This contract became effective in January 1986, and the private firm now operates the 200-bed facility known as Marion Adjustment Center in Marion County. The State's Cabinet contracted out the facility as a result of the recommendations of the Governor's Task Force on Prison Options. Kentucky's Corrections Cabinet is monitoring private management of the minimum-security correctional facility.

The Florida and Kentucky examples offer considerable information on decisions State policymakers need to make before contracting out management of secure, adult correctional facilities for State prisoners. However, a careful review of the examples raises the question: How different are these two examples from privately run halfway houses and various types of community correctional or work release centers in many other States?

Kentucky's Marion Adjustment Center has a number of similarities with privately operated halfway houses in the State. Inmates in the Center serve a longer term, which is 3 years or under, compared to that of 1 year or less in halfway houses. The Center has tighter restrictions and a self-contained correctional program. Inmates remain on the grounds. Marion Adjustment Center is located in a rural county with no perimeter fence, while all the halfway houses are located in urban areas in the State. Kentucky's Corrections Cabinet places the Center on a continuum between privately run halfway houses and other minimum-security prisons in the State.

Illinois

Illinois was one of the first States to use private organizations to operate community correctional centers for felons, as well as for parolees. The State's Department of Corrections has been involved in contractual arrangements with not-for-profit organizations since 1975. The State currently has 5 contractual correctional community centers and 10 State-operated correctional centers. The privately run correctional centers must abide by the same rules and regulations, directives and procedures required of the State-operated facilities. In fiscal 1986 the State appropriated $3.5 million for contracts to provide housing and services to 252 inmates. In 1983 the Governor's Task Force on Prison Overcrowding recommended that the State "consider the private sector for correctional facilities and services where fiscally cost-effective and administratively feasible. Such contracting shall include community center placements, as well as prison facilities and services."[9]

Wisconsin

Despite legislation passed in the 1986 legislative session allowing the State corrections agency to contract for operation of community correctional centers by private firms, Wisconsin's only privately run facility was closed in January 1986 for budgetary reasons. For 8 years, Baker House Pre-Release Center in Milwaukee (capacity of 26 beds) housed adult State inmates. One of the 15 State minimum-security facilities, Baker House was operated by a nonprofit corporation, the Wisconsin Correctional Services. The private correctional facility had placed heavy emphasis on work release, job training, and extensive counseling services.

Alaska

Contracting with private firms has received considerable review in Alaska. In 1985, legislation was passed authorizing the State Department of Corrections to contract for adult correctional restitution center services. In November the department contracted with a private agency for the operation of a 75-bed correctional restitution center in Anchorage. Alaska plans to expand this to other areas of the State. The purpose of the center is "to provide certain nonviolent offenders with rehabilitation through community services and employment—while protecting the community through

partial incarceration of the offender, and to create a means to provide restitution to victims of crimes."[10]

California

The California Department of Corrections has used, on a limited basis, privately operated correctional programs to house selected State inmates to alleviate prison crowding. In fiscal 1986 the Corrections Department was budgeted for 1,700 private beds. By December 1985 the department had 1,000 beds under contract and had issued requests for proposals for an additional 734 private beds for three programs: private reentry work furlough, private community treatment, and private return-to-custody.

Tennessee

The Tennessee Department of Corrections issued a request for proposals to operate a medium-security prison. A new State law allows the State corrections department to contract with a private firm to manage the State-built medium-security 180-bed work camp in Carter County. Under the law, the private firm is required to operate the facility at a cost of 5-percent less than the probable cost to the State of providing the same services. The cost of monitoring the contract is to be added to the vendor's price for determining the cost of private operation.

In a November 1985 special session, Tennessee Governor Lamar Alexander proposed to let a private company build and operate a State prison. The legislature also considered a proposal by the Corrections Corporation of America for the "franchise" to operate Tennessee's entire prison system for up to 99 years. Neither proposal passed before the special session recessed. The session of the 1986 legislature passed the private prison contracting act in April, and the governor signed the bill into law in May 1986. The enabling law, however, is applicable only to the Carter County facility.

Statutory authority

At the present time, most States do not have specific enabling legislation for contracting for adult correctional institutions. In some jurisdictions there is no statutory authorization or prohibition, while others do have legal barriers to contracting. There are other States where privatization requires prior approval from a State's attorney general's office. Yet the trend appears to be headed toward either clarifying or granting statutory authority to State agencies to permit contracting. In all States, however, existing legal barriers may be removed only by legislative measures or by constitutional amendment. Until recently, for example, it was the law of the State of Maryland that "State employees shall perform all state functions within state operated facilities in preference to contracting with the private sector for the performance of those functions . . ."[11] In 1984 the legislature added the following to the existing statutory provision:

> . . . Except where the General Assembly has mandated or authorized the performance of these services by an independent contractor, a service contract may be . . . exempt from the preference stated in Section 8–802 of this subtitle if. . .
>
> • The services to be contracted for are not available for performance by state employees;
>
> • Actual cost savings under contract operation will be 20 percent for any service contract costing up to $1,000,000; or $200,000 for any service costing in excess of $1,000,000; and
>
> • The potential economic advantage of contracting is not outweighed by the public's interest in having the particular function performed directly by the state government.[12]

The following statutory provisions illustrate the extent of the legal basis for contracting for operation of State correctional facilities.

• Alaska: Chapter 72, Laws of Alaska (1985), Sec. 33.30.060.

> The commissioner shall determine the availability of state prison facilities suitable for the detention and confinement of persons held under authority of state law. If the commissioner determines that suitable state prison facilities are not available, the commissioner may enter into an agreement with a public agency to provide necessary facilities. Correctional facilities provided through agreement may be in this state or another state. The commissioner may not enter into an agreement with an agency unable to provide a degree of custody, care, and discipline similar to that required by the laws of the state.

• Florida: Chapter 944.105.

> (1) The Department of Corrections is authorized to enter into contracts with private entities for the provision of the operation and maintenance of correctional facilities and the supervision of inmates. However, no such contract shall be entered into without specific legislative approval and funds being specifically appropriated for the contract.
>
> (2) The provisions of ss.216.311 and 287.057 shall apply to all contracts between the department and any private entity providing such services. The department shall promulgate rules pursuant to chapter 120 specifying criteria for such contractual arrangements.

• New Mexico: Section 1, Chapter 149.
Laws of 1985

> (1) The governor or the legislature may direct that the corrections department cease operation of any minimum security facility and contract for the operation of the facility with a person in the business of providing correctional and jail services to government entities. The department shall solicit bids and award the contract in accordance with the provisions of the procurement code. The contract shall include such terms and conditions as the department may require after consultation with the general services department; provided that the terms and conditions shall include provisions:
>
> (a) setting forth comprehensive standards for conditions of incarceration

(b) that the contractor assumes all liability caused by or arising out of all aspects of the provision and operation of the facility

(c) for liability insurance covering the contractor and its officers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision and operation of the facility

(d) for the termination for cause upon ninety days' notice to the contractor for failure to meet contract provisions when such failure seriously affects the operation of the facility

(e) that venue for the enforcement of the contract shall be in the district court for Sante Fe county

(f) that continuation of the contract is subject to the availability of funds

(2) When the contractor begins operation of the facility, his employees performing the functions of correctional officers shall be deemed correctional officers for the purposes of Section 33–1–10 and 33–1–11 NMSA 1978 but for no other purpose of state law, unless specifically stated.

- **Wisconsin: 1985 Wisconsin Act 29, Section 46.03 (17).** To contract with one public, private or voluntary agency for the supervision, maintenance and operation of one minimum security correctional institution in a county having a population of 500,000 or more. To be eligible, an agency must have prior relevant experience.

- **Kentucky.** The legal basis for Kentucky's Marion Adjustment Center is not very clear. In fact, the word "private" is not found in the statutory provision:

  KRS 539.590. The corrections cabinet may establish community residential correctional centers at locations approved by the legislative body of the area where located as places of confinement for convicted felons. The secretary or such person, as said secretary delegates, may at his own discretion transfer prisoners to a residential center from any correctional institution for the purpose of facilitating the rehabilitation of the prisoner except as set out in KRS 439.620.

- **Tennessee. Chapter 932 of 1986 Tennessee Public Act.** The newly enacted Tennessee law provides for specific guidelines for contracting for operation of a medium-security facility.

  SECTION 1. Tennessee Code Annotated, Title 41 is amended by adding

  SECTION 2. through 15. of this act as a new chapter, to be designated as "The Private Prison Contracting Act of 1986."

  SECTION 3.

  (a) The Commissioner is authorized to enter into contracts for correctional services only as provided in this act.

  (b) Contracts for correctional services as defined in Section 2 (d) of this act may be entered into subject to the requirements and procedures of Tennessee Code Annotated, Sections 12–4–109 and 12–4–110, and any additional requirements specified in this act.

  (c) A contract for correctional services as defined in Section 2 (d) (6) of this act is authorized only for the Carter County Correctional Facility and only according to the requirements and procedures specified in this act; no other such contract for any other facility shall be authorized unless the General Assembly grants specific authority for such other contract by law.

  (d) Any inmate sentenced to confinement in the Department shall be legally eligible to be incarcerated in a facility in which a prison contractor is providing correctional services pursuant to this act.

The legislative intent of the Tennessee law, as cited in the bills in the House and Senate, is to authorize the executive branch "to contract with private concerns on a limited basis . . . if savings and efficiencies can be effected for the operation of correctional facilities and at the same time assure that the interests of the state's citizens and employees can be fully protected."[13]

The issues

Many States are considering permitting contracting. Granting statutory authority has become widespread (as cited in the preceding discussion). In order to analyze this trend, major issues and questions should be addressed. Chapters III, IV, V, and VI deal with these issues in specific discussions. Table A, which appeared on page vi, lists the issues which the study determined to be most important. Our original list of issues was modified and renumbered based on the findings from the various States, the literature, and our examination of specific contract operations.

Chapter III: Legal issues in contracting for State correctional facilities

Issue 1: What are the legal issues in contracting?

The first major question that a jurisdiction will ask in exploring the question of contracting for correctional responsibilities is, "Is it legal to contract prison services to the private sector?" Although some would disagree, the answer appears to be an emphatic yes. States may contract out the responsibilities of running entire institutions or certain selected prison services unless it is specifically prohibited by State law.

Perhaps the best starting point for this analysis is Federal law, which remands Federal offenders to the custody of the Attorney General for confinement in "any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise. . . ."[1] There is universal agreement that this statute affords the Federal Government the ability to contract out the total operation of a correctional facility and indeed, the Government has done so, at least indirectly. The Federal Immigration and Naturalization Service (INS) has recently contracted out the operation of several facilities for detainees held by the INS.

Some States also have provisions in their statutes which permit the State to contract for certain specified levels of correctional treatment. For example, in Alaska, the Department of Corrections is authorized to contract for adult correctional restitution center services, but the law does not permit contracting for adult secure correctional facilities. Most States, however, have provisions that permit some form of service contracting with respect to corrections, such as allowing private food service, health care, facilities maintenance, and other outside contracts. Nevertheless, there is resistance to the concept of total facility contracting in most States.

Discussion of issue

Contracting for prisons can probably best be described as the delegation of authority for the daily operation of a correctional facility by the governmental entity statutorily responsible for correctional activities to a nongovernmental entity. While the idea might seem simple, the concept poses a myriad of legal questions that must be addressed by any jurisdiction that wishes to explore contracting for prison management services as an option.

While it would prove to be of great help to public administrators if the body of law on the points relevant to prison contracting were clear cut, unfortunately this is not the case. Neither generations of case law nor multitudes of State statutes cover all of the major controversial issues involved in State prison privatization. Ascertainment of "the law" on a given topic is a function of how that particular concept or statute has come to be interpreted over the years. In an area as new as this, the State statutes generally do not address the phenomenon of prison contracting; often the statutes are simply silent.

As a result of the dearth of statutory law, we must look back into the annals of case law on similar subjects to arrive at a general understanding of what constraints might be placed upon a jurisdiction that seeks to contract State adult secure correctional facilities.

The right to strike

The right of the private contractor's employees to strike has worried some of those considering the total prison facility contracting alternative. While it may be illegal for a State correctional officer to strike, private prison guards are not denied this avenue for expressing their discontent. In *National Transportation Service*,[2] the National Labor Relations Board rejected the argument that private employees should be entitled to the same protection as public employees. Private employees cannot be covered under the National Labor Relations Act "merely because they provide services similar to those provided by public employees."[3]

This problem is conceded by those hoping to be on the receiving end of corrections contracts. They only seem to be able to respond by noting that they will be paying higher wages and offering better benefits to corrections officers than the States currently provide, thus discouraging strikes. In the unlikely event of a strike, they generally contend that an emergency preparedness agreement with the State will enable the National Guard to intervene in a timely manner. States should include special provisions in their contracts or enabling legislation that require sufficient advance notice of the end of an employment contract period, the onset of labor difficulties or major grievances that could result in a work stoppage or slowdown.

Legislative appropriations

Legislatures are not continuing bodies. The actions of one legislative session are generally not considered to be binding, but rather serve merely as precedent. Thus, it may be inappropriate for certain States to enter into an agreement with a private contractor that extends beyond a legislative biennium.

Selective acceptance of inmates

Questions have recently arisen regarding whether a private contractor would have the ability to discriminate in the acceptance of inmates. For example, could a private contractor refuse to accept an inmate who has Acquired Immune Deficiency Syndrome (AIDS)? States should protect themselves against the prospect of selective acceptance by contractually obligating the private contractor to accept all prisoners in certain specifically defined categories (e.g., minimum security) for the duration of the contract period up to the maximum number of inmates to be incarcerated at any given time (as provided for in the contract). The State should include a contract provision that permits the State to make

the decisions relative to inmate reassignment or reclassification in the event that the contractual capacity is reached.

Issue 2: What liability protection will a government agency and contractor need?

Discussion of issue

Certainly one of the most serious questions on the agenda of State and local governments today is that of government liability and the inability to adequately ensure (at a reasonable price) against massive judgments. With prison litigation becoming a cottage industry subject to significant judgments, States may be looking toward prison contracting as a means of contracting away public liability. Contracting out correctional services will not insulate government from liability.

Legal liability

The important provision at stake here is Section 1983 of the Civil Rights Act.[4] This law provides in pertinent part that "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."[5] Can governments insulate themselves from liability under this statute? Can private contractors be shielded as well, or do they operate under color of State law?

Although the specific question of Section 1983 liability has not yet been litigated with respect to privately operated State correctional facilities, there are a number of analogous cases which make it quite evident that private prison contractors will not be able to escape liability under Section 1983, and that the contracting government entity will be unable to assure that it will not be sued for the wrongful acts of the operator it selects, but governments may take measures to reduce exposure.

While there is no precise formula for recognizing State action in a given situation,[6] the Supreme Court has developed a series of tests that help to determine when the necessary component of "State action" is present. Of particular relevance to this discussion is the "public function" concept, which recognizes State action as existing when the State delegates a power to private parties that is "traditionally exclusively reserved to the State."[7]

The Supreme Court has further refined this concept recently to find State action when the function performed has been "traditionally the exclusive prerogative of the State."[8] Courts have also found that "detention is a power reserved to the government and is an exclusive prerogative of the state."[9] This recognizes the right of government to delegate the function.[10]

While "many private corporations . . . build roads, bridges, dams, ships, or submarines for the government, acts of such private contractors do not become acts of the government by virtue of their significant or even total engagement in performing public contract."[11]

"That a private entity performs a function which serves the public does not make its acts state action."[12] Rather, "the conduct allegedly causing the deprivation of a federal right must be fairly attributable to the State."[13]

"The deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible . . . [and] the party charged with the deprivation must be a person who may fairly be said to be a state actor."[14]

If the "state actor" is not a state official, he may so qualify "because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."[15] A private party's joint participation with state officials may characterize the private party as a state actor if he is a willful participant in a joint activity with the state.[16]

There is a considerable body of law that indicates that a private prison contractor will be liable for Section 1983 violations because the contractor is acting under color of State law. But does this liability render the governmental entity that contracts out immune from civil prosecution? Again, the answer is that the governmental jurisdiction cannot contract out its liability.

Perhaps the best elaboration of the issues came in the case of *Lombard v. Eunice Kennedy Shriver Center for Mental Retardation, Inc.* Lombard, a resident at a State institution, filed a civil rights action alleging inadequate medical care on the part of the Shriver Center, a private organization which discharged the affirmative State obligation to provide the care to residents of the State institution.[17] In refusing to dismiss the claim against either the Shriver Center or the Commonwealth of Massachusetts, U.S. District Court Judge Garrity considered the dispositive issue to be the trilateral relationship between the State, the private defendant, and the plaintiff.[18] The Court recognized the affirmative State obligation to provide adequate care, noted the delegation by the State to a private provider under a voluntary assumption, and held that "Shriver must be considered to have acted under color of law, and its acts and omissions must be considered actions of the state. For if Shriver were not held so responsible, the state could avoid its constitutional obligations simply by delegating governmental functions to private entities."[19]

Under certain circumstances, the State may so imbue itself with the activities of the private contractor "as to be considered a joint participant in the offending actions."[20] In *Milonas v. Williams,* a case involving a juvenile facility, class members were involuntarily placed at the school by juvenile courts and the State with detailed contracts drawn up and agreed to by many local school districts which placed students at the facility.[21] The State provided much of the funding of the tuition at the school; the facility trumpeted this fact in its promotional materials.[22]

In 1985 the United States Court of Appeals went a step further toward holding government responsible for private contractor actions. In *Ancata v. Prison Health Services, Inc.*,[23] a county had contracted out medical care services for jail inmates. The contractor had failed to properly recognize

a prisoner's case of leukemia as a result of his/her initial recalcitrance and subsequent improper diagnosis and treatment. The Court found that, although the contractor "contracted to perform an obligation owed by the county, the county itself remains liable for any constitutional deprivations caused by the policies or customs of the [contractor]."[24] Significantly, however, the Court also determined that constitutional torts committed by a contractor's employee that were "not a result of the policy or custom of the entity" would not subject the county to liability, apparently insulating the county against ultra vires acts of the contractor.[25] Such an exemption could carry significant positive implications for States.

Two other forms of liability exist under which government can be found liable. The common law doctrine of respondeat superior holds the master responsible for the acts of his servant toward those whom the master owed a duty of care, if the servant failed to use such care in the course of employment. This can result in considerable civil liability.

Another scenario can arise if the contract activities are not carefully monitored by the contracting government agency. Liability can be imposed for failure to exercise the degree of oversight appropriate to the contract circumstances. However, if the oversight is close and a situation arises which the government should have reasonably recognized and dealt with in an appropriate manner, the government may be liable for the harm resulting from the action or omission. This is a catch-22 situation for government that is dependent upon the whims of the judge and jury. These types of questions involving oversight are now appearing frequently within the private sector context with corporate boards of directors, a group for which the cost of purchasing adequate insurance continues to skyrocket. But the governmental entity should know that, where oversight is concerned, the government may be damned if it does and damned if it doesn't.

A governmental entity can never be totally secure from the potential of a judgment against it resulting from the actions of a private contractor which it has hired to perform certain notable traditional governmental functions. The government can reduce its exposure to a secondary level when contracting out by specifying in a contract that the government be indemnified against any damage award and for the cost of litigation. While indemnification is not the perfect answer that governments would prefer to hear, it is the best available option to ensure against the costs of a negative judgment; the contractor must have adequate self-insurance or outside coverage.

Issue 3: How should the responsibility and authority for security be divided between the contracting agency and the private operator?

Discussion of issue

Escapes and use of deadly force. Private prison contractors certainly have an incentive to minimize escapes and injuries. Not only is the negative publicity something to be avoided, but escape and injury clauses may be components of contract performance requirements or incentives. While there are questions in many States as to whether a private prison officer can carry out certain activities, there is also a similar lack of understanding as to what their State counterparts can do. For example, the laws of Tennessee do not provide that corrections officers can use force, but they do provide for the licensing of private security guards.

Some States have specified standards as to when deadly force can be employed. Private prison employees would likely be bound by these regulations, if deemed under these laws to be law enforcement officers. If these employees do not have such authority, presumably this deficiency could be corrected by deputizing private prison guards who have completed some type of specific training. In States that subscribe to the provisions of the Model Penal Code, the proper use of deadly force by private correctional officers would not require further legislation. The definitions in the Model Penal Code appear to sufficiently include private prison guards. Deadly force, in any event, is condoned when used in self-defense against a similar imminent threat.

In the event of an escape attempt, private prison employees would likely be able to use reasonable and appropriate restraint in the absence of any other specific statutory or case law guidance. Once an inmate has left the facility's property (unless the private prison employees are in hot pursuit or have been deputized), law enforcement officials should become the parties responsible for the ultimate capture and return of the escapee.

Issue 4: What provision is there for protecting inmates' rights, including a mechanism for inmates to appeal decisions affecting them?

Discussion of issue

Why is there such resistance to the idea of total facility contracting? Much of the debate centers around constitutional questions—specifically, the potential deprivation of the constitutional rights of incarcerated individuals. The United States Constitution guarantees certain rights to every citizen, and virtually all of these rights inure to those who are incarcerated. Given the high number of prisoners who annually file civil rights actions with courts across the country (approximately 20,000) one might make a strong case that inmates are constantly on the lookout for actions by their captors which allegedly abrogate these precious freedoms.

Due process

One fundamental constitutional right is the entitlement to due process of the law. There are two types of due process recognized by the United States Supreme Court. The first, substantive due process, protects an individual against the arbitrary deprivation of life, liberty, or property. The second, procedural due process, merely affords an individual reasonable notice and an opportunity to be heard prior to the deprivation of any such substantive rights.

Contracting for prison services is said to adversely affect certain due process entitlements. Opponents claim that the very act of delegating the authority to deprive a person of freedom (incarceration) constitutes a fundamental denial of due process rights. The delegation of discipline and "good

time" decisions, inmate assignments, parole recommendations, and similar items are examples. A close examination of precedent, however, shows that the decision to contract out the correctional function, by itself, does not automatically bring with it a concurrent repudiation of due process rights.

Courts have consistently upheld the right of the Federal Government to contract out for detention facilities, provided that the facilities complied with certain minimum due process standards.[26] Assuming that the State has established reasonable safeguards and standards to be followed by the contractor, the mere fact of contracting out, taken alone, does not infringe upon due process. There must be an actual denial of rights, either procedural or substantive, to invoke questions relating to due process.

A particular hue and cry has been raised with respect to the authority of a private entity to impose discipline on an inmate, award or take away "good time" toward early release, assign inmates to appropriate facilities or parts of facilities, or make recommendations to the State's parole board as to a prisoner's suitability for a return to society.

Deserving of special consideration is the fact that virtually all private companies will contract on a per diem/per prisoner basis. A private contractor typically has a fiscal incentive to keep the inmate population at a high level. There is little that can be done, with the possible exception of close monitoring, to ensure that the profit motive does not supersede the individual rights of inmates. But the question remains: how can private entities perform the traditional governmental functions that affect individual rights?

The answer is relatively simple. Private entities exercising authority over individuals that otherwise would have been performed by a governmental entity should endeavor to closely adhere to the same type of procedures that the government agency would have normally used. Where possible, private contractor discretionary actions should also be made in the form of recommendations to the appropriate government agency or official for ratification. This ensures that there will be additional oversight and review, if not a *de novo,* or totally new hearing on the facts of the case. By following the necessary steps to provide procedural due process for an incarcerated individual, the contractor is able to better protect the inmate from substantive due process harms. To better protect all parties, the State should specifically authorize such actions to be taken by the private contractor with appropriate standards and safeguards.

Finally, one should note that there are some types of activities for which due process is limited or not even at issue. For example, loss of accumulated "good time" credits is not subject to a full invocation of due process safeguards.[27] Neither are liberty interests infringed by a transfer between prisons.[28] Other examples may also be found in areas that focus on the "privileges" of inmates, rather than on their "rights."

Privacy considerations

The right of the inmate to privacy is a matter of concern. For example, private contractors may not be able to legally acquire State or Federal criminal records ("rap sheets") that may be necessary for the proper classification of prisoners. In this case, if the information may not be passed along to the contractor, the government entity should be responsible for determining the appropriate placement of the prisoner. Other information that may be confidential under terms of court agreements may be available to the government itself, but not to its contractors. Finally, there may be constraints imposed upon the release of information pertaining to an inmate by a contractor. This may be problematic if specific information about an escapee must be held confidential by the contractor, yet would serve to improve the chances for the prisoner's recapture. Further questions may arise in the transition from one contractor to another or from a contractor back to the government. Careful attention must be paid to what documents and information may be legitimately retained by the initial contractor.

Summary

Contracting for a total facility is not impermissible nor an easy logistical process. Careful attention must be devoted to each contractual component to ensure adequate protection of the inmate's rights and protection of the State from unjust liability claims. Where the law is ambiguous, sensitive policy decisions must be made. These determinations can affect the lives and liberty of perhaps thousands, and can potentially impair a jurisdiction fiscally. Contracting for total facilities is a legal alternative, but the governmental entity must also choose the best social, fiscal, and political alternative. The remainder of this volume offers governments help in assessing that decision.

Chapter IV: Policy and program issues before deciding to contract

There are a number of policy and program issues that States need to consider before deciding to contract with a private firm to manage and/or operate a correctional institution.

- What are the arguments for and against privately operated prisons?
- What are the most suitable types of facilities to consider?
- Are there certain types of offenders that should receive special consideration?
- How are the numbers and types of inmates controlled?
- What would be the relationship of a private facility to the State board of parole?
- When is publicity appropriate?
- How can costs and quality issues be compared?

These major issues have been considered by many States and local governments during the past few years; they constitute important first steps. The material presented in this chapter serves as the basis for a policy study or special task force agenda in a State considering the contracting issue. A discussion of each issue is presented. Recommendations are offered, as appropriate.

Issue 5: What specific preanalysis should a State undertake prior to the contract decision?

Discussion of issue

Every State considering contracting out prison facilities should undertake a preanalysis to help decide whether or not to contract and to assess the scope of the contracting effort.

None of the eight government jurisdictions examined used a written, systematic preanalysis that preceded the decision to contract. It is possible that one or more of these was done and just not referred to us, but that seems unlikely. Partial exceptions to this were examinations by legislative research agencies in the States of Pennsylvania and Massachusetts.[32] Those discuss many of the concerns, particularly the legal and other legislative issues involved. However, they do not offer a detailed analysis of any proposed contracting effort.

Thus far the evidence currently available on the effects of contracting is extremely sparse, especially as to the success of these attempts. Therefore, the information on impacts of past trials is currently of limited value to other jurisdictions. While part of this is due to the early nature of many of these pilot contracting efforts, there also has been little systematic collection of evaluative material even on the older contracting efforts; nor have there been systematic cost comparisons. This means that most near future preanalyses will not be able to obtain useful data on the impact of contracting efforts of other jurisdictions.

Recommendations

Who should do the preanalysis? Though the legislature may have initiated the request for the preanalysis of contracting and may have also undertaken its own form of preanalysis—(as indicated above) focusing particularly on the general situation and legislative issues—it seems more appropriate that the detailed preanalysis be undertaken by the executive branch and particularly the corrections agency.

We suggest that the preanalysis be a team effort. The team should include not only representatives from the corrections department, but also from the State's office of management and budget and the State's procurement office. (Even in a State that has decentralized procurement, if it has a central purchasing office, the special competence of this staff should be included on the team.) There should also be a representative from the health department (at least for that part of the analysis that looks at health, medical, and various safety issues), and an attorney. From the corrections department itself there should be policy, program, and research and evaluation personnel.

The preanalysis will probably take a minimum of 3 months (preferably 6 or more months) to permit a thorough, comprehensive review.

What should be the content of this preanalysis? At least the following seven topics should be covered:

1. The intended purposes.
2. Legal issues.
3. Cost implications.
4. Service quality and contract monitoring implications.
5. Existence of adequate suppliers.
6. Possibility of defaults and their consequences.
7. Political issues.

Each of these is discussed below:

1. Purposes intended. This part of the preanalysis is basic. The review team should examine problems in the current system that the contract effort is attempting to alleviate. Typically, this means that the team should determine whether the contracting is attempting to reduce cost, improve service performance (and if so, in what specific ways), reduce crowding quickly, has other purposes, or some combination of these.

The findings here will affect, to a great extent, much of the subsequent analysis. For the purposes of this report it is assumed that the State's purposes are all of the above.

As part of their analysis, the review team should consider which types of facilities are to be candidates for contracting; i.e., what security level, what type, and how many inmates. The team should also consider whether an additional facility

is needed (especially to reduce crowding) or to replace an existing State-operated institution, and whether this should be accomplished by having the contractor construct and operate the new structure or take over an existing State-operated facility.

2. Legal issues. As discussed at some length earlier in this report, there are numerous legal issues that each State will need to face. These include such questions as whether statutes already exist, and if not what legislation is needed to permit contracting of prisons; and what changes to the State's procurement laws and regulations, if any, are needed to allow contracting and to permit an adequate request-for-proposals effort.

3. Cost implications. Costs will always be a key criterion for a State considering contracting. Probably the first analysis step the team should undertake is a cost analysis of present correctional facility expenses, at least those relating to the type of facility being considered for contracting.

Table B, below, provides an illustrative list of cost elements that should be considered for comparing the costs of government-operated to contracted facilities. The analysis should focus on costs likely to be incurred if the State operated the facility for which a contractor is being considered. For example, if the government is considering a brand new additional institution, it should compare contracting costs to those that would accrue if the State operated that facility. If the contractor would replace State operation of an existing institution, then the cost analysis should identify the expected cost of continuing State operation (considering, for example, whether significant capital funds would be required in the near future for the agency to the facility) as well as the costs that would be required of the contractor. These costs should include fringe benefits for the government employees.

Difficult questions arise as to how much overhead should be included and whether past capital costs, such as debt service, should be included in considering the State's operating costs. To what extent would these expenses change? Which costs would be reduced if the facility was contracted?

The preanalysis team will want to consider what the costs of a contracting effort would be, or at least what would be the break-even per diem contract price. The team will be handicapped by not having bids from contractors. It may want to obtain informal estimates from possible contractors, but this should not be done in a way that might compromise subsequent competitive bidding. Additionally, the team might renew bids obtained from other jurisdictions on similar projects.

Table B

Cost elements that need to be considered in cost comparisons

	Personnel including fringe benefits	Supplies	Equipment	Renovation	Capital	Maintenance	Total
Administration							
Food services							
Care and custody							
Medical, dental, and mental health							
Education							
Training							
Counseling/religion							
General services							
Recreation							
Relevant utilities; e.g., water, electricity, etc.							
Relevant maintenance							
Relevant capital costs							
Construction							
Rehabilitation							
Contract administration (contract option only)							
Contract monitoring (contract option only)							
Special one-time costs (if shifting to contractor); e.g., special training or termination costs for current employees							
Total							

Source: Adapted from Wayson, Funke, and Falken.

In calculating this break-even point, the analysts need to estimate the additional cost to the State for contract administration and monitoring and for potential special one-time costs if the State shifts a facility from State operation to private operation (e.g., special training of displaced personnel or termination costs for staff that are not retained). These expense elements are also included in Table B.

The analysts should also consider the cost (and other) implications if a higher or lower than anticipated number of inmates need to be assigned to the institution. The contract needs to include provisions for this eventuality to avoid possible larger-than-expected costs.

It is beyond the scope of this report to describe cost analysis in detail, but it will be a key element of preanalysis. Some cost data probably can be obtained from other States and local agencies; however, the relevance of that information will be limited.

4. Quality of service. Here the analysis team should review the current level of performance of the current facility (if it is to be a candidate for contracting) or of similar existing State-operated facilities. This should act as a benchmark for the potential contracted effort. As discussed later under issues relating to contract monitoring and evaluation, the State should review its own recent performance on maintaining security (such as disturbances and escapes), humane treatment, and success in rehabilitation. The State team might want to compare its own current performance (where it can) against the performance of other jurisdictions. If the State has a record of high performance, this will indicate less reason for contracting than if it has a weak or poor record; the latter implies that trying a different approach might be useful.

The experiences of other State and local governments with contractors may provide clues to the team as to what can be expected in its own State. But again, current information is likely to be quite limited and of restricted applicability.

It is recommended that team members undertake some examination of other selected State and local contracted activities (preferably including interviews onsite with a prison's public and contractor officials and even inmates) to obtain a better perspective on the problems and advantages in contracting.

5. Are there sufficient suppliers? As discussed in Issue 13, a State considering contracting should be concerned about the availability of vendors. Are there enough quality suppliers to produce sufficient competition to provide proposals from which a contractor could be selected? This is currently a problem since only a few companies are now contracting with State or local governments for secured facilities for adult or juvenile offenders.

6. Possibility of default and its consequences. A major concern in contracting is the need to have assurance that the contractor will be able to perform without defaulting. Failure might take the form of bankruptcy, inability to perform adequately, result from major labor disputes (such as strikes), or problems obtaining performance bonds or liability insurance. To some extent this is closely related to the problem of obtaining an adequate set of potential suppliers; however, additional difficulties can also occur, subsequently.

In Issue 16 we discuss provisions that reduce the risk of service interruptions and the consequences of defaults. A key product of this part of the preanalysis is to identify both the likelihood of such problems and what should be done to prevent their occurrences from having major consequences; e.g., by both preventing them in the first place and by minimizing the consequences if they do occur.

7. Political issues. Inevitably, there will be major interest groups within the State that will be very negative to contracting under almost any conditions. On the other hand there will also be proponents who will push hard for contracting. Members of the review team are not likely to be responsible for political action, but they should identify the likely major obstacles and how legitimate concerns might be recognized if contracting is undertaken.

From the foregoing components the team will be able to put together a comprehensive picture for State legislative and executive officials that should provide considerable guidance for their decisions on contracting. The material throughout this report should be helpful to the preanalysis team in completing their assignment.

Issue 6: What are the reasons for considering or not considering contracting prison operations with private enterprise, particularly with for-profit firms?

Discussion of issue

Debate over contracting for the operation of correctional facilities has been heating up at all levels of government during the past 2 years. Legislative hearings have been held in State capitals as well as in the U.S. Congress.[1] National organizations of State officials have sponsored conferences on contracting for corrections.[2] National organizations of lawyers and criminal justice planners have also expressed their concern, while government employee unions announced their opposition to the contracting trend being boosted by private firms.[3]

State officials have heard testimony from private vendors about the advantages of contracting for the operation of correctional facilities: cost savings, flexibility, quick facilitation, better management, and the like. Bills have been introduced into legislatures in several States to allow contracting, but States have tended to be extremely cautious in making their decisions. Bills in some States have been tabled or defeated; at least one State, Pennsylvania, placed a moratorium on contracting for private prison operations for 1 year.

The American Bar Association also called for a moratorium on contracting for prisons and jails until the legal issues were resolved. These were issues that arose when a State delegated "to private companies one of government's most basic responsibilities, controlling the lives and living conditions of those whose freedom has been taken in the name of the government and the people." The American Civil Liberties Union (ACLU), while not taking a clear position on the

contracting issue, raised a pertinent question: "Do we wish to establish a system whereby those interested in profit margins are given an incentive to influence and control public policy with respect to crucial criminal justice issues?" ACLU also raised a series of questions about the possibility of violations of prisoners' civil liberties by private entities.[4]

In February 1985, the National Governors' Association (NGA) gave a limited endorsement to contracting for prison operations. NGA's policy statement said, "States may wish to explore the option of contracting out the operation of prisons or other correctional programs. Private enterprise would be expected to run prisons in an approach similar to the way it now operates hospitals, drug and alcohol treatment programs, or job-training programs for government." The statement also said, "States should approach this option with great care and forethought. The private sector must not be viewed as any easy means for dealing with the difficult problem of prison overcrowding."[5]

Reasons for contracting

Reasons for considering contracting may be grouped under six subheadings: cost savings, rapid mobilization, capital expenditures, flexibility, management, and political considerations.

Cost savings:

- Private contractors may be able to construct new facilities or rent space less expensively than government, or may happen to have inexpensive space available that can later be used for another purpose.

- Fewer levels of management may allow private companies to provide a comparable level of correctional services at lower costs.

- Private purchasing procedures and negotiations may save money while avoiding rigid government procurement procedures. More short-term purchasing may be possible in the private sector than in the public sector.

- Private firms can bring economies of scale to the operation and private firms with contracts for multiple facilities can amortize expenditures.

Rapid mobilization:

- Private contractors may be able to make facilities available more quickly by raising private capital.

- Private firms with existing facilities may be able to relieve crowding faster than government could build a new facility.

Capital expenditures:

- It may not be necessary for government to increase its capital budget if a private firm builds a correctional facility.

- State government can avoid large amounts of capital expenditures by letting private firms build and run its correctional facilities.

Flexibility:

- Private prisons may have increased flexibility to deal with changes in the size of the prison population and special needs prisoners.

- By contracting with a number of jurisdictions, private firms may be able to achieve greater specialization than a single government.

- Private firms may deal more easily with a temporary increase in inmates without long-term commitment of facility space and/or more staff.

Management:

- A fresh infusion of ideas and energy from private firms may bring some positive changes in the corrections field.

- Private firms may have more efficient management systems than government because they are in competition, which government is not.

- Private entrepreneurs may be more creative in employee management, hiring, and promotion procedures, thus reducing employee turnover rate and increasing morale.

- Private firms are free to innovate and use the latest technology and management techniques as is any profit-motivated service industry.

- Private firms can design a facility to hire fewer highly motivated and highly trained people at a greater wage than the public sector may be able to.

- Private firms may provide better programs for counseling and training.

Political considerations:

- State agencies can justify contracting as a new alternative to prison crowding.

- Contracting may involve the private sector in sharing responsibility for corrections problems.

Arguments against contracting

Reasons for not considering contracting may be grouped under five subheadings: philosophical/legal, higher costs, lack of accountability, management, and political considerations.

Philosophical/legal questions:

- Profit-motivated employees may lose perspective on the mission of the public agency in the interest of expediency.

- The contractor's first loyalty may be to his firm, and this may conflict with the goal of the public good.

- Government incentives to pursue alternatives to incarceration may be weakened if new institutions are more quickly and easily available through the private sector.

- A firm's self-interest may encourage further or extended incarceration.

- Private industry can lobby for tougher law enforcement and longer prison sentences to keep institutions at maximum occupancy.
- The government has remanded individuals to the prison system and private firms should not be given responsibility to carry out their punishment.

Higher costs:

- Privately contracted prisons may cost more because of the necessity of government contract administration and monitoring.
- Private firms may lower employee wage and benefit levels.
- Private firms may "buy-in" or "lowball" a bid to get their first contract and then greatly increase their costs in future years.
- There might be hidden costs in contracts.
- It may be in the interest of the contractor to keep prisons full if contracts are on a per diem basis.
- Contractors may incarcerate prisoners longer than they need to in order to collect per diem fees, thus costing taxpayers more.
- In the absence of true competition among qualified private firms, contracted prisons may cost more.

Lack of accountability:

- Contracting for prison operation and management may decrease public input into the delivery of correctional services.
- Corrections is one of a small number of public services which may best be managed by the public sector, because it involves the legally sanctioned exercise of coercion by some citizens over others.
- Private firms may be less accountable to the public than government because of the profit motive, lack of legal mandate to provide service, and reduced public input.

Management and services:

- Privately managed prisons may compromise correctional standards.
- Prisoners in privately managed facilities may be denied as much human contact as they now receive because there might not be as many correctional officers under private management.
- There is the possibility of bankruptcy in a private firm.
- The public may be more worried about safety and security if a prison is privately managed.
- Private firms may skim the market and then leave the more difficult prisoners for the publicly run institutions.
- Private firms can reduce or eliminate unprofitable services even though they may still be needed, but not legally protected.

Political considerations:

- Contracting proposals may face inevitable resistance from many interest groups, including employee organizations.
- Contracting proposals can be an unpopular issue in election campaigns.
- Potential opposition from the community may be severe.

Recommendations

State policymakers should consider the issues of cost, management, timeliness, and accountability before making a decision about contracting with a private firm to manage and operate a correctional facility. A careful analysis of the advantages and disadvantages, opportunities for input from all sectors, and an assessment of past relationships with contracting will all lead to a better final decision.

Issue 7: How should publicity be handled?

Discussion of issue

Contracting out operation of an entire correctional facility to a private firm raises publicity questions State agencies need to consider—publicity on the nature of contract, bidding, the vendors, site, the impact of privatization, and so forth. The publicity issue also concerns such questions as: Do State agencies need to let the public know about their intention to consider contracting? How do they handle the media on this controversial issue? When and how should correctional employees be informed of contracting? And, how should State government approach the local community where the private facility will be located? Unless these questions are adequately addressed beforehand, State agencies may face unfavorable reaction from the public.

Philosophically, the general concept to privatization may appeal to both conservatives and liberals. Conservatives tend to consider privatization as an alternative way of reducing the size of government, and liberals see privatization as a means to "make scant dollars go farther to create additional government services."

In practice however, contracting for prison management is a potentially divisive issue for correctional employees, policymakers, the media and, especially, people in the community. Experiences in Tennessee and Kentucky all point to the significance of public relations as an integral process in contracting for total institution management.

The Kentucky situation deserves attention here. The contract required this private vendor to obtain approval from the local governing body before opening the Marion Adjustment Center. The private firm had visits and meetings with civic groups, officials, and residents in Marion County. Although the company had the support of Marion County's government officials, a group of community residents filed suits. While those lawsuits were dismissed, residents stayed divided on whether the facility should be allowed to locate in their community.

In Tennessee, a private firm made a big effort to inform correctional employees about its proposal to the State for privatization of the entire prison system. Tennessee's Commissioner of Corrections also sent out a memorandum to all of the correctional employees about this proposal.

Many commentators felt that this effort realized the worst fears of opponents to this strategy; i.e., private industry's real wish to replace the public sector. Neither Kentucky nor Tennessee are highly unionized States. The contracting issue can be even more divisive in States where government employees are unionized.

Recommendations

A public relations plan can be helpful in bringing about community education and acceptance. States should inform community members, seeking out active residents with good reputations as volunteers in government service. Second, States should also keep correctional employees fully informed of any contracting deliberations. Third, the media should be made aware of the initiative at an early stage. And fourth, the private firm, if awarded a contract, should employ community resources for operating the facility by hiring local people, and buying supplies and services locally.

Issue 8: Should contracting be done for (a) existing facilities; (b) a new institution replacing an existing facility; and/or (c) a new institution not replacing an existing facility?

Discussion of issue

Questions relating to private sector facility issues concern the relative merits of transferring existing facilities, building new institutions, and/or retrofitting existing structures. Each of these alternatives may be appropriate depending upon the system's particular set of circumstances. Additionally, they each have both positive and negative features.

Type-of-facility issues focus on whether or not there are any particular advantages to be realized by selecting one of three listed alternatives. The literature suggests that each instance of contracting is unique and there are no rules which precisely fit every situation. Nevertheless, there may be insights to be gained from the experience of others.

Additional capacity

Much of the justification for contracting out prisons rests on the expectation that private enterprise can supply critically needed correctional bed space within a shorter time period than the public sector. South Carolina, for example, when faced with the need to comply with a lawsuit settlement (concerning crowding) that required building five prisons, looked initially to the private sector for assistance.[6] Generally, the presumption is that private business has less so-called "red tape" and therefore can move ahead more quickly. Whether this involves converting preexisting structures or constructing new spaces, the speed with which new capacity can be added to help alleviate crowding is frequently a major consideration in deciding to go the private route.

The most expedient way to add to capacity is to bring new beds on-line by converting an already existing structure so that it can fulfill a correctional mission. Thus, vacant seminaries, private schools, and mental institutions can be reconfigured to meet a corrections need. A number of potential obstacles in this process have been identified by the Edna McConnell Clark Foundation in its publication *Time to Build?*[7] The contracting agency should ensure that the private company:

- Performs early planning activities.
- Educates the local public.
- Understands the nature of the criminal justice system.
- Gathers data about critical planning issues.
- Makes system-level policy decisions.
- Performs adequate prearchitectural programming.
- Considers operational costs during planning.

In the event that the private vendor has not attended to these items problems may develop: (1) in regard to the site selected for the new privately operated correctional facility; or (2) integrating the new facility into the ongoing system. The first of these problems was experienced by a Kentucky corporation, when after winning the contract to provide a minimum-security facility for the Kentucky Corrections Cabinet, it could not obtain an agreement from the local community permitting it to operate a correctional institution. Another contractor experienced a variation of the second problem when it took over the management of a State of Florida training school.[8]

Transferring an existing correctional facility

If the public agency's concern is less about additional bed capacity but more in the direction of seeking a new management style, one that purports to be more innovative or cost-effective, then it may consider turning over the administration of a currently operating facility to a private sector company. A variation on this theme occurred when the Florida State Department of Health and Rehabilitative Services (HRS) transferred the management of the Okeechobee Training School for Boys to a not-for-profit entity.[9] While this was not an adult facility and the private vendor was a not-for-profit agency, many of the problems incurred are identical to those that might result if an adult prison was involved.

Initially, the most difficult transition problems to manage concerned personnel on board at the time of the conversion. For example, how would existing retirement plans be affected; would those employees who opt to hire on with the private corporation retain reinstatement rights should they later change their minds; anticipating that any contract can be terminated, does the State agency have to reserve personnel "slots" so that staff can be rehired and paid should the facility revert to public sector management; what provisions should be made for public sector employees who do not wish to transfer from civil service to the private corporation, etc. Unhappiness about Okeechobee's pending transfer reportedly induced some personnel to agitate the in-resident juvenile population and for several days there was genuine concern that the administration would not be able to control the explosive situation which resulted.

Subsequent to the transition stage, another series of problems may emerge in regard to the private sector's desire to "train old dogs to do new tricks." The new management style will be different from the previous one. This means that staff who transferred will have to unlearn prior procedures and adopt new ones; some may have difficulty in accomplishing this. Moreover, at a later time the private company may decide it is easier to train new recruits than to retrain "the old guard." These latter individuals may then be eased out after the new administration has been established. At the Florida training school, in less than 18 months after the transition, all but one of the top management staff who had transferred from HRS was replaced by the private contractor. The sole survivor was in a position of lessened responsibility. This scenario also reflects the loss of control over personnel that the State implicitly agreed to when it pursued the contracting. Consequently, to protect the public agency's interests, the contract should address the qualifications of staff hired by the contractor, especially at the professional level (e.g., physicians, psychologists, social workers, educators, etc.).

Transferring an ongoing facility from public to private sector management appears to follow a type of "natural evolution." Subsequent instances of similar transfers should be better able to anticipate the aforementioned stages and more prepared to cope with them.

Additionally, while Florida's private vendor did introduce a number of novel program ideas, the initially stated goal of a more cost-effective operation was not realized.[10] (See also discussion under Issue 22.)

Since the State cannot abrogate its responsibility concerning the conditions under which prisoners are confined, contracting with the private sector raises liability issues (regarding the degree to which the private company's new procedures comply with constitutional minima). In order to reduce the likelihood of litigation, one private contractor in Kentucky adopted existing State Department of Corrections' policies and procedures; this also tends to resolve retraining problems. However, such an approach brings into question a purported private sector advantage, namely, its flexibility and readiness to bring novel ideas into corrections.

The public agency's concerns regarding conditions of confinement means that regular and frequent onsite inspections become a necessity, along with requiring periodic reports from the private enterprise. State personnel and resources will be needed to conduct this monitoring function. The contract should specify how the costs involved in conducting these inspections will be reimbursed, how deviations will be resolved, as well as the nature and frequency of both onsite audits and periodic reports.

Recommendations

The appropriateness of using private contracting to obtain additional bed space rests on the type of outcome the public agency seeks. If the intent is to obtain new beds quickly, the private sector offers an attractive alternative. If the outcome sought is a more economical operation, the minimal evidence available to date suggests that it is not a likely result of contracting (e.g., Okeechobee, some innovation; Kentucky, adoption of State policies by the vendor).

Contracting for or replacing an existing facility engenders a large number of problems, particularly in regard to on board, civil service personnel. As in the Okeechobee situation, this can lead to serious problems during the transition. Using private vendors to add to existing capacity by providing new or retrofitted institutions avoids these issues. It has the advantage of being accomplished more speedily than if the project were undertaken by the public sector.

Issue 9: What level of offender should be assigned to the contracted facility? What are the differences in attempting to contract minimum- versus medium- versus maximum-security facilities? Are there different considerations for contracting facilities for specific populations?

Discussion of issue

Issues regarding level or type of offender involved: (1) accommodating to the security needs of inmates, and (2) addressing questions around special needs that prisoners may have. The following section explores these aspects from the viewpoints of both the public and the private sectors.

Currently there are no privately operated high security prisons in the country. At least one former State corrections commissioner, Ellis MacDougall, now president of a private corrections company, states: "I don't think there are enough answers to questions in the country and in the courts."

Additional concerns have been expressed regarding the type and/or level of offenders confined in the institutions which are contracted out to private vendors. In October 1985 the Pennsylvania Legislative Budget and Finance Committee indicated that such a contract should specify exactly the characteristics of the prisoners to be housed.[11] A primary consideration regarding prisoner characteristics concerns their security needs.

Security

There are no nationally accepted standards which establish whether a particular prisoner warrants minimum, medium, or maximum security. In order to reduce future misunderstandings, the RFP and final contract should indicate quite specifically the security level needs of inmates being considered.

In order to arrive at a mutually agreed upon definition of the characteristics of the contracted-for prisoners, objective criteria will have to be established. Determining a prisoner's security needs usually involves considering the following factors:

1. Severity of current offense.
2. Length of sentence.
3. History of violence.
4. History of escape.
5. Number and/or type of prior commitments.
6. Number and/or type of pending detainers.

This process will be facilitated if the jurisdiction already has an objective classification system in operation. The classification approach should (a) use items which are in some way measurable; (b) be applied to all inmates equally; and (c) be both reliable and valid.

There is a natural tendency to assume that the more problematic prisoners will require a greater degree of security. While generally true, it is by no means always the case. The type of issues that inmates present to administrators range from the mental and physical to those common in everyday life. Being psychotic, having AIDS, or experiencing deep feelings of desperation brought on by serious family, economic, or personal difficulties are independent of whether or not a particular offender is or is not violent or an escape risk.

An additional problem in the security area concerns the lack of any agreed-upon definitions as to what constitutes a maximum-, medium-, or minimum-security institution.[12]

Consequently, when the public agency contracts for "x" number of minimum-security beds, not only should it specifically describe how appropriate inmates will be identified for those spaces, but also establish expectations regarding what constitutes a minimum-security facility. Some of the criteria used to classify institutions utilize the degree of presence of the following:

1. External mobile patrol—an armed officer who drives a vehicle on a road which circles the institution outside its perimeter.

2. Gun towers—above-ground towers from which armed officers can observe a facility's secure perimeter.

3. Perimeter barriers—the number and type of physical barriers surrounding the institution (e.g., fence(s), wall, razor/concertina wire, etc.).

4. Detection devices—a television camera, high-mast lighting, electronic intruder-sensing devices on a fence, wall, or in the ground.

5. Internal security—internal architectural features which contribute to security (e.g., sally ports, secure glazing materials and reinforced concrete buildings, electronic steel doors and/or corridor grilles, physical barriers between inmates and staff, etc.)

6. Inmate housing—the proportion of dormitories, squad rooms, single rooms, and cells in a correctional institution (outside versus inside cells, etc.).

7. Inmate/C.O. ratio—the number of inmates relative to the number of correctional officers (i.e., facility's inmate population divided by its total C.O. staff).

Minimum versus medium versus maximum security

Management issues vary with institution security levels as a consequence of different percentages of prisoners in specific categories. Inmates are not a homogeneous group even within security levels.

One system for classifying prisoners into program/security relevant types employs a fivefold categorization system: Group I (Aggressive-Psychopathic); Group II (Manipulative); Group III (Situational); Group IV (Inadequate-Dependent); and Group V (Neurotic-Anxious).[13] These groups can be into three clusters: the troublemaker/predatory types—"heavies"; a "moderate" group; and the dependent/anxious/victim group—"lights." Characteristics for each of these clusters are shown in Table C, on the following page.

A minimally secure and open institution, whose inmates were appropriately designated, is projected to have 20 to 25 percent Heavies (Groups I and II), 25 to 30 percent Moderates (Group III), and 25 to 30 percent Lights (Groups IV and V). Prisoners appropriately assigned to a maximum-security institution might be distributed so that 35 to 45 percent would be Heavies, 25 to 30 percent Moderates, and 25 to 30 percent Lights.[14] The distribution of these groups at an actual maximum-security penitentiary, Central Correctional Institution, in Columbia, South Carolina, were: 61 percent Heavies, 15 percent Moderates, and 24 percent Lights over a 9-month period for an average population of 1,113. A medium-security facility in the same system, Kirkland Correctional Institution, during an 8-month period with an average population of 747 inmates had the following average percentages in each category: 49 percent Heavies, 32 percent Moderates, and 18 percent Lights.[15]

Both the anticipated and actual distribution of prisoners in these inmate categories reflect differences in percentages relative to the facility's security level. There are concomitant implications in terms of staffing patterns and differences in construction. The greater the percentage of Heavies, the more correctional officers and institutional security features warranted. The higher the proportion of Lights, the more program staff is required. The greater the proportion of Moderates, the fewer security features needed.

Mention has been made of contractors who may want to avoid troublesome cases and therefore be unwilling to contract for certain types of individuals.[17] From another perspective, Commissioner Jeffes of the Pennsylvania Department of Corrections, testifying before the Pennsylvania House Judiciary Committee, suggested it may also be desirable to restrict the type of inmates who will be housed in a private prison (e.g., those convicted of murder, assaults on correctional officers, arson, and certain organized crime offenses), especially where the prisoners will be from out of State.[18] If the contract addresses only the security level required by the contracted-for prisoners, it will miss dealing with important variables and as a consequence lead to future misunderstandings and problems.

Custody

A final issue concerns operational definitions for custody levels. Custody differs from security in that the latter deals with, for the most part, architectural features of an institution, while the former is concerned with levels of supervision. Prisons usually house inmates in several custody categories; i.e., a single facility will generally have two custody levels (sometimes more). Contract negotiations regarding the security levels of both inmates and the institution should also specify the type of privileges which will be accorded prisoners in the private facility's various custody grades. These should parallel those found in the State's comparable facilities.

Table C

Characteristic behaviors by group[16]

I ----------Heavy ---------- II		III --- Moderate	IV ---------- Light ---------- V	
Aggressive	Sly	Not excessively aggressive or dependent	Dependent	Constantly afraid
Confrontational	Not directly confrontational	Reliable, cooperative	Unreliable	Anxious
Easily bored	Untrustworthy	Industrious	Passive	Easily upset
Hostile to authority	Hostile to authority	Do not see selves as criminals	"Clinging"	Seek protection
High rate of disciplinary infractions	Moderate to high rate of disciplinary infractions	Low rate of disciplinary infractions	Low to moderate rate of disciplinary infractions	Moderate rate of disciplinary infractions
Little concern for others	"Con artists," manipulative	Concern for others	Self-absorbed	Explosive under stress
Victimizers	Victimizers	Avoid Lights	Easily victimized	Easily victimized

Differential programming by group assignment

	Education	Work	Counseling	Staff approach
Heavy (Groups I & II)	Individualized	Nonrepetitive	Individualized (behavioral contracts)	By the book
	Programmed learning	Short-term goals		No nonsense
		Individual goals		
Moderate (Group III)	Classroom lecture plus research assignments	High level of supervised responsibility	Group and individual (problem orientation)	"Hands off"
				Direct only as needed
Light (Groups IV & V)	Classroom lecture plus individual tutoring	Repetitive	Group and individual (personal orientation)	Highly verbal
		Team-oriented goals		Supportive

Table D, on the following page, illustrates some of these custody features.

Programs

Differences in the methods utilized to deliver inmate programs parallel institution security levels, but the assortment of programs is generally the same (e.g., academic/vocational training, counseling/psychotherapy, industries, recreation/leisure activities, work details, etc.). Since time to release tends to vary directly with the needed security level, high-security facilities have a greater concentration of work activities (such as prison industries) to accommodate their prisoners' continuing need for productive

Table D

Inmate custody features[19]

Activity	Custody-community	Out	In	Close
Observation	Periodic; appropriate to situation	Checked at least every hour	Frequent and direct	Always observed and supervised
Day movement	Unrestricted	Unrestricted	Unescorted but observed by staff	Restricted, on a checkout/ check-in basis
Night movement	Unrestricted	Under staff observation	Restricted, on a checkout/ check-in basis	Escorted and only on order of watch commander
Meal movement	Unrestricted	Under staff observation	Supervised	Supervised and may be escorted or fed in cell or on cellblock
Access to jobs	All, both inside and outside perimeter	All inside perimeter and supervised outside jobs	All inside perimeter, only	Only selected day jobs inside perimeter
Access to programs	Unrestricted, including community-based	All inside perimeter; none outside perimeter	All inside perimeter; none out perimeter	Selected programs/activities; none outside perimeter
Visits	Contact; periodic supervision; indoor	Contact; supervised; indoor only	Contact; supervised indoor only	Noncontact
Leave the institution	Unescorted	Escorted	Armed one-on-one escort; inmate in at least partial restraints	Armed escorts; inmate in full restraints
Furlough	Eligible for day pass* and unescorted furlough	Eligible for day pass* and/or escorted	Not eligible for day pass* or furlough	Not eligible for day pass* or furlough

Definitions: * Day pass—Permits inmate to be away from institutions only during daylight hours; whereas a furlough means overnight for at least 1 (or more) night.

activity following completion of time-limited academic and vocational training programs. By contrast a minimum-security institution generally has inmates with shorter time to release. Therefore, its programs would have to be geared to a different timeframe.

The greater number of correctional officers required to staff a high-security institution is balanced in treatment/rehabilitation oriented agencies by the relatively larger number of high salaried program personnel in the less secure facilities. If the public agency has only minimal expectations in regard to prisoner programming, then it will be more costly to operate the high-security institutions.

"Skimming"

Another aspect of the private vendor/inmate selectivity issue was expressed in union official Dave Kelly's testimony before the House of Representatives' subcommittee, when he states that if private companies house the less dangerous and less violent inmates (i.e., "skimming"), then public institutions will end up with a higher concentration of the worst inmates, thereby increasing public costs.[20]

It is more costly to build high-security institutions appropriate for confining the more dangerous and violent prisoners. However, the day-to-day operation of such facilities may not necessarily be more expensive. Although high-security facilities require greater numbers of correctional officers, less secure institutions are often more program-intensive. The smaller number of correctional officers in these latter facilities is balanced by a greater number of professional program staff, many of whom command high salaries. Thus, the actual cost of operation for institutions at different security levels may not vary as greatly as their construction costs.

"Skimming," if it were to occur, will increase the concentration of more difficult-to-manage inmates in public-sector institutions. Initially this may require retrofitting less secure State facilities to make them more appropriate for prisoners with higher security needs. Eventually it would mean that any newly constructed facilities would have to be built more securely. The short-term effect of contracting out might be to delay the time when new construction would be required (a cost benefit) but increase the funds needed to build those facilities (a cost detriment).

"Skimming" may lead to additional problems if the jurisdiction does not have an objective classification system. That is, unless there is a reliable and valid method for identifying inmates likely to be violent, mistakes may occur and what gets skimmed may not always be pure cream. The Supreme Court recognized this when it held that classification deficiencies may have far-ranging impact on the totality of conditions of confinement.[21]

"Dumping"

The other side to the selection issue concerns public sector agency "dumping." It is a truism that no one wants to deal with the problematic inmates. If the public agency has total flexibility in selecting who it will send to the private vendor, all the "worst" prisoners within a particular security level might be chosen. Therefore, the contract needs to specify which type prisoner the contractor will house, thereby protecting both public and private sector interests.

At the Marion Adjustment Center (Kentucky's private sector minimum-security facility) an interesting twist to the "dumping syndrome" occurred; the State selected only its best prisoners because of a desire to have the private contracting project succeed.

Special needs

A second aspect of the type-of-inmate issue concerns special needs prisoners. This refers to factors other than an offender's security needs; e.g., inmates who are aged/infirm, physically and/or mentally ill, retarded, handicapped, require protective custody, women, etc. A number of sources seem to agree that contracting out could be particularly successful if it concentrated on prisoner groups that have specialized requirements. Not only can private prison conditions be tailored to meet the needs of these inmates, but it is probably more cost effective to house them together than dispersed in general prison settings. Such clustering permits economies of scale which otherwise are precluded.[22]

For example, all correctional systems have a number of inmates who must be provided special housing because of their protective custody (PC) status. A prisoner may be placed in protective custody for a variety of reasons:

a. Threats of sexual and/or physical assault.

b. Testified in court against another prisoner in that facility.

c. Being an informant.

d. Case involved a high level of notoriety.

PC individuals are kept totally separated from the regular inmate population. The high levels of security and concomitant staffing ratio, along with the small number of these prisoners, means that per capita costs for operating a PC unit are quite high. Moreover, in small units it is difficult to meet recognized standards (ACA, 1981) for special needs inmates in such programs as outdoor recreation and work assignments. It has been proposed that a private sector institution devoted entirely to handling PC cases (gathered from several jurisdictions) would alleviate much of the burden now borne individually by each one.[23] Additionally, this would make available a number of beds in currently crowded institutions.

This same argument has been advanced regarding female prisoners. Women inmates represent less than 10 percent of the total prisoner population. Consequently in many States, particularly those with small correctional systems, economies of scale reduce the likelihood that female prisoners will be accorded the same level of program opportunities as available for the male prisoners. A private regional prison could provide better facilities and a wider variety of program activities for the female inmates from several State systems. The same advantages would result as indicated above for PC prisoners.

Recommendations

The issue concerning the level of offender for which a State might seek to contract with a private vendor involves not only questions pertaining to security needs, but also encompasses special needs prisoners. Both the RFP and the subsequent contract should be explicit in describing the type of inmate for which the State is seeking a private contractor, and the architectural features the public agency deems appropriate for any facility proposed to confine those prisoners. Further, the contract should reference the State's current classification policy and its operational definitions of the privileges and level of supervision accorded the type of inmates at the contracted-for custody level.

Assuming that these questions can be resolved—how one identifies a prisoner's security and custody needs, and what attributes appropriately characterize institutions at each security level—both the public and the private sectors would be most comfortable if their negotiations concerned only minimum-security offenders/institutions. Because of political implications and community resistance, it is much easier to find a site for a minimum- as opposed to a maximum-security institution. The recommendation would be that only minimum-security prisoners/facilities be contracted for once a jurisdiction decides it wants to follow the contracting route.

Additionally, the contract should specify the State as being responsible for identifying which inmates meet the agreed-upon criteria and how their transfer to the private contractor will be effected. Moreover, should any disagreements arise, the contract should indicate how these will be resolved (referral to a contract-specified public agency staff member in the central office). The other side of this coin should also be addressed in the contract; namely, the criteria and process by which prisoners confined in the private facility will be identified for transfer back to the public agency and how such moves will be accomplished.

Contracting issues regarding maximum- versus medium- versus minimum-security inmates affect an institution's architectural features and the relative proportions of correctional officers and program personnel in the facility's staffing pattern. Construction costs are substantially greater for the more secure institutions. However, operational costs may not vary directly with the level of facility security, depending upon the public agency's stance toward inmate programming. In order for the private contractor to accurately estimate the per diem cost for each prisoner, both the RFP and the contract should specify the government agency's expectations regarding level of inmate programming; i.e., number and type of programs, prisoner/program personnel ratios, and staff qualifications.

Issue 10: How many inmates should the contractor be expected to house? What provisions should be made for fluctuations in that number? What control does the contractor actually have over the number of inmates? Should minimums and/or maximums be established in the contract?

Discussion of issue

The issues surrounding the number of inmates contracted for in a private sector undertaking center on limits: setting minimum and maximum numbers, establishing a tiered schedule of per diem payments, and building safeguards into the contract regarding the movement of prisoners into and out of the private sector facility. The need to find a balance between the interests of both the public and private sectors is paramount, along with a continuing attention to the concerns of prisoners.

Size

Decisions about institution size must balance such factors as economies of scale (which argue for large facilities that can function at lower per capita costs) and concerns about dehumanizing conditions of confinement (which suggest smaller facilities as being more desirable). The recommended size for new public institutions is 500 beds. An increase has been proposed to better accommodate swollen populations without adding inordinately to construction costs. While "smaller is better" still holds, suggested maximum, medium, and minimum figures are, respectively, 1,000, 750, and 500.

One strategy which avoids both horns of the size-of-institution dilemma, supports unit management.[24] This approach subdivides large prisons into smaller semiautonomous units. In this way both the economies-of-scale benefits and the humane-conditions-of-confinement criteria can be satisfied. A unitized facility requires only one dining hall, gymnasium, school building, kitchen, laundry, etc., while at the same time close contact can be maintained with the inmate population since the treatment staff's offices are on the same living units where their caseload is housed.

Minimums and maximums

Concerns regarding the number of inmates involved in a private sector contract take a variety of forms. On the one hand there is the contractor's need to create a budget and establish a per diem cost figure based on a minimum expected population. In other words, the public agency's contract guarantees "x" number of prisoners at "y" dollars per day and vacant as well as filled beds are paid for at a set rate (which should be less for the former, provided this is specified in the contract).

The public agency, on the other hand, would desire avoiding any tendency on the part of the contractor to keep beds filled to capacity by retaining inmates beyond the time when prisoners are eligible for transfer to another facility.

A private contractor's proposal to manage Tennessee's entire Department of Corrections dealt with this issue by proposing one large, overall payment rather than a per diem rate.[25] This approach has frequently been used in contracting for specific services; e.g., Alabama's contract for medical services by its Department of Corrections.[26] While the Tennessee proposal may avoid the problem of keeping inmates longer to maintain a maximum-occupancy level and the resulting highest number of per diem payments, it also presents a reverse problem; namely, releasing prisoners early in order to avoid variable costs since empty beds do not adversely affect the level of payment.

From another perspective in this era of extreme crowding, the public agency may want to establish a maximum bed capacity at the private facility. This assures that a certain amount of capacity will be available.[27] Such limits also protect the private vendor from possible liabilities arising from crowding. However, these constraints have their downside.

For example, the public agency may need to place more than the agreed-upon number of prisoners at the private facility. Contractually established "caps" present real problems under such circumstances. A variation on this issue arose in Tennessee at the privately managed Chattanooga (Hamilton County) Jail, when the county was charged the same per diem rate for each inmate above the contract specified limit as they paid for the "guaranteed" beds. County officials felt that economies of scale should have resulted in a lower per capita cost of the additional prisoners. Thus, it is important for the contracting agency to document its expectations in regard to the cost for housing any inmates above the agreed-upon number. (See also discussion of Issue 15.)

Timing

The contract should specify how quickly the new facility will be filled to the agreed-upon minimum number of inmates. A too rapid transfer-in rate may overload private sector staff before operational "bugs" have been resolved. However, too slow an inflow of prisoners will not only delay the crowding relief sought by the State, but it will also result in a waste of funds—payments for unoccupied beds.

Balancing all these conflicting sets of interests becomes a contract negotiation issue. In light of the above considerations, the State may be interested in establishing specific safeguards in the contract regarding decisionmaking authority as it relates to the movement of inmates.

Recommendations

Decisions concerning institution size involve balancing economies of scale interests (in favor of large prisons) with consideration regarding humane conditions of confinement (suggesting smaller facilities). The public agency can have the best of both worlds by specifying in the RFP and the contract that unit management be used by the selected private vendor.

A tiered fee structure should be built into the contract so that there will be no future misunderstandings regarding cost for vacant beds and/or additional inmates beyond the specified maximum; both a minimum and population level should be stated in the contract.

Most critical of all in this area are contractual agreements in regard to inmate movement into and out of the contracted-for facility. As the contract initiator, the State should incorporate statements in the document which will ensure its continuing control over decisionmaking regarding inmate movement.

Both the public and the private sectors have an interest in ensuring adherence to the provisions agreed to in the contract. A method for resolving any future contractual differences which may emerge should be agreed to before activation of the facility.

Issue 11: How will inmates be selected? Will the private organization be able to refuse certain inmates?

Discussion of issue

The nature of eligibility requirements, which prisoners must meet to be placed in a private prison, touches upon the heart of the matter in contractual arrangements. How particular individuals will be selected (i.e., whether or not they meet agreed-upon criteria) is critical to the success of the contract. Additionally, a method for resolving differences of opinion must be specified. These considerations affect not only inmates included "in" by the correctional agency but also prisoners selected "out" by the private vendor. Thought also needs to be given to questions concerning what choice, if any, a chosen prisoner has regarding refusing to be transferred.

Corrections has been characterized as the one institution that "can't say no." All of society's other service providers have some sort of screening criteria which establishes a threshold for entrants; this is not the case in the prison business. Whoever the courts sentence will be imprisoned; *where* they will be incarcerated remains the prison system's only option. The question arises: will this same situation hold for the private sector?

Eligibility criteria

The correctional agency will want to set the criteria for placing inmates in the contracted-for beds; therefore, the conditions of eligibility should be specifically mentioned in the contract. From the viewpoint of the private vendor, such an arrangement has both its positive and negative aspects.

Assuming the criteria for admission have been arrived at through a negotiation process, there should be little difficulty provided both sides live up to the terms of the agreement. This presupposes that there is a clear understanding by both parties as to the definitions used to characterize the eligible group. Unfortunately, more often than not, this is more easily said than accomplished.

The contract should specify the factors which will be considered to determine whether or not a particular prisoner qualifies. This assumes that the correctional agency has a formal classification process which assesses every inmate in a consistent fashion on objective measures. In other words, if the private vendor agrees to accept only minimum-security prisoners, what are the desiderata by which one determines "minimum security"? (see discussion under Issue 9). In parallel fashion, criteria need to be specified by which the private agency will be able to identify inmates who warrant transfer back to the State's facilities.

Level of specificity

The category "minimum-custody inmates" is not homogeneous. Within the group of prisoners who qualify for this level of supervision there will be strong and weak, stable and unstable, bright and dull, physically and mentally sound and unsound; troublemakers, victims, and moderates will be found within all of these groups. If there are to be any transfer restrictions regarding selecting prisoners with certain characteristics, these need to be documented from the outset.

Selection authority

In addition to how prisoners will be chosen for the private institution, there is the additional consideration regarding who does the selecting. That is, can the private vendor veto a choice made by the public agency? Added to the "selecting in" process, there are considerations in regard to "selecting out"; i.e., are there conditions that must be met before the private corporation can return a previously accepted inmate whose subsequent behavior, in their estimation, no longer makes the individual eligible? What if there are differences of opinion between the public and private agencies as to whether or not a particular inmate met, or continues to meet, the contractually agreed-upon criteria? Who arbitrates?

For Kentucky's private facility (Marion Adjustment Center) the State is the selecting authority. The researchers learned, during interviews with State Corrections Cabinet personnel, that initially, because of its desire to see the Marion contract succeed, only the best inmates were being identified for transfer. However, as Marion's prisoner count increased fewer of these highly qualified offenders could be located. Consequently, more recent transfers included more typical minimum-security inmates. The State faced the dilemma of too few highly qualified prisoners versus the need to fill the contracted-for minimum number of beds at Marion.

Transfer willingness

A final concern involves the inmate's options; i.e., do prisoners selected for transfer to a private vendor's institution have a right to refuse to go? This question has legal implications regarding what rights prisoners forfeit as a consequence of their criminal conviction. It has been generally held by the courts that inmates retain only those rights which do not conflict with the fact of incarceration.

Any attempt to limit a correctional agency's authority to transfer inmates would have serious negative consequences for the efficient operation of that system. Prisoners are entitled to a modified level of due process in order to avoid arbitrary and capricious decisionmaking. Ordinarily these are built into agency policy and control all inmate movements which involve transfers within a given jurisdiction. When the transfer is across jurisdictional lines (e.g., from one State to another), additional procedures are required as specified in interstate compact agreements.

State correctional agencies have also transferred inmates from their institutions to private sector halfway house facilities in the community. Usually such transfers are desired by the prisoner involved since it results in greater freedom in an area closer to the offender's home. Thus, the issue of an inmate refusing to move to this type of private facility rarely arises. Should it occur, the agency most probably would not transfer a prisoner who did not wish to move since the minimum-security level of the new facility would raise the issue of escape. Typically, State corrections departments avoid confronting the issue of transferring a prisoner to a private-sector facility which the individual involved deems to be less desirable than the current place of incarceration.

The courts have ruled that inmates do not have a constitutional right to any particular classification.[28] Clearly the correctional agency has the authority to make such transfers.

Plausibly, it will not want to set up a situation which challenges a prisoner sent to a private facility to engage in untoward behavior to gain a return transfer.

The decision to transfer to a private prison presents some additional considerations. The private facility may be located further from the inmate's home and family than the institution to which he/she ordinarily would have been designated, or it may not have a program that the prisoner wants, or the inmate's buddy may be in the State's comparable institution, etc. Within these scenarios, there is a disinclination for the inmate to comply. Consequently, the State must maintain control over inmate selection and include "transfer willingness" on the part of selected prisoners into its decisionmaking equation.

Recommendations

Selection of inmates for placement in a private facility is the State's responsibility. As the contract originator, the State agency has control over provisions written into the document. The public sector cannot abdicate its authority to carry out mandated responsibilities. The basis for these selections, and the methods by which chosen inmates will actually be transported to the private facility, should be written into the contract. Criteria should be mutually agreed upon to avoid any future misunderstandings (see Issue 7).

Differences are bound to arise regarding the interpretation of the contract's provisions, and whether or not in a specific instance a specific individual does or does not meet a particular definition. A prior agreed-upon mediation method needs to be identified; i.e., a high-level State employee in the DOC's Central Office who will perform this function. The purpose of this mechanism will be to temporize frequent recourse to the courts regarding an alleged breach of contract.

Issue 12: What authority and responsibility should a private contractor have for discipline and for affecting the release date of inmates? What will be the relationship of these decisions to the State board of parole?

Discussion of issue

Since the private sector lacks the official authorizations granted to a corrections agency (in order that the latter be able to carry out its lawful responsibilities), questions arise as to the degree to which a private company should be able to restrict the freedom of another person. Within a correctional setting, this issue affects decisionmaking in regard to imposing disciplinary sanctions and in making recommendations to a parole board or other releasing authority.

The argument has been made that the private sector should not be involved even indirectly in the area of classification or parole release any more than it would be in sentencing.[29] If prisoners' rights are to be properly protected, the "contractor or his employees could make no disciplinary decision which would affect parole or loss of good time."[30]

Disciplinary problems

Aside from the legal aspects involved (see Issue 4) there is the operational question: how can any correctional facility, public or private, function effectively if it does not maintain control over disciplinary procedures? Even if prisoner intake is carefully screened, some individuals transferred to the private facility will engage in untoward behavior resulting in disciplinary charges being filed. A prompt reaction to reported rule infractions is imperative, both from the standpoint of maintaining control of the institution as well as from the legal perspective of inmates having a right to due process in areas affecting their release from incarceration. Consequently, the question becomes not whether the private prison should be involved in handling disciplinary infractions, but rather how this will be done in light of legal implications.

In Kentucky's privately operated Marion facility this issue was temporarily resolved by transferring inmates back to the State agency when they are suspected of having committed a major disciplinary infraction. This approach was predicated on the absence of a legal library at Marion (omitted from contract requirements) and the State's opinion that this lack denies a prisoner constitutionally entitled rights. A subsequent opinion held that because MAC was a minimum facility, a law library was not required. Nevertheless, the contractor has recently installed a law library.

A number of court cases have dealt with inmate rights to due process during the disciplinary hearing process; e.g., Sostre versus McGinnis, Wolff versus McDonnell, and Hayes versus Walker.[31] It is mandatory that both private and public agencies follow practices which comply with recognized constitutional minima. In many instances these requirements will have been spelled out in already existing State policies. As was decided in Kentucky, other private agencies may simply adopt the State's procedures for handling disciplinary issues, thereby avoiding having to demonstrate that their own procedures meet the required standard.

In order to ensure that appropriate policies and procedures are being followed, the State many want to assign one of its employees to participate in some, if not all, disciplinary hearings held at the private contractor's facility. Under this arrangement, the contract will need to specify who is responsible for such costs as office space, electricity, heating, ventilation, lights, telephone, office equipment and supplies, etc.

Handling disciplinary infractions may be facilitated if the private contractor's authority is stipulated in the agreement. For example, a two-stage process could be established, provided the public agency's disciplinary policy groups infractions into minor and major categories and details the possible sanctions permitted for each level of rule violation. Penalties for minor disciplinary infractions would not include placement in segregation or loss of good time; these would be among the options available only for the most serious rule violations. Under this arrangement, the private company would be able to deal promptly with lesser (minor) level untoward behavior—Stage 1. More serious (major) breaches of regulations—Stage 2—could be dealt with by having the

onsite agency representative chair the disciplinary hearing. If there is no public sector representative onsite, the private prison's disciplinary committee would limit its actions to making only recommendations when major rules have been violated. Those recommendations would then be reviewed and (within a stipulated short time period, not to exceed 2 working days) approved, disapproved, or modified by a specific staffmember or designee on the State's staff.

Releasing authority

Whether or not a particular jurisdiction continues to use a board of parole, every system has some releasing process which in effect, separates a prisoner from the auspices of the correctional agency. Questions arise concerning the relationship between the private prison and this authority. There appears to be no reason why the private sector cannot play the same role as the State department of corrections; that is, one of providing information to the releasing authority.

In some jurisdictions the corrections system makes specific confidential recommendations to the releasing authority concerning every prisoner being considered. This practice has both its positive and negative aspects when such recommendations are being made by private sector staff. From the point of view of the releasing authority, providing recommendations gives them additional information. The negative side concerns whether or not the private sector should have the authority to exercise such influence.

In regard to the private agency's function in this arena, there would seem to be few problems if it confined itself to presenting the facts concerning the prisoner's level of institutional performance. However, if private prison personnel become more involved (e.g., making recommendations) there may be some basis for a legal challenge—questioning their authority to sway decisions which result in the restriction of someone else's freedom.

Recommendations

The public agency needs to be certain that the contractor is conducting disciplinary hearings following legally required practices. It is recommended: (1) that the private agency adopt the policies and procedures utilized by the State; and (2) that the State permanently station one (or more) of its own staff members at the private facility who in addition to other responsibilities will participate in all disciplinary hearings concerning major rule infractions—the definition of these having been spelled out in written policy statements.

Although individual practices may differ in regard to the degree of involvement of the State correctional agency with release decisions, insofar as the private sector is concerned, their contribution to this process should be limited to a presentation of the facts pertaining to the inmate's level of adjustment during the period of confinement in the private facility.

Chapter V: Requests for proposals and contract issues

This chapter discusses a number of issues that States need to consider in deciding what provisions to include in requests for proposals (RFP's) and the contract. These issues include:

- How the RFP process should be handled so as to ensure sufficient competition.
- What criteria should be used for evaluating proposals and to what extent these should be specified in the RFP?
- Which capital and operation costs should best be assigned to the private vendor and which should remain a public responsibility?
- The duration of the proposed contract.
- Contractor obligations towards current government employees if the contract calls for a transfer of a facility to private operation or replacement of an existing institution with a new, private facility.
- Provisions relating to potential problems with vendors such as poor performance or bankruptcy.
- Provisions covering possible changeovers from one contractor to another or from the private sector back to the State.
- Which standards the contractor should be required to follow.
- Contractor obligations regarding the State's monitoring of the contract.

Issue 13: Should contracting be competitive or non-competitive? Are there enough suppliers to provide real competition? What are the relative merits of for-profit and nonprofit organizations?

Discussion of issue

A major reason proponents give for contracting with the private sector is that it enables the government to encourage competition for the business. In turn, this competition is intended to encourage bidders to keep their prices low and their program at as high a quality as possible—in order to win the competition. Another reason for competitive contracting is to avoid claims of cronyism that can occur with sole-source contracting.

This raises some important issues for government that need to be resolved early if contracting is being considered.

1. Should the government solicit bids through a formal State request-for-proposal (RFP) process?

2. Are there enough potential suppliers to have an effective competition?

3. How can governments find and develop additional potential suppliers to try to ensure effective competition?

Competition and costs

Does competition bring costs down without sacrificing service quality? Our research was not designed to determine an answer to this question. Many accept as a given the principle that competition brings costs down—with the caveat that it has to be real competition. We found two indications that the principle is sound. One piece of evidence was the substantial reduction in price (43 percent) by the eventual winner in Kentucky during the last phase of the competition when bidding was reopened. In Pennsylvania, when the State switched to competitive bidding on the Weaversville facility, there was more than one bidder, and the contractor (for the first time) reduced its price from the previous year's cost. Note, however, that in both cases the contractor reduced staff. It is also possible that, initially, a contractor will offer a cut-rate price and subsequently raise it. The State's protection here is (1) to check the company's financial condition (to be sure the firm is not likely to default because of possible losses incurred during the contract); (2) to have alternative suppliers available when time for rebidding comes up, if the original contractor proposes a large increase; (3) to limit the allowable price increases in multiyear contracts; and (4) to be able to take back or discontinue the facility if no bidder comes in at rebid time with a reasonably priced proposal.

Request-for-proposal process

Should government agencies use a request-for-proposal process? Most, if not all, States require RFP's for services of this magnitude, or at least make it difficult to use another method. All the State governments whose contracted facilities we examined used RFP's: Kentucky, Florida, Massachusetts, and Pennsylvania. Pennsylvania's Weaversville facility, however, was operated by a for-profit company from 1976 until 1982 without an RFP or a competitive bid process.

At the local government level, RFP's were less frequent. Bay County (Florida) and Hamilton County (Tennessee) both advertised in newspapers but did not issue formal RFP's.

Bay County, because the contract was to include some construction work, felt it could not legally use an RFP process. Apparently the county felt the contract would be covered by the State's professional Architectural and Engineering Procurement Law that prohibits competitive price bidding for these types of services. Thus, Bay County advertised requesting "qualifications" statements.

The Hamilton County commissioners were approached by the company that eventually received the contract and did not feel the need for a more formal RFP than that represented by a short newspaper ad.

Ramsey County (Minnesota) initially issued an RFP in 1984 but had no plans to rebid it (as of 1986) because of satisfaction with the operation of the contract.

At this time, given the limited formal evaluation that has been done on any but the Florida Okeechobee contract (and that one was done early in the life of the contracting effort), there is no strong evidence that RFP's are a major necessity. As noted in discussing Issue 22, most contractors appeared to have tried hard to do a good job in these early examples of secured-facility contracting.

Thus, the absence of RFP's has not, to date, appeared to have caused major service problems or led to major cost problems. Nevertheless, it seems likely (as indicated by the findings given earlier) that the RFP process that clarifies what is desired and forms the basis for contract negotiations, also adds competition and helps bring costs down. Over the long run, RFP's are likely to be a necessity in order to ensure fair competition.

Are there enough suppliers? What type of suppliers should be sought?

Currently, only a few private companies have direct experience in managing and operating secure correctional facilities. There are not a large number of experienced suppliers. For the most part, even the current vendors have only a very few years of experience as companies delivering this service. Since most firms hire key personnel from State or local correctional agencies, however, even brand new companies may have some staff with many years of experience.

In response to both its initial (1984) and revised (1985) RFP's, Kentucky received five bids. Florida received only one bid for both its initial (1982) and the later (1984) Okeechobee RFP. Pennsylvania's 1982 RFP elicited only one bid, and two bids in 1985. Bay County in 1985 received eight statements of qualifications from contractors, four of whom were asked to bid by the county commissioners. Hamilton County received only one response to its 1984 advertisement. Shelby County, Tennessee, did not issue any formal notice but compared, informally, two or three vendors.

Of the facilities we studied, only one contractor seemed both inclined and capable to expand rapidly into new areas. In three cases the contractors were nonprofit organizations. Of the for-profit firms, two were just starting up. One of the older firms did not believe prison contracts to be a particularly good business opportunity for it.

On the other hand, even if only two bidders are likely, this can make for a good competition if they truly compete. Organizations with correctional experience in halfway houses, for instance, have relevant experience. In addition, there is considerable staff experience in State and local corrections agencies. Some of these employees and managers welcome the more entrepreneurial atmosphere and the different opportunity represented by a new private company.

We suspect that nonprofit organizations are likely to be much less willing to work with inmates in higher security level settings, probably preferring to work with minimum security or juvenile offenders.

How can a State find and encourage enough potential suppliers to have effective competition? Kentucky advertised in the State's major city newspapers (but not in the corrections professional journals). It also prepared a bidder's list of over 15 organizations to which it sent copies of the RFP.

Though politically it may be preferable to emphasize suppliers that have offices within the State, this may greatly limit the number of competitive bidders, especially with the current lack of experienced providers. Local firms probably have an inherent advantage, such as "knowing the territory," but this does not mean others should not be invited to compete. Kentucky's 1985 RFP was mailed to firms in 10 States; however, Kentucky addresses by far outnumbered others on the RFP mailing list.

Several government agencies permitted and actually received bids from both for-profit and nonprofit private organizations. The Massachusetts Department of Youth Services contracts only with nonprofit organizations, since it does not currently have statutory authority to use for-profit firms. This seems to be an exception, however. Even in Massachusetts the Department of Corrections has the authority to contract with for-profit companies (but currently only at one facility).

Allowing both kinds of enterprises to compete certainly adds to the number of potential suppliers. A preference for nonprofit, such as in Massachusetts youth corrections, is usually due to the belief that private nonprofit organizations will be more likely to give quality service and not cut their level of service to make extra profit. Some of these organizations may also have the advantage of being able to use voluntary help, have lower paid employees, use contributions to offset their costs, and not have to pay taxes. Such advantages, however, should be reflected in their bids. The temptation of for-profit firms to cut corners to make added profits can, to some extent, be controlled by the corrections agency if it has a good monitoring system (as discussed under later issues).

Another way to expand the number of suppliers involves the choice of size and security levels of facilities to be contracted. In general, the smaller the facility and the lower the level of security (and, presumably, inmate difficulty), the easier it will be for organizations, especially smaller ones, to bid.

Finally, a State could encourage the formation of new private organizations, especially in States faced with major crowding. This solution is not an immediate answer to finding more suppliers but might be appropriate in some situations. Assistance might be in the form of seminars on establishing such organizations, especially for persons already experienced in State or local corrections, or for organizations with some experience in corrections but not secure prison operations.

Recommendations

States should use a competitive RFP process; many States may have to in order to meet State procurement laws. This also reduces the likelihood of claims of cronyism and the like.

To maximize the number of eligible suppliers, a State can:

- Advertise in both major State and national newspapers and national correctional journals.

- Develop and maintain a list of potential suppliers.
- Permit both private nonprofit and for-profit organizations to bid.
- Provide some assistance to encourage the formation of new organizations.

Issue 14: What criteria should be used to evaluate private proposals?

Discussion of issue

Prior to soliciting proposals,the State needs to work out the process for evaluating proposals. This includes such considerations as: the specific evaluation criteria to be used, how they should be weighed against each other and combined to give an overall score, how formal and explicit the evaluation process should be (including how much detail should be spelled out in the RFP), and who should do the evaluation. A key issue in the assessment is the relative weight given cost in determining the winner. This latter question may differ between initial contracts for a facility and rebids.

Purchasing officials generally prefer explicitness—detailed ground rules for the evaluation—but correctional officials with little experience in contracting correctional facilities may feel less comfortable with spelling out criteria and weights. Of course, the State's own purchasing regulations may require a particular level of detail.

What evaluation criteria should be used? Pennsylvania's Department of Public Welfare, which ran the 1985 competition for its Weaversville secure facility for seriously delinquent male youth, used five criteria. No weights were given in the RFP, but the criteria were "listed in descending priority order" as follows:

1. Contractor qualifications: "quality, relevancy, or recency of projects of a similar nature conducted or completed by the contractor" and ability to "meet the time constraint."
2. Professional personnel: personnel qualifications, education, and experience.
3. Cost.
4. Understanding of the service program problem.
5. Soundness of approach: proposed treatment plan. The State of Kentucky for its 1985 RFP was quite explicit in providing specific evaluation criteria, the weights for each, and scoring system. The principal criteria were (a) facility, (b) staffing, (c) programs, (d) security, and (e) experience.

Table E, on the following page, shows the information provided in the Kentucky April 1985 RFP, including both the subcriteria and weights for each. As noted at the bottom of Table E, Kentucky set a minimum score for each of the five criteria. If a proposal scored less than 60 percent on any one of the five major criteria, it would not be considered further. This procedure required the bidder to meet minimum levels for each major criterion. This is unusual. Evaluations of proposals in most other States generally permit the proposal to overcome a poor showing on one criterion with good showings on others. Establishing minimum acceptable scores has the advantage that the bidder has to reach a minimum acceptable level of competence for each important criterion.

Kentucky separated the evaluation of costs from the technical assessment. The technical aspects of proposals were evaluated first. Cost proposals were examined only for those proposals considered technically acceptable. The State felt this saved considerable review effort by not wasting time considering costs for technically unsound proposals.

Kentucky used a formula to determine the overall score for each proposal and thereby determine which bidder would be awarded the contract. It divided the "price per inmate per day" (as obtained from the cost proposal) by the total technical score. The proposal with the lowest resulting value received the award. This scoring procedure was spelled out in the RFP.

Kentucky included "facility" as a major evaluation criteria since the contractor was required to select a site within the State and provide a facility at that location. The Pennsylvania solicitation to operate the existing Weaversville facility did not need a facility criteria. Otherwise, there is considerable similarity between these two sets of criteria.

Not explicitly stated in either set is consideration of the financial condition of the bidder and consideration of the background of the firm in terms of, for example, possible criminal connections. Presumably this could be considered part of the contractor qualifications or experience criteria, but it is not explicitly identified.

The Pennsylvania RFP put as its first priority the quality and relevance of projects of a similar nature. This criterion appears to be particularly important for rebidding a contract (as was the case for the Weaversville facility). An official with a private firm expressed considerable concern that State officials carefully consider the effects on personnel and the offender population of bringing in a new company if only "to save a few dollars." With an emphasis in the criteria on relevant experience, the existing contractor can have a considerable advantage over other bidders, especially if the vendor has been doing a good job. This seems reasonable; however, other bidders might be scared off if they perceive the existing contractor as having the inside track for the new contract. The question arises whether the rebid RFP should provide a rating, at least in general terms, of the contractor's performance to date, and also provide the most recent contract price. If the private firm's performance has been good, this would put more emphasis on contract price, and vice versa. (This probably only should be done if the government agency has a sound monitoring process and can substantiate work performance.)

A special problem occurs with cost. Often, a State will have determined a maximum price that it can pay, probably based on budget limitations. Should the RFP explicitly identify this upper price limit? Purchasing officials tend to dislike putting such information into RFP's, feeling that it inhibits good cost competition. However, experience of the State of Texas' Department of Human Resources for some social service RFP's, in which an upper per diem rate is given, suggest that if bidders feel there is real competition, they will often come in with rates substantially lower than the maximum. This has the advantage of avoiding wasting bidders' time trying to

Table E

Evaluation criteria for Kentucky RFP[1]

SECTION 80 — RFP SR–903–85
CON
PROPOSAL EVALUATION — APRIL 12, 1985

80.000 **Point Scoring of the Technical Proposals**

The evaluation of technical proposals will involve the point scoring of each proposal in each of several areas according to pre-established criteria. A maximum of points will be available for each technical proposal. The cost information will not be available to the technical committee during this evaluation.

The evaluation criteria are:

1.	FACILITY:	
	Ability to meet Codes and Startup Timeframes	10 points
	Availability of Transportation	4 points
	Space Available	10 points
	Vocational Resources	10 points
	Community Reaction	6 points
	Sub-Total	40 points
2.	STAFFING:	
	Pattern	14 points
	Director's Qualifications	8 points
	Job Classifications	14 points
	Monitoring System	4 points
	Sub-Total	40 points
3.	PROGRAMS:	
	Service Work Programs	12 points
	Personalized Programs	12 points
	Recreational Activities	6 points
	Community Resources	10 points
	Sub-Total	40 points
4.	SECURITY:	
	Procedures	40 points
5.	EXPERIENCE:	
	Previous Experience	20 points
	Performance in Previous Experience	20 points
	Sub-Total	40 points
TOTAL		200 points

80.100 **Minimum Acceptable Score**

Proposals scoring less than 60% (24 points) in any one or more of the five criteria will not be considered for award of contract.

guess how much is available and as occurred in the State of Kentucky, putting in bids that are higher than the maximum funds available. (This situation required Kentucky to amend its RFP and undertake subsequent negotiations to meet State financial constraints.)

Evaluation process

How formal and explicit should the evaluation process be? Kentucky was quite explicit regarding its evaluation process, believing that the more explicit the RFP, the fairer the competition and the fewer problems later. As indicated above, the State spelled out the evaluation criteria, weight given each, and the formula by which the winner would be decided, considering both the technical score and the cost proposal. Not only that, but Kentucky's purchasing process requires that once the award is made that the ratings of each bidder be open information. The State feels this keeps the purchasing process open and discourages improprieties and later complaints by losing bidders.

Who should evaluate the bids? Generally, the assessment is done by the corrections agency initiating the RFP, with the assistance of central purchasing or financial officials. In Kentucky, five people evaluated the proposals. They were

appointed by the heads of corrections and finance departments. The basic RFP process was determined by the Finance Cabinet, which houses the State purchasing office.

One possibility is to include on the evaluation team an outside person, such as a representative from another State correctional agency, from a corrections professional association such as the American Correctional Association, or from a State interest group that is reasonably neutral and has no self-interest in the final selection. This has been done on occasion in human service proposal evaluations. For example, Hennepin County occasionally uses outside persons, such as representatives from human service boards. The Utah Division of Youth Corrections has on occasion solicited outside input by asking neutral members of the community to serve on evaluation panels.[2] The National Association of State Purchasing Officials' "Guide" recommends a third party that can provide technical expertise, a fresh look, no vested interest, and objectivity.[3]

Recommendations

We suggest that an explicit, open proposal process be used, one similar to that employed by the State of Kentucky. Prior to writing the RFP the State agency should carefully plan what it wants to look for in proposals, and consider how and by whom the evaluation will be done. This should include specification of the weights for each criterion and how the overall scoring will be done. The procedure should identify how "cost" will be handled and what weight it will have. The RFP itself should spell out the specific evaluation criteria, the weights, and scoring system (so that all bidders will know equally how the evaluation is to be done and what is important to the State).

Kentucky's practice of specifying a minimum score for each of the major evaluation criteria seems quite appropriate. If a proposal does not meet the minimum requirement for any one criterion, that proposal should be dropped.

We suggest that evaluation criteria include such items as:

1. The experience of the firm in undertaking similar operations and evidence as to degree of success of past performance.

2. Staff qualifications in the desired correctional activities.

3. The quality of the procedures and programs that the bidder proposes.

4. The bidder's financial condition and absence of criminal connections.

5. Evidence that the personnel indicated in the proposal will actually be principals in the contracted effort.

6. Cost.

Doing the technical review first seems reasonable to avoid spending time reviewing costs for proposals that are not technically qualified. The reverse also holds. The State might remove from technical review proposals whose total cost exceeded the amount available.

We further suggest that if there are major budget limitations on the facility that are known to the State, that information be specified in the RFP in order to avoid wasted time by both parties in preparing and reviewing proposals that are above State budget levels.

Issue 15: How should the contract price be established and on what basis? What should be included in the contract price?

Discussion of issue

A major concern for States in contracting prison facilities is the contract price. In this discussion we address questions regarding: (a) the form in which the price is specified, (b) what might be done about setting maximum or minimum price limits, (c) what elements of cost should be included in the price, (d) timing of payments to contractors, (e) how prices for years beyond the first year in multiyear contracts should be adjusted under the contract, and (f) what provision should be made for reimbursing capital costs.

We do not discuss here questions of what specific prices should be or whether contracted correctional facilities have been less or more costly than publicly operated facilities. (The latter is discussed under Issue 22.)

Form of contract price

In most of the facilities whose contracts we examined, the final contractual arrangement took the form of a cost per inmate day—usually one rate regardless of the actual number of offenders during the contract period. (See discussion of tiered price schedule, Issue 10.) (As will be discussed shortly, some contracts also included maximum or minimum prices in the agreement.) Exceptions were the 1985 contract for the State of Pennsylvania's Weaversville facility and the Florida Okeechobee School For Boys contracts, which specified fixed total price arrangements. Another potential exception was the 1985 proposal to operate all State of Tennessee correctional institutions for a flat amount, not based on a rate per inmate day basis. The latter proposal was not accepted by the Tennessee legislature.

The underlying rationale for using a rate per inmate day basis is that facility costs are directly related to the number of person days at the facility. However, in most of the cases examined, some substantial capital costs (facility rehabilitation or new construction) were incurred by the contractor and included in the contract price. Thus, some cost elements were "fixed" and did not vary in proportion to the number of inmate days. In addition, economies of scale can sometimes be achieved when there is a high number of prisoners, such as by getting better prices for buying supplies in bulk. This suggests that prices could be somewhat variable, depending on the number of inmates.

We found only one example of variable prices. The Bay County Jail 1985 contract specifies (to simplify somewhat) three prices depending on the average number of prisoners for the month: $29.81 for up to 310 prisoners, $20.74 for 311–329, and $7.50 for 330 prisoners and above. These prices were dependent on whether the vendor was able to obtain tax-exempt financing for capital costs. The contractor did not obtain such financing, and therefore the price was fixed at $29.81 for up to 330 prisoners and $7.50 per day above 330.

The Bay County contract also permits the contractor to house inmates from other jurisdictions. The vendor is not permitted to charge less than the price to Bay County. If the charge is higher, the excess is to be shared equally between the contractor and Bay County. (An extra advantage to Bay County is that any outside inmates count toward the minimum number that the county is obligated to pay for.)

Another issue is the effect of the pricing approach on contractor behavior regarding retention of inmates. A fixed-price contract tends to encourage contractors to move inmates out, thus reducing the number at the facility. This would have the effect of reducing the contractor's variable costs and also reducing staff workload. A fixed per diem contract tends to encourage contractors to retain inmates longer, thus maximizing revenues. The importance of the choice of pricing arrangements is affected by the extent to which the contractor can actually influence the length of prison time, as discussed in Issue 12.

Provisions for maximum and minimum contract amounts

An unexpected influx of inmates into a contracted facility can mean large additional costs for the government agency, perhaps forcing it well over its budget. This can be a fearful event. On the other hand, if a much smaller number of inmates than anticipated are assigned to the facility, the contractor can lose a great deal of money because of fixed costs. Thus, both government and vendor receive some protection by specifying maximums and minimums in the contract.

Note that government-operated facilities can, at least in the short run, house additional inmates (through crowding) with relatively small additional out-of-pocket costs, such as for additional food. Thus, a public agency operating its own facilities has some protection against large budget overruns. If, however, it contracts with a private vendor on a straight per-inmate day basis, the government is obligated to pay that daily rate for every prisoner.

Of course, the corrections agency can exercise control by not sending inmates to the contract facilities. A State has flexibility as to where it assigns prisoners. This problem is more of a danger for local governments (such as those contracting their only county jail) where the county has little option but to put the additional inmates into the contracted facility. This happened at Hamilton County, Tennessee, and caused budget problems when there was a large influx of offenders committed for driving while intoxicated (DWI).

The contract with Bay County Florida specifies a maximum dollar obligation, the amount budgeted for the fiscal year. The contract states: "In no event shall the County be required to pay the contractor more during any fiscal year than the amount budgeted."

Both the State of Kentucky's Marion facility contract and Bay County's contract specify a minimum number of inmates, and thus a minimum price. The Kentucky 1986 agreement includes a minimum of 175 inmates for the facility, which the State had planned as a facility for holding 200. The contract price is based on inmate days. Assignment of more than 200 prisoners requires approval by both parties (Section 40.120). The rate per day is the same regardless of the number of extra inmate days.

Contracts by the Massachusetts Department of Youth Services for secure treatment facilities specify both a per diem rate and a maximum total payment for the year.

In order to keep contracts within budget limitations, a State might indicate funding constraints in its request for proposals. The State of Kentucky's first RFP produced only one bid that qualified technically, and it was above the State's funding limit set by the Corrections Cabinet. This limit was not published in the RFP. The revised RFP also lead to most bids being above Kentucky's unspecified maximum. Finally, after the initial winner (whose bid was below the maximum the State had in mind) failed to secure the site it proposed, the remaining bidders became aware of the maximum.

It is a controversial question regarding whether or not to put specific maximum dollars in RFP's. Purchasing departments often disapprove of such provisions, believing specifying the maximum amount diminishes cost competition. However, if there are enough competitors this specification need not inhibit price competition significantly, especially if the RFP encouraged lower bids by including price as an important evaluation criterion in awards. This would make for more realistic bids from suppliers, would avoid bidders having to second guess the State, and would avoid some wasted effort (as occurred in Kentucky). The Texas Department of Human Resources has specified in its RFP's a maximum rate that the State will pay for its family service program but encourages proposals at lower rates.

A related question for initial contracts is when does the State start paying the minimum specified in the contract? The Kentucky contract originally provided for a 60-day startup period (after contract signing) before the minimum took effect. However, the contractor found it difficult to bring the inmate count up to the minimum of 175 during that period and negotiated with the State to delay the effective date to 90 days.

Another question that should be considered in advance of contract signing is whether an inmate day should be counted for both the day offenders enter prisons and the day they leave. This specification was not clear in most of the contracts we examined. Exceptions were in Bay County, Florida, which included the day of entry but not the day of departure—and Hamilton County, Tennessee, where only 1 of the 2 days counted. Both versions have the effect of counting 1 of those 2 days, but not both.

Contract cost elements

What cost elements should be included in the contract? The principal bone of contention between governments and contractors concerning these contracts was: who was responsible for which cost elements? Responsibility for certain expenses had not been clearly specified in the contracts.

The following contract elements were particularly prone to insufficient specification, thus opening the possibility of later disputes and serious problems:

- Certain health costs, especially medication and expenses for treatment outside the facility, as in hospitals or a specialist's office.

- Certain transportation costs, such as those to and from hospitals and the offices of medical specialists, and to other locations for court parole or disciplinary hearings.
- The incidental costs of an onsite monitor, such as office space, secretarial assistance, reproduction costs, office equipment, utilities, and telephone.
- Utilities (especially if the facility is on a site shared with a publicly operated facility). Utilities include water, sewer, heat, light, gas, electricity, and telephone.
- Costs of training the private contractor's correctional officers, especially when training is provided by the government.
- The disposition of funds obtained in a contractor-operated canteen for inmates.
- Provision for a legal library and paralegal aid for inmates.
- Provision for an information system compatible with the government's system.
- The use of inmates to undertake various services for the facility such as maintenance and repairs, food service, and janitorial duties.

The crucial issue here is to determine in advance which items are to be provided by the contractor and ensure that the bidders, and subsequently the winning contractor, have included those items.

Most contracts addressed medical costs in some detail and required that the contractor take care of in-facility initial treatment and nursing care, while the government paid for outside hospital and specialist care. (The amounts might be billed and paid for by the contractor, such as in Bay County, but these are resubmitted for reimbursement by the government—over and above payments for the operation of the correctional facility.) The Bay County contract requires the contractor to obtain county approval first for such non-emergency health care. The contractor pays for medication but can then bill the county separately for it.

The Ramsey County, Minnesota, 1986 contract for adult female inmates specifies that basic medical care is covered by the private firm's per diem. This care is defined as including: "a physical examination, sick call and self care. The cost of emergency or necessary hospitalization, surgery, outpatient evaluations, and dental care will be borne by Ramsey County. Costs for prescriptions will be borne by Ramsey County . . ."

In Kentucky's Marion Facility, questions arose over a number of elements: hospitalization of a Marion inmate with a preexisting medical problem; State training program costs for private firm staff; lack of provision for an onsite prison law library and paralegal assistance; and laws of inclusion of a computer-based inmate records system compatible with the State's approach.

The State of Kentucky, after some initial dispute with the vendor (since the contract did not address the issue), decided the private firm had to reimburse the State for 2 weeks of training which the State provided to the contractor's correctional officers. The contract, it should be noted, required annual training for project staff. The private company provides space for the State's onsite monitor, although this was not specified in the RFP or contract, but the State corrections department pays for the monitor's telephone. Responsibility was not specified for some of the other expenses of that office; reproduction and secretarial help were handled informally. While these are small costs, they exemplify problems that should be avoided in future RFP's and contracts.

In general, canteen profits in contracted facilities are used to directly benefit the inmates; however, the wording in the contracts that we examined usually was vague. This could be a source of subsequent contention, and perhaps public embarrassment, if the ground rules are not carefully spelled out in advance.

Using inmates to work on various facility activities is traditional in correctional facilities. The concern here is that the contract should make clear the extent to which inmates can be used for work in operating and maintaining the facility, how they are to be paid, and what elements the contractor is to be paid for. This concern should not conflict with the objective to keep inmates constructively occupied. Also, as one private contractor official noted, work details will require supervision by the contractor, so that savings to the contractor may be small if there are any at all.

Even when competitive bidding was undertaken, we often found that the RFP did not specifically identify which specific costs (items such as those mentioned above) were to be included in the bidder's price. Thus, it appears possible that some bidders included some of these and others did not. Such inconsistency makes comparability among prices more difficult and may lead to misinterpretation by the bid evaluators, as well as disputes after the contract is awarded regarding responsibility for unspecified costs.

Timing of contract reimbursement

Delayed government payments to contractors can be a major concern. The vendor may incur added interest expense, if he needs to borrow funds to pay bills or salaries. An official of the Kentucky facility contractor expressed such delays as one of his major concerns. He thinks that contracts should provide for an advance, or at least prompt payments. Another official of a contracting firm felt that the government agency might delay payments because of budget problems.

Kentucky, however, is one of a number of States which have a "Prompt Payment Act." This guarantees that correct invoices are paid within 30 days of their submission.

Determination of the contract amount for future years

Typically, prison facility contracts will be for more than 1 year. The question arises: what will happen to the price in future years? Contractors do not want to be held to the same price, especially in the face of inflation.

Most of the correctional facility contracts we examined were multiyear and had provisions for automatic adjustments based on cost-of-living indexes.

The State of Kentucky specified that after the first year of a 3-year contract, increases would be based on the U.S. cost of living index. The Bay County contract calls for an

"inflation adjustment" based on the Consumer Price Index but also established a minimum increase of 2½ percent ("in order to provide sufficient funds for salary increases for contractor personnel") and a maximum increase of 5 percent ("in order to protect the County from unlimited escalation").

The Bay County contract is nominally for 20 years, but it provides that either party may request a price adjustment due to "unforeseen circumstances" every 3 years. Another contingency explicitly identified in the Bay County contract was the possibility that State laws or regulations would be changed thus increasing the cost of operating the facility. If this occurs, the contractor may request an adjustment to the per diem charges. Arbitration is required if the two parties cannot agree on the adjustment.

The Florida Beckham Hall contract limits the price for the second and third year of the 3-year contract to no more than the price offered by the contractor for each of these years in its response to the RFP. In addition, the department reserved the right to negotiate the price prior to the beginning of the second and third years. The contract also limits the State's obligation by explicitly making future years of the contract "subject to appropriation of funds by the State Legislature."

All the contracts had "escape clauses" permitting either party, with reasonable notice, to terminate the contract without cause (presumably allowing termination because they couldn't live with the existing price).

Government agencies and contractors do not appear reluctant to attempt renegotiation at almost any time, as circumstances arise. The State of Pennsylvania has recently undertaken renegotiations to reduce costs. The reverse, of course, is also a possibility. An item omitted from the contract might require adding to the contract price.

Inevitably some items will be neglected in developing contracts even after more experience is gained; not every contingency can be anticipated. Nevertheless, it is desirable to keep renegotiations to a minimum.

Provision for reimbursing capital costs

If the contractor is responsible for construction or rehabilitation of a facility, this can involve substantial capital costs. The private firm could be paid a lump sum or, as was the case in the examples we examined, can be reimbursed by including this cost in calculating the inmate per diem charge. Over the life of the contract the vendor can recoup the investment and debt service interest expenses. Another option (not found in use in these correctional contracts) is for the contractor to charge an annual fee, equivalent to a leasing or rental fee, to the government. This option could have the advantage of separating a major portion of fixed expense from the per-inmate day variable costs.

A principal question is what should be done if the contract is terminated before the private company has recouped its investment. In most of the cases we examined, the expectation is that the facility would revert to the government or be taken over by a new contractor. Thus, the government generally wants to retain ownership, or at least control, over the institution. An exception is Kentucky's Marion facility, which was purchased by the contractor before the request for proposal was issued. There is no specific provision for the State to obtain the facility when the contract is terminated. A portion of the per diem was identified in the contractor's bid as being for debt service. The vendor presumably wants to retain the property and facility for other uses if and when the correctional facility contract ends.

Other contracts we examined included a formula for reimbursing the private company at termination, basically an amortization schedule. A payment level was established whose magnitude declines each year that the contract is in operation. For example, the Bay County agreement includes renovation of the jail and construction of an annex. Payment at (no-fault) termination is determined by amortizing the principal in equal installments over a 20-year period with an interest cost "the lesser of the prime rate plus one percent (1%) or the interest rate actually paid by [the contractor] on any money borrowed . . ." (Sections 1 and 8.4)

An associated issue for government is how to protect itself if it unexpectedly needs to terminate the contract; e.g., because of contract problems. The agency could be then faced with a large, budget-busting cost to pay the contractor for the facility. To reduce this problem the contract could provide for repayment spread over several years (with appropriate interest). Such provisions were not found in the contracts we examined.

Recommendations

While contracts based on a fixed inmate day rate are the major form currently in use, we recommend that States consider variable daily rates. Rates would be based on steps, being lower for larger numbers of inmates during a particular reimbursement period. This recognizes that certain fixed costs don't change and that there are some economies of scale available to contractors.

To protect the private company a minimum number of inmate days should be indicated through a minimum total contract price or a larger per diem for smaller numbers of prisoners. In addition, a State should include a maximum amount that cannot be exceeded without formal approval. This is desirable to protect State budgets.

Perhaps most important, the government should specify explicitly in both requests for proposals, and subsequently in the contract, which cost elements are to be included and which are not. Details should be included on such items as: various medical, mental and dental health costs, transportation expenses, use of inmates for work activities, costs for onsite monitoring, training expenses for contractors' correctional staff, utilities, record-keeping requirements, and legal libraries and other legal aid for inmates. The documents should also specify how facilities will be disposed of and paid for at termination of the contract. The result of more careful specification should be bids that are more easily compared and also fewer disputes over contracts and possible public embarrassment.

The request for proposal and contract should specify how both current and future costs will be determined under the contract. Minimum and maximum limits on adjustments should be detailed. Provisions for adjustments due to unforeseen circumstances should be included, but reopening

the negotiation process should not be overly "easy." Frequent adjustments of price may defeat the competitive purposes of the original bidding.

Finally, to protect the contractor, the agreement should provide for a specific payment schedule requiring reasonably frequent and timely payments.

Issue 16: What provisions should be made to reduce service interruptions and their impacts? Should there be provisions to protect the private contractor?

Discussion of issue

The use of private contractors increases the likelihood that service will be interrupted. These interruptions can occur for three major reasons. First, private firms have a greater possibility than public agencies of strikes and substantial financial problems (even bankruptcy). Second, normal changeovers can be expected to occur periodically when contracts come up for rebid. And finally, changeovers can occur if the State, for whatever reason, decides to cancel the contract and return the facility to public management. This might occur, for example, if the State encounters major legal or contractor performance problems, evidence of corruption or illegal conduct involving the vendor, or political pressure.

If any of these events occur, the government will face major problems maintaining care of prisoners and the condition of facilities, equipment, and inmate records, for which the contractor had been responsible. At a minimum, such interruptions add extra expenses to the public agency to correct these difficulties.

Government can avoid some of these continuity predicaments by preventing them from happening in the first place. For example, it can include in its criteria for evaluating bidders, at least the finalists, such characteristics as:

- Financial capability, viability, and stability; and
- Possible criminal connections, perhaps checked by the State police.

Checking financial capacity (e.g., through past financial statements) appears fairly common in major procurement for many government services.

Another strategy is to include certain protections in the contract; e.g., requirement for a performance bond. This will ensure that added costs resulting from contractor default will be recovered. For example, the performance bond would be available if the private firm goes into bankruptcy or doesn't perform up to contract stipulations. The presence of a bond, purchasing officials have mentioned to us, makes it easier for the government to collect when problems are the fault of the contractor.

The contract can also contain a variety of provisions specifying the contractor's responsibility if there is a changeover. Such provisions can apply whether the changeover is voluntary or involuntary, from one vendor to another, or from the contractor back to the government agency.

The contract should require the private firm:

- To turn over inmate records in fully satisfactory condition.
- To turn back equipment and the facility, if these become government property, in good condition.
- To work with the new contractor (or government agency if the work is being returned to the public sector) to provide an orderly, efficient transition.

In addition to the above concerns, both the contractor and government agency generally want the contract to spell out disposition of property. All the contracts we examined included specific provision for payments to the vendor for any capital facilities or equipment that would be turned over to a new firm or back to the government agency. The provisions included specific formulas for determining the price to the new contractor or government agency.

We found performance bond requirements in several of the contracts we examined. For example, the State of Kentucky contract contains a provision requiring a performance bond "equal to 70% × 200 (inmates) × 365 (days) × rate per inmate per day." The performance bond must be renewed each year and is required throughout the term of the present or any renewal contracts. The performance bond must be submitted "no later that 90 days after award of the contract."

To help protect against extra costs to the government if the vendor defaults, the Kentucky contract for its Marion facility provides in the case of termination because of contractor default: "the contractor shall be liable for any excess costs for such similar services . . ." and "for administrative costs . . . in procuring such similar services."

Provisions that explicitly required cooperation or responsibility of the contractor in a changeover (transition period) were rarer. One exception was Hamilton County, which required in its contract that "facilities, including buildings and furnishings, . . . remain the property of Hamilton County and must be kept in good repair, except for personal property acquired by the company that is not the property of the county." The Hamilton County provision was not explicitly or solely directed at changeovers, but appears to cover such a contingency.

A second example was the Pennsylvania Department of Public Welfare's contract for its Weaversville facility which stipulated that the contractor "cooperate with the Department of Public Welfare if a new provider is selected from the request for proposal process." The wording is general, but addressed the issue. The Pennsylvania provision explicitly dealt with changeovers. It was added in later contracts, after the contracting process became competitive. (Initially the awards had been on a noncompetitive basis.) The Weaversville contract also includes a stipulation that "inmate records will be transferred in an orderly fashion."

In general, except for provisions for the disposal or transfer of real property, the contracts we examined did not seem to address explicitly the changeover problem.

Another strategy for a State is to take steps to reduce vulnerability to problems due to changeovers, defaults,

strikes, and the like. The government, for example, may protect itself by contracting only part of the service and by having a contingency plan if major problems arise. That is, the agency would not contract for all its prisons, or even all its minimum-security facilities. This has the advantage that if the contractor runs into major problems, inmates can be transferred, at least temporarily, to other facilities. Or the State might bring in staff from its other facilities or other State agencies to manage operations during a problem period.

Another way to reduce vulnerability to problems arising because of contractor financial instability is to require the submission of annual financial statements showing such information as net worth. This gives the State early warning of potential problems and more time to make needed changes. The contract with Bay County (Florida) for operation of its jail required the contractor to submit a net worth statement each year. If the company's net worth falls below the amount specified in the contract, the county may declare the contract in default.

Finally, all the contracts we examined permitted the government to terminate the contract without cause, but with reasonable notice and appropriate reimbursement to the contractor. This gives the State an escape clause if circumstances arise, such as political pressure, even though the vendor has not violated the contract. However, activating this provision would inevitably result in added government costs for the termination.

Protection for contractors

There is another side to this issue. The contractor also needs some protection when changeovers occur. Contract clauses that specify payments to vendors for their capital investments do, of course, also protect the contractor. In addition, the private firm needs ample notice and reimbursement of its reasonable costs if a termination occurs for reasons not its fault, especially during the contract term.

Recommendations

To protect against vendor defaults, the contract should:

- Consider requiring performance bonds be provided by the contractor. They should only be required after determining that the added protection to the government is worth the cost of the bond.

- Specify vendor's obligation to cover additional State costs to replace the contractor (including administrative costs, expenses to bring what may be a run-down facility back to satisfactory condition, and any added funds that the State has to spend during the remainder of the original contract period).

- Develop a contingency plan in case of an emergency default, such as how the facility will be staffed (e.g., whether from other correctional facilities or temporarily by State police) or where inmates would be sent and how. This will permit the State to react rapidly and also provides reassurance to the public and local community that such a problem will be rapidly corrected.

For all situations:

- Include contractual provisions that require the current contractor to cooperate in an orderly and efficient transition, including providing inmate records in good shape and returning the equipment (and facility, if appropriate) in good condition.

- To avoid default problems in the first place, require during the assessment process that the financial stability of the company be an important evaluation criteria as well as such items as possible criminal connections of the vendors.

- Require and review annual financial statements from the contractor to ascertain continuing financial stability.

Issue 17: What standards should be required in RFP's and contracts?

Discussion of issue

A State will want to ensure that any contracted facility be operated in conformance with State laws, regulations, and appropriate correctional principles. State legislators and executive branch officials will likely want to be confident that contracted facilities will conform because of the brighter spotlight that such institutions are likely to be under, at least during the initial years of contracting. Officials may also feel the need for stricter specification of standards because of the lessened control they will have over day-to-day operations.

Every State has laws, regulations, and policies applying to their prisons. All require certain types of facility inspections, such as fire and safety. These should apply to contracted facilities as well as those that are government operated. On the other hand, governments should avoid excessively specifying requirements that inhibit innovation by contractors, such as might be the case if the regulations, for example, specified ratios of correction officers to inmates.

The term "standards" in this discussion refers to benchmarks against which the contractor's processes and procedures are judged, not for the measurement of outcomes (such as numbers of escapes, riots, etc.). Monitoring adherence to standards is discussed in Issues 19 and 21.

Most of the contracted efforts we examined required the contractor to adhere to Federal, State (and if applicable, local) laws, rules, and regulations. Only one (Kentucky's) spelled out the specific set of standards the contractor would need to adhere to. Many did, however, reference the standards to be complied with typically applicable State and Federal laws and regulations and sometimes the American Correctional Association standards. For example, the 1985 Bay County contract stated under its section on "Standards of Performance" that the contractor should operate and maintain the facility "in a good and workmanlike manner and in a manner that complies with this contract and with all applicable local, state and federal laws, rules and regulations, including but not limited to Chapter 951, Florida Statutes, and Chapter 33–8 Florida Administrative Code."

Kentucky spelled out specific standards in its 1985 RFP. These, the RFP states, were taken for the most part from the

ACA standards. The RFP also required compliance with the fire, sanitation, and health codes of the State and local jurisdictions. This RFP provided 12 pages of minimum requirements.

In some contracts that we examined, meeting appropriate ACA standards was required not because the government agency had specified this in an RFP but because the requirement was part of the private firm's proposal. For example, the Bay County contract required the contractor to also operate the facility "in accordance with the then current standards and guidelines of the American Correctional Association." The agreement gave precedence to applicable government laws, rules, and regulations over the ACA standards, should there be a conflict between them.

In some cases, contracts called for a facility to become accredited by the Commission on Accreditation for Corrections (using the ACA standards) by a specified date. For example, the 1985 Bay County contract called for accreditation no later than 3 years after the start of the contract. (Section 5.1.) The initial contract for the Florida School for Boys also specified ACA accreditation within 10 months. (That deadline was not met.)

Standards usually cover specific major facility programs and activities, such as:

- Security and control.
- Food service.
- Sanitation and hygiene.
- Medical and health care services.
- Inmate rules and discipline.
- Inmate rights.
- Work programs.
- Educational programs.
- Recreational activities.
- Library services.
- Records.
- Personnel issues.

There has been some controversy over the adequacy of the accreditation process of the Commission on Accreditation for Corrections.[12] Indeed, there will inevitably be some weaknesses in any process that involves outside inspectors obtaining a major part of their information from an announced visit that lasts at most a few days.

Many State-operated prisons currently would have considerable difficulty in meeting the intent of ACA standards. Nevertheless, for contracted facilities, particularly new facilities provided by the private sector, the State may want to require that such a set of standards be met by a reasonable time.

A limitation of standards of this type is that they often focus on process and not on results. This could distort the contractor's effort. For example, one of the evaluators of the Florida School for Boys reported that the contract between the State and the contractor ". . . contained 41 items, over 90 percent of which the contractor complied with. Virtually every one of these concerned input activities and pertained to administrative/operation functions. Thus, the contractor could have been in total compliance with all contractual provisions even if every released client committed a new offense on the first day in the community."[4]

Overspecification is a potential problem, but we did not find this to be a major one in these contracts. One possible exception occurred in the 1985 Florida Beckham Hall contract. It contained the requirement that "The Agent shall provide 29 employees . . ." The State's purpose was to ensure that the contractor did not excessively reduce its staffing. Such detailed process specifications, however, restrict the ability of the contractor to innovate—one of the potential advantages of private organizations. The contractor in this case felt that this requirement adversely limited the company's flexibility.

In addition to special standards for correctional facilities, State laws and regulations require that public facilities adhere to various fire, safety, health, and sanitation codes, with inspections being made by various State agencies. These are generally applied to contracted correctional facilities as well.

Recommendations

Prison facility contractors should be required to meet State laws, regulations, and policies regarding publicly supported facilities and correctional institutions. These requirements, however, should be reviewed to ascertain whether there are regulations that are primarily appropriate to government-operated facilities and that might excessively inhibit the contractor from more efficient or effective operations (such as staff-inmate ratios).

The State should ensure that contracted facilities be subject to government fire, safety, health, and sanitation standards.

Requiring contractors to adhere to a set of operating standards for correctional facilities is quite appropriate. The State may want to apply ACA standards, but may want to strengthen and adapt them to its own internal situation. Standards in contracts should explicitly emphasize implementing desired policies and procedures, not merely require contractors to have written policies and procedures.

If the contractor is taking over operation of an existing, aged prison facility, it could have considerable difficulty meeting ACA standards, at least without extra time and added funds. This will need to be considered when specific standards are incorporated into the contract.

Issue 18: What should be the duration of the contract and provisions for renewals?

Discussion of issue

This issue addresses the frequency with which the contract should be rebid. The advantage of longer durations of the contract are:

- There will be fewer times that the State agency will have to go through the considerable work and time required for administering a competitive procurement.

- If the contract involves substantial capital investment by the contractor, such as the construction or rehabilitation of facilities, multiyear contracts give the contractor more time to amortize their investment.

- Longer durations provide stability. For example, the longer the duration, the less frequently inmates and employees will be upset by changes of contractors. The shorter the interval between competitions, the more frequent, in general, will be switches in contractors.

- If rebidding is too frequent, the contractor costs could rise to cover uncertainties and added startup and shut-down costs.

The advantages of shorter contract duration are:

- Frequent competitions can bring lower prices and give the government agency the opportunity to switch to a better performing contractor—or at least provide a continuing incentive to the current vendor to perform well and keep costs down. If the current contractor did not perform well, it would face an increased risk of losing a near-future competition.

- Longer term contracts may reduce competition at the time of rebidding since some potential rebidders may feel that the holder of the contract has an inside track with the government agency because of experience built up over the years of the contract.[5]

Contracts also may have renewal clauses permitting them to be renewed up to a specific number of years. In any case, contracts can also have provisions permitting either party to get out of the contract even without cause, though with possible financial penalties.

A problem with longer term contracts is that in most States one legislature cannot legally obligate funds longer than the biennial budget period. Thus, in multiyear contracts the phrase "subject to the availability of funds" is often included.

Multiyear contracts generally provide for annual alterations in the price of the contract, as discussed elsewhere, often with the adjustments based on some form of cost-of-living index.

Although long-term contracts help the contractor recoup initial capital investment, contracts can, and usually do, provide that if terminated earlier, the vendor will be reimbursed for the unamortized portion of that capital investment (see Issue 15).

We found contracts ranging from 1 year in length (Ramsey County adult females) to 32 years (Hamilton County Workhouse). These are described below.

1. The State of Massachusetts' facility contracts are for 1 year and may be noncompetitively renewed twice. They must be rebid then.

2. The State of Florida's Okeechobee School for Boys used a 1-year contract with a 1-year renewal initially (in 1982) and two 1-year renewals for its 1984 contract. Florida's Beckham Hall contract (1985) is for 3 years. The Florida Committee on Corrections, Probation and Parole recommended contracts be statutorily limited to 2 years.[6]

3. The contract for the Kentucky Marion facility is for 3 years, with two 1-year renewals possible beyond that date.

4. The Pennsylvania Weaversville contract is for 5 years, but requires yearly renewals and annual price reviews.

5. The 20-year Bay County contract permits annual cost of living adjustment and review of the contract price every 3 years. The 20-year period evidently precludes rebidding during that period. Thus it is potentially of considerable advantage to the contractor getting that first contract. (The county, however, can terminate the agreement at any time even without cause.)

6. The Hamilton County facility appears to have a 32-year contract. The 1984 contract calls for an initial term of 4 years, with up to seven automatic renewals for 4 years each. The county can terminate the agreement at the expiration of each 4-year term. (Bay County's contract is with the same private firm.)

7. The Ramsey County contract is open-ended. The County is not using RFP's but renegotiates the agreement with the contractor annually.

At least three of the cases examined had contract clauses specifying that continuation was subject to the availability of funds (Kentucky, Pennsylvania, Ramsey County).

At this time we have no explicit evidence as to the optimal duration for contracts. In some ways these arrangements are more similar than they look at first glance. In most cases, the government could terminate at almost any time, though with penalties if there is not a contractor default. In most cases the private firm can annually negotiate price (at least to some extent). And probably both parties can renegotiate at any time regarding various programmatic responsibilities not clearly specified in the contract.

Recommendations

We suggest that contracts be competitive and provide for rebidding about every 3 years but not much longer than that. Automatic renewals beyond, say, 5 years, are probably not good policy even though it is troublesome and time consuming to conduct a full-fledged rebidding.

Periodic rebidding seems desirable to encourage the private company to keep up the quality of its work, to encourage efficient operation and reasonably low cost (by periodically causing a confrontation with the possibility of losing the contract in the next rebidding competition), and to permit correcting major unforeseen problems in the current contract.

Issue 19: What provisions are needed for monitoring in the RFP and contract?

Discussion of issues

There appears to be unanimous agreement among national experts, government agencies, and contractors themselves that the contract should include adequate monitoring of performance. This will maximize the likelihood that the vendor provides the services contracted at a satisfactory quality level. There is considerable concern that private

organizations, particularly for-profit firms, might sacrifice quality for profit or to avoid losses.

Monitoring is a key element in giving the State adequate oversight over service delivery and helps protect it and the public against contractor deficiencies.

Explicitly mentioning monitoring in the RFP and contract should provide greater assurance to the legislature and public that the service will be performed adequately. It may also provide some protection in certain liability claims by showing that the State made reasonable efforts to protect against various problems.

Three phases of monitoring are needed for the process to be effective: (1) Provisions are needed in the RFP and contract; (2) the actual monitoring practices need to be done properly; and (3) the findings of monitoring activities need to be disseminated and acted on appropriately.

This issue discusses the first phase: RFP and contractual provisions. In the next issue we discuss specific procedures that government agencies might use to conduct such monitoring and the use of monitoring findings. Issue 19 (on standards) addressed some of the elements that should be monitored for compliance.

Overall, we found the provisions in RFP's and contracts regarding monitoring of contractor performance to be quite general. There was little specification as to the elements contractors would be held accountable for, and how these should be monitored. Contractors could not be sure either that monitoring would be done or, specifically, what their obligations were under the contract. Government monitors would have little in these documents to guide them.

For example, the ACA 1983–84 evaluation of the contracted State of Florida's School For Boys at Okeechobee reported that "there had been no overall monitoring to determine whether the contractor was complying with contract provisions."[7] To some extent this is explained by the current lack of experience and formulated procedures for such monitoring. General contract provisions can, at least, keep the door open for subsequent specific monitoring procedures. A problem can arise, however, if the agency subsequently decides it needs certain information from the contractor or access to certain data and these are not stated explicitly in the contract. The agency may have trouble obtaining the material.

The sections below first discuss the types of monitoring activity that can be provided for in the RFP and contract, and then briefly discuss provisions that can be included in the contract to encourage good performance, including sanctions if the contractor is not performing adequately.

Types of information provided in RFP and contract

Governments can use two basic approaches: (1) periodic indepth reviews or audits conducted at regular intervals, such as once every year, and (2) ongoing, continuing monitoring done through required reports from the contractor and onsite inspections by a monitor.

These require specifying in the contract such activities as:

- Reporting (in a timely way) by the contractor on certain types of incidents and occurrences.
- Provision of space for, and cooperation with, onsite monitors.
- Access to the facility, inmates, and to certain records and other materials (including written policies and procedures)—at any time, even unannounced.
- Access to data from special fire, safety, medical, and sanitation inspections.

Both Kentucky and Florida (and probably most, if not all, States) require each of their prison facilities to report promptly various "extraordinary occurrences." These include escapes and attempted escapes, prisoner deaths, serious injuries to prisoners and employees, assaults, major disturbances (such as riots), and significant disciplinary incidents. Kentucky requires its Marion facility contractor to provide such reports. Not as clearly required are reports of disciplinary incidents (other than those classified as extraordinary occurrences, such as "major violations").

We did not find contracts that contained targets that would represent satisfactory or unsatisfactory performance, such as the maximum number of extraordinary occurrences. Such inclusions could be used as a basis for periodic reviews and discussions with vendor personnel concerning their performance and (if they are not easily manipulated) could form a basis for incentive contracting.

The ACA 1983–84 evaluation of the State of Florida School for Boys at Okeechobee reported a lack of "clearly defined objectives" as a complicating factor in the State agency's assessment procedure. "Moreover, the Department of Health and Rehabilitative Services contract did not specify outcome performance expectations; e.g., that Okeechobee's readmission rate under the contractor would not exceed the level attained by the state."[8]

A partial exception to this general observation are contracts that require the facility to "pass" various special inspections (usually done by other government agencies), such as fire, safety, medical, and sanitation. If not actually stated in the contract, this requirement appears to be assumed, but the legal contractual responsibility may not be clear under these latter conditions. Such special inspections are conducted for many types of government facilities and should apply no less to contracted correctional institutions even if not owned by the government. Clearly contract provisions should require contractor cooperation with such inspections with the understanding that problems found to be the responsibility of the contractor be promptly corrected. The State of Kentucky included in its RFP both scheduled and unannounced inspections of the contracted facility by both corrections and other State agencies.

The State of Pennsylvania House Bill 307 (1986) regulating private prisons mandated annual inspections of private correctional facilities by the Department of Corrections.

If the government agency wants access to various records and annual statements from the contractor (such as financial

statements, performance bonds, and liability insurance) these requirements should also be written into the contract. Although the government may assume such information would be available to it, even if not specified in the contract, such provisions can avoid later problems. It also puts the contractor on notice that such material will be reviewed, and consequently, should be kept in satisfactory shape. Similarly, the timing and frequency of required reports should be specified.

Of particular concern in corrections is the contractor's responsibility for discipline, sanctions, and the awarding or removal of "good time." We did not find much specification in contracts laying out guidelines in these areas (such as a requirement for approval of major disciplinary actions by government officials before the contractor implements them). The Kentucky RFP, for example, requires the contractor to make recommendations (for awarding meritorious good time and for restoring good time) to the Corrections Cabinet, which makes the final decision.

An area of uncertainty is the extent to which the private firm should be required to open its financial records to the government (other than for tax purposes). If the bidding process was competitive and focused on a bottom line, such as total fixed cost or a fixed-cost per-inmate day, for-profit contractors may feel that their books are, and should be, proprietary. The requirement for an independent audit paid for by the contractor may be sufficient to protect against inappropriate contractor financial practices.

Some government agencies have used onsite monitors, especially for facilities housing many inmates, e.g., 150 and over. Both Kentucky and Bay County contracts required the private company to provide space for an onsite government monitor. The Bay County contract also provided for space for the contract monitor and for full access to the facility. It says: ". . . the Contract Monitor shall be provided an office in the jail and shall have access at all times to all areas of the County Detention and to all books, records and reports . . . concerning . . . the operation and maintenance of the County Detention Facilities" (Section 5.5). The 1984 Hamilton County, Tennessee, contract gives the county "unrestricted rights . . . to visit, inspect and talk with the workhouse prisoners and any other personnel . . ." (pp. 22–23). The October 1986 State of Tennessee RFP for a new medium security facility provided for an onsite monitor for the 180-bed institution.

Provisions to encourage performance

What provisions should be put into contracts to encourage good performance? Noncompliance with contract provisions can justify either terminating the contract with cause, or invoking penalties as specified in the contract. Serious noncompliance (e.g., in reporting, or in not permitting specified inspections) should be cause for termination.

The Pennsylvania Legislative Budget and Finance Committee in its October 1985 report on private prisons recommended that the law should specify sanctions for nonperformance.[9] Furthermore, not meeting standards specified in the contract, or not correcting major problems found during special inspections, or not meeting specified performance targets in the contract (such as exceeding a maximum number of "extraordinary occurrences") could also be grounds for penalties. If such requirements, and the sanctions, are not contained in the contract, or if the contract stipulations are vague, the government agency could have problems enforcing them.

Note, however, that the major reason for monitoring provisions is not to terminate contracts. Monitoring is done to assess performance, detect deficiencies, provide continuous feedback to management, improve operations, and protect the agency. Additionally, it can help assure high levels of performance since it will motivate the contractors especially if incentives for good performance are provided in the contract.

Though we did not find incentive provisions in any of the corrections facility contracts examined, bonuses might be written into contracts to reward extra-high performance. The key is to have sound performance indicators or targets written into the contract.

Recommendations

The State should consider its performance monitoring needs in advance of drafting the RFP and final contract. This advance planning should guide the writing of specific contractual performance monitoring provisions. Both requests for proposals and subsequent contracts should include specific provisions as to the contractor's obligations relative to performance monitoring. As noted above, these documents should specify: the performance criteria for which the contractor will be responsible; reporting requirements (specified schedules, clearly indicating the information to be provided to the State); full access to the facility and to relevant records; cooperation with various inspections; and, providing space for an onsite monitor (particularly at "large" facilities).

The contract should also require prompt correction of problems (areas not in compliance) found by the monitoring process. It should also specify the nature of sanctions to be imposed if correction within an appropriate, specified time period is not accomplished.

States should include performance targets in their contracts as a basis for performance and incentive contracting. After it has gained experience with the performance monitoring process and feels the procedures are yielding reliable data on performance, the State should consider adding incentive provisions to their contracts with dollar bonuses for exceeding or penalties for falling short of performance targets.

Issue 20: What provisions should be made to address concerns of public correctional agency employees?

Discussion of issue

In those instances where a facility switches from State to private operation, the government will need to assist displaced employees. From the time that the government agency first indicates its interest in contracting to the time that the change is made, this can be a difficult period for

employees potentially involved in the changeover and may affect service quality levels.

Even if the corrections agency is contracting for a new facility that is not displacing any government personnel, there still may be concerns by other State employees that government facilities currently in operation will also be contracted.

In either situation, State personnel may also reap benefits from contracting. Some employees may see the presence of contracted facilities as offering them more flexibility in career choices.

Four of the nine contracting efforts we examined involved switches from a government to a contractor-operated institution. These were two county jail-type operations in Bay County (Florida) and Hamilton County (Tennessee), the State of Florida's School for Boys at Okeechobee, and its Beckham Hall facility.

The Bay County contract required the contractor to hire public employees if they satisfactorily completed 40 hours of training prior to a certain date. The wages and benefits for new employees were specified in the appendix to the contract. Staff received a raise similar to the one that had been promised by the government plus $500 more per year. All but one of about 60 public employees accepted the contractor's offer of employment. Approximately 6 months after the contract began, about five staff had left the contractor, with four returning to employment in the sheriff's office.

Employee benefits

In Bay County the private company's fringe benefits were believed by local officials to be about the same as the county's, except for retirement. The contractor had a stock option plan, but its retirement plan was not believed to be as generous as the public employees' plan. A number of veteran jail officers were unhappy about losing their State retirement benefits when they went to work for the contractor, and this loss was a main financial "bone of contention" for employees considering the switch.

The loss of State pension credits was the main subject of a lawsuit filed by a citizens' group against private management of Bay County's jail. Accrued leave time was also an issue for former jail employees hired by the contractor since whether it would be paid and by whom apparently was left ambiguous. The county, however, subsequently accepted responsibility for this payment.

Hamilton County and the contractor agreed to "hire all persons who are presently employed by the county at the workhouse subject to the right of the company to decide not to retain said employees as the company may deem necessary." The intention was to give employees first chance at the private firm's positions, but at the same time to allow the contractor to dismiss staff who did not work out satisfactorily.

Employees received the same health and life insurance benefits and at the same cost as they had when they worked for the county. The company gave all employees accepted a slight increase in salary. All had to go through special training. Subsequently, there was an attempt to unionize staff at the facility, but it failed when the National Labor Relations Board ruled that the union did not have the right to organize the employees.

The Hamilton County facility contractor has had problems retaining public employees. Most staff were upset at the prospect of private management and opposed it, making the last 6 months under county operation very difficult. Even 20 months later there appeared to be continuing problems. Only 33 of the original 60 employees that had worked at the county-operated facility before September 1984 remained at the facility as of May 1986. County officials indicated that the contractor may have tried to make changes too rapidly for the employees. Staff turnover has been especially troublesome because of the need to provide new personnel 20 to 40 hours of training before the individual starts work.

Fringe benefits appear to have been comparable to the county's, but the contractor may not have explained its employee stock option plan well enough. Former county staff complained about giving up the county pension plan when they went to work for the contractor.

Employee benefits were discussed in a private firm's 1985 proposal to operate the complete Tennessee correctional system. That proposal was rejected by the State legislature. The vendor asked the State legislature to provide legislation to allow government personnel to choose to remain in the State retirement system with the corporation paying the State portion if the employee did not select the private firm's stock ownership plan. The firm's proposal did not provide any guarantees as to the number of government personnel that it would hire. First the firm wanted to examine personnel needs and possibly hire more staff than Tennessee's current staff to reduce the amount of overtime. Salaries of all correctional officers were to be increased more than 10 percent, with other personnel receiving at least a 5-percent raise. The proposal also allowed employees to retain any personal and sick leave that they had accrued under the State system.[10]

The contractor for the Florida School for Boys immediately initiated layoff procedures reducing staff almost 20 percent (from 225 to 183). Many State employees with long seniority did not wish to transfer and lose their State retirement. The State made efforts to place personnel in other agencies, but many employees had to be terminated.[11] This situation contributed to substantial staff problems during the early days of the transition.

Employee resistance

A government agency will also need to consider options for staff that do not want to be employed by the private firm. Many State and local governments in recent years have used the following elements to help displaced employees:

- Use of natural attrition with possible transfers to other facilities to absorb the displaced personnel.
- Establishing training programs to help employees affected by the contract to fit into other available government positions.
- A program for referring personnel to, and placing them in, other public and private sector jobs. If a government union is involved, an orderly transition would need to be worked

out with the union. The situations above did not involve unionized employees. In other contracting situations throughout the country, unionized employees often have fought hard against the contracting effort and to protect employees' rights and benefits if the contract goes forward.

In those jurisdictions we examined where the new contracted facility was not a replacement for a government-operated institution, public officials did not indicate that correctional employees at other government facilities had complained about contracting. Apparently in none of these cases did other public sector staff feel strongly that the new facility was a threat. In some cases, such as Pennsylvania, officials indicated personnel felt that relief from crowded conditions was needed and consequently did not object to the new facility being contracted.

In the Florida Beckham Hall case, the State had a nearby facility opening at about the same time. About two-thirds of the 30 employees transferred to it or another State facility. The remainder went to work for the contractor. None went without a job.

Our Kentucky interviews with former State staff who had become supervisory employees of the contractor indicated (as might be expected) that they appreciated the opportunity to operate under less bureaucratic conditions. Note that in Kentucky, corrections personnel are not unionized, which also helps to explain the lack of opposition to establishing the privately operated facility. In addition, the State was already contracting with private companies for low-risk offenders in community settings, and the new Marion facility was put under the director of community residential services rather than the adult prison division—reducing the likelihood of concern by corrections employees.

An official at one of the sites examined indicated there was an "unwritten agreement" that the contractor's employees would not receive more than their public peers. We did not become aware of any formal agreements by a State or local agency that controlled the vendor's employee compensation levels. It is of course likely that if the private firm becomes known for higher wage and benefit levels, pressure could increase to raise the public sector's compensation scales. On the other hand, if the contractor's salaries were lower, this could be viewed by opponents of contracting as an attempt to drive down wage levels for State employees. Our examination does not provide evidence regarding the effects of differences in employee compensation.

Recommendations

For States considering contracting existing facilities that would require displacing government personnel, the government should consider a number of steps:

1. Undertake extensive preplanning to work out ways to help the employees and reduce the level of anxiety and work interruptions during the transition process.

2. Wherever possible require the contractor to give displaced staff first right to employment with the contractor.

3. Provide retraining, job referral, and placement programs as needed for placing employees that do not switch, into other positions either in or out of government.

4. Carefully work out the disposition of various employee benefits, especially retirement and vacation/sick leave accrual.

5. When a decision has been made on benefits, inform government employees regarding what they will and will not receive. Encourage the selected contractor to brief potential employees clearly regarding benefits and salaries they can expect, what working conditions will be, and what training and changes in work assignments and type of work they can anticipate.

6. Move quickly once decisions are made in order to reduce the period of uncertainty for government employees.

7. Explicitly include in preanalysis cost comparisons any one-time termination personnel expenses (including early retirement and other benefits, temporarily retaining employees until placements are found, training of displaced persons, etc.) that contracting will incur.

For situations in which the government is contracting for a new facility and thus not displacing employees, the State should:

1. Make sure the public sector staff recognize that contracting will not displace existing employees (to counteract rumors to the contrary).

2. Consider whether or not the State should emphasize possible advantages to at least some government employees that the use of contractors may provide; e.g., a more varied array of employment and personal growth opportunities for correctional employees. The State probably should not attempt to control the level of the contractor's salaries and fringe benefits.

Chapter VI: Contract monitoring and evaluation

Monitoring and evaluation are critical elements of any State or local contract-for-service activity. They are especially important in a field as controversial as private prison management. States and local governments must consider the cost of these administrative controls when considering the contracting approach.

The following issues are discussed:

- What elements of a contract should be monitored?
- How should the monitoring be done?
- What are the areas where contracting effects might be measured?
- How is evaluation different than monitoring?
- What evaluation techniques might governments use?
- What results can governments expect from contracting?
- What has occurred thus far?

Issue 21: How should contractor performance be monitored, and to what extent?

Discussion of issues

Issue 19 focused on what should be specified in the proposal and contracting phases. Here, we cover operational questions, such as what specific elements should be monitored and how the auditing should be done. We also cover a sometimes overlooked key aspect of monitoring: providing for the use of the information obtained.

As noted previously, one element on which all parties, both public and private, agree, is that contracted correctional facilities should be carefully monitored. Don't contract without a good monitoring process.

One of the basic purposes of monitoring is to ensure that the contractor is performing satisfactorily. Monitoring is intended to ascertain that prisoners are securely incarcerated (thus protecting the public and penalizing those breaking the law), that the inmates themselves are being adequately treated (without violating their rights or providing unreasonable punishment), and that reasonable rehabilitation efforts are being provided.

The State of Pennsylvania's Legislative Budget and Finance Committee in its October 1985 report stated that the law should designate a specific agency as responsible for monitoring private prisons; this process should include periodic inspections, evaluations, and specification of minimum standards.[1]

What types of monitoring should be used?

The process for auditing corrections facilities appears to take two forms:

1. Periodic reviews/audits/inspections—perhaps once a year by special teams of government personnel.

2. Regular, ongoing monitoring through periodic reporting (such as on extraordinary occurrences), onsite monitors, or public sector employees that visit the facility frequently, e.g., daily/weekly/monthly.

These options are not mutually exclusive. States usually employ both approaches for monitoring other activities and will almost certainly want to apply them to contract facilities.

Special annual reviews and audits have the advantage that they permit a comprehensive, indepth assessment. Since these are done infrequently, the State can utilize onsite experts in all aspects of corrections. Special inspections (such as for fire, safety, health, and sanitation hazards) also use specialists to examine particular elements in their area of expertise.

Regular, frequent reports and visits to a facility permit the government agency to spot and initiate corrective actions on problems as they occur throughout the year.

The content of these monitoring efforts, whether periodic or regular, includes "process" elements (such as information on staff changes/adherence to State-required policies and procedures) and information on "outcomes"; e.g., frequency of extraordinary occurrences, such as escapes, deaths, assaults, riots, etc.

We found few explicit, formalized monitoring procedures in existence either for regular or periodic reviews. The word "formal" is emphasized since all the contracted correctional facilities were inspected periodically by government personnel, though generally on an informal basis. Some basic reporting was required in all cases, but there appeared to be little in the way of a formal system for aggregating and tabulating that data, analyzing it, and acting on the results obtained.

Elements to be monitored

What elements should be monitored? Clearly, standards (see Issue 19) and other performance indicators identified in the contract should be monitored.

We found that for those contracts containing formal checklists (detailing what the public monitor should examine—some of which were being drafted at the time of our review), the items primarily were indicators of whether

the contractor was undertaking certain activities and doing them properly. We found little formal monitoring of results.

Two States (Massachusetts and Pennsylvania) were developing a standardized monitoring system. Both had been contracting their facilities for considerable time, but had not yet implemented a formal, comprehensive monitoring process. Both States were developing monitoring systems for juvenile facilities, whether public or contractor operated.

One State had a new draft instrument (intended for review of juvenile facilities) which asked the monitor to check "does the facility have the heating system inspected annually for safety?" Nowhere in the checklist was the monitor asked to identify whether any safety violations were found during the past year or whether currently there were any outstanding violations (and, if so, how many and how serious). In another example, the item to be examined by the monitor was: "Is the garbage removed from the kitchen weekly?" Nowhere were questions asked about whether there were any signs of garbage not being stored in containers or containers that were overloaded or whether there were garbage odors.

This sole focus on process rather than results appeared to be the general practice, not the exception. It also applies to those contracts that specify adherence to the American Correctional Association's standards (for either adult or juvenile correction institutions). Those standards also emphasize process elements rather than results or outcomes.

Process standards are easier to monitor since they are more observable. Identifying actual problem conditions is considerably more difficult and more time consuming. For example, assessing the quality of the food service (including taste, appearance, and temperature) is more troublesome than only examining menus and inspecting the kitchen facilities. It is especially difficult to determine what conditions exist throughout the year and not just at the time of short visits by inspectors or monitors. An ACA standard states that the facility's "written policy and procedure require that in the preparation of all meals, food flavor, texture, temperature, appearance, and palatability are taken into consideration." Unless monitors spend time themselves to either sample the food at frequent intervals (quite possible with onsite monitors or with staff that regularly visit the facility) or interview a sample of inmates to determine if there are an unusual number of complaints, an agency cannot be assured that prisoners are receiving reasonably decent food throughout the year.

Information on some outcomes, however, were common. In all the cases we examined, the contractor was responsible for promptly reporting extraordinary incidents such as escapes, attempted escapes, assaults, deaths, serious illnesses, and major disturbances. Surprisingly, we generally did not find tabulations of such incidents or subsequent reports. Nor were there reports that tabulated and categorized number and type of incidences for the contract facility, or that compared these with similar State institutions or with previous history (before the contractor began operation). Most, if not all States prepare regular reports on at least some extraordinary incidences (such as escapes) and provide these for each of their correctional facilities. Thus, these data undoubtedly can be made available, but we found little explicit provision for such reports as part of the regular monitoring effort, at least not in a formal way. Informally, public officials monitoring these efforts had some sense of the number of such incidents, though in a surprising number of cases, the actual counts did not seem to be available, unless special checking through records occurred.

The State of Kentucky issues an annual report on extraordinary occurrences, tabulating, by category of occurrence, the number of occurrences for each institution. These are based on the individual extraordinary occurrence reports provided by each facility. The Marion facility began operation in January 1986, and a tabulation had not yet been done at the time of this report that included this new contracted facility. Nevertheless, the various Kentucky State correction officials were well aware of the number of escapes that were occurring and clearly considered this an important indicator of the contractor's performance.

Ideally, the government agency would also regularly assess the success of the contracted facility in rehabilitation/social adjustment; e.g., for inmates released from the institution. At none of the sites we examined were attempts made by the government to examine rehabilitation success, such as by examining postincarceration employment of inmates even if only at the time of release. Such information could help monitor the facility's work training and counseling programs. Information on rehabilitation and social adjustment is less meaningful in assessing contractor performance when most inmates remain at a facility for only a few months. This would not give the contractor much time to provide rehabilitation assistance.

Performance indicators

How can data on performance indicators be obtained? At least five sources of data can be used:

a. From required facility reports. Extraordinary occurrence reports from the contractor's facility to the State are commonly provided. Also needed is information on such elements as the treatment and safety of inmates, the extent of internal strife, level of drug use, and degree of program participation (in educational, work, recreational, counseling programs, etc.). Some data could be tabulated from facility incident/disciplinary reports, such as number of rule violations at various levels of seriousness that are not included in the extraordinary-incidents reports, number of inmates in punitive segregation, etc.

b. Surveys of inmates and staff. Formal surveys of all, or of a random sample of, inmates can be conducted to obtain feedback on such items as: frequency of internal assaults, extent of use of drugs, treatment by employees, quality of the food and other amenities, and inmate perceptions of the quality and usefulness of various facility programs.

Prisoners are not the most reliable persons to comment on many matters, but feedback from inmates can provide important information on many aspects of facility conditions. For example, though one would expect most offenders to complain about food, major differences among institutions probably can be detected by the relative extent to which prisoners complain.

We found no existing procedures currently in place for systematically surveying inmates as part of a contract

monitoring effort—even if only by a random sample. In part, this is probably due to the lack of such procedures as an accepted part of the regular operation at any prison or jail facility, at least that we know of. The State of Massachusetts Department of Youth Services in its early 1986 draft "Protocol for Program Review" calls for interviews with both clients and staff as part of proposed onsite visits (1 to 5 days). The proposed questionnaire asks the youths about many procedural aspects of the facility, but also asks for their perceptions of other conditions such as: whether they get enough to eat, whether they feel the rules are fair, their attitude toward the staff, and whether they feel the programs are helping them. Use of review forms was proposed for all youth facilities, both those that are contracted and those that are State operated.

Government monitors that are onsite or that visit frequently could also rate these facility characteristics based on informal conversations with inmates and staff.

At Ramsey County, Minnesota's Roseville facility, the nonprofit contractor asks each woman at release to complete a questionnaire dealing with such issues as: how safe she felt at the facility, how much she got out of programs, and what she thought of the environment and supervision. This feedback is computer analyzed to identify patterns. The contractor felt that this procedure was an important aid to improving programs. While Ramsey County has access to the Roseville questionnaires and reviews them on occasion, it does not currently tabulate the responses to help assess the vendor's performance. This same procedure (i.e., asking released inmates to fill out such questionnaires) probably could be adopted for use in assessing State contractors.

c. Onsite monitoring. Site inspections can be undertaken through periodic visits to the institution by government auditors or by having an onsite monitor. The onsite monitor approach has both advantages and disadvantages. It has the considerable advantage of permitting continuous checking of many aspects of the facility operation. The onsite monitor can observe on a regular basis the quality of performance and "climate" of the facility and is less susceptible to being misled by temporary "good behavior" than inspectors who are only temporarily onsite. Another important advantage is that the onsite monitor who establishes rapport with the inmates will hear firsthand, and quickly, about problems and major concerns, and will be able to bring these to the attention of both the contractor and the agency.

There are two disadvantages of onsite monitoring. First, it is expensive to maintain the monitor and provide required resources such as secretarial support, telephone, equipment, and materials. Onsite monitors are not likely to be practical for small facilities; e.g., less than 150 inmates. Frequent, day-long visits, however, might provide a partial remedy.

The second potential problem with onsite monitoring is the possibility that the monitor would be co-opted by the contractor's staff. Becoming friendly or even beholden to contract personnel could lead to the State receiving misleading reports. However, this probably can be alleviated by periodically changing monitors, by proper training, and by continued interaction between State home-office personnel and the monitor.

The State of Kentucky has placed a full-time monitor at the Marion facility. This individual also acts as the parole officer. The monitor/parole officer speaks frequently with inmates and has on occasion received complaints regarding the facility. For example, a problem arose early in the life of the contract about the quality of food served. This problem was brought to the attention of the contractor and, the agency believes, more quickly corrected because of the presence of the monitor. The contractor subsequently subcontracted to a food service company rather than providing the meals itself. Currently, the Marion monitor does not have any formal checklist, but provides monthly a primarily qualitative report.

At Bay County, an employee, not located at the jail, visits it every day.

At the Hamilton County Jail/Workhouse, the county person responsible for the facility spends mornings at the facility monitoring the operation, and prepares a semiannual inspection report using a 75-item checklist. This compliance checklist was prepared by the contractor's administrator and signed off by the County correctional person responsible for the facility.

At the Shelby County (Tennessee) institution for adjudicated delinquents (who would otherwise have gone to a State facility), a county representative visits "practically every-day." The responsible county judge also visits the site frequently. No specific checklist is used at present.

d. Followup of released inmates. As noted earlier, we found no jurisdiction that was monitoring contractor success in rehabilitating inmates. Such a procedure would require special effort to follow up released prisoners. This probably could be done on a regular basis in most States by tabulating subsequent reincarcerations or rearrests within the State. To determine clients' postrelease employment status, followup could be done for those on parole. It would require considerably more resources to track releasees who moved to other States or the employment success rate of inmates that served their entire sentences. It is, of course, much easier to track in-prison successful program completions such as the number of education diplomas granted.

e. Periodic reviews and audits. Periodic, annual or biennial reviews or audits are a frequent practice in State-operated facilities. For the most part, government officials reported doing, or planning to do, an annual review of the contractor's performance. These agencies, however, appeared to be using ad hoc procedures, since the specific content of these reviews did not appear to have been formalized. Two States, Massachusetts and Pennsylvania, recently had developed draft review procedures. Although both contracting efforts are for youth facilities, the monitoring principles seem the same.

Massachusetts Department of Youth Services 1986 draft "Protocol for Program Review" called for review of each facility, whether private or State operated, in the second of their 3-year RFP cycle. Thus, these reviews are done once every 3 years, but at a time that permits the findings to be available before contract rebidding. The department also provides annual evaluation reports, which are primarily qualitative in nature. The Program Review Unit would borrow staff from regional and other department offices to do the monitoring and would train them in the review process.

The process includes: (1) an information-gathering phase including examination of monthly and quarterly monitoring reports and the annual evaluation reports, especially to identify issues that should be focused on during the review; (2) an onsite monitoring period of from 1 to 5 days, including interviews of clients and staff of the facility using "standardized questions and review forms," as well as observation of activities (to include education, recreation, leisure time, counseling, and meals); and (3) preparation of the report and debriefing of both contractor and State officials. The interview forms were developed in part from the ACA national standards, but "modified to reflect Department policies."

The 1986 draft Pennsylvania Department of Public Welfare (Office of Children, Youth and Families) material for monitoring "secure programs" is used with both contracted and State-operated facilities. The process includes standardized review instruments for: (1) observations by team members, (2) examination of the institution's case records, and (3) interviews with staff.

Kentucky expects to apply its current review procedures for Community Residential Centers to its new contracted Marion facility. That process calls for a least two onsite inspections annually plus annual review of the facility's procedure manual.

The Kentucky onsite review calls for the inspector to indicate whether each of a number of items are in compliance or not. The onsite inspection covers items grouped as to: "administration/personnel/fiscal" elements (such as whether records, plans, and audits are in order), "sanitation/health/physical" conditions (including facility cleanliness, dietitian approval of meals, records of meals served, and presence of sick calls), "safety/security/emergency" procedures (including absence of dangerous material in inmate living areas, presence of fire and emergency plans, and presence of prisoner counts), "programs" (such as the availability of educational, vocational, recreational, counseling, and work programs), and "records" (to make sure that intake forms are complete, that case records are current, complete, and in secure storage, and that reports of extraordinary occurrences have been filed within the 24-hour required time period).

The Kentucky RFP and contract also specify that the contractor itself should have a "system to monitor programs through inspections and reviews by the administrator or designated staff." However, the State does not appear to require that it be provided with those findings.

Use of information obtained from monitoring

A crucial issue is: what should be done with the information obtained? Clearly, it is not enough to just simply undertake even the best of monitoring efforts. Findings need to be reviewed by appropriate State authorities and acted on when action is called for. A major purpose of monitoring is to ensure that the facility is operating at a satisfactory quality level and to encourage as high a level of performance as possible by the contractor.

In addition to a general lack of monitoring requirements, we did not find many formal provisions for either the review process or the use of monitoring information.

An exception was the 1986 draft Massachusetts Department of Youth Services "Protocol for Program Review." It states that the purpose of site program reviews (whether vendor or State operated) is to "enable management staff to make accurate assessments and decisions regarding policy and program development . . ." The Massachusetts draft protocol calls for a debriefing of both State officials and contractor officials. The review teams are also to discuss compliance issues with facility personnel. Appropriate State program supervisors are expected, subsequently, to monitor the institution's compliance efforts. "In cases where more serious and substantial recommendations are cited, the review team may become involved in developing a compliance plan to insure that their recommendations are being implemented." The draft protocol, however, does not explicitly refer to sanctions for contractors who fail to comply.

A major potential use for monitoring is to provide information to the State for contract renewal and at the time rebidding occurs. In only one case did we find this issue directly addressed. The Massachusetts "Protocol for Program Review," as noted earlier, calls for reviews to be scheduled for programs that are operating in the second year of the RFP cycle, with special attention to the RFP schedule, so that the review findings can be considered in decisions as to future contract renewals or awards.

Recommendations

State agencies are urged to develop a formal monitoring process prior to awarding contracts. The RFP and contract should identify actions expected of vendors to facilitate an effective review process, such as providing needed reports and access. A monitoring process should include components such as the following:

- Regular tabulation, analysis, and reporting of incidents of extraordinary occurrences (e.g., escapes, attempted escapes, deaths, major injuries and illnesses, numbers of assaults both on staff and other inmates, disturbances, use of force by staff, and other major disciplinary violations, i.e., those involving loss of good time). States should, to the extent appropriate, compare the contractor's performance on these indicators to other similar facilities in the State and also to past performance, including years before the contractor took over the institution (if it is not a new facility).

- Regular systematic sampling of current and released inmates to obtain feedback concerning various conditions and programs in the facility. Preferably, this should also be done for all State institutions, including those that are government operated, for comparison purposes.

- Onsite inspections, conducted at least annually; to examine degree of conformance with State laws, rules, regulations, and policies (including any other conditions specified in the contract). These pertain to: administrative matters including records, health, safety, security, housing, food, and programs. Formal inspection "checklists" should be used to ensure adequate coverage and to ensure that both State and contractor officials know what is to be examined for compliance. This will provide a reliable record of findings over time. These inspections should include not only evidence that the contractor has adequate policies and written

materials but also that they are being implemented in the correct manner. Thus, the onsite monitoring team should sample the food, rate the cleanliness, and examine the results of health, safety, sanitation, and fire inspections done by specialists. There are a number of starting points for such a checklist including the American Corrections Association standards and those adopted by States for their own internal purposes. Actual documented behavior, not merely the presence of written policy and practices, should be the focus of attention.

- Onsite monitors, or at least monitors that frequently visit the contracted facility—preferably unannounced—should be considered for institutions, especially those with substantial numbers of inmates (e.g., 150). Monitors should use checklists for guidance, which indicate the specific information they should collect. They should be trained in the audit procedures and knowledgeable as to how the information can be obtained. The presence of the onsite monitor, or of frequent inspection visits, will provide reassurance to the public that the State is keeping careful watch over the facility operation. Such a process will provide early warning to the State of facility problems so they can be corrected before becoming worse.

- The monitoring process should include explicit provision for reviews of both regular and periodic data, and the inspection of reports soon after they are completed. It should require government officials to identify and review needed corrections with the contractor, and include setting written deadlines for when those corrections are to be completed. The process should specify sanctions that will be implemented if satisfactory corrections are not made in a timely fashion. This process should be stated in RFP's and contracts so that bidders, contractors, government monitors, and the public know what is expected. Vendors can then be held accountable for their noncompliance.

- Finally, facility reviews, particularly of the contractor's performance, should be scheduled and completed at a convenient time prior to the date that decisions are made concerning contract renewal or when rebidding occurs. This means data will be available for evaluating the current contractor's renewal request or new bids.

Essentially the same monitoring procedures should be applied to publicly operated and contracted facilities. Governments with comparable facilities can then use the resulting information as a basis for comparison—and to obtain a better perspective on the relative performance of the contractor.

Issue 22: What results can be expected from contracting?

Discussion of issues

Ultimately the central question for public executives and legislators is whether contracting has positive, negative, or neutral effects on: costs to the government, the quality of service (in terms of providing a secure, humane facility that offers as much successful rehabilitation as possible), and the government's ability to meet its needs for the secure confinement of prisoners.

This study was not an examination of the costs and effectiveness of contracting efforts. Such an evaluation would be premature in view of the short experience of most of the secure facilities being contracted. However, impressions we developed from interviews and from a review of available documentation are presented here.

Impact on service quality

Our impression, based on the limited information available, is that the quality of contracted facilities is perceived by government agency oversight officials as being quite satisfactory. We have seen no indication to date that a government agency has been dissatisfied to any significant extent with the quality of the service provided.

One negative situation was the State of Florida's School for Boys at Okeechobee. The American Correctional Association evaluation found considerable staff problems at the time of its evaluation and, in general, a poor organizational climate. There were also indications of high staff turnover. Moreover, personnel at that facility, in comparison to a noncontracted institution with which it was compared, perceived a significantly greater number of "student sex assaults" at the contracted facility. However, the evaluation in its summary statement also said, "In general, it seems reasonable to conclude that the data show no real significant difference between the two facilities in so far as the overall performance of their respective client populations is concerned. Or to phrase it another way, the contractor appears to have delivered a program of equal quality to that conducted by the state."[2]

Data on escapes indicated that the number of escapes was higher than the comparison government-operated facility, but the Okeechobee facility had about the same rate after the changeover as before. Both a subsequent reevaluation and a separate critique of that work pointed out that the evaluation was conducted after only about 1 year of the contracted effort, a period during which the facility appeared to be still in the startup period. Additionally, there appeared to have been some substantial improvement in management during a brief, subsequent examination of the facility by ACA several months after the first assessment.

The Hamilton County facility also had substantial initial problems in staff turnover, but it did not appear to be causing significant problems in service delivery. Grand jury reports for the first half of 1986 indicated considerable satisfaction with the quality of operation of the facility. This indicates that the contractor overcame initial problems, helped by a switch in the contractor's facility administrator. The reports prior to contracting also had reported good quality of conditions at this facility.

Limited escape data were available for Hamilton County, Kentucky's Marion, or Pennsylvania's Weaversville facilities. These indicate escape rates which were either lower or about the same as comparison facilities.

It appears that the private organizations made a major effort to do their work correctly. This seems, at least in part, to be because the companies perceived those as trial efforts and recognized that their work would be in the national limelight. They saw the need to be successful in the early efforts for future business to develop.

Facility startup

Ability to start up a facility more quickly than State or local government has been reported to be a major advantage for private organizations. It is particularly important if a State is attempting to relieve crowded conditions. The evidence we found supports this opinion. However, our information is limited to minimum-security and local and juvenile facilities, rather than adult maximum- or minimum-security prisons.

Kentucky's Marion minimum-security prison for adult male prisoners accepted inmates within 3 months after the contract was actually awarded. However, this may be something of a special case since the contractor had purchased the site a few years before. The facility, previously a seminary, needed little modification for its new purpose. Also, in this case, the State spent approximately 15 months completing the RFP process, which diminishes somewhat the time advantage of the private contractor. Kentucky's experience may be somewhat unusual since its initial RFP did not result in a successful competition and had to be reissued.

The State of Pennsylvania's Weaversville secure juvenile facility (housed in buildings already owned by the State) was retrofitted by the contractor in less than 1 month (after the attorney general ruled in 1975 that even hard-core delinquents could not be incarcerated in facilities with adult offenders).[3]

Bay County, Hamilton County, and Shelby County all wanted either significant modifications to existing facilities and/or new facilities. In each case the counties felt the contractor provided the facility much quicker than the government could have done; i.e., in each case, in less than 1 year.

A major reason for the ability of private organizations to start up new or rehabilitated facilities more quickly than a government agency is they can avoid extensive series of reviews and public hearings, including executive approvals that the government has to go through. Opponents of private contracting argue that this public examination is desirable; that dispensing with it undercuts certain checks and balances. We have no direct evidence on this issue, although the contracting issue was explicitly debated in public in most of the cases examined. In addition, a legislative body often had the opportunity to review the contracted activity prior to its initiation.

Treatment of prisoners

Four cases provided some clues in regard to the treatment of prisoners. As noted earlier, the Florida School for Boys contract facility was initially found by evaluators to have worse conditions for inmates than a comparison State school. At three adult facilities, however, the limited evidence indicated that the contractor was able to provide improved treatment for inmates. This appears to be the case based on our onsite interviews at the Kentucky Marion minimum-security facility, telephone interviews with public officials of the Bay County Jail, and the Ramsey County facility for adult women prisoners. Unfortunately we have no systematically collected evidence that compares either before and after data or outcomes in similar government-operated facilities. An early 1986 inspection visit to Bay County by the Florida Department of Corrections (a few months after the contractor had taken over operation of the jail) found far fewer and less severe violations than when visited the previous year, prior to contracting.

Contractor policies regarding treatment of prisoners appeared to put somewhat more emphasis on humane treatment than seems the case for public correctional agencies. This may be a result of better physical conditions (such as at the new Kentucky facility), staff's lack of years of hardening experience in attempting to treat difficult inmates, and less crowding at most of the contracted facilities.

Impact on costs

One might expect public agencies to have already made reliable cost comparisons of the contracted facility either as compared to the cost before it was contracted, or if the contracted facility is an additional facility, as compared to similar State-operated institutions. We have not found available reliable cost information at any of the levels of government studied here. (Even at the Federal level, the government did not feel comfortable with the cost comparisons made to date, stating that they did not have indepth cost comparisons.)

Cost comparisons are not easy to make and need to be done carefully. The expense of contracting, for instance, should include the costs of monitoring. As noted earlier, however, for most State and local agencies there has not been extensive monitoring thus far. However, in Kentucky, which has an onsite monitor (who also acts as parole officer), the cost of the monitor would have to be included. It can also be argued that States should monitor their own State-operated facilities as carefully as they do a contracted institution and, therefore, monitoring expenses should be about the same for both modes of operation.

Another pitfall sometimes encountered in comparing facilities with different levels of security is lumping together all State prisons whether minimum, medium, or maximum security; it is more appropriate to compare the costs of facilities at similar levels of security.

In addition, cost comparisons need to take into account expenses that are incurred in the contractor's but not the State-operated prison, or vice versa. For example, the State of Pennsylvania's Weaversville facility for severely delinquent youth is on the grounds of the State hospital, which is responsible for some maintenance and utilities expenses; consequently comparison State facility costs should not include full maintenance and utility costs.

Finally, some have argued that the contractors' costs may reflect a higher level of service resulting from such factors as less crowding and a higher staff-to-inmate ratio. This tends to apply more to juvenile facilities than to adult facilities.

In the following paragraphs we summarize our findings about costs at the individual facilities. These numbers represent only a rough indication of the expenses involved. They have not been obtained from indepth cost comparisons—which are needed.

Kentucky's Marion facility's contract price was $25 per inmate day, beginning in January 1986. FY 1983–84 costs

per inmate day (excluding any debt service) for the two most comparable minimum-security Kentucky State-operated facilities were $22.74 and $26.83. Thus the contracted price was quite similar, especially after considering likely price changes since FY 83–84. (Costs at State institutions of higher security levels was over $30; a comparison with those, however, would be misleading.) The 3-year contract permits adjustments based on the national cost of living index during the second and third years.

Pennsylvania State officials estimated that costs at Weaversville were somewhat lower than at comparable State-operated juvenile facilities. They felt that at least part of the reason for this was that the contractor's employees, who were nonunionized, were paid less than government staff. A recent cost comparison (provided by the State) showed that for FY 85–86 the Weaversville per diem was $130 compared to $141 and $152 for the two similar State-operated facilities with approximately the same capacity; i.e., about 20 to 24 beds. Thus, the contracted institution was approximately 11 percent less than the State facilities. The contract price for 1986 was expected to be approximately $100 per inmate day, a reduction from previous years that would result in even greater differences. One problem with these numbers involves whether they include fully comparable items. For example, the contract facility was not charged for full utilities and maintenance, since it is located on the grounds of a State hospital which supplies some of these functions.

The costs of the State of Florida's School for Boys at Okeechobee were found by the American Correctional Association evaluation to have increased less than the comparison State-operated facility during the initial year of operation by the contractor. "However, the dramatic decrease anticipated (and promised)—variously stated at the outset as a 10 or a 5 percent reduction—has not been realized."[4]

County officials estimated that Bay County's contracted jail was operating at a considerable savings compared with what the county would have spent. The contractor, county officials reported to us, was able both to operate the main jail and build and operate a workcamp-jail annex for the same amount estimated to be needed for operation of the main jail by county employees. However, we have not been able to document these impressions.

Hamilton County officials reported that the contractor's per diem rate was approximately 10 percent below the cost incurred when the county government operated this facility. The initial contract rate was $21 per inmate day. The private firm was negotiating for approximately $24 per inmate day, beginning July 1986. The contractor was also asking the county for permission to reduce its liability coverage (from $20 million to $5 million). Hamilton County had problems with the contract in the past when facility costs escalated due to a large influx of driving under the influence of alcohol (DUI) inmates. Subsequently the contractor agreed to a new rate for DUI offenders (who are held for only 48 hours on weekends). This rate was $12, close to half the regular cost.

The Ramsey County contract for adult female offenders (in 1985) specified a cost of approximately $57 for fully confined offenders and approximately $28 for those on work release. Ramsey County had been using Hennepin County's facility for female prisoners which became filled because of new DUI sentencing. If Ramsey County had continued to place women inmates with Hennepin County, that county would have had to add space to its facility. It is estimated that Ramsey County would have been charged $80–$90 per diem.

Shelby County's secure facility for juveniles was a new institution so no comparable costs were available. The per diem price in the contract was determined by the statewide per diem cost to counties for retaining youth that otherwise would use State facilities (currently $65, of which the contractor receives $63 and the County $2 for administration costs). Officials noted that if the county operated the facility, it would "commit" the county to retain employees for many years and absorb the high costs for fringe benefits.

Based on this highly limited information, it appears that in most cases the contractor costs were somewhat less than government-operated facilities would have been, thereby achieving savings. Our interviews suggest that some of the contractors were having difficulty with their current per diems, such as in Kentucky and Pennsylvania. In both cases the vendors had recently been asked by the government to bring down costs to budgeted levels. Thus, there remains some question as to whether these operations in the future will be able to maintain their current level of quality. In these two cases, at least, these private for-profit firms are not likely to be achieving much, if any, profit (and may well be operating at a loss).

In sum, the information is not clear. The contracted operations appear to have been tightly budgeted. We found no indication that costs are higher than at government-operated facilities or that the private organizations are making excessive profits.

Attitudes

Public officials inevitably are concerned about the public's reactions to correctional institution contracting. During our study we became aware of major public controversy over the contracting efforts in two of the eight jurisdictions. Both of these are recent. In Bay County, the Sheriff, many jail employees, and various members of the community strongly opposed shifting the jail operation to the contractor. Several citizens joined in a lawsuit against private operation of the jail, saying the county lacked authority to transfer operations to a private vendor, though such authority was passed by the Florida legislature in 1985. Final disposition was pending.

In Marion County, Kentucky, the location where the new prison was installed by the contractor, there was considerable community opposition. Relations improved greatly when the contractor hired a substantial number (about 45 persons, in fact most of the staff) from county applicants.

Contracting by the States of Pennsylvania, Massachusetts, and Florida, and Shelby County, Tennessee (all secure facilities for severely delinquent youth), did not appear to result in any significant public relations problems. Contracts for nonsecure community correctional facilities for youth, especially with nonprofit organizations, have been set up frequently throughout the United States, perhaps explaining in part the lack of debate over such arrangements.

With evidence from only one State-contracted adult minimum-security facility, it does not seem appropriate at this time to make any generalizations as to public attitudes.

Issue 23: How should government evaluate the results of contracting?

Discussion of issues

A State or local government that transfers from publicly to contractor-operated prison facilities should evaluate that effort. The purpose of such an assessment is to determine whether the effort should be continued, reduced in scope, returned to government operations, or expanded to other facilities.

In Issues 19 and 21 we discussed monitoring the performance of the current contractor. Here, we are not so much concerned with the performance of a specific vendor under a specific contract, but in evaluating the process as a whole. For example, a private firm might fulfill the basic requirements of the contract, but costs and overall performance levels may not be sufficiently advantageous to warrant further expansion or even continuation.

Another distinction between monitoring and evaluation is that monitoring needs to be done on a regular and frequent basis to make sure the contractor is meeting contractual performance requirements and to provide input for contract renewal and rebidding cycles. An evaluation, such as the type discussed here, needs to be performed only once every several years but synchronized with the budget contract cycle.

Information obtained through the government's regular monitoring process should be of considerable use for the evaluation. The evaluation process, however, will place more emphasis on comparing the costs and performance with and without contracting—a much more difficult process.

We found only one attempt to conduct an evaluation: the assessment by the American Correctional Association of Florida's School for Boys at Okeechobee. It compared the contract facility with another, similar institution for seriously delinquent male youths.[5] Most recently, a specific requirement to undertake an evaluation was required by the May 1986 Tennessee Legislature when it authorized contracting at one medium-security prison.[6] That legislation permits contract facility with another, similar institution for seriously delinquent male youths.[5] Most recently, a specific requirement to undertake an evaluation was required by the May 1986 Tennessee Legislature when it authorized contracting the same cost."

Recommendations

The sections below discuss and present our recommendations on: (1) the timing of the evaluation, (2) who might do the evaluation, (3) the specific performance indicators for which data should be collected and the collection procedures to obtain the information, and (4) the evaluation design; that is, what comparisons should be made to enable the government to estimate the extent of success or lack of it. Because of the lack of actual experiences in evaluating contracting for prison operation, this issue draws heavily on our previous experience in evaluating other public services.

Timing of the evaluation

The evaluation should cover information obtained after the contracting approach has had a chance to get past the shakedown period. A 1-year period is likely to be needed to iron out bugs. The assessment should extend for a minimum of 1 (preferably 2 or more) years beyond the initial startup period. (In cases where the contract is terminated early, a very useful evaluation could be conducted to find out what went wrong.) Subsequently, the State might want to evaluate its contracting approach in depth perhaps every 4 or 5 years.

As will be discussed later, the evaluation activity should begin before the first contract is initiated in order to collect baseline data. This allows comparisons to be made with the period before the contract began.

If a State selects an "experimental design" for its evaluation approach, it will be indispensable for the evaluation to begin before the contract period covered by the experiment.

Who should do the evaluation

A full-fledged evaluation requires evaluation expertise to assure that the design is sound. Many State correctional agencies have personnel in their research, statistics, or planning units that probably can direct such evaluations—if given the time to do it. For those States that do not have staff available to plan and monitor the evaluation, they should seek outside help such as a university or consulting firm. An evaluation aimed at assessing prison contracting is a complex task and some special expertise is likely to be needed.

Data elements to be collected and associated data collection procedures

Indicators of effectiveness. Table F gives an illustrative list of performance indicators that States should consider as possible criteria for assessing the effects of their contracting efforts. These are similar to the performance indicators discussed earlier for the monitoring efforts (see Issue 21). Except for the reincarceration indicators in Table F, data for the performance indicators could be obtained through an ongoing monitoring process undertaken by the State. As discussed later, the performance indicators chosen as evaluation criteria also need to be collected on noncontracted facilities so as to permit comparison.

We have discussed data collection procedures for most of these effectiveness indicators under Issue 21. These procedures include: (1) tabulation of data provided by reports from each institution on incidents such as: escapes, assaults, and other extraordinary occurrences; information from onsite inspections (both those done by specialists such as health, medical, safety, fire, and sanitation inspectors and by special correction agency teams); and (2) data from interviews of inmates such as on internal safety, discipline, treatment by staff, and on the quality and availability of programs such as recreation, education, vocational training, and work experience.

Evaluation of rehabilitation success is particularly difficult. Many States can probably determine reincarceration rates and

Table F

Illustrative indicators for evaluating correctional facility effectiveness

Performance dimensions	Performance area	Performance measure
I. Internal control and security.	A. Escape frequency.	1a. Number of escapes, attempts, unauthorized leaves per average daily population (ADP).
	B. Victimizations, incidents, and protection of offenders (categorized by type).	2a. Number of incidents of problems in internal security per ADP.*
		2b. Number of offenders victimized one or more times per ADP.
		2c. Number of inmates involved in suicides, attempted suicides, and self-inflicted wounds per ADP.
		2d. Percentage of sample inmates reporting substantial fear for own personal safety.
II. Confinement conditions.	A. Overcrowding.	3a. Number overcrowded offender days (for all facilities of the relevant security level).
	B. Sanitation conditions and facility maintenance.	4a. Number of major violations of State standards related to food handling, preparation, and storage; vermin control; bathing, drinking, and toilet facilities; and liquid and solid waste disposal.
		4b. Rating of level of facility appearance.
	C. Fire safety.	5a. Number of major violations of State codes related to automatic fire protection and standpipes; portable fire extinguishers; electrical, heating, and mechanical equipment; combustible and flammable; exit facilities; structural features; occupancy limits; smoking and alarm systems.

Continued next page

*This can include such incidents as disturbances, drug incidents, contraband and weapons found in shakedowns, or disciplinary actions.

even rearrest rates, at least those that occur within the State. It is much more difficult to identify success in obtaining legitimate employment. If the released prisoners are on parole, this information should be readily available. If not, some of the data might be obtained through special agreements with State unemployment insurance offices, which maintain records of wages paid by employers to employees in jobs covered by unemployment insurance. A considerably more difficult and costly procedure is to find, contact, and interview ex-inmates by mail, phone, or in person. Finding the prisoners and gaining their cooperation is difficult if they are not on parole, so we do not encourage this option unless the State believes it has the necessary resources.

Procedures for collecting these various data, based on data collection trials with the States of Minnesota and North Carolina, are further discussed in the report referenced on Table F.

Table F (continued)

Illustrative indicators for evaluating correctional facility effectiveness

Performance dimensions	Performance area	Performance measure
		5b. Number of fires by seriousness of damage.
	D. Safety of building and physical surroundings.	6a. Number of inmates and employees receiving serious injuries per ADP (accidental and intentional).
	E. Health.	7a. Sick days per ADP.
III. Social adjustment and rehabilitation.	A. Within facility progress and achievement.	8a. Number of inmates successfully completing educational program divided by the number of inmates with less than a high school diploma or without a GED.
		8b. Number of inmates completing vocational training divided by the number of inmates with no vocationally oriented work skills.
		8c. Percent of inmates earning "good time."
	B. Recidivism (with breakouts for seriousness).	9a. Percent of released inmates with subsequent in-State arrests within 12, 24, and 36 months of release.
		9b. Percent of released inmates with subsequent in-State convictions within 12–24 months of release.
		9c. Percent of released inmates with subsequent in-State reincarcerations within 12 and 24 months of release.
	C. Employment success.	10a. Percent of released inmates that are gainfully employed 12 and 24 months after release.

Source: Adapted from Burt.[7]

Process indicators. The evaluation should include descriptive information about the programs and practices of the contracted institution and compare it to government-operated facilities. Such information can be quite useful in providing explanations for observed differences in costs and effectiveness.

For example, ratios of the number of staff to number of inmates, both in total and for various types of staff (such as for recreation, counseling, case work, various programs, and medical services) may be informative. In addition, differences in the procedures used for security, programs, and in the treatment of prisoners should be identified.

A State, however, cannot automatically assume that differences in correctional practices are in themselves good or bad. Only when these differences relate to outcomes will a jurisdiction be able to determine whether such elements are associated with better or worse outcomes. Thus, higher staff-to-inmate ratios, size of salaries and fringe benefits, and the like may indicate higher quality service, but they also could have negligible effect and even indicate inefficiency.

Primarily, process indicators provide clues to the question: "Why did the observed differences in outcomes occur?" This information can offer important suggestions regarding how prison programs might be improved in the future.

Cost analysis. A major part of the evaluation should be a comparison of the costs of the contract facility with the likely costs if it were not contracted. This is a more complex issue than may seem at first glance.

The costs for the contracting effort should include expenses incurred administering the contracting process (including the RFP phase) and of monitoring contractors. They should include the contract's cost, including any amendments and adjustments that were made.

In comparing these expenses to those of similar State-operated facilities, the analysis should first determine that comparable elements are included for both types of facility. For example, State-operated facilities have fringe benefit costs that need to be included. If utilities are included in one type of organization, they should be included in the other. If certain medical costs are not paid by the contractor out of the contract price but were paid directly by the State, the State-operated facility costs to be compared should also exclude these medical costs.

In Issue 15 on contract pricing, we identified a number of other cost elements for which there have been problems in determining responsibility. These same elements should be examined carefully in this cost analysis. Table B (in Issue 5) listed individual cost elements that should be considered.

A major cost analysis problem concerns how capital costs will be handled. In situations where the contractor has constructed or rehabilitated a facility, normally those costs will be included somehow in the contract price. If a comparison is made with existing State-operated facilities, past or current capital costs (such as the cost of debt service) are not included in the State agency's budget. It is not clear how this perennial cost analysis question should be resolved. Some government cost analysts have suggested that an imputed "rental" cost be added to the government costs, particularly to reflect the funds lost by the government by not using the property for other purposes. We suggest that the basic cost comparisons be done without this input, but that a comparison including an imputed capital cost also be shown.

Timing and public acceptance. A major reason for contracting in some cases is to accelerate adding prison capacity. The savings in time should be estimated in the evaluation. The evaluation should also include such important considerations as the ability to save time in getting a new facility started and public acceptance.

Another crucial issue is the degree of public acceptance of the prison contracting effort. Situations such as Kentucky's, where the facility is new and not owned by the State, entail resolving special problems with the citizens of the community where the institution is located. How successful has the program been in alleviating such problems in the community?

Media, political attention, and attitudes toward the contracting effort are important when assessing the success of a contracting effort. They will affect the type of problems faced by the State in operating facilities. The evaluation should provide evidence of current attitudes.

What comparisons are needed?

A major question for the evaluation is the way in which the evaluation attempts to determine whether there were advantages to contracting and whether the outcomes were due to the use of contracting as distinct from other factors.

If the facility is an "add on" (such as is the case in Kentucky), then the State should compare the contract operations to both (1) the option of not adding the additional facility at all, and (2) to the option of adding the facility but operating it by government employees. In the first case, the bottom line question is whether the additional cost is worth the reduction in crowding elsewhere. In the second case, the question is whether the contract institution is more or less efficient and/or effective than a State-operated facility would be.

If the contract is to take over an existing facility, or to build and operate a new facility to replace an old one, then comparisons can be made both between costs and performance of the old one, and between the new arrangements and any comparable facilities still government operated.

A State has a spectrum of possibilities, from highly sophisticated evaluation designs to relatively simple ones. These differ in the strength of the evidence they can provide about whether or not the contracting process itself resulted in improved or worsened prisons. Below we discuss three basic design types: (1) before versus after (time series) evaluations, (2) comparison group evaluations without special assignments of inmates, and (3) experimental evaluations with random assignment of inmates to contract and noncontract facilities. There are numerous variations that will not be discussed here. Combinations of these designs are possible and are likely to be appropriate. For more detail on such designs, we refer the reader to texts on program evaluation.

Before versus after (time-series) designs. For those situations where the government contracts a facility that it has been operating, the contracting effort can be evaluated by comparing performance before and after the switch.

This design requires the government agency to have available comparable data on each performance indicator, preferably for a few (e.g., 3) years, prior to the switch to contracting. Performance data for the first year of the contract should be collected, but at least 1 additional year should be included to make for a fair comparison (since the first year is a startup period). The basic principle here is to identify whether there has been an improvement, worsening, or lack of change in performance after switching to contracting.

Used alone this time-series design is quite weak. A major problem is that many factors other than contracting could have affected performance. For example, the number and types of inmates assigned to the facility, State laws, regulations and policies, and the basic State environment could have changed, thereby affecting performance in ways unrelated to the switch to a contract.

Also, the agency may have modified data collection procedures from before the switch to afterwards, reducing

the comparability of the information. Similarly, a State may not have adequate data from an earlier period as it does currently. This problem can be alleviated if the State arranges to collect baseline data prior to the switch to contracting.

For cost analysis, time-series cost data should be adjusted by a price-level index to reflect changes over time. To show benefits, either the performance level should have increased substantially without major increases in costs, or costs should have decreased significantly without a significant decline in performance.

Comparison groups without random assignment. Inevitably the State will want, and need, to compare the contract facility to similar State-operated institutions. Tennessee mandated this comparison of quality and cost of service to similar facilities in its May 1986 legislation authorizing contracting for one prison. (The legislation, however, does not preclude the use of random assignments as discussed later.) To make these comparisons, a State needs to collect similar information, using comparable data collecting procedures, for the comparison institutions as well as for the contract facility—and over the same time period. If the State introduces a new monitoring process for the contracted facilities that provides new performance data, similar monitoring procedures should be applied to the comparison facilities so that collected information will be comparable.

The key problem in implementing this type of evaluation is to identify "similar facilities." This is a tricky, complex issue. There are numerous characteristics that tend to make two correctional facilities dissimilar. These include such characteristics as:

- The level of security. (This has many nuances; facilities within any one category such as minimum, medium, and maximum security can still differ appreciably among themselves as to their security features.)
- The characteristics of the inmates, such as the severity of the crimes for which they are in prison, whether they are first time or repeat offenders, their age, race, and sex.
- Age of the institution.
- The number of prisoners incarcerated.
- Whether the facility is in an urban, suburban, or rural setting. (Presumably the more urban the facility, the more difficult it may be to operate the institution smoothly.)

Since any one State is not likely to have a large number of prison facilities, its choices for the comparison institutions will be limited; a perfect match is not likely. Therefore, the assessment will have to settle for the best possible match on characteristics such as the above.

Probably the most troublesome issue is that of the characteristics of inmates. There are numerous procedures for classifying prisoners using various scales. For example, the Federal Bureau of Prisons assigns each inmate to one of six "security levels" based on a score derived from a number of social and criminal history variables.[8] The American Correctional Association in its evaluation of the Florida School for Boys used a personality inventory, a behavior checklist, and a social-history rating form to compare inmates of a contract institution with those in a government-operated facility.

Such procedures can be used both to select comparison facilities and subsequently to identify the extent of their differences regarding inmate population, thereby helping with the later interpretation of the findings. The evaluators should, at the least, consider the differences as a possible reason for any differences found in performance. Should contract facilities show better results than comparison institutions and also have more "difficult" inmates, this would present a strong case in favor of the contracting method. On the other hand, if the contract institution showed better performance, but had substantially less difficult prisoners, this would indicate that the reason for the contracting facility's success might have been that it had easier inmates with which to work.

The American Correctional Association evaluated the Florida School for Boys at Okeechobee for severely delinquent male youths (with funds provided by the National Institute of Corrections, not the State). ACA compared the facility to a State-operated facility, the Dozier School for Boys.[9] The ACA evaluators felt there was insufficient baseline documentation available to use the before versus after design.

The ACA evaluation found that Okeechobee had a higher percentage of residents incarcerated for more serious offenses (about the same percent of residents with crimes involving weapons and bodily harm, but substantially more residents with two or more prior placements at training school or with the offense of theft of a firearm) and a higher percent of black inmates (58 percent versus 44 percent at the comparison site). To compensate, the evaluators divided each facility's population into subgroups, comparing performance of these subgroups on frequency of serious infractions of rules and academic achievement scores.

The ACA evaluators confronted two other problems likely to face other evaluations. They found that the data available on number of assaults had not been collected in a consistent manner. Escapes from the two facilities, which the evaluators had also hoped to compare, were so few that no statistically meaningful comparisons could be made.

This Okeechobee evaluation was itself evaluated or criticized.[10] The reviewers were not happy with what they felt to be large differences in inmate characteristics between the two facilities being compared. They expressed even more concern that the contract facility was in its early stages at the time of the evaluation, while the comparison site was well established.

The State of Kentucky during the first few months of the privately managed Marion facility intentionally sent inmates who were least likely to cause trouble to the new, minimum-security facility. Thus, the first 100–150 inmates were probably among the least difficult inmates in the State system. There are other minimum-security facilities to which the contracted facility could be compared, but their prisoners would likely be somewhat more difficult to handle—complicating the task of any future evaluator. The contract institution is still in its initial startup period, however, and more difficult inmates are beginning to be assigned to it.

Experimental designs. This is the most powerful and the preferred form of evaluation. However, it also is the most complex to undertake.

In this design the State correction agency would assign inmates of similar security levels randomly to the contract facility (the experimental group) and to the comparison institution (the control group). This process maximizes the likelihood that the inmates at the facilities being compared would be similar.

Though such experimental evaluation raises legal questions, States should be able to apply this procedure to some extent since the corrections agency is responsible for choosing the inmate's placement location. The experimental design requires that offenders be randomly assigned during the period covered by the evaluation, which would probably need to be for a few years. The size of the facilities being compared should also be similar; e.g., to assure that the overall mix of inmates is similar between facilities. Those responsible for prisoner assignments to institutions would need to follow the procedure carefully during the experiment.

With this experimental procedure, the differences found in performance, if data are collected in similar ways at both types of facilities, would provide strong evidence as to the relative merits of the two types of correction facility management as implemented by a particular vendor.

Recommendations

In evaluating its contracting effort a government should utilize as many of the above three experimental design procedures as it can. Every effort should be made to obtain comparable data on a preselected set of result and cost indicators, both before and after the contract effort started (to permit a "before" versus "after" comparison) and for agency-run as well as contract institutions.

The comparison group design will likely be the approach most often used given the difficulties with using an experimental design. Because differences between comparison facilities are inevitable, it is likely that any evaluation will produce at least somewhat ambiguous results.

One year should be allowed as a startup period, with at least 1 year of poststartup-period performance included in the evaluation. An experimental approach with random assignments of inmates to the contracted and government-operated facilities should be used if possible; however, officials must consider the practical and legal problems in implementing and sustaining such an experiment long enough to be evaluated.

One final observation on the limitations of these evaluation designs: even if the best of evaluation designs is used, the contracting effort will represent just one trial. Ideally there would be many efforts undertaken under many different conditions to determine whether, as a whole, the private approach appears to have significant benefits under typical conditions. One example cannot give the complete picture. The one vendor might be particularly competent or especially incompetent. The contract or the government-operated comparison institution might be particularly good or exceptionally weak. Preferably, there should be a national effort to support and encourage appropriate evaluations so that all States can learn from a collection of experiences in a variety of conditions.

Chapter VII: Conclusions and recommendations

We examined reports provided by 22 States and experiences from nine State and local government jurisdictions in contracting for the management and operation of secure facilities. These probably represent most of the current existing experiences in the United States. Only one instance, however, is an adult State correctional institution: Kentucky's Marion minimum-security facility. Six of the nine jurisdictions contracted with for-profit firms. The other three, Florida, Massachusetts, and Minnesota, contracted with nonprofit organizations.

Our review of these experiences provided the basis for the conclusions and recommendations discussed throughout this report. They are summarized here.

Conclusions

1. **Liability.** It is evident that private prison contractors will not be able to escape liability under Section 1983 of the Civil Rights Act, and that the contracting government entity will be unable to protect itself from lawsuits resulting from the wrongful acts of the operator it selects, but it may reduce its exposure.

2. **Type and size of facility.** States that have decided to use private contractors would avoid a series of problems if they limit contracting to additional minimum-security beds. "Special needs" prisons also seem relatively well-suited to the contracting option.

Contracts should set maximum and minimum inmate population levels and specify the consequences if these are exceeded. A tiered price structure stating per diem costs for vacant as well as occupied beds is advisable. Finally, the contract should establish a mechanism for resolving disputes.

3. **Contracting.** Thus far, most State and local government agencies have not used fully competitive procedures when contracting for the operation of correctional facilities. This lack of competition does not appear to have been a major obstacle to obtaining good service, costs, or quality. Over the long run, however, it is not the best contracting practice and could lead to major problems. The one State-level secure adult institution contract, Kentucky's Marion Adjustment Center, did involve fully competitive contracting. At present, few vendors are experienced in operating secure correctional institutions. And there are few government agencies with experience in contracting for the operation of these facilities. Efforts thus far should be characterized as "experimental."

4. **Monitoring and evaluation.** The State's method for monitoring the contract should be specifically stated and should, for larger (e.g., 150 inmates or more) institutions, include an onsite staff member. Costs to house this individual should be agreed to and documented in the contract.

All the contract efforts we examined were weak when detailing their provisions for monitoring vendor performance. This applied both to provisions in the contracts (where little was said) and to the agency's subsequent monitoring procedures (which were not well formulated). Formal performance criteria were usually vague while procedures for conducting the monitoring were limited. Standards included in the contracts dealt with process, but paid little attention to specifying outcomes.

We found only one systematic, indepth evaluation of any of these contracting efforts. This was an evaluation of the State of Florida's Okeechobee school for severely delinquent male youth, funded by the Federal Government. Nor did we find plans for indepth assessments of the contract effort in any of the other jurisdictions. However, on occasion there were plans, especially at the State level, for periodic reviews of the contractor's performance. The State of Tennessee's Legislature, as part of its May 1986 authorization of a trial contract effort for a medium-security facility, is requiring that an evaluation of comparative costs and service quality be done after the first 2 years. The evaluation is a prerequisite to renewing the contract for an additional 2 years.

These examples are all primarily experimental efforts; there is little past experience to go by anywhere in the country. Since the number of private firms available to undertake these efforts were few, some new organizations were formed to bid on and operate the secure correctional facilities.

5. **Impacts.** While based on limited information, our observations indicate that initial contract operations have been reasonably successful—at least in the opinion of the government officials. It is not, however, clear that they have been successful from the perspective of profitability for the private firms. Vendor organizations appear to have made major efforts to do the job correctly.

In only one case, the Okeechobee School for Boys in Florida, was there evidence that major problems existed early in the effort. Even there, a followup visit indicated that many, if not most, of the problems had been corrected. A county workhouse that changed from public to private management initially had substantial staff turnover problems (Hamilton County, Tennessee), but this apparently did not result in major reductions in service quality. This special effort to do a good job is probably due to the private organizations finding themselves in the national limelight, and to their desire to expand the market.

6. **Avoiding future problems.** Although a lack of full competitive bidding and careful monitoring of performance may be understandable for the initial trials, second phase efforts will require more attention to establishing (a) more credible competitions, and (b) comprehensive, formal monitoring requirements and procedures. This applies to future contracts for current providers as well as new private efforts.

Government agencies need greater assurance—for themselves, for elected officials, and for the public—that

contracting activities will be administered in a fully appropriate, cost-effective and accountable manner. A strengthened contracting process should not be offensive to the private organizations themselves. Most of the officials of these firms supported full monitoring of their work.

Recommendations

Contract goals

1. Before contracting, the government should undertake a systematic, detailed preanalysis to determine if, and under what conditions, contracting is likely to be helpful to the corrections system. This analysis should include an examination of whether statutory authority exists, of current State prison costs, crowding, performance, legal issues involved, availability of suppliers, ways to reduce the likelihood and consequences of contractor defaults, and the attitudes of various interest groups (Issue 5).

2. If a government's goal in contracting is to obtain new beds quickly, the private sector offers an attractive alternative. However, if the government seeks a more economical operation, the minimal evidence available to date suggests that contracting does not necessarily save a significant amount of money (Issues 6 and 22).

Protection of inmates/States

3. Careful attention must be devoted to ensure that each contractual component provides adequate protection of the inmate's rights, and protects the State from unjust liability claims (Issues 2 and 4).

4. The government can reduce but not eliminate its vulnerability to lawsuits when contracting by specifying in the contract that the government be indemnified against any damage award and for the cost of litigation (Issue 1).

5. The government should consider requiring that a significant performance bond be posted or a trust fund established in order to indemnify it in the event of contractor, financial, or other, problems. The agency should, however, determine whether the protection is worth the cost of the bond (Issue 16).

Contracting process

6. Governments should use a competitive bidding process if they decide to contract. This will avoid accusations of cronyism, fraud, and the like. To maximize the number of bidders, the government can:

- Advertise in major State newspapers and national correctional journals.
- Develop and maintain a list of potential bidders.
- Permit both in-State and out-of-State private nonprofit and for-profit organizations to bid (Issue 13).

7. Governments should include information about the bid evaluation process in the RFP (Issue 14). Suggested evaluation criteria include, but are not limited to:

- Firm's experience and past success in similar undertakings.
- Staff qualifications.
- Proposed programs.
- Cost.

8. A method for resolving any contractual differences that may emerge should be agreed to and be specified in the contract before activation of the facility (Issue 10).

Contract prisons

9. The requests for proposals and subsequent contracts should explicitly specify: (a) who is responsible for what expenditures, and (b) what levels of performance are expected (including: compliance with minimum standards as to policies, procedures, and practices; results on such performance indicators as maximum numbers of various "extraordinary occurrences"; and compliance with fire, safety, medical, health, and sanitation standards). The RFP's and contracts should also identify what sanctions or penalties they will apply for inadequate performance (Issues 15 and 19).

10. A tiered fee, or variable cost structure that is fair for both parties should be built into the contract so that there will be no future misunderstandings regarding cost for vacant beds and/or additional inmates beyond the specified ceiling (Issue 15).

11. Rebidding of prison contracts should occur approximately every 3 years. State laws and regulations should be checked before including this specification, since they may suggest a different maximum contract length (Issue 18).

12. Governments should include special provisions in their contracts to require that the contractor provide advance notice of the end of a union contract period, the onset of labor difficulties or major worker grievances that could result in a work stoppage or slowdown (Issue 16).

New versus existing facilities

13. Contracting for new or retrofitted institutions entails fewer problems (such as personnel problems) than turning over an existing facility to a private firm, and thus should be given preference in a government's initial contracting efforts (Issue 8).

14. Governments contracting to replace existing facilities should take steps to ameliorate personnel problems, including:

- Requiring contractor to give employment preference to displaced staff.
- Providing transfer, retraining, and outplacement services to employees not choosing to work for the contractor.
- Carefully calculating, and making provisions for, disposition of benefits (especially retirement and vacation/sick leave accrual) (Issue 20).

15. Governments establishing a new contracted facility should develop a public relations plan. Good public relations

are crucial for community education. The government should fully inform community leaders and should also keep correctional employees fully informed of any contracting deliberations. The media should be made aware of the contracting initiative at an early stage. Once awarded the contract, the private firm should use community resources for operating the facility whenever possible by, for instance, hiring local people and buying supplies and services locally (Issue 7).

Selection of inmates

16. Both the RFP and subsequent contract should be explicit in describing the type and level of offender for which the State is seeking a private contractor and the major architectural features the public agency deems necessary to confine the prisoners appropriately. The contract should be based on the State's current inmate classification policy and its operational definitions of the privileges and level of supervision to be accorded the type of inmates at the proposed contracted-for custody level (Issue 9).

17. States should contractually obligate the private vendor to accept all prisoners in certain specifically designed categories (e.g., minimum security) for the duration of the contract period up to the agreed maximum number of inmates to be incarcerated at any given time (provided for in the contract). This would protect the State against the prospect of selective acceptance (Issue 10).

18. Selection of inmates for placement in a private facility, and decisions about their movement, is the government's responsibility. The bases for these selections should be written into the contract. Criteria should be mutually agreed upon to avoid future misunderstandings (Issues 10 and 11).

19. The contract should include a provision that permits the State to make the decisions about inmate reassignment or reclassification in the event that the contractual capacity is reached (Issue 10).

20. Both a minimum and maximum prisoner population level should be stated in the contract in order to facilitate planning and cost estimates (Issue 10).

21. States contracting for large institutions should specify in the RFP and the contract that the selected private vendor can use unit management, that is, can subdivide the total number of beds into a number of smaller semiautonomous units (Issue 15).

Level of authority

22. Government officials must ensure that disciplinary hearings conducted by the contractor follow legally required practices. A private firm should adopt the policies and procedures utilized by the unit of government. Significant disciplinary actions should be formally approved. The State should consider permanently stationing one or more of its own staff members at large (e.g., 150 inmates or more) private facilities, or at least provide for frequent visits. This individual's responsibilities would include participation in all disciplinary hearings concerning major rule infractions, the definition of these having been spelled out in written policy statements (Issue 12).

23. Private companies given authority over inmates—authority that otherwise would have been that of the governmental entity if the contract did not exist—should closely adhere to the same type of procedures that the government agency would have normally used. Where possible, private contractor discretionary actions involving inmate rights and discipline should be made in the form of a recommendation to the appropriate government agency or official for ratification (Issues 3 and 4).

24. In the event of an escape attempt, private prison employees could use reasonable and appropriate restraint in the absence of any other specific statutory or case law. Once an inmate has left the facility's property (unless the private prison employees are in hot pursuit or have been deputized), law enforcement officials should become responsible for the ultimate capture and return of the escapee (Issue 3).

25. Although individual practices may differ in regard to the degree of involvement of the public correctional agency with release decisions, insofar as the private sector is concerned, its contribution to this process should be limited to a presentation of the facts pertaining to the inmate's level of adjustment during the period of confinement in the private facility. Public officials should make the decision (Issue 12).

Monitoring

26. The State should plan (before the RFP is issued) and implement (after contract award) an effective system for continuous contract monitoring. This should include:

a. Regular timely reports (showing tabulations and analyses of extraordinary occurrences and other significant performance indicators and the results of onsite inspections).

b. Regular onsite inspections (at least monthly and preferably weekly), using prespecified checklists, rating categories, and guidelines on how to complete the ratings.

c. Periodic documented fire, safety, health and medical, and sanitation inspections.

d. Provision for regular interviews with samples of inmates to obtain feedback on such performance elements as treatment of prisoners, amount of internal security, drug use, and helpfulness and adequacy of educational, work, and recreational programs.

e. Annual indepth, onsite inspections by a team of experts, covering the various procedures used and the results of periodic reports on the facility's quality of services based on precontract specified outcomes/results indicators.

f. Explicit provision for prompt review by government officials of the written findings from each of the above procedures with prompt written feedback to the contractor, and identification of what needs to be corrected and by when (and subsequent followup to determine level of compliance).

g. Provision for supplying information obtained from the monitoring process by the time contract renewals and rebidding are scheduled—so this material can be used effectively.

The same monitoring procedures should be applied to publicly operated and contractor-operated facilities. Governments with comparable facilities can then use the resulting information as a basis for comparisons—and thus obtain a better perspective on the relative performance of the contractor (Issue 21).

27. From a State, local, and national perspective, it is highly desirable to obtain systematic, comprehensive evaluations of the costs and effectiveness of contracting secured correctional facilities. A government should require that a comprehensive evaluation be made, within 3 years of contract award, of the degree of success of its contracting effort. Where possible the contracted facility should be compared to publicly operated facilities. Other than the philosophical issues, most of the debate over prison contracting can be greatly enlightened by empirical field evidence. It is a great waste of resources if innovative trials of prison contracting are undertaken without including appropriate evaluations from which States and local governments, and society, can learn: Does contracting work, and under what conditions? (Issue 23).

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*U. S. GOVERNMENT PRINTING OFFICE 1988: 202-052/75203

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August 19, 1991

To: Members of the Committee on Public Safety and Health
From: Deborah Friedman, Committee Staff
Re: Enclosed Materials; Agenda for August 23

Enclosed are some articles on corrections issues you raised at the last meeting. Also enclosed is a copy of the 1972 report on Police Services in the State of Maine. That report proposed a major structural change in the delivery of law enforcement services. The recommendations were not adopted, but some of the information and the thought process involved in the report may be useful to you in thinking about Friday's meeting.

Michael and I were not able to get the people you wanted for Friday's meeting, but we have tried to present a fair cross-section of law enforcement people for the morning. For the afternoon, we will most likely spend more time reviewing corrections issues, the morning's presentations and planning for future meetings.

See you Friday.

Committee on the Protection of Public Safety and Health
Special Commission on Governmental Restructuring

AGENDA
August 23, 1991

9:30 a.m. Intergovernmental Coordination of Law Enforcement

Comments from the panel:

- Frank Hackett, Kennebec County Sheriff
- Charles H. Jackson, Executive Director, Maine Chiefs of Police Association
- Officers from the Department of Inland Fisheries and Wildlife, Bureau of Warden Service and the Department of Marine Resources (tentative)
- Possibly an officer from the Bureau of Intergovernmental Drug Enforcement (BIDE) to discuss an example of intergovernmental law enforcement

Committee questions to panel members

Noon Lunch with Commission

12:45 - 2:45 Committee discussion about morning presentation; thoughts and tentative conclusions

Further discussion about committee methodology and plans for future meetings: data sought, presentations required, etc.

2:45 Committee report to Commission

Mandatory Programs in Prisons—Let's Expand the Concept

BY SYLVIA G. MCCOLLUM

Education Administrator, Federal Bureau of Prisons, Washington, DC

Introduction

THE IDEA that prisoners must work has been widely accepted for a long time in the United States and probably throughout the world. Why? Because work is not really regarded as a joyful experience. In fact, having to work, particularly at the kind of work traditionally available in prisons, could come under the heading of punishment. Good behavior has also been required of prisoners, although it is probably safe to observe that it has seldom, if ever, been regarded as a "mandatory program." It was just required, and specific unpleasant sanctions were the penalty for non-compliance. And, interestingly enough, eating has generally been viewed as mandatory—or at least eating enough to survive. The early suffragettes were not the only prisoners in history to suffer forced feedings in order to satisfy the requirements of correctional administrators.

At the same time that the mandatory concept was limited to these few requirements—few in number but nonetheless important—prisoners were offered inducements for selected behaviors and accomplishments. "Good time," or time off sentence served, was available in some jurisdictions for particular kinds of work and for the maintenance of good conduct over specified periods of time. Furloughs home were also possible, as were the upgrading of living conditions and even paid vacations from prison industry or other work assignments, as rewards for meeting various behavior standards.

Mandatory Literacy in the United States

Chief Justice Burger's Speech

The application of the mandatory concept continued to be very limited for what now seems an inordinately long time. The assumption that correctional administrators had exhausted the acceptable limits of required performance from prisoners went unquestioned for a long time, at least in the United States. And then a window of opportunity opened in the Federal Prison System. Warren E. Burger, then Chief Justice of the United States, who frequently admonished all involved in the criminal justice system to do better, spoke to the graduating class of the George Washington University School of Law, located strategically for purposes of the speech in Washington DC, the nation's capitol. He stressed that society lacks direction about what to do with criminals. He eloquently referred to "an intractable problem that has plagued the human race for thousands of years." He repeated his disappointment that not much new was taking place and restated his earlier and long-held position that we have a moral obligation, stronger than any legal one, to try to find a better way to manage prison programs. While he realized that his personal vision of rehabilitation of prisoners had to be revised, somewhat, he still felt that much more could be done. He proposed two specific actions which he thought were feasible, given the tight budget constraints and the mood of the general public and its elected representatives:

1. the careful screening, training, and better pay for correctional workers, and
2. the encouragement or requirement for all prisoners to become literate and acquire a marketable skill.

The Federal Prison System Reacts

At least one person heard that speech and took it seriously. The speech was made on May 24, 1981, and on May 29, just 5 days later, Norman A. Carlson, then director of the Federal Bureau of Prisons, appointed a task force on education and training to advise him of the policy implications of Chief Justice Burger's speech.

The writer was one of the five members of the task force, chaired by Joseph Bogan who, at that time, was the warden of the Federal prison in Butner, North Carolina. The group's report was issued on November 12, 1981, and is known throughout the Federal correctional community as "The Bogan Report."

The report made at least three recommendations with respect to staff training and eight regarding inmate education and training. One of the education recommendations read simply:

> Develop a comprehensive ABE policy which will require enrollment in, while simultaneously encouraging meaningful participation.

The Bureau of Prisons' mandatory literacy program, established in May 1982, flowed from these 15 words. There was a good deal of anxiety over the impact of a mandatory education program. Would forcing inmates to do something they really did not want to do create more problems than it would solve? What would the staff think? Would there be passive, and perhaps active, resistance by both staff and inmates? These and other questions surrounded the task force's initial discussions. Partially to allay some of these concerns, the task force distributed a questionnaire to assess staff reactions and opinions on issues under review. The questionnaire asked "should we have mandatory education programs?" Eighty-four percent of the staff surveyed answered "yes," insofar as literacy programs were concerned. The support dropped to 74 percent for mandatory high school equivalency (GED), to 73 percent for mandatory counseling, and to 60 percent for mandatory prison industry employment. A second question asked what action should be taken against an inmate who refused a mandatory program. A large minority of staff—around 45 percent—were against any sanctions, but a majority favored disciplinary action, and that position was formalized into the final policy which emerged.

The first mandatory literacy standard was a sixth grade achievement level as measured by the Stanford Achievement Test. Any Federal prisoner, with minor exemptions, who tested below that standard was required to enroll in a literacy program for 90 days. Inmates could opt out after 90 days, but—and this was the winning provision—they could not be promoted above the entry level labor grade either in prison industries or in institutional work assignments if they didn't meet the sixth grade standard.

The tie between pay level and education was clear and was easily recognized as a reflection of the real world. We were all pleasantly surprised at the ease with which the mandatory adult basic education (ABE) program was implemented, and within a few years the minimum standard was raised to the 8th grade in recognition of community literacy standards. And sure enough, before too long, some states began to experiment with and adopt mandatory literacy standards for state prisoners.

Mandatory High School Equivalency - GED

The success of the mandatory literacy program led directly to enlarging the mandatory concept to include the completion of high school, or its equivalent, in order to qualify for the top inmate jobs in Federal correctional institutions. In September 1987, the executive staff of the Federal Prison System authorized a 1-year pilot effort in 10 institutions in the Bureau's southeast region to test the establishment of the GED standard for top labor grade jobs. The pilot began on January 1, 1988, and ended successfully on December 31 of that year. The new requirement became effective nationwide on March 1, 1989.

What Were the Successful Ingredients?

The mandatory literacy program in the Federal prison system in the United States included the following significant elements:

1. All inmates, with minor exceptions, who tested below the required grade level on a standarized test had to enroll in a literacy program for a minimum of 90 days. (The 90 days is really the only mandatory feature of the program.)
2. Inmates could opt out of the program after the required time period without incurring any sanctions, except that they could not be promoted above the entry level pay grade for any industrial or institution job.

The relative success of the mandatory programs has led many Federal correctional administrators to begin to examine the outer limits of mandatory programming—or at least the next steps. Current discussions suggest that if a required program is coupled with substantial incentives and/or specific, significant entitlements, it will work. The model of having to meet some requirement in order to get something you want, is so deeply embedded in our culture that it has an almost immediate and uncontested acceptance, provided, of course, that the quid pro quo is perceived to be desirable, reasonable, and fair.

If this perception is correct, the possibilities for mandatory programming are extensive. What is it that inmates want that is in the power of correctional administrators to give, and what can we reasonably ask from inmates in exchange? Should we require quality occupational training before we assign any inmate to a paid institution or prison industry job? Should certain privileges, such as preferred housing or priority access to high demand recreation opportunities, be contingent on enrollment and completion of parenting programs, Alcoholics Anonymous, or other programs designed to strengthen inmate coping skills? Should release through a half-way house be available only to those who complete a rigorous pre-release program? You can see how challenging the options are and how creative we can be in our

attempt to plumb the potential of tying what the inmates want to what society wants, at least as interpreted by the correctional administrators, checked as always, in the United States at least, by judicial review and congressional or state legislation. When you begin to think of the possibilities involved in this concept they are very exciting and may offer the criminal justice system some new options.

The Case for Mandatory Programs

Many thoughtful correctional administrators and others in related fields of work do not subscribe to the extension of mandatory requirements to inmates beyond work and acceptable behavior, and maybe not even that. They argue that coercion doesn't buy permanent change; that inmates can run games to obtain what we have to offer without any real commitment to the required performance; that mandatory programs are invasive and violate individual freedom; that correctional administrators do not have the right to do more than confine prisoners in a humane fashion during their adjudicated sentences.

This approach neglects the realities that an inmate will have to deal with after release. There is very little in organized society which doesn't have a prerequisite. If you want to drive a car, you must apply for a license and pass a test. If you want to rent an apartment, you generally have to sign a lease and make an advance deposit. If you want to work in certain occupations, you have to demonstrate some education achievement or competence level, and even then you may have to pass some additional examinations. You can't even get married in some jurisdictions unless you meet some specific requirements—pass a health test and get a license. The theme—if you want something from us you have to meet prescribed standards—runs through much of organized society's activities. And this is essentially what is envisioned in mandatory prison programs which make certain activities or privileges contingent on meeting specified standards. Aren't we creating a make-believe world in prison when we say to inmates, you don't have to do anything special to qualify for opportunity systems—meagre though they may be—while you are in prison? But watch out when you are released, everything out there has a catch to it. What we really are talking about is the establishment of program standards and prerequisites for various entitlements—just like in real life.

We think the 1990's will see a growth of the program standard concept in prisons, both in the United States and elsewhere, because, very simply, it makes sense.

Recommended Reading

U.S. Bureau of Prisons, Task Force on Education, Training and Selection. November 12, 1981. Final Report.

McCollum, Sylvia G. 1990. Mandatory Literacy For Prisons. The Yearbook of Correctional Education.

Offender-Oriented Restitution Bills: Bringing Total Justice for Victims?*

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THE PRACTICE of juvenile restitution through court orders is a relatively recent development in the United States. Restitution is now interwoven into the juvenile justice system, often alongside other court sanctions (e.g., probation). As originally conceived, the purpose of restitutive sentencing has been to restore victims to the conditions existent prior to the offenses against them (Upson, 1987). This is what Friedman (1985) considers to be a sentence that attempts to bring about "total justice" for victims. That is, in addition to punishing those who break the law, victims are provided with an opportunity to achieve equity by being directly compensated by their offenders. The very act of making restitution is assumed to be rehabilitative as well as punitive since the offender is forced to make reparation for the harm caused by his action. Although well received by many, there is a great concern among practitioners and scholars (in the juvenile justice system) as to whether restitutive sentencing can be incorporated into the current offender-oriented juvenile justice system without losing its original purpose. In the face of this concern, the State of Michigan has passed two bills—4240 and 4558 (enacted into law on June 1, 1988)—to bring about changes in juvenile restitution. The purpose of this article is to critically assess the practicality of these two bills in achieving total justice for victims through the use of juvenile restitution.

The contention here is that the liberal sentencing of restitution is already in conflict with the conservative philosophy of the juvenile justice system. To present such argument, first, a brief description of the justice system's lineage and the incorporation of restitution into the juvenile justice system is presented. Then, the restitutive goals for the victims, offenders, and the juvenile justice system are presented to explicate how total justice for victims is considered only after the rights of the offenders and the benefits derived by the juvenile justice system are weighed.

*This article is based on a paper presented at the ...ting of the Michigan Academy of Arts, Sci... March 17, 1989.

Restitution and the Juvenile Justice System

Walker (1980, p. 5) in his book *Popular Justice* has refuted the "myth of the changeless justice system"; he strongly argued that it has historically been subjected to public pressure. The history of the juvenile justice system supports his contention. However, it indicates that in at least one aspect, the juvenile justice system has remained unchanged. This system has operated under several rationales for the punishment of offenders—such as retribution, deterrence, and rehabilitation. Yet, regardless of the rationales, the primary goal has been, and continues to be, the control of behavior considered to have pernicious effects on the social harmony. Specifically, the justice system has always been concerned with the offender.

A recent development in the juvenile justice system is the introduction of victim rights to the sentencing process. Victim rights advocates argue that victims have rights, just as offenders have rights. Margery Fry (1951), a leading English penologist, who was influential in bringing restitution into the American juvenile justice framework, asserts that victims have the right to financial remuneration for crimes they encounter.

The recent growth of interest in the United States in the use of restitution as a dispositional option for the courts is tied to a number of factors: efforts in the 1960's and 1970's to introduce major reforms in the juvenile justice system; the continuing search for innovative correctional programs; and concern for the plight of victims. The steps to deinstitutionalize and divert adolescent offenders during the 1960's and 1970's represented the emergence of a correctional ideology which was a reaction to the excesses and failures of institutional, custodial care. Furthermore, "the deterministic theories underlying many treatment approaches could be construed to provide a justification for offenders' illegal behavior rather than for holding offenders accountable for their behavior" (Galaway, 1988, p. 11).

The record of treatment failures in the juvenile justice system is extensive (Gibbons, 1986). A number of efforts have been made to create therapeutic milieus in correctional institutions, but to

no avail (Jesness, 1965). The record of various counseling-oriented ventures in the juvenile justice system is a dismal one. Many of these programs have had little or no impact upon youths diverted to these ventures, many of whom ended up in "net widening" which is the opposite of what was intended by such ventures (Decker, 1985; Binder & Geis, 1984; Polk, 1984).

According to Regnery (1986), there is a desperate need for reforming the juvenile justice system. The juvenile justice system has traditionally been most concerned with the offender only, often at the expense of society. Its guiding force, in fact, has been the belief that it is the offender who is the victim and that the court must do something in the best interest of society at large. To a great extent, "the system has been based on the Rousseauian notion that people are born good, but corrupted by institutions" (Regnery, 1986, p. 49). Regnery also contends that this concept has worked in the first two or three decades of this century, but does not any longer.

The criticism of juvenile training schools led to the evolution of a new set of ideas about appropriate treatment of juvenile offenders and favored the use of community-based alternatives as a major alternative to institutionalization. Community-based services are less expensive than institutional services, and since program staff and clients are closer to meaningful community contacts, community-based alternatives are expected to improve the probability of client reintegration. Restitution as alternative sentencing appears to fit well with all these assertions. Restitutive sentencing designed to "emphasize accountability on the part of the offender, and responsibility for one's actions, can have an effect on the offender's behavior" (Regnery, 1986, p. 45). This sentencing also provides the opportunity for potential recovery of losses for victims. In the United States, the President's Task Force (1982) specifically recommended that judges should order restitution to victims in all cases in which the victim has suffered financial loss. In the same year, the Federal government enacted a restitution law—the Victim Witness Protection Act. Also, in just a few years, 30 state legislatures codified laws prescribing the use of restitution as a sentence for certain types of crimes (Upson, 1987).

The inclusion of restitutive sanction in the juvenile justice system might lead the optimistic observer to conclude that the rights of victims are on their way to being well ingrained in the justice process, just as are rights protecting offenders. Certainly, now that this sentence has been codified into law at both Federal and state levels, chances are better than ever for victims to be recompensed for their losses. However, a more thorough examination leads one to believe that consideration of victim rights is in conflict with the current offender-oriented sentencing process and, as a result, remain secondary to traditional sentencing goals—to punish, to rehabilitate, and to deter.

As mentioned earlier, the State of Michigan has codified bills 4240 and 4558 into law, prescribing the use of restitutive sentencing. According to subsection 44(2) of bill 4240, the court at the dispositional hearing for a juvenile offense may order, in addition to or in lieu of any other disposition authorized by law, that the juvenile make restitution to any victim or victim's estate for the juvenile's course of conduct which gives rise to the disposition. Subsection 18(7) of bill 4558 mandates that if the court finds that a juvenile has violated any municipal ordinance or state or Federal law, and the court has placed the juvenile on probation, the court may, as a condition of probation, require the juvenile to pay restitution to the victim. The juvenile may maintain paid part-time or full-time employment and pay restitution to the victim from the earnings of that employment. Also, subsection 18(12) of bill 4558 stipulates that if a juvenile is unable to pay all of the restitution ordered, after notice to the juvenile's custodial parent and an opportunity for the parent to be heard, the court may order the custodial parent to pay all or part of the unpaid portion of the restitution ordered.

Goals of Restitution

Disappointed with the ostensible failure of the justice system to control crime, the public began questioning criminal sentencing and the use of tax dollars (Armstrong et al., 1983). In an endeavor to improve their images, many states adopted mandatory sentencing laws. Nevertheless, such action resulted in an increased inmate population and concurrent need for tax revenue to build more jail and prison spaces. The public responded to this need with a definitive "no" by renouncing several bond elections (Latessa, 1986). Consequently, the justice system was forced to look for alternatives to incarceration—those that were less expensive, more effective in reducing crime, and result in improved public perception.

The quest for alternatives to incarceration was complicated by the public calling for total justice for victims. Advocates of restitution argued that this sentence would meet the demands of the

public. It would address victims' rights to compensation by their young offenders and reduce the justice system costs associated with incarceration (Conrad, 1984), thereby improving the image of the juvenile justice system. Consequently, restitutive sentencing has been incorporated into the juvenile justice system.

Reparative goal: "The opportunity to claim all relevant losses" incurred through crime (McGillis, 1986, p. 66). Restitutive sentencing responds to the emerging interest in crime victims in one way— there is potential for reimbursement of crime victims. However, the use of restitution is confined to crimes involving identifiable losses. This restriction requires that victims prove financial loss. While this restriction appears to specify the appropriate use of restitution, there are issues left unaddressed, as well as limitations that impede the victim-offender exchange process. For instance, an issue impeding victim reparation is the question of offender status in the juvenile justice system. That is, there is uncertainty as to whether restitution should be limited to "crimes for which the offender is convicted, or whether the statutory language is broad enough to encompass offenses disposed of through plea-bargaining or other nonadjudicatory disposition[s] (Brown, 1985, p. 19). A case in point comes from the New York Penal Code. Subsection 60.27(4) defines an offense as a criminal conviction, as well as any other offense that is part of the same criminal transaction or contained in any accusatory instrument disposed of by a guilty plea. Brown (1985, p. 19) argues that "the statutory language" of this law makes "it unclear as to whether it is required that the offense even be charged in the accusatory instrument."

While the lack of clarity in the law poses one problem for victims achieving financial equity (justice), law-imposed limitations on the amount of recoverable losses creates another hurdle. An example of this comes from the State of New York. Article 60 mandates that restitution should not exceed $5,000 in felony convictions and $1,000 in misdemeanors. Another example comes from subsections 18(12) and 44(17) of State of Michigan bills 4558 and 4240 respectively. Under these subsections, the amount of restitution a juvenile's parent is ordered to pay must not exceed $2,500. That is, these subsections put a maximum limit for both misdemeanors and felony cases. Although many offenses do not involve such losses (Bureau of Justice Statistics, 1980), it is conceivable that they could.

Beside these, total justice for victims is hindered by the emphasis on the part of the juvenile justice system to achieve traditional goals, despite an order by the court to pay restitution. When this is the case, "the sentencing objectives of incapacitation, retribution or deterrence may lead to a decision to incarcerate [the offender], ... thereby functionally excluding the possibility of restitution" (Brown, 1985, p. 20). Clearly, a person serving a prison sentence who is also ordered to pay restitution has blocked opportunities to meet this order (Cohen et al., 1985). Furthermore, when rehabilitation is a significant consideration and probation or parole is ordered in conjunction with restitution, fear of failure due to financial hardship on the part of the offender becomes a primary concern and victim's loss become secondary (Brown, 1985). When financial hardship on the part of the offender turns out to be the primary concern, the court cancels all or part of the restitution ordered. A case in point is subsection 18(8b) of the State of Michigan bill 4558. This subsection mandates that the court must annul all or part of the amount of restitution due if it appears to the court that the payment will impose manifest hardship on the juvenile offender. In addition, bill 4558 is also concerned about the financial resources of the offender's parents. Subsection 18(14) stipulates that a parent who has been ordered to pay restitution under subsection 18(12) may petition the court for a modification of the amount of restitution owed or for a cancellation of any unpaid portion of the restitution. The court should cancel all or part of the amount of restitution due, if it appears to the satisfaction of the court that payment of the amount due will impose a financial hardship on the parent. Clearly, the concern for the offender or his or her parents takes precedence over victim's plights or loss.

Hence, while restitution gives victims the right to recover financial losses due to crime, victims are not guaranteed all that may be entitled to them or even that restitution will be paid within a stipulated time. This led McGillis (1986, p. 36) to stress the importance of "victims understand-[ing] at the outset that they are not guaranteed restitution" from their offenders.

Sentencing goal: To promote an increased sense of responsibility and accountability, thereby reducing recidivism (McGillis, 1986; Armstrong et al., 1983). The sentence of restitution offers the juvenile justice system a unique approach in dealing with offenders. It combines conservative and liberal views of sentencing. Finn and Lee (1987) contend that the very act of making restitution payment can be punitive as well as rehabilitative, as

offenders are forced to confront and make reparation for the harm caused by their criminal acts. Likewise, Maloney and associates (1982) and Armstrong et al. (1983) stress that restitution holds offenders accountable and provides them the opportunity to take personal responsibility for their crimes. In addition, restitutive sentencing can serve as a deterrent (Finn & Lee, 1987), since it lowers net gains for committing crimes. Still others posit that the requirements laid out to pay victims actually provide increased opportunity to monitor offenders (Miller, 1981). In other words, the payment schedule provides an objective and tangible criterion to the juvenile justice system for evaluating offender progress. Similarly, it can also serve to increase self-esteem as offenders see their own progress. In the words of Maloney et al. (1982, pp. 4-5):

> Juvenile restitution serves as an important tool as a deterrent to repeated offenses. Youths who are held accountable for their actions are given the chance to accept personal responsibility for their lives. To the community, restitution offers a juvenile justice response which makes sense. It is understandable, observable, tangible, logical consequence to unlawful behavior.

However, Upson (1987) points out that although restitution has been codified at both the Federal and state levels, it is not imposed regularly as a form of punishment. In addition, McGillis (1986) asserts that since it is not used regularly, the benefits of restitutive sentencing are mostly speculative and based primarily on theory. Therefore, the impact of this sentence on lowering recidivist crime remains unknown.

Nevertheless, by examining restitutive sentencing, it is doubtful that this sanction will fully meet advocate expectations. The Victim Witness Protection Act of 1982 provides an excellent example. The Act specifically authorizes judges to order restitution for those convicted of robbery, violations of civil rights, etc. However, at the same time, it does not require the ordering of this sentence. Instead, the law indicates that if the sentence is not used, the judge merely needs to specify the reason(s) for not ordering it. The concern primarily centers around how offenders may be adversely affected by this sentence. In fact, the Act discourages imposition of restitutive sentence if it appears that such sentence would unduly complicate the sentencing process and/or prolong contact between the justice system and the offender.

It is interesting to note the language of this sentence at a time when discretionary sentencing is being taken out of the hands of judges. There may be several explanations to account for the wording of this sentence. First, it may reflect the incompatibility of restitution in an offender-oriented juvenile justice system. Second, it may indicate skepticism on the part of the juvenile justice system that this sentence can rehabilitate offenders. Regardless of the reason(s), it points to the fact that victims remain, at best, a secondary concern in the sentencing process.

An indication that restitutive sentence is incompatible with the current sentencing practices of the juvenile justice system, and that there is little confidence that this sentence can rehabilitate offenders, is the conversion of restitution to other forms of punishment. Typically, if victim reparation is willfully not made, incarceration or unpaid community service immediately follows (Brown, 1985). Under subsections 18(10) and 18(11) of State of Michigan bill 4558, if a juvenile is in intentional default of payment of restitution or refuses to perform the required community service (as part of the restitution sentence), the court may alter the terms and conditions of probation for community service. Consequently, crimes initially defined as committed against an individual are subsequently redefined as crimes committed against the state.

Proponents of restitution recognize that there are those who will refuse to make restitution, but they also point out that there are others who are financially unable to meet the requirements to be sentenced to restitution. According to Thorvaldson (1987), an offender's ability to pay is a major consideration when imposing restitution. Research suggests that the discretion of judges has resulted in sentencing disparity between economic classes. For instance, a study conducted by Hudson and Chesney (1978) revealed that lower income offenders are under-represented among those ordered to make restitution to their victims. These findings have led McGillis (1986) to question the applicability of the Equal Protection Clause of the 14th Amendment, requiring the statutory ceiling period on imprisonment for any substantive offense be the same for all defendants (offenders), regardless of their economic status. This certainly would account for the lack of use of this sentence, since most arrests for property crimes are made against the poor (McGahey, 1986). Addressing the disparity issue, Van den Haag (1975, p. 236) asserts that "The amount [of restitution] should be independent of the offender's ability to pay and dependent on the financial loss suffered [by the victim]. However, ability to pay should determine the rate of pay."

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the juvenile offender accountable and responsible for his criminal act; accountability and responsibility are, in turn, expected to meet the traditional sentencing goals of punishment, deterrence, and rehabilitation. Van den Haag (1985, p. 86) contends that punishment is essential to rehabilitation, because "without punishment rehabilitation is unlikely to take place." Furthermore, he maintains (1985, p. 91), "all punishment should be mandatory." Likewise, completion of reparative payments on behalf of the offender should be mandatory to make him or her accountable and responsible for criminal behavior. However, in reality, this is not the case. Under subsection 44(18) of bill 4240, a juvenile offender who is required to pay restitution, at any time, during his period of reparation, may petition the court for a cancellation of any unpaid portion of restitution; consequently, the court may oblige the juvenile. When this is the situation, the sentencing goal of restitution is far from reach.

Corrections goal: To find an effective, inexpensive alternative to incarceration (Galaway, 1983; Wilson, 1983). "Restitution has been warmly received by the proponents of the moratorium on prison construction as well as prison abolitionists in the United States who see restitution as providing an alternative to prisons which they consider an unjust punishment for a civilized, enlightened society" (Galaway, 1983, p. 12). Furthermore, as an alternative to incarceration, restitution benefits juvenile offenders by reducing recidivism. "Prisons frequently serve as a breeding ground for more crime, not less, by exposing the naive offender to the more sophisticated and hardened criminal elements" (Friday & Petersen, 1973, p. 61). Hence, the argument is: incarceration contaminates the juvenile and thus impedes any chance of rehabilitation. Also, incarceration carries a severe social stigma that rehabilitation of juvenile offenders is frequently hindered.

Beside these, overcrowding in our nation's jails and prisons is one of the most pressing problems facing the justice system today (Bureau of Justice Statistics, 1988). The primary stimulus invoking this concern is the cost of incarceration (Latessa, 1986). For instance, estimates range from $10,000 to $15,000 per inmate annually (Allen et al., 1986).

Fishbein and her associates (1984) characterize restitution as a creative and effective alternative to traditional sentencing practices. The logic of this contention rests on the premise that those sentenced to restitution would not burden society with the high cost of institutionalization. Furthermore, in contrast to incarceration, offenders sentenced to pay restitution are more likely to be rehabilitated (Armstrong et al., 1983). Hence, they become productive citizens and less likely to recidivate.

The major impediment in the reduction of the juvenile justice system costs is that when restitution is imposed, it is typically not ordered as an alternative to incarceration. Rather, it is ordered usually in conjunction with probation or parole (McGillis, 1986). On the other hand, Miller (1981) and McGillis (1986) argue that even if restitution were used more often as an alternative, expenses would probably increase. Among several areas where increased expenses would be seen, these researchers mention: increased costs incurred by the juvenile court system due to additional revocation hearings and, most of all, increased need and training for additional probation personnel to monitor those sentenced to restitution.

Conclusion

To consider victim rights and reacting to problems in the justice system, the Federal government and most state legislatures have enacted restitution laws. Some proponents of restitution stress that in addition to financially balancing the scales, this sentence can help in the victim adjustment process. Zehr (1985) contends that when victims participate in sentencing their offenders, they feel that justice is being served and gain a better understanding of the situation. In other words, participation in the sentencing process and the compensation (by offenders) for losses caused by crime can help victims regain a sense of control.

The enactment of bills 4240 and 4558 in the State of Michigan is intended to bring about total justice for victims. At face value, it appears that total justice is an attainable goal through the use of juvenile restitution. A number of sections and subsections of bill 4240 spell out the rights of victims during the court processing of the juvenile offender. For instance, under subsection 36(2), if the victim requests, the juvenile court will give him or her advance notice of scheduled court hearings; according to section 39, the victim has the right to be present throughout the entire contested adjudicative hearing; finally, subsection 43(1) mandates that the victim shall have the right to appear and make an oral impact statement at the disposition of the juvenile offender. However, a more careful examination of these bills suggests that restitutive sentencing conflicts with traditional sentencing goals. While on the

surface victims stand a better chance of being recompensed for losses due to crimes than before, they are far from achieving equal emphasis within our justice system. Although the original purpose of restitution has been to bring victims back to the same financial status as before their victimization, laws are vague (Brown, 1985). The Victim Witness Protection Act allows considerable judicial discretion in sentencing restitution. In addition to these problems, the new bills in Michigan place limits on recoverable losses and allow judicial discretion to cancel restitution payments. They are concerned with financial hardship on the part of the juvenile offenders and their parents, let alone offenders' accountability and responsibility and victims' plight. In sum, laws involving restitutive sentencing seem to be written to favor offenders and place their rights above those of victims.

It also appears that there is lack of commitment on the part of the juvenile justice system to make restitution a functional alternative to incarceration or other forms of traditional punishment. A case in point is the practice of converting reparation to victims to unpaid community service when payments are wilfully not made. Evidently, the juvenile justice system wants to use a heavier hand when the state benefits from the sentence than when individual victims benefit.

Overall, it appears that until the juvenile justice system adjusts its orientation and places equal importance on both offenders and victims, no appreciable change in the pursuit of total justice will be seen. At this point, an analogy for restitutive sentencing can be drawn. The current use of this sentencing has a similar symbolic meaning as the wooden horse had to the Trojans. The Trojans were led to believe that possession of the horse would give them the power to control Europe. Likewise, the public is led to believe that with restitutive sentencing victims are destined to achieve equity. As history says, the symbolic meaning of the horse was contrary to its contents; it led to the destruction of Troy. In a similar fashion, the contents and current use of restitutive sentencing are, for the most part, contrary to its symbolic meaning.

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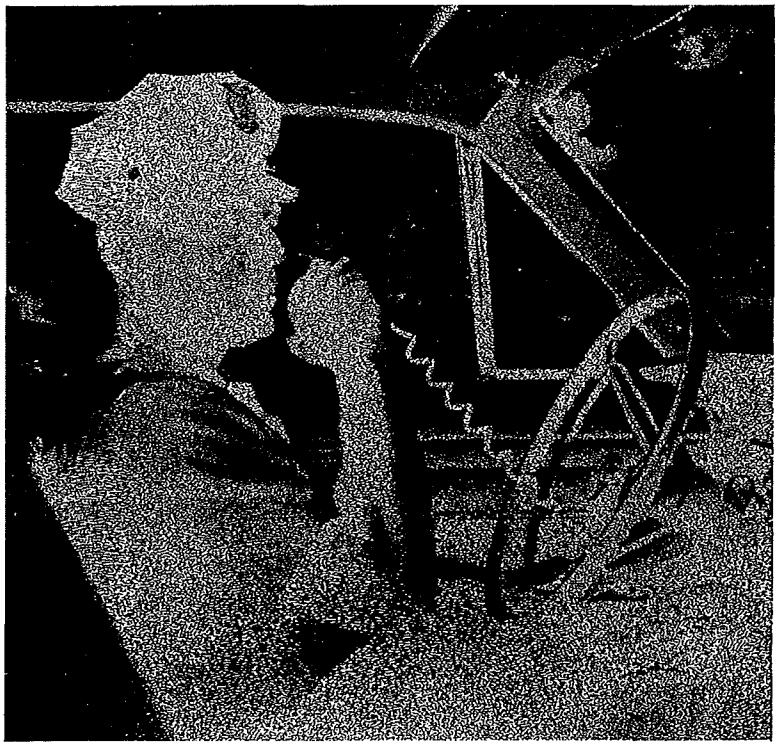
A STUDY OF POLICE SERVICES IN THE STATE OF MAINE

EXECUTIVE SUMMARY



THE
NEW ENGLAND BUREAU FOR
CRIMINAL JUSTICE SERVICES

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A STUDY OF POLICE SERVICES IN THE STATE OF MAINE

Executive Summary

April 1974

prepared by

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Police Services Study Committee
Chief Clyde F. LeClair, Chairman
Maine Law Enforcement Planning
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Dear Members:

The New England Bureau for Criminal Justice Services is pleased to submit this final report, Police Services in the State of Maine: Phase II. The report is a conceptual design for a police services delivery structure which will improve the quality of police services in the State of Maine.

In preparing our recommendations, we have drawn on the extensive studies and findings of several prestigious national commissions and on the experience and writings of law enforcement practitioners. However, the recommendations and proposed delivery structure are based upon an analysis of the existing system in Maine, and in our judgment, constitute the best way to deliver police services to all citizens of the State of Maine.

We would like to express our sincere gratitude to the Police Services Study Committee; to Chief Clyde F. LeClair, Chairman of the Study Committee; to Mr. William Koleszar, Police Coordinator for the Maine Law Enforcement Planning and Assistance Agency; and to Professor Donald Dahlstrom of the University of Maine for their assistance, advice, and support. We are also grateful to the members of the Maine Chiefs of Police Association for their assistance in furnishing crime rate data and information on the demand and need for police services in the State of Maine.

Yours truly,

Dennis M. Crowley, Jr.
Project Director

TABLE OF CONTENTS

INTRODUCTION

Police services within the State of Maine today are highly decentralized, resulting in fragmented and limited services to many of Maine's communities. Such was the general finding of a 1972 study commissioned by the Maine Law Enforcement Planning and Assistance Agency (MLEPAA) and the Maine Police Service Study Committee (MPSSC) to examine and evaluate the delivery of police services in the state of Maine.[1]

That study (referred to as Phase I), which was completed in 1972, provided an inventory of existing police services in Maine. It presented detailed findings concerning the extent of various categories of police service, drew conclusions as to their quality, and indicated a general need to improve the present structure.

The Phase I study, which was primarily descriptive and evaluative in nature, has now been supplemented by a Phase II study, the purpose of which was to consider alternative ways to improve the existing police services structure and recommend that approach which seems best suited to Maine.

Phase II, completed in 1973, was performed by The New England Bureau for Criminal Justice Services under a contract financed in part by the United States Department of Justice, Law Enforcement Assistance Administration, and authorized by the Maine Law Enforcement Planning and Assistance Agency. It involved a systematic examination and assessment of alternative police service delivery structures in terms of their capability for utilizing police resources effectively, eliminating fragmentation, and reducing the incidence of non-service and limited service.

---

1. Public Administration Service, Inc., Police Services in the State of Maine, Phase 1, 1972.

The Phase II final report[2] recommends shifting to a new consolidated police district concept that appears best suited for Maine's needs. It also recommends that a prototype of the recommended delivery structure be tested and evaluated operationally.

This Executive Summary presents the highlights of the Phase II final report.

2. A Study of Police Services in the State of Maine, April, 1974.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The purpose of the Phase II study was to determine the structural approach that would best improve the delivery of police services statewide on a long-term basis. Eight alternative approaches, including the present structure, were considered before arriving at the present recommendation. In the process the study involved in-the-field and analytical evaluations of the Phase I findings and conclusions, and analysis of demographic and crime trend data.

The basic recommendation resulting from this study is for Maine to shift from a highly decentralized structure based upon municipal and county jurisdictional units to a statewide structure of police districts. A major aspect of this recommendation is to change from a three-tiered law enforcement structure (municipal, county, and state) to a two-tiered structure (district and state).

In order to carry out the above structural change, a series of recommendations for action are presented. They provide an integrated development strategy by which Maine can achieve (or at least move towards) a structure which is capable of delivering a full range of quality police services to all its citizens.

CONSOLIDATION OF EXISTING POLICE FORCES

By appropriate legislation and action, the State of Maine should merge all of its municipal police departments and sheriffs' office law enforcement functions into approximately 20 consolidated police departments, each with full police powers, each providing a full range of police services, and all of them collectively covering the entire state.

CREATION OF A BOARD OF POLICE COMMISSIONERS

Legislation should be enacted authorizing the creation of a Board of Police Commissioners to provide civilian supervision and control over the police department in each of the Law Enforcement Districts.

POLICE DUTIES AND RESPONSIBILITIES

1. Law Enforcement District Level

   (a) Legislation redefining police functions throughout the state should be enacted.

   (b) Legislation should be enacted giving full police powers to officers when serving in their own jurisdictions and also in any other Law Enforcement District when requested.

2. Maine State Police

   (a) Statutory duties should not be changed.

   (b) Additional personnel should be hired and assigned to the Bureau of Criminal Investigation.

   (c) A statewide crime analysis capability should be developed and implemented.

3. Maine Sheriffs

   (a) Maine should terminate the legal authority of the 16 sheriffs to enforce the criminal laws of their counties.

   (b) There should be no change in the sheriffs' duties and responsibilities as officers of the court and participants in civil processes.

RECRUITMENT AND CAREER DEVELOPMENT

1. Maine should establish a Central Police Recruitment, Standards and Training Commission. The Commission should be vested with the authority to:

(a) Develop and administer recruitment programs;

(b) Develop and implement a formal candidate screening and selection process;

(c) Establish minimum standards for selected supervisory and specialist positions;

(d) Develop and administer a lateral movement program in all municipal police departments.

2. Maine should develop and implement a new personnel and career development structure.

3. The state should enact legislation to provide the necessary funds for the Maine Criminal Justice Academy as the centralized training facility for all police in the state.

SALARY AND PENSION STRUCTURE

1. A statewide police salary structure should be established;

2. A central police pension system and health insurance plan should be established;

3. A state-funded educational incentive pay program for all police personnel should be established.

LEGAL ADVISORY SERVICES

The state should enact legislation providing for a full-time police legal advisor to each Law Enforcement District.

LABORATORY SERVICES

1. The state should assign responsibility to the Department of Public Safety for providing laboratory services.

2. The state should provide the necessary funds to establish a forensic science institute which meets national forensic science laboratory standards.

DETENTION FACILITIES

Detention should be considered to be outside the scope of law enforcement responsibilities. Detention facilities and services should be provided by state and county correctional agencies.

Figure 1 sets forth the agencies and their assigned responsibilities for providing police services under the new police structure recommended for the state. The full final report describes each of these functions in greater detail.

Figure 2 is a map of Maine showing possible cohesive geographical areas into which the state can be divided to provide approximately 20 police districts, each serving roughly equivalent populations. The full final report describes each of these districts in greater detail, indicating geographical features, population factors, existing police services, and like matters. Maps for consolidation of greater and lesser population groupings are also included in the full final report.

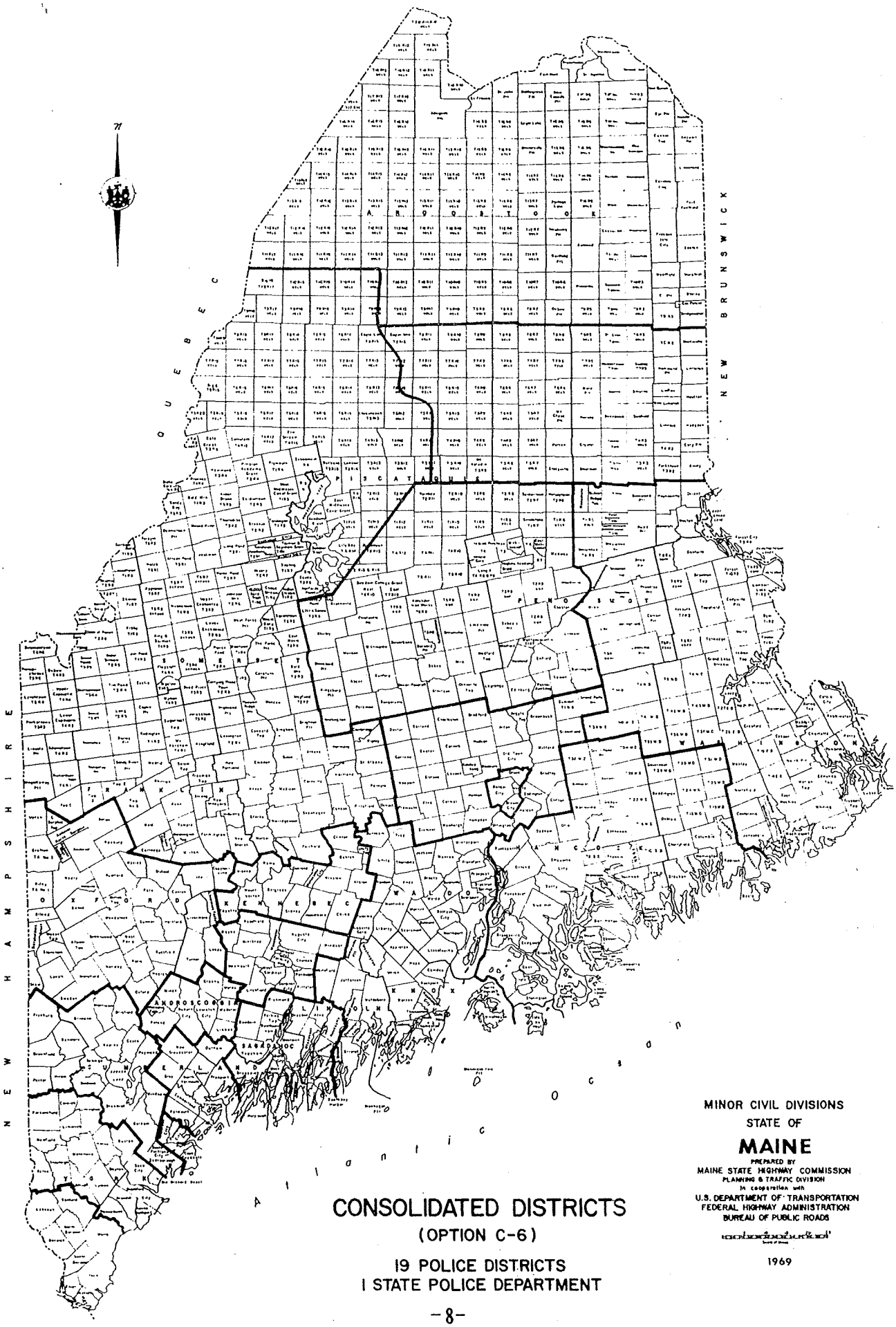
Because of the sweeping nature of the recommendations and the complexity associated with their acceptance and implementation, the full final report also recommends use of a prototype district as a test-bed and demonstration vehicle. Section 6 of this Executive Summary describes the proposed prototype and steps necessary to move forward with the recommendations of the Phase II Study.

Figure 1

ALLOCATION OF POLICE SERVICES UNDER PROPOSED CONSOLIDATION

Police Functions	Consolidated District Police Departments	State Police	Sheriff's Office	Department of Public Safety	Criminal Justice Academy	Police Recruiting & Selection Board
A. Field Services						
1. Patrol	●	●				
2. Traffic	●	●				
3. Investigations	●	●				
4. Juvenile Services	●					
B. Auxiliary Services						
5. Records	●	●				
6. Communications	●	●				
7. Laboratory				●		
8. Evidence Collection and Preservation	●	●		●		
C. Staff Services						
9. Public Information and Police/Community Relations	●	●				
10. Planning	●	●				
11. Training					●	
12. Legal	●	●				
13. Recruiting and Selection						●
D. Other						
14. Sheriff's Services *			●			
15. Detention *			●			

* Not Law Enforcement



MINOR CIVIL DIVISIONS
STATE OF
MAINE

PREPARED BY
MAINE STATE HIGHWAY COMMISSION
PLANNING & TRAFFIC DIVISION
In cooperation with
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS

1969

CONSOLIDATED DISTRICTS
(OPTION C-6)

19 POLICE DISTRICTS
1 STATE POLICE DEPARTMENT

FACTORS CONSIDERED

In the Phase II Study, five major categories of information were dealt with and considered carefully: (1) the present situation; (2) national standards and guidelines; (3) functional effectiveness levels, (4) population trends, and (5) crime trends. They are summarized below.

2.1 The Present Situation

A "given" for the present study was the present structure for delivery of police services in Maine, namely, 112 municipal police departments, 16 sheriffs' departments and the State Police Department.

The Phase II Study divided all police activities into fifteen functions and surveyed their general availability and proficiency. In addition, it reviewed the Phase I findings and conclusions. The police services structure, as depicted in the Phase I Study Report (with which the Phase II Study concurs) is as follows:

> "The State of Maine has 129 police departments at the municipal, county, and state levels. These agencies employ almost 2,000 full-time personnel. Support for these agencies in 1970 requires operating expenditures surpassing $19 million. The major proportion of the expenditures is for personnel.
>
> "The kinds and levels of services and functions being provided by and engaged in by police departments have been called the police services Inventory. Analysis of the Inventory reveals the police agencies are committing the major share of their resources to two police field services: patrol and traffic. Second priority commitment is to communications and investigations. Beyond these, commitment is to auxiliary and staff services, in that order. Evaluation of the Inventory revealed that an increase in the size of the State's police services Inventory is needed. Increases are needed most in planning, juvenile services, public information and police-community relations, evidence collection and

preservation, investigations, legal services, and records.

"Statutory prescriptions of police powers and geographical jurisdictional authority provide potential for duplication of effort among police agencies. Although duplication or overlap of legal authority to provide police services exists, operational or actual Duplication of effort is prevalent only to a limited degree. Fragmentation or uncoordinated provision of police services, however, is apparent.

"Analysis of the Level of police services and functions revealed that the incidence of non-service and limited service throughout the State is pronounced. Nonservice applies when a department does not engage in a service or function at all. Limited service applies when a department engages in a service or function, but the service or function is limited in scope, informally administered, and the department cannot or does not assign at least one full or part-time specialist to the service or function. Limited service is more prevalent than non-service. Small departments experience significantly higher incidence of nonservice and limited service than do either medium-sized or large departments. Highest incidence of nonservice and limited service is in those service and functional areas cited above as ones where major additional resource commitments are needed. Lowest incidence of nonservice and limited service is in laboratory services, detention and identification, patrol, communications, and traffic. Nonservice and limited service are inversely related to quality: The higher the incidence of non-service and limited services and functions, the lower the quality of services and functions.

"Quality of services and functions in the aggregate is modest. Departments throughout the State achieved a composite quality rating of 47 percent. (One hundred percent would be achieved if every department administered

services and functions which, in practice, approached the highest degree of quality attainable.) Substantial upgrading of the quality of services is required. Those services and functions most in need of upgrading are communications, investigations, training, and personnel management. Those least in need of upgrading are patrol and evidence collection and preservation. Quality of services and functions tend to be higher among larger departments than among either medium-sized or small departments.

"Two major objectives of those responsible for improving Maine's police services system should be: reducing the incidence of nonservice and limited service and upgrading the quality of services and functions. It is possible that these objectives would more likely be achieved through modified police services structures than through the present structure which is dominated by small police departments."

2.2 National Standards and Guidelines

In Phase II a search was conducted to identify standards applicable to the State of Maine in its desire to upgrade its law enforcement services. It was found that over the past six years, major national studies regarding police organizations and the delivery of police services have been conducted by following four organizations:

Group	Acronym
. The President's Commission on Law Enforcement and Administration of Justice (1967)	PC
. Advisory Commission on Inter-Governmental Relations (1971)	ACIR
. Committee for Economic Development (1972)	CED
. National Advisory Commission on Criminal Justice Goals and	

Group	Acronym
Standards (1973)	NAC

Relevant recommendations of these studies are summarized on the following pages.

Figure 3

CROSS REFERENCE OF NATIONAL
STUDY RECOMMENDATIONS

RECOMMENDATIONS	National Study			
	PC	ACIR	CED	NAC
Area 1: Standards, Recruitment, Selection and Training				
Should be provided by state for benefit of all police departments	X	X	X	I
Should be paid for by state	I	X	I	I
State should encourage public and private education programs for police		X		
Local governments should incentivize officers to take advantage of educational opportunities		X		
Area 2: Minimum Size for Effective Police Operations				
Recognition that police departments of less than 10 officers cannot provide adequate services	I	X	I	X
Police departments of less than 10 men should be consolidated into larger organizational units	I	X	I	X
Recognized ways of achieving larger aggregations of organizational effectiveness				
Consolidating entire departments	I	X	I	X
Consolidating certain functions only (e.g., records)	X	I	I	X
Having higher organizational unit provide services	X	X	X	X

X = Express
I = Implied

RECOMMENDATIONS	National Study			
	PC	ACIR	CED	NAC
Obtaining services by contract		X		X
Inter-local mutual aid pacts				X
Consolidation/centralization should be done in a way to preserve local independence and control	X			X
Area 3: State Level Support to Local Law Enforcement				
State agencies should provide support in the following primary field service areas:				
Felony investigations	X		X	
Organized Crime			X	
State agencies should provide support for the following auxiliary services:				
Records	X	X		I
Communications	X			X
Laboratories		X		X
Information and intelligence				X
State agencies should provide support in staff services generally			X	

X = Express
I = Implied

RECOMMENDATIONS	National Study			
	PC	ACIR	CED	NAC
Area 4: Regional Pooling and Sharing of Services				
Municipal and county law enforcement agencies should provide jointly for their needs for assistance in the following field services:				
Investigations				X
Tactical operations				X
Municipal and county law enforcement agencies should provide jointly for their needs in the following auxiliary services:				
Communications				X
Records				X
Identification				X
Laboratories	X			X
Equipment and buildings	X			
Information and intelligence	X			X
Auxiliary services generally		X		X
Municipal and county law enforcement agencies should provide jointly for their needs for the following staff services:				
Planning	X			

X = Express
I = Implied

RECOMMENDATIONS	National Study			
	PC	ACIR	CED	NAC
Purchasing	X			X
Public information	X			
Personnel recruitment, selection and training				X
Community relations				X
Staff services generally		X		
Area 5: Use of Multi-Jurisdictional Task Forces				
Joint multi-jurisdictional task forces are recommended for use against problems that cross jurisdictional lines:				
Organized crime		X		
Other, or in general	X	X		
Extraterritorial police powers recommended to support task force efforts		X		
Area 6: Detention of Arrested Persons				
The responsibility for custody of persons in detention should not be a police function	X			X

X = Express
I = Implied

RECOMMENDATIONS	National Study			
	PC	ACIR	CED	NAC
Area 7: Law Enforcement for Rural Areas				
Use of the following are recommended ways to assure adequate police services to rural areas:				
State personnel on contract basis		X		
State police		X		
Legislative inducements for consolidation		X		

X = Express
I = Implied

In general, these studies agree on the relationship between police effectiveness and the size of the unit providing police services. However, none of the studies provides a means for comparing and evaluating alternative delivery structures. Rather, they assume the existing structures will continue to exist and then recommend piecemeal ways of making them work more effectively. Thus, while the recommendations of these studies were examined and are useful, it was necessary to develop a special approach for this project.

2.3 Functional Effectiveness Levels

All authorities agree that police departments of less than ten sworn officers cannot, by virtue of their size, offer a full line of professional grade police services. On this basis, 92 of Maine's 129 departments are underpowered (see Figure 4). In the Bureau's opinion, due to inherent relationships, police departments with less than 40 officers cannot offer a full line of professional grade services. On this basis, only five of the 112 municipal departments in Maine can approximate a full line of police services.

Figure 5 indicates the various manning levels at which various functions emerge in normal police work, and Figure 6 indicates typical manpower deployment at varying sizes of police departments. The full final report reviews each of the police functions in greater detail.

FIGURE 4

OFFICER STRENGTH IN MAINE POLICE DEPARTMENTS

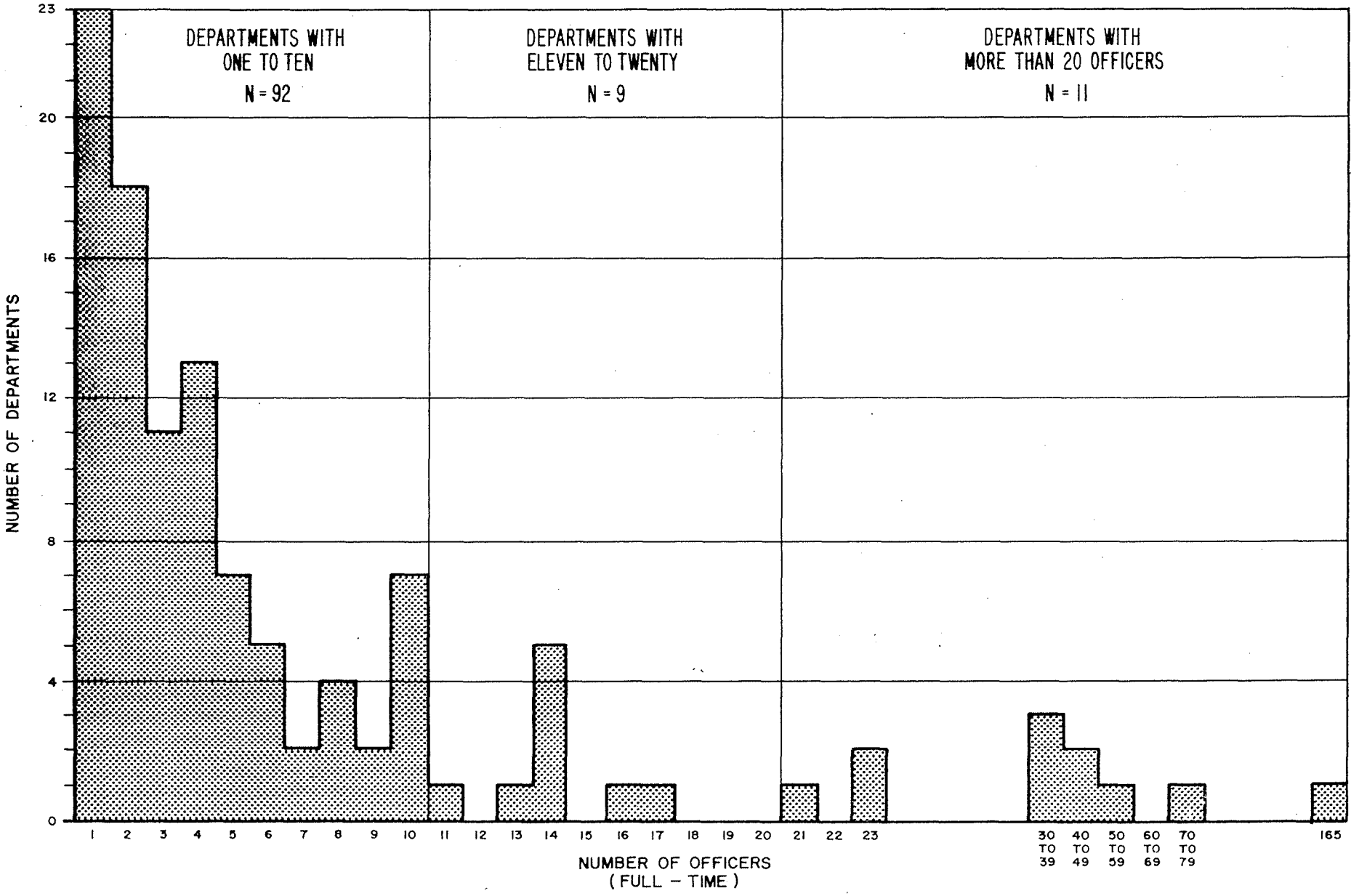


FIGURE 5

QUALITY OF SERVICES AS A FUNCTION OF SIZE

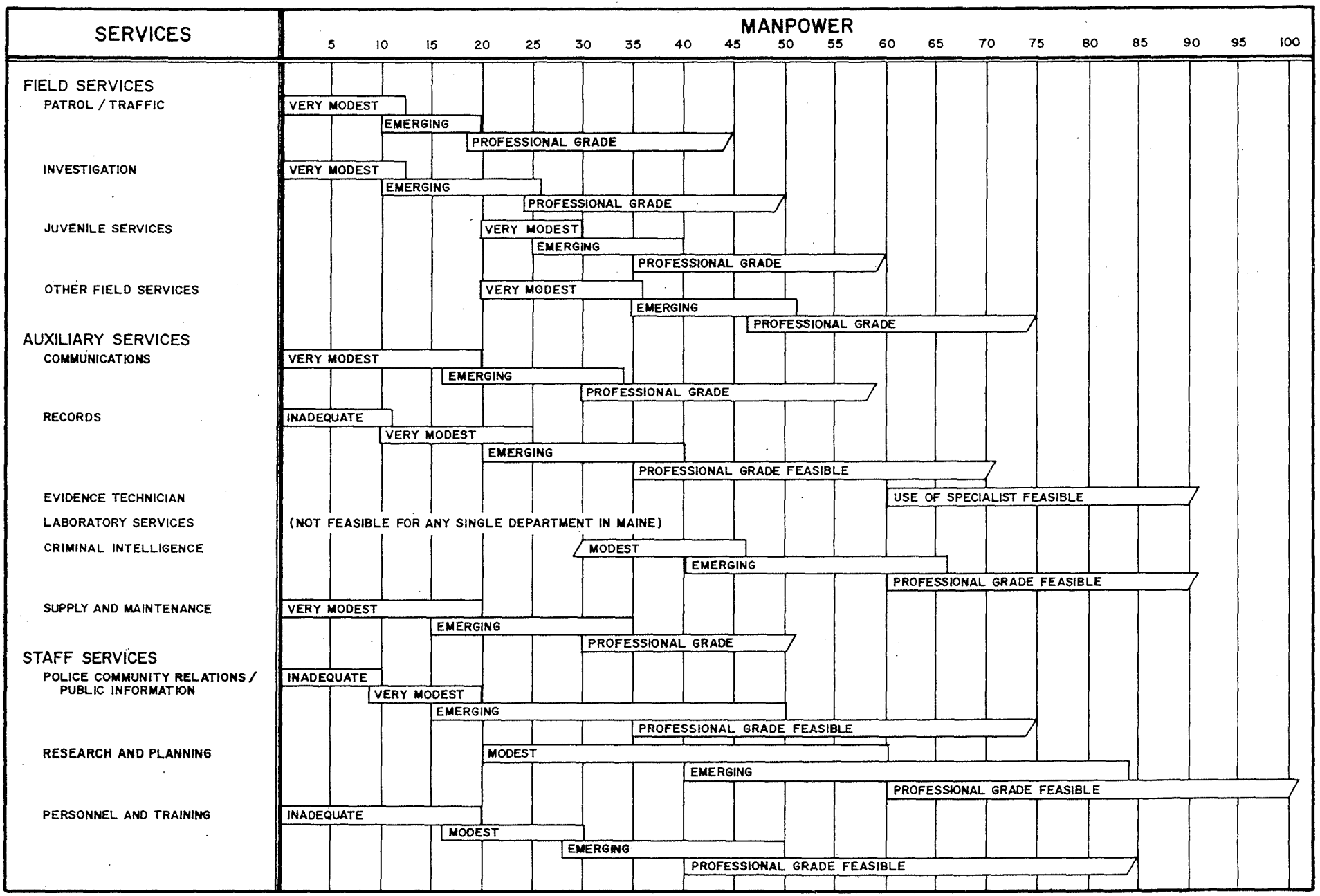


Figure 6

	Size of Department in Equivalent Full-Time Employees										
	1	5	10	15	20	25	30	35	40	45	50
Field Services											
Patrol and Traffic	+	3	6	9	12	15	18	21	24	27	30
Investigations	+	+	+	1	1	2	2	2	3	3	3
Juvenile Services	0	0	0	0	+	+	1	1	1	1	1
Other Field Operations (Vice)	0	0	0	0	+	+	+	+	+	+	1
Auxiliary Services											
Communications	+	+	2	2	4	4	5	5	5	5	5
Records	+	+	+	+	1	1	1	1	2	2	2
Evidence	0	0	0	0	0	0	0	0	0	0	0
Laboratory	-	-	-	-	-	-	-	-	-	-	-
Intelligence	+	+	+	+	+	+	+	+	+	1	1
Other	+	+	+	+	+	+	+	+	+	1	1
Staff Services											
Public Information/Community Relations	+	+	+	+	+	+	+	+	1	1	1
Research, Planning and Financial Management	+	+	+	+	+	+	+	+	+	+	+
Personnel and Training	+	+	+	+	+	+	1	1	1	2	2
Legal Services	+	+	+	+	+	+	+	+	+	1	1
Other	+	+	+	+	+	+	+	+	+	+	+

2.4 Population Trends: 1971 - 1985

While Maine is predominantly a rural state, the characteristics and distribution of its population are diverse in nature. A large part of Maine's land area consists of unorganized territory with a population density of less than ten persons per square mile, while the southeastern population corridor, which extends from Kittery to Bath, has a population density of more than 100 persons per square mile.

The population projections to 1980 indicate a slight increase in the rate of growth to 4.6 percent, yielding an increase of only 44,500 persons. Extending these projections into 1985, Maine is expected to have 1,063,000 inhabitants, or an increase of 6.7 percent over the 1970 population base. Figure 7 shows the growth rates to 1985.

Figure 7

ACTUAL AND PROJECTED RATES OF GROWTH

IN POPULATION FOR MAINE

(1940 - 1985)

TIME PERIOD	Percent Increase Over Previous Period
	1 2 3 4 5 6 7 8 9 10
1940-1950	7.9%
1950-1960	6.1%
1960-1970	2.5%
1970-1980	4.6%
*1970-1985	6.7%

*Note change in time period. Increase 1980-1985 : 2.1%

Although these rates are not high, there are indications that the population is shifting to a relatively small number of population centers located throughout the southern and mid-coastal sections of the state. It is in these areas that the largest population increases will be experienced during the years 1970-1985. Concomitant with these changes will be an increased demand for police services.

Maine's current ratio of police to population (1.1 officers per thousand population) falls far below the national average of 2.4 per thousand in 1971, and will probably have to be increased if the state is to stabilize the rates of crime in the years ahead.

If the decision is made to increase the number of police personnel in the state, the expected population growth rate favors orderly expansion. Other than an initial infusion of personnel into the system to raise the ratio of police to population closer to the national average, the seven percent population rate increase projected for the period up to 1985 indicates a minimal increase in the numbers of police personnel each year to maintain that satisfactory ratio.

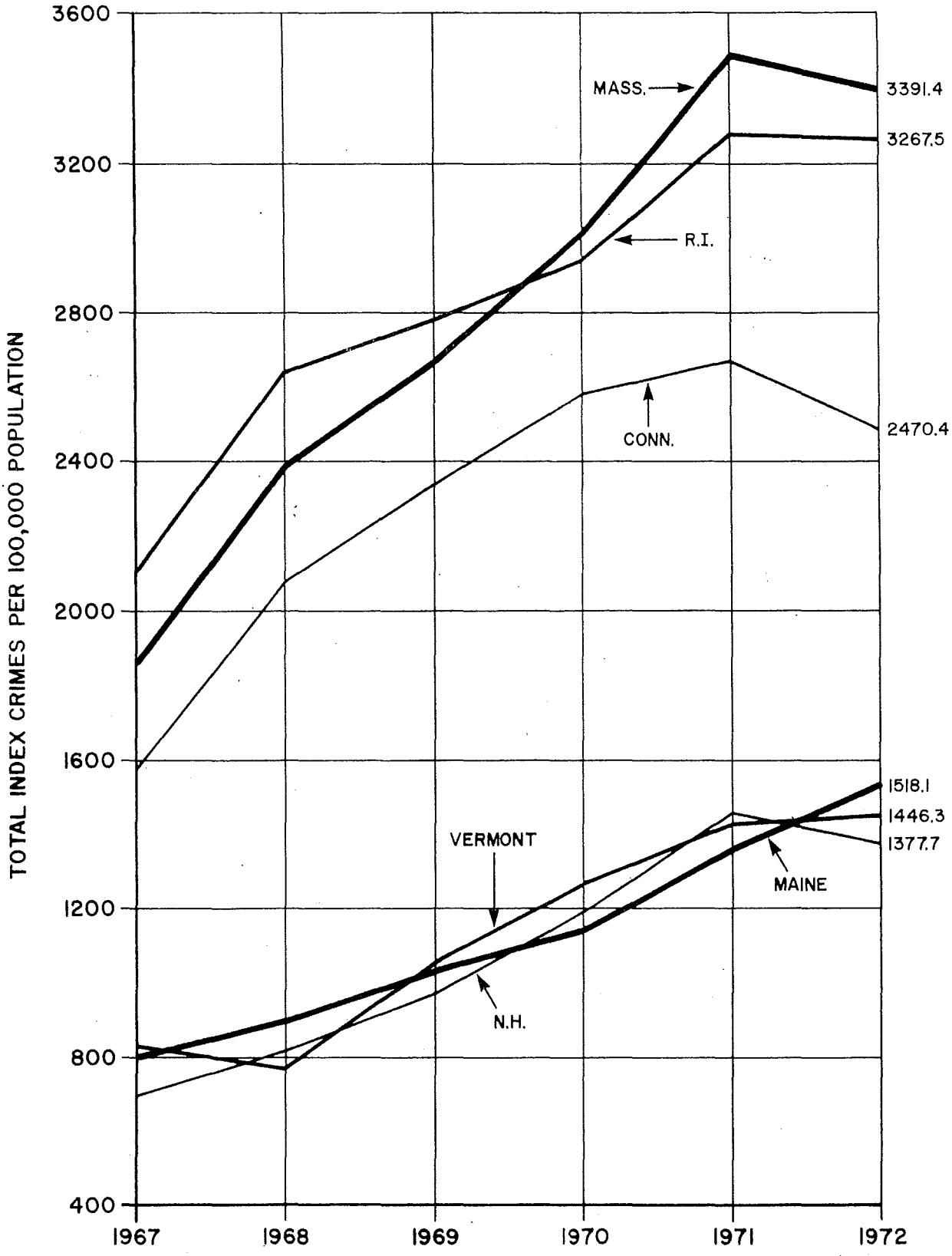
2.5 Crime Trends

Analysis of crime trends in Maine indicates a general increase in the volume of serious crime over the past decade, with the greatest proportion of crime involving offenses against property (see Figure 8). Thus, principal law enforcement emphasis should be on the improvement of techniques to reduce property crime.

The distinction between municipalities will be affected by the projected population changes in urban and rural areas, the building of large shopping centers between cities, and improvement of state and local roadways. The increase in traffic and mobility means that criminal acts previously located in urban centers will expand to larger geographical areas. This will affect the need for police coverage over a larger area, as well as greater coordination between police departments and improved command and control systems.

FIGURE 8

COMPARATIVE RANKING
TOTAL INDEX OFFENSES
NEW ENGLAND STATES
1967 - 1972



FRAMEWORK FOR EVALUATION

The search for national standards or guidelines, produced useful information, but did not provide a tool for comparing alternative delivery structures. As a result, this study involved defining a range of options for Maine, and an evaluation framework. The options, evaluation framework, and conclusions are summarized below.

3.1 Alternative Structures

Eight optional police services structures were considered: A-1, A-2, and A-3 are the status quo plus two variations on it; B-4 is a county/metro approach; C-5, C-6, and C-7 are police district oriented options; and D-8 is a statewide unitary police force approach. These options, described in detail in the final report, are presented briefly here.

A-1: Status quo with 112 police departments, 16 sheriffs' officers, and one State Police Department. In the normal course of affairs, the 112 figure will grow year by year. Nevertheless, it is used unchanged for present purposes, as it is the number from Phase I.

A-2: Status quo plus consolidation of certain functions across local jurisdictions.

A-3: Status quo plus replacement of all existing and emerging 1 and 2-man departments with contract law enforcement.

B-4: County/metropolitan organization of all police services other than State Police. Portland and Lewiston/Auburn would be metropolitan areas. All other policing would be done along county lines under sheriffs' supervision.

C-5: Police Department consolidation into approximately 30 units, including sheriff's law enforcement services, which collectively cover the entire state.

C-6: Police department consolidation into approximately 20 units, including sheriffs' law enforcement services, which collectively cover the entire state.

C-7: Police department consolidation into approximately 10 units, including sheriffs' law enforcement services, which collectively cover the entire state.

D-8: One unitary, statewide police department for the entire state.

In selecting the above structural options, the intent was to cover the range of reasonable possibilities and meet the following objectives:

- Increasing police operations to a size which enables effective field operations and adequate specialized support functions;
- Standardizing the quality of services provided throughout all police units in Maine;
- Equalizing the quantity of police services available in different parts of the state;
- Maintaining a balance among the various types of functions that collectively make up police services; and
- Providing incentives for capable persons to become police officers and remain in the field for an entire career.

3.2 Evaluation Criteria

Criteria developed for this study include output-oriented criteria, i.e. how well the goals of a police department are achieved, and to what degree citizen satisfaction is achieved; process-oriented criteria, which relate to the internal functioning of the department; input-oriented criteria, which relate to the

resources required to maintain the police operations; and "other" criteria, which include other matters, such as community control.

These criteria, and the scoring of the eight options on a subjective basis by the Bureau's research team, are shown on the following pages.

Comparisons were made among all options with reference to a given criterion. Scoring was made as simple as possible, with only three values: marginal/submarginal (marked "-" and scored zero); adequate (marked "+" and scored as 1); and more than adequate (marked "++" and scored as 2).

While the use of explicit criteria, weights, and measures gives an aura of objectivity about the process and does, in fact, make it explicit, visible, and open to challenge and improvement, one should not lose sight of the fact that the entire framework as well as the formulation of options and their evaluation by means of the criteria and framework is based fundamentally only on the informed judgment of many people, both those on The Bureau's study team and personnel in Maine who directly or indirectly contributed in one way or another. The framework and associated process is not held out as being totally objective or susceptible to quantitative treatment. Quite the opposite--it is judgmental through the core. But it is also explicit, a feature which allows the informed reader to understand how the conclusions were derived and invites him to "second guess" the approach and results if he should so desire.

OUTPUT-ORIENTED CRITERIA

	Options							
	A-1	A-2	A-3	B-4	C-5	C-6	C-7	D-8
Category 1								
Degree of Visible Presence	-	-	-	++	++	++	+	+
Response Time	+	+	+	++	++	++	++	++
Calibre of Resp. Officer	+	+	-	++	++	++	++	++
Effectiveness of Invest.	-	+	+	++	++	++	++	++
Fairness in Traffic Enf.	+	+	+	++	++	++	++	++
Effectiveness in Order Con.	-	+	+	++	+	++	+	++
General Helpfulness	+	+	+	++	++	++	+	+
Category 2								
Crime Rates	-	-	-	-	++	++	++	++
Accident Rates	-	-	-	++	++	++	++	++
Geographical Coverage	-	-	+	++	++	++	++	++
Degree of Non-Discrimin.	+	+	+	+	+	+	+	+
Responsiveness to Local Needs	+	+	++	++	++	++	-	-
Resistance to Corruption	+	+	+	-	++	+	+	-
Adaptability to Change	-	-	+	-	++	+	+	-
Degree of Equal Quality of Services	-	-	-	-	++	++	++	++
COMPOSITE SCORES	7	9	11	21	28	27	22	21

Note: "-" is scored 0
"+" is scored 1
"++" is scored 2

PROCESS-ORIENTED CRITERIA

	Options							
	A-1	A-2	A-3	B-4	C-5	C-6	C-7	D-8
Degree of Radio Support for Patrol	-	-	+	++	++	++	++	++
Degree of Radio Support for Other Field Services	-	-	-	++	++	++	++	++
Degree of Access to Teletype	-	-	-	+	++	++	++	++
Degree of Record System Support to Field Services	-	+	-	+	+	++	++	++
Degree of Evidence Technician Support to Investigators	-	-	+	+	+	++	++	++
Degree of Criminal Intelligence Support to all Operations	-	-	-	+	+	++	++	++
Degree of Personnel and Training Support to Field and Auxiliary Services	-	-	-	-	+	++	++	++
Degree of Incentivization for Recruitment of New Officers	-	-	-	-	++	++	++	++
Degree of Incentivization for Career Decisions by Officers	-	-	-	-	++	++	++	++
Degree of Other Staff Support to Field and Auxiliary Services	-	-	-	+	++	++	++	++
Degree of Supply and Maintenance Support to all Operations	-	-	-	+	+	++	++	++
COMPOSITE SCORES	0	1	2	10	17	22	22	22

Note: "-" is scored 0
"+" is scored 1
"++" is scored 2

INPUT-ORIENTED CRITERIA

	Options							
	A-1	A-2	A-3	B-4	C-5	C-6	C-7	D-8
One-Time Capital Costs								
Detailed Design and Planning	++	++	++	+	+	+	-	-
Added Personnel Recruitment and Training	++	++	++	+	+	+	-	-
Added Equipment Procurement	++	++	++	+	+	+	-	-
Facilities Acquisition or Modification	++	++	++	+	+	+	-	-
Annual Operating Costs								
Personnel	++	++	++	-	+	+	+	+
Personnel Recruitment and Training (Annual)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Vehicles and Their Support	-	-	-	+	++	++	++	++
Other Equipment and Supplies	-	-	-	+	++	++	++	++
Maintenance and Other	-	-	-	+	++	++	++	++
COMPOSITE SCORES	10	10	10	7	11	11	7	7

Note: "-" is scored 0
"+" is scored 1
"++" is scored 2

OTHER CRITERIA

	Options							
	A-1	A-2	A-3	B-4	C-5	C-6	C-7	D-8
Ability to Meet Minimum Size Criteria for Field Services	-	-	-	+	++	++	++	-
Ability to Meet Minimum Size Criteria for Auxiliary Services	-	-	-	+	++	++	++	+
Ability to Meet Minimum Size Criteria for Staff Services	-	-	-	-	++	++	++	+
Ability to Provide Task Forces for Emergency Conditions	-	+	++	+	++	++	++	++
Degree of Local Community Control over Operations	++	++	++	++	++	++	++	-
Ability to Conform to National Standards and Practices	-	-	-	+	++	++	++	+
Relative Ease of Implementation	++	++	+	++	+	-	-	-
COMPOSITE SCORES	4	5	5	8	13	12	12	5

Note: "-" is scored 0
"+" is scored 1
"++" is scored 2

3.3 Conclusions

Figure 9 is a summation of the scores of all of the options. C-6 is the preferred option. It involves the consolidation of all municipal police departments and law enforcement activities of sheriffs' departments into approximately 20 departments serving districts which collectively blanket the entire state and contain approximately 65-85 officers in each department. Option C-5, which involves consolidation into approximately 30 departments, each proportionately smaller and serving a smaller population base, is the second choice.

Figure 9

COMPOSITE OF ALL CRITERIA

	Assigned Weight	Options							
		A-1	A-2	A-3	B-4	C-5	C-6	C-7	D-8
	(Not Used)								
Composite Output-Oriented Criteria		7	9	11	21	28	27	22	21
Composite Process-Oriented Criteria		0	1	2	10	17	22	22	22
Composite Input-Oriented Criteria		10	10	10	7	11	11	7	7
Composite Other Criteria		4	5	5	8	13	12	12	5
CONSOLIDATED COMPOSITE SCORES		21	25	28	46	69	72	63	55

THE BEST SYSTEM AND COST FACTORS

4.1 The Best System

In the Bureau's opinion, the best structure for providing long-term effective police services in Maine is a two-tier structure consisting of the State Police and approximately 20 district police departments at the local level, which collectively blanket the entire state and serve a population base of 45,000 to 60,000 residents. The size of each department would be some 65-85 officers with the exception of greater Portland and Lewiston/Auburn, which would be in excess of 200 and 100 officers, respectively.

This structure involves the use of state agencies for officer recruitment, selection and training, and crime laboratory services. The allocation of these functions to state agencies is recommended for all options under consideration.

The major reasons for accepting this approach are:

a. A two-tier structure avoids extreme concentration of police power in a single organization and the problems of fragmentation, limited service and non-service, and fiscal inequality which characterize the present three-tier structure.

b. A police structure which blankets the state at the local level will eventually provide more even delivery of police services to all citizens.

c. Centralized officer recruitment and selection and training, will assure that the officers who provide the police services will meet or exceed minimum standards for all police officers in the state, at all levels.

d. Use of police districts serviced by a police department in the 65-85 officer range (greater Portland and Lewiston/Auburn each having larger departments) means that the police department will be of a sufficiently large size to

achieve the increase in effectiveness that can be obtained through use of specialist personnel.

e. Use of police departments of the above size, coupled with legislatively provided police powers, will provide Maine with a highly flexible police structure both within districts and for inter-district mutual aid purposes.

f. Use of departments of the above size, coupled with legislatively authorized lateral entry and central statewide standards and training, will strengthen the process of getting the most qualified officer for any position.

g. Use of departments of the above size, coupled with legislatively authorized lateral entry and statewide standards, will provide police officers with a widened horizon of career opportunities and the challenge to establish a program of personal skills/knowledge development throughout their professional careers.

h. Use of departments of the above size will make possible a more efficient use of available police resources, and reduce the size of the increases in police personnel which will be needed.

i. Consolidating existing sheriffs' functions with those of municipal police departments will allow sheriffs' office personnel the opportunity to participate fully in the mainline law enforcing activity of the state and be provided compensation and benefits appropriate to such service.

j. The recommended size is sufficiently large to obtain most of the benefits and will keep the problems of transition to a minimum.

4.2 Cost Factors

The costs of running a single police department in a given district should be no greater than present costs, if one assumes that the total number of sworn officers is held constant and the rates of pay are unchanged.

Consolidation of staff services and centralization of some of the auxiliary services will reduce costs in these areas, or release personnel on support duty to perform field work. Whether or not the consolidated approach is used, operating costs will necessarily increase as the number of officers increases and/or police pay scales increase.

The one-time costs of making the transition from the present arrangement to a consolidated district approach is difficult to estimate with precision, and will involve at least the following:

One-Time Statewide Costs

Prototype district experiment	$300,000
Legislative action in accordance with the recommendations	(unpredictable)*
Public support generation activities to gain legislative and local concurrence	(unpredictable)*
Total	$300,000

* These are not out-of-pocket expenses that will require funding in any event.

One-Time Costs per District

Detailed transition planning for the district	$10,000--20,000
Selection and orientation of district commander and key senior officers	$ 5,000--15,000
Orientation and public relations type activities for benefit of public officials and citizens	10,000--20,000

One-Time Costs per District (Con't)	
Acquisition of a district headquarters facility (not new construction) and modification as necessary	$ 50,000-150,000
Rearrangement of facilities and communication equipment outside the headquarters (radio relays, substations, teletype lines, etc.)	5,000--25,000
Personnel orientation and training program presentations by the Maine C. J. Academy	10,000--15,000
Personnel movement and uniform allowance costs	10,000--30,000
Other one-time costs associated with changing names, repainting vehicles, printing new stationery and forms, etc.	5,000--10,000
Reserve for unforeseen costs	20,000--25,000
Total	$125,000-310,000

One-Time Savings per District (applicable to Prototype as well as other districts)	
Release of several police facilities	$(unpredictable)
Release of assorted teletype and telephone lines and instruments and surplus radio base stations	(unpredictable)
Reduction in total numbers of persons involved in staff support	(unpredictable)

One-Time Savings per District (Con't)

Savings achieved by reduction of office equipment and supplies, coupled with the economies from purchases in bulk of such items	(unpredictable)
Total	$(unpredictable) *

* The Bureau believes such savings might be as low as $25,000 or as high as $200,000, depending on the circumstances in any specific district.

The net one-time cost per district is determined by calculating all of the new costs called for by a detailed implementation plan and subtracting from that figure all of the savings that will be realized by discontinuing activities or facilities and equipment no longer needed.

IMPLEMENTATION AND THE FUTURE

The recommendations set forth in the previous section call for wide-range changes in current methods. They involve substantial merging and restructuring of municipal and county services and a re-emphasis of the direction of police functions at the state law enforcement level.

The introduction of change within any organization is difficult. Changing organizational patterns in existence for a long time creates major problems. Additional complications arise when the changes involve multiple organizations. Thus, to effectively carry out the project in a coordinated fashion, the following are considered prerequisites to implementation.

5.1 Prerequisites

a. A Legislative Mandate

The nature of the recommendations and their far-reaching effects appear to necessitate a comprehensive legislative program that will lead to statewide acceptance of the recommendations.

b. An Operational Prototype

For the legislative bill to have a reasonable possibility of passage, it would be highly desirable to have the concept tested in an operational manner to show that a 65-85 officer consolidated department can be brought to operational status and will provide the full-service benefits claimed.

In addition to the prototype demonstration, the concept will have to be detailed to the degree needed for statewide implementation; and the necessary legislation will have to be drafted.

c. Voluntary Participation in Prototype

Establishing a prototype test-bed prior to a full legislative mandate will require voluntary participation of a number of departments that

are contiguous to one another, possibly using their joint exercise of powers authority.

d. Detailed Planning for Prototype

All of the above calls for careful planning of the prototype test effort and for the legislation to be drafted on the basis of that experience.

5.2 General Strategy

The general strategy recommended to the Police Services Study Committee and the MLEPAA Board is:

a. That a prototype test phase be established in the general PSSC/MLEPAA plan of action;

b. That the prototype test phase include the following:

- Identification of a potentially favorable area;
- Detailed planning for prototype department organization and operations;
- Obtaining all necessary agreements by police departments, sheriffs, and municipal officials to participate;
- Coordination of detailed plans with local authorities; and
- Implementation of the prototype district department on a voluntary basis.

c. Based upon the lessons learned from implementation of the prototype department, that:

- A statewide implementation plan to be prepared,
- Legislation to implement the district approach statewide be drafted in accordance with the above plan;

d. That MLEPAA fund the implementation of the prototype;

e. That members of the PSSC and MLEPAA Boards personally visit the prototype department after it has been operational for approximately three months and periodically thereafter to ascertain performance;

f. That the PSSC and MLEPAA decide, on the basis of (a) the prototype operations, (b) the statewide plan, and (c) the draft legislation whether or not (and when) to submit the concept to the Maine legislature.

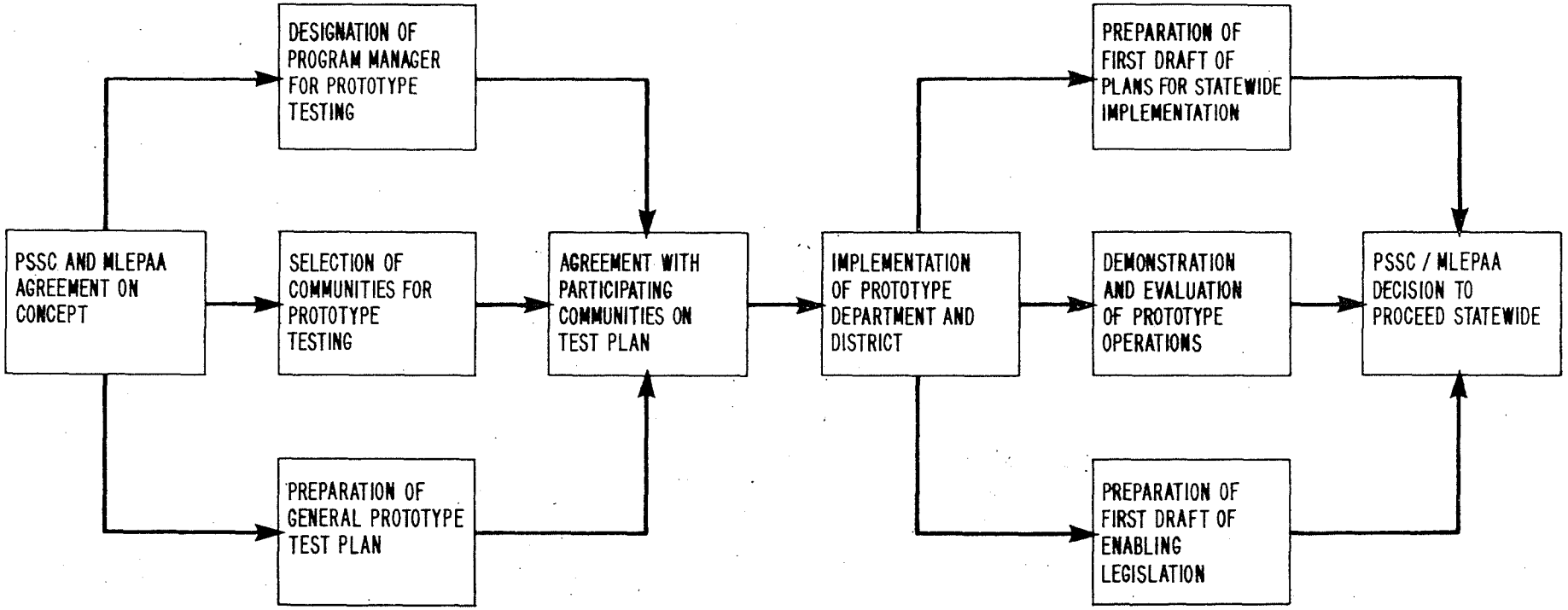
5.3 Preliminary Plan

Figure 10 presents a summary diagram of a general plan for the prototype demonstration effort. A brief description of each of the steps in the plan follows.

The several steps, which are described in more detail in the full final report, all assure that the start of such process is agreement between the Police Services Study Committee and the Maine Law Enforcement Planning and Assistance Agency on the general concept and general plan for a prototype test and evaluation of the plan.

FIGURE 10

GENERAL PLAN FOR PROPOSED PROTOTYPE TEST AND EVALUATION



Selection of Communities

The selection of the communities which will serve in the prototype program is best left to Maine authorities. It is important, however, to include communities in which the municipal leaders and the chiefs of police feel a need for this type of consolidation and an area where the sheriff or sheriffs are sympathetic to the idea.

Designation of Project Manager

The creation of a full-time program manager for the prototype test program is recommended. Some one person is needed to handle the large number of details to be considered and decided upon on a day-by-day basis. The program manager will be responsible for resolving all policy problems that may arise, and should have free and easy access to the PSSC, MLEPPA, and the Attorney General's Department. In addition to the program manager, it will be necessary to appoint a commander of the prototype department to manage the daily activities of the officers assigned to the prototype department.

Preparation of the Prototype Plan

Preparation of the general prototype test plan will involve writing an organizational and procedural manual, determining where and how to obtain personnel, (including specialists if they are not present in the existing departments), and preparing processes for orientation of the officers and communities involved. It is expected that LEAA funding will be needed to cover costs over the normal expenses of the participating departments.

Agreement with Participating Communities

Formal consent of all communities and law enforcement organizations in the area to participate in the prototype experiment should be obtained. Participating communities should then be jointly involved in the detailed planning and preparation of the plan.

Implementation of Prototype Department

The next step is to implement the consolidated department in accordance with the detailed plans. It is recommended that the prototype program be designed to

operate for a mimimum of six months and a maximum of 12-24 months. Assuming success with the prototype operation, it is likely that the PSSC/MLEPPA will want to continue it through legislative hearings.

Evaluation and Preparation of Statewide and Enabling Legislation and Plans.

Following the implementation, a draft of the plan should be prepared to reflect statewide implementation. In addition, a draft of enabling legislation should be prepared.

5.4 Legislation

The changes recommended in this report will require the following types of state legislation:

a. Consolidation of municipal/county law enforcement organizations into a specified number of police districts (and eliminating detention as a police responsibility);

b. Provision for civilian control over district police departments;

c. Provision for adequate financial support for district police operations;

d. Provision for orderly transition from the present municipal/county based law enforcement structure to the new police district structure;

e. Elimination of law enforcement powers presently held by sheriffs and municipalities;

f. Restatement of duties, functions, authority, powers, rights, privileges, and immunities of police officers and responsibilities of the new district police structure;

g. Authorization/requirement for expansion of State Police manning;

h. Establishment of uniform statewide personnel practices for police, including such matters as standard positions and pay scales, career/longevity provisions, pension program, insurance program and lateral entry privileges;

i. Authorization/requirement of state-level support services in forensic sciences; central statewide police officer recruitment, testing, selection, and standards, and provision for a state level board of civilian commissioners to oversee state-level functions.

All of the above need not be included in a single legislative bill, although they could be so packaged. Maine authorities familiar with matters of legislative strategy should determine the extent to which the above matters should be presented for consideration by the legislature.

The above needs for legislation cover all of the recommendations which require state law to be carried out. Preparation and adoption of these kinds of legislation will lead to the restructuring of police services in Maine.

CONCLUDING REMARKS

The police services delivery structure recommended for the State of Maine is not as startling or innovative as it might appear. The consolidation of smaller police departments providing minimal service into reorganized units, still controlled by local units of governments but of a size sufficient to provide a complete range of police services to its constituents, has already occurred in several jurisdictions. And the success of those consolidated departments in providing efficient and effective services on an equitable basis has been documented.

The most significant consolidation effort has been underway in England for almost a century. Through "amalgamation" of smaller departments, England in 1966 had reduced the number of police departments from a high of 226 in 1860 to 122 departments serving a population of approximately 43,125,000. Beginning that year, a major amalgamation effort reduced that total further to the present figure of 40 police departments.

Other excellent examples of consolidation are the Provinces of Quebec and Ontario in Canada; Metropolitan Toronto; Nashville-Davidson County, Tennessee; Dade County, Florida; Jacksonville, Florida; and St. Louis County, Missouri.

Both the President's Commission on Law Enforcement and Administration of Justice (1967) and the National Advisory Commission on Criminal Justice Standards and Goals (1973) have discussed the problem in detail and have recommended that each jurisdiction examine closely its existing delivery structures; the capacity of its citizens in communities with small departments to continue funding minimal service police departments which must increase their resources to meet future requirements; and alternative delivery structures.

The recommendations contained in this Executive Summary and detailed in the full final report are in line with the recommendations, standards and goals of the national commissions. They present, we believe, an excellent starting point for the State of Maine to begin working towards its stated goal of making available the most effective and efficient police services possible to all citizens of the state.

COMMITTE ON PROTECTION
OF PUBLIC HEALTH AND SAFETY
MATERIAL FOR 8/9/91

SUMMARY OF MAINE DISTRICT AND SUPERIOR COURTS

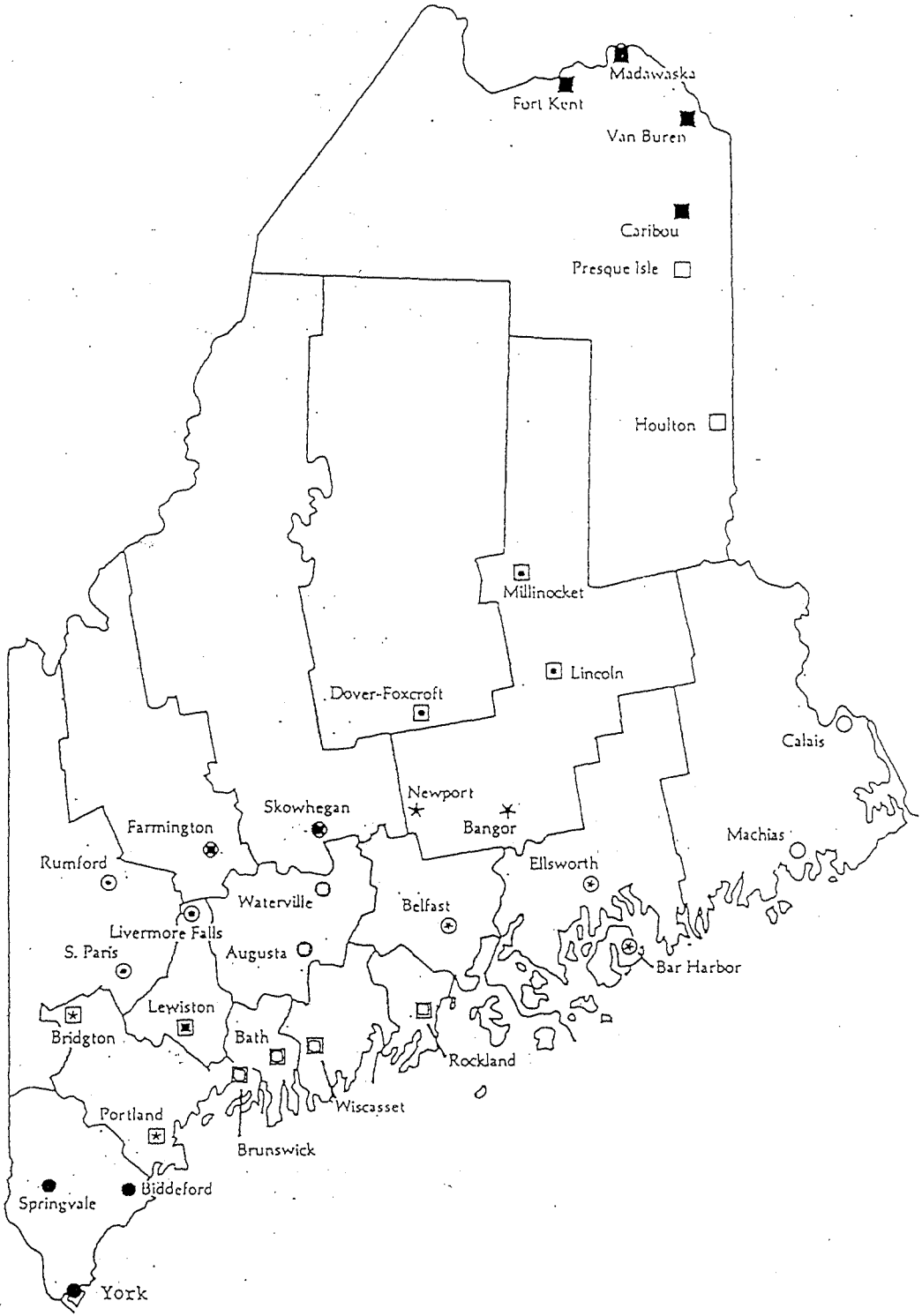
PREPARED FOR THE JUDICIARY COMMITTEE
115TH MAINE LEGISLATURE

OFFICE OF POLICY AND LEGAL ANALYSIS
FEBRUARY 25, 1991

State of Maine District Court Locations

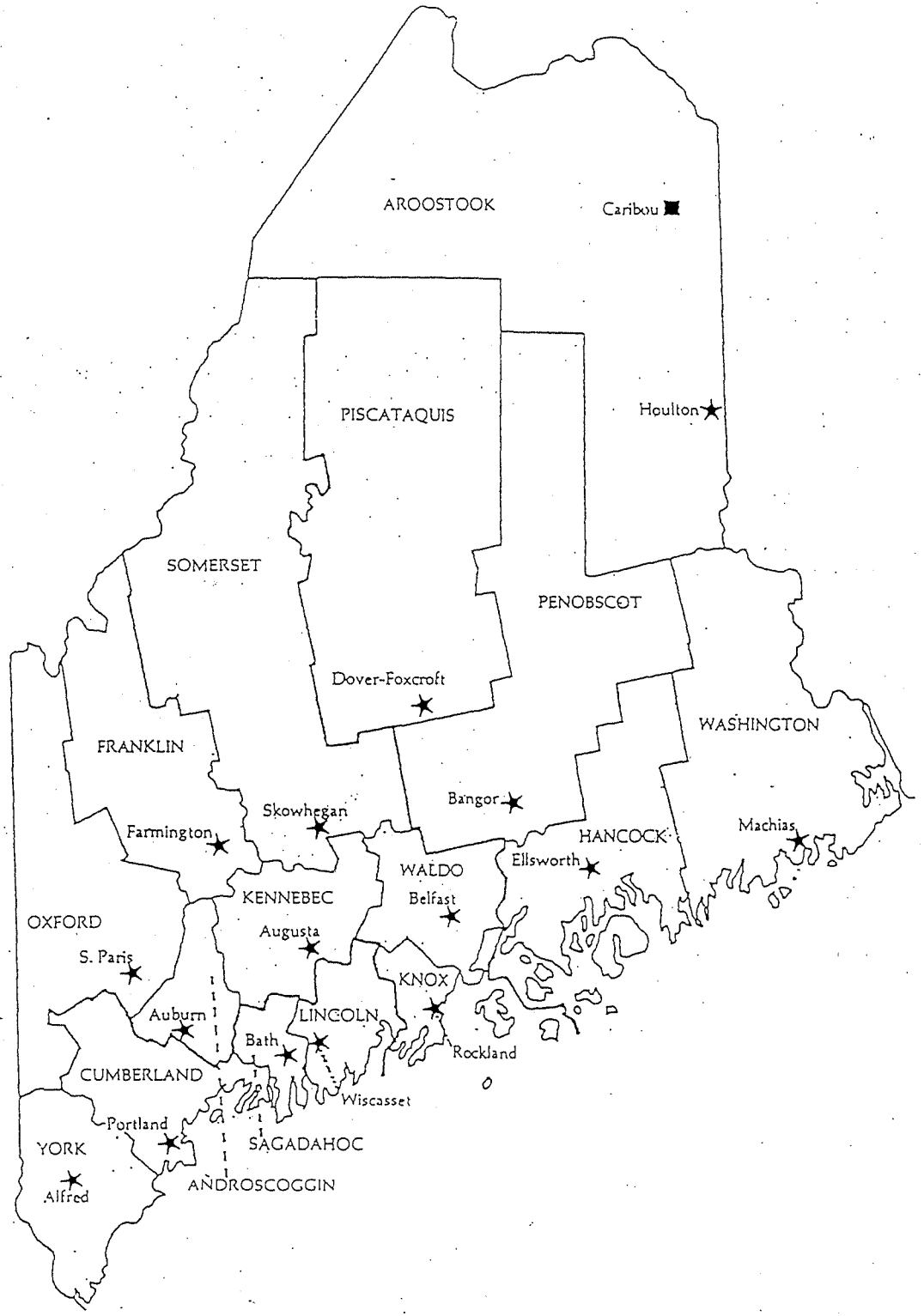
Court Locations

■	District	1	▣	District	8
□	"	2	⊠	"	9
★	"	3	●	"	10
○	"	4	⊙	"	11
⊛	"	5	⊗	"	12
▣	"	6	⊡	"	13
○	"	7			



Source: Annual Report FY90: Judicial Department

State of Maine Superior Court Locations



★ principal court location

■ auxiliary court location

Source: Annual Report FY90: Judicial Department

MAINE DISTRICT COURTS (2/25/91) OFFICE OF POLICY AND LEGAL ANALYSIS

DISTRICT COURTS	WHO OWNS BUILDING	RENT CHARGED PER YEAR	HOW OFTEN COURT MEETS	# OF EMPLOYEES	CIVIL TRAFFIC ONLY	CIVIL (NOT TRAFFIC)	CRIMINAL FILINGS	TOTAL FILINGS FY90	% OF TOTAL FILINGS
DISTRICT 1									
FORT KENT	LEROY MARTIN	$30,230	1 DAY A WEEK	1 F.T.	505	0	508	1,013	0.3%
MADAWASKA	ROBERT COX	$32,870	1 DAY A WEEK	2 F.T.	327	752	286	1,365	0.4%
VAN BUREN	TOWN OF VAN BUREN	$7,008	1/2 DAY A MONTH	0 (SHARES FORT KENT)	261	0	117	378	0.1%
CARIBOU	AROOSTOOK COUNTY	$12,686	3 DAYS A WEEK	3 F.T.	1,368	1,244	1,165	3,777	1.2%
DISTRICT 2									
PRESQUE ISLE	CITY OF PRESQUE ISLE	$19,500	3 DAYS A WEEK	3 F.T./1 P.T. TEMP	2,369	1,807	1,827	6,003	1.9%
HOULTON	AROOSTOOK COUNTY	$30,015	2 DAYS A WEEK	3 F.T./1 P.T. TEMP	1,398	1,077	1,766	4,241	1.3%
DISTRICT 3									
NEWPORT	ROBERT COX	$40,524	1 DAY A WEEK	3 F.T.	3,377	1,090	2,012	6,479	2.1%
BANGOR	PENOBSCOT COUNTY	$128,434	5 DAYS A WEEK	11 F.T./1 P.T.TEMP	10,175	5,881	8,275	24,331	7.7%
ELECTRONIC FACILITY	BROCKING & SMITH	$24,000		5 F.T.					
DISTRICT 4									
CALAIS	HIGHT PARTNERS	$84,424	2 DAYS A WEEK	2.5. F.T.	1,879	1,000	1,600	4,479	1.4%
MACHIAS	WASHINGTON COUNTY	$13,685	2 DAYS A WEEK	2.5 F.T.	1,102	826	1,217	3,145	1.0%
DISTRICT 5									
BAR HARBOR	TOWN OF BAR HARBOR	$26,820	1 DAY A WEEK	1.5 F.T.	1,004	552	883	2,439	0.8%
BELFAST	WALDO COUNTY	$53,447	2 DAYS A WEEK	3 F.T.	1,591	1,613	1,955	5,159	1.6%
ELLSWORTH	HANCOCK COUNTY	$32,071	2-3 DAYS A WEEK	4.5 F.T.	3,503	1,745	3,224	8,472	2.7%
DISTRICT 6									
BATH	OLD BATH CUSTOM HOUSE	$35,700	5 DAYS A WEEK	7.6 F.T.	2,767	1,625	2,124	6,516	2.1%
BRUNSWICK	BEING BUILT				4,426	1,342	3,189	8,957	2.8%
ROCKLAND	KNOX COUNTY	$30,780	3 DAYS A WEEK	4 F.T.	2,541	1,948	2,782	7,271	2.3%
WISCASSET	LINCOLN COUNTY	$17,952	2 DAYS A WEEK #	3 F.T.	1,408	1,395	1,690	4,493	1.4%

MAINE DISTRICT COURTS (2/25/91) OFFICE OF POLICY AND LEGAL ANALYSIS

DISTRICT COURTS	WHO OWNS BUILDING	RENT CHARGED PER YEAR	HOW OFTEN COURT MEETS	# OF EMPLOYEES	CIVIL TRAFFIC ONLY	CIVIL (NOT TRAFFIC)	CRIMINAL FILINGS	TOTAL FILINGS FY90	% OF TOTAL FILINGS
DISTRICT 7									
AUGUSTA	STATE OWNED	$0	5 DAYS A WEEK	8 F.T.	7,912	4,178	6,140	18,230	5.8%
WATERVILLE	FERRIS ENTERPRISE	$64,750	4 DAYS A WEEK	5 F.T./1 TEMP	4,452	3,006	5,013	12,471	4.0%
DISTRICT 8									
LEWISTON	CITY OF LEWISTON	$81,349	5 DAYS A WEEK	12 F.T./4 TEMP	9,657	5,204	8,365	23,226	7.4%
DISTRICT 9									
BRIDGTON	TOWN OF BRIDGTON	$50,166	1 DAY A WEEK	2 F.T./1 TEMP	3,192	1,001	2,613	6,806	2.2%
PORTLAND			5 DAYS A WEEK	22.3 F.T./4 TEMP	32,466	10,590	20,523	63,579	20.2%
CIVIL COURT	RONALD COFFIN	$36,616							
ADMINISTRATIVE	RONALD COFFIN	$28,106							
ALL OTHER	CUMBERLAND COUNTY	$51,201							
DISTRICT 10									
BIDDEFORD	CITY OF BIDDEFORD	$14,400	5 DAYS A WEEK	12 F.T./1 TEMP	12,262	3,977	8,747	24,986	7.9%
SPRINGVALE	CITY OF SANFORD	$3,000	3 DAYS A WEEK	6.6 F.T.	3,714	2,179	4,542	10,435	3.3%
YORK	NH SAVINGS BANK	$125,370	3 DAYS A WEEK	7 F.T.	7,962	1,195	8,095	17,252	5.5%
DISTRICT 11									
LIVERMORE FALLS	TOWN OF LIVERMORE FALLS	$28,000	1 DAY A WEEK	2 F.T.	1,046	525	908	2,479	0.8%
RUMFORD	OXFORD COUNTY	$24,000	2 DAYS A WEEK	2 F.T.	1,703	1,188	1,890	4,781	1.5%
SOUTH PARIS	OXFORD COUNTY	$26,666	2 DAYS A WEEK	3 F.T.	1,109	2,318	1,399	4,826	1.5%
DISTRICT 12									
FARMINGTON	BUREAU OF PUBLIC IMPROVEMENT	$64,082	3 DAYS A WEEK //	3 F.T.	1,892	1,517	1,920	5,329	1.7%
SKOWHEGAN	AUREL GAGNON	$36,000	2 DAYS A WEEK	6 F.T./1 TEMP	3,173	2,806	4,984	10,963	3.5%

MAINE DISTRICT COURTS (2/25/91) OFFICE OF POLICY AND LEGAL ANALYSIS

DISTRICT COURTS	WHO OWNS BUILDING	RENT CHARGED PER YEAR	HOW OFTEN COURT MEETS	# OF EMPLOYEES	CIVIL TRAFFIC ONLY	CIVIL (NOT TRAFFIC)	CRIMINAL FILINGS	TOTAL FILINGS FY90	% OF TOTAL FILINGS
DISTRICT 13									
DOVER-FOXCROFT	PISCATAQUIS COUNTY	$26,820	2 DAYS A WEEK	2 F.T.	1,622	1,043	1,719	4,384	1.4%
LINCOLN	HASKELL LUMBER	$33,972	6 DAYS A MONTH	2 F.T.	2,316	678	1,097	4,091	1.3%
MILLINOCKET	TOWN OF MILLINOCKET	$36,013	6 DAYS A MONTH	2 F.T.	976	803	988	2,767	0.9%

TOTAL RENT PAID	$1,350,656						
AVERAGE MONTHLY RENT	$3,127	TOTALS	135,455	66,105	113,563	315,123	
AVERAGE YEARLY RENT	$37,518						

ADDITIONAL SESSIONS SCHEDULED AS NEEDED

Source: Annual Report FY90: Judicial Department

MAINE DISTRICT COURT JUDGES (2/25/91)

HON. SUSAN CALKINS, CHIEF JUDGE
HON. S. KIRK STUDSTRUP, DEPUTY CHIEF JUDGE

DISTRICT 1 FORT KENT, MADAWASKA, VAN BUREN, CARIBOU	HON. RONALD D'AIGLE
DISTRICT 2 PRESQUE ISLE, HOULTON	HON. DAVID GRIFFITHS
DISTRICT 3 NEWPORT, BANGOR	HON. ANDREW MEAD HON. DAVID COX
DISTRICT 4 CALAIS, MACHIAS	HON. DOUGLAS CLAPP
DISTRICT 5 BAR HARBOR, BELFAST, ELLSWORTH	HON. BERNARD STAPLES
DISTRICT 6 BATH, BRUNSWICK, ROCKLAND, WISCASSET	HON. JOSEPH FIELD
DISTRICT 7 AUGUSTA, WATERVILLE	HON. COURTLAND PERRY
DISTRICT 8 LEWISTON	HON. JOHN BELIVEAU
DISTRICT 9 BRIDGTON, PORTLAND	HON. PETER GORANITIES HON. ALEXANDER MACNICHOL
DISTRICT 10 BIDDEFORD, SPRINGVALE, YORK	HON. ANDRE JANELLE
DISTRICT 11 LIVERMORE FALLS, RUMFORD, SOUTH PARIS	HON. JOHN SHELDON
DISTRICT 12 FARMINGTON, SKOWHEGAN	VACANT
DISTRICT 13 DOVER-FOXCROFT, LINCLON, MILLINOCKET	HON. JESSIE GUNTHER

JUDGES AT LARGE	ACTIVE RETIRED JUDGES
HON. JANE S. BRADLEY	HON. JOHN L. BATHERSON
HON. SUSAN W. CALKINS	HON. F. DAVIS CLARK
HON. ROBERT E. CROWLEY	HON. BERNARD M. DEVINE
HON. EDWARD F. GAULIN	HON. ROBERT W. DONOVAN
HON. ELLEN A GORMAN	HON. PAUL A. MACDONALD
HON. RONALD D. RUSSELL	HON. CLIFFORD O'ROURKE
HON. LEIGH I. SAUFLEY	HON. ALAN C. PEASE
HON. S. KIRK STUDSTRUP	HON. L. DAMON SCALES
HON. MICHAEL N. WESTSCOTT	

Source: Administrative Office of the Courts

MAINE SUPERIOR COURTS (2/25/91) – OFFICE OF POLICY AND LEGAL ANALYSIS

SUPERIOR COURT	TOTAL # OF FILINGS**	% OF TOTAL FILINGS	CRIMINAL FILINGS	CIVIL FILINGS	CIVIL JURY TRIALS	NON-JURY CIVIL TRIALS	CRIMINAL JURY TRIALS	CRIM. JURY WAIVED TRIALS	# OF EMPLOYEES*
ANDROSCOGGIN	1,603	7.8%	1,041	562	17	10	46	7	7
AUBURN									
AROOSTOOK	972	4.7%	608	364	20	12	46	2	
HOULTON									1.5
CARIBOU									2.5
CUMBERLAND	4,593	22.3%	2,820	1,773	48	21	39	16	17
PORTLAND									
FRANKLIN	732	3.6%	591	141	8	4	20	5	4
FARMINGTON									
HANCOCK	667	3.2%	423	244	12	3	45	6	4
ELLSWORTH									
KENNEBEC	1,549	7.5%	850	699	22	14	30	1	7
AUGUSTA									
KNOX	910	4.4%	718	192	11	2	33	6	3
ROCKLAND									
LINCOLN	669	3.3%	489	180	2	1	33	9	2
WISCASSET									
OXFORD	626	3.0%	398	228	2	5	10	3	3
S. PARIS									
RUMFORD ***									
PENOBSCOT	2,003	9.7%	1,350	653	22	16	79	13	8
BANGOR									
PISCATAQUIS	213	1.0%	158	55	4	1	6	0	2.5
DOVER-FOXCROFT									

MAINE SUPERIOR COURTS (2/25/91) – OFFICE OF POLICY AND LEGAL ANALYSIS

SUPERIOR COURT	TOTAL # OF FILINGS**	% OF TOTAL FILINGS	CRIMINAL FILINGS	CIVIL FILINGS	CIVIL JURY TRIALS	NON-JURY CIVIL TRIALS	CRIMINAL JURY TRIALS	CRIM. JURY WAIVED TRIALS	# OF EMPLOYEES*
SAGADAHOC BATH	708	3.4%	563	145	3	4	19	9	5
SOMERSET SKOWHEGAN	1,385	6.7%	1,109	276	12	9	24	8	5
WALDO BELFAST	430	2.1%	286	144	6	4	22	1	2
WASHINGTON MACHIAS	611	3.0%	444	167	5	7	24	1	4
YORK ALFRED	2,912	14.1%	1,842	1,070	25	29	74	12	10
TOTALS	20,583		13,690	6,893	219	142	550	99	

Notes:

* Employee totals do not include court officers.

** All cases counted by docket number – includes cases filed and refiled.

*** Court has not been held in Rumford since the late 1970's.

The Superior Courts utilize County owned space, at county expense with the following exceptions:
Portland has a lease arrangement which has yet to be finalized. They expect a July 1991 occupancy.
Knox pays $3,936 a year, Penobscot pays $4,723 per year, and Sagadahoc pays $28,900 per year.

Source: Annual Report FY90: Judicial Department

I. MAINE'S CORRECTIONAL FACILITIES

The Department of Corrections controls 9 correctional facilities, 8 adult and 1 juvenile. Juveniles are committed to the Maine Youth Center by the juvenile courts. The adult courts specify whether an adult offender shall serve his or her sentence in a county jail or be committed to the Department of Corrections. Those committed to the Dept. are classified and transferred among the various adult facilities at the discretion of the Department. All adult women are imprisoned at the Maine Correctional Center.

Below are very brief descriptions of Maine's correctional facilities. The security level given is that of the general population. At a given time a facility may house inmates with a range of security classifications. Tables I-1 and I-2 which follow the descriptions give rated capacity for each facility and the population census as of 1/16/1990.

The listings of programs offered are incomplete and are being updated. All facilities do offer preparation for the high school equivalency test (GED).

1. **The Maine State Prison** at Thomaston is a maximum security facility for adult felons. Programs currently in place at the prison include: drug and alcohol education and rehabilitation, a sex offenders program, psychological services, the Novelty Program, and vocational training.

Funding from passage of the 1989 bond issue (3A) designated for MSP:

$4,510,000

2. **The Maine Correctional Center** at South Windham is a medium/minimum security facility for men and women. Programs in place at MCC include: religious and educational theology programs, substance abuse treatment, a sex offenders program, academic instruction including post-secondary courses, and vocational training in the following areas: building trades, auto reconditioning, graphic arts, welding, meat cutting, automotive front end work, and business and office procedures.

Funding from passage of the 1989 bond issue (3A) designated for MCC:

$200,000

3. Bolduc Minimum Security Unit at South Warren is an organizational unit of the Maine State Prison. Bolduc houses inmates in vocational training, prison assignments or on work release.

4. The Charleston Correctional Center is a minimum security facility receiving transfers from the Maine Correctional Center and the Maine State Prison. Programs at CCC include substance abuse counselling, public work restitution, a job readiness program, and vocational training in woodharvesting, sawmill operation, boiler operation, building maintenance and welding.

Funding from passage of the 1989 bond issue (3A) designated for CCC:

$100,000

5. The Downeast Correctional Facility is a medium/minimum security facility. Programs include a sex offenders program, academic courses, and vocational training. Vocational training is in electrical, welding and building trades.

Funding from passage of the 1989 bond issue (3A) designated for DCF:

$100,000

6. Pre-Release Centers: Bangor Pre-Release Center is an organizational unit of Charleston Correctional Facility. Southern and Central Maine Pre-Release Centers are organizational units of Maine Correctional Center. Residents of the Pre-Release Centers have been classified as 'community ' level security by the transferring facility. Residents of the pre-release centers are often on study release or work release. Job developers at the centers help residents find employment in the community..

Funding from passage of the 1989 bond issue (3A) designated for the Pre-Release Centers:

$70,000

7. Maine Youth Center receives juvenile offenders between the ages of 11 and 18 committed to the Center by the courts. Commitment to the Center is for an indeterminate period of time up until the juvenile's 18th birthday or by order of the court

until his or her 21st birthday. The school at the Youth Center is approved by the Department of Education and Cultural Services and provides a range of academic and vocational classes. Other programs at the center include a sex offender treatment program, psychological programming for emotionally disturbed adolescents, and the Pathfinder program which teaches outdoor skills.

Funding from passage of the 1989 bond issue (3A) designated for MYC:

$5,020,000

8. Northern Maine Detention Center will be constructed to house juveniles detained for court.

Funds of $4,500,000 are designated for this project from the 1989 bond issue (3A).

Note: Total funds from passage of 3A - $14,500,000.

DJI/LHS/576

Table I-1: CORRECTIONAL FACILITIES
MAINE DEPARTMENT OF CORRECTIONS
Rated Capacity and Population Census

	General Pop.	Segregation	Total Beds	Census as % of Rated Cap.
1. Maine State Prison	400	31	431	
Thomaston	458	37	495	115%
2. Maine Correctional Center	293	34	327	
South Windham	455	26	481	147%
3. Bolduc Minimum Security Unit	72	0	72	
South Warren	85	0	85	118%
4. Charleston Correctional Center	93	6	99	
Charleston	116	5	121	122%
5. Downeast Correctional Facility	96	7	103	
Bucks Harbor	104	7	111	108%
6. Bangor Pre-Release Center	35	0	35	
Bangor	49	0	49	140%
7. Central Me. Pre-Release Center	30	2	32	
Hallowell	58	0	58	181%
8. Southern Me. Pre-Release Center	30	0	30	
South Windham	42	0	42	140%
9. Maine Youth Center	190		190	
South Portland	235		235	124%
Subtotal Adult Facilities (1 - 8)	1049	80	1129	
	1367	75	1442	128%
Total All Facilities	1239	80	1319	
	1602	75	1677	127%

Shaded area is census population 1/16/1990.

Prepared by: OFFICE OF POLICY AND LEGAL ANALYSIS.
Information Source: Maine Department of Corrections.

Revised 2/7/90

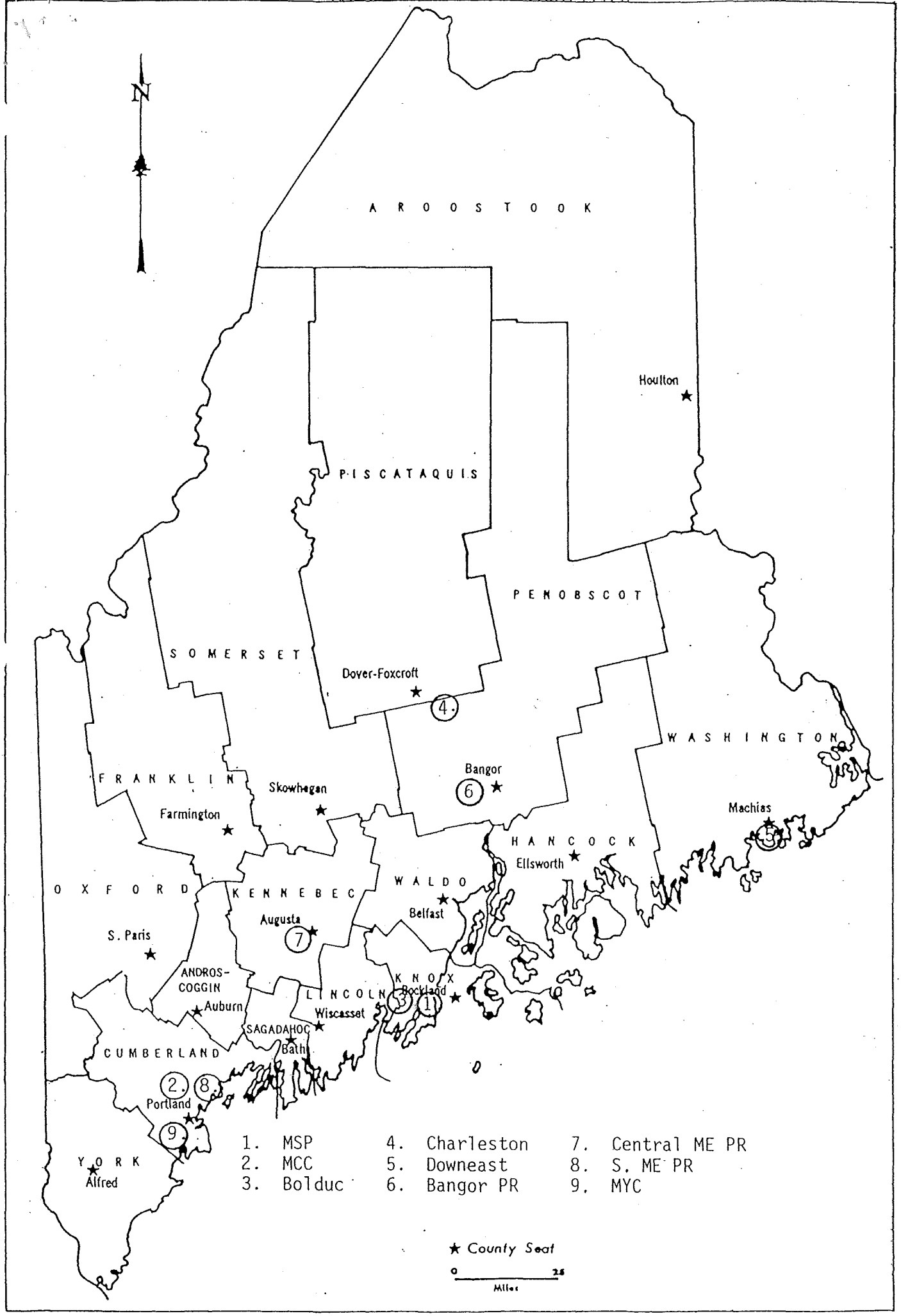
Table I-2: CORRECTIONAL FACILITIES WITH MALE AND FEMALE POPULATIONS
MAINE DEPARTMENT OF CORRECTIONS
Rated Capacity and Population Census By Sex

	General Population		Segregation		Total Beds		Census as % of Rated Cap.	
	Male	Female	Male	Female	Male	Female	Male	Female
1. Maine Correctional Center	254	39	29	5	283	44		
South Windham	415	40	21	5	436	45	154%	102%
2. Maine Youth Center	153	37			153	37		
South Portland	209	26			209	26	137%	70%

Shaded area is census population 1/16/1990.

Prepared by: OFFICE OF POLICY AND LEGAL ANALYSIS
Information Source: Maine Department of Corrections
Revised 2/7/90

MAINE CORRECTIONAL FACILITIES



COUNTY JAILS
MAINE DEPARTMENT OF CORRECTIONS
Rated Capacity and Average Daily Population*

	Adults		Juveniles		Total**
	Capacity	Pop.	Capacity	Pop.	Capacity
ANDROSCOGGIN	30	53.4	4	0.8	34
AROOSTOOK	58	50.5	0	0	58
CUMBERLAND	100	156.0	0	1.1	100
FRANKLIN	21	22.2	2	0.1	21
HANCOCK	18	18.8	2	0.7	18
KENNEBEC	66	68.3	0	0	66
KNOX	31	25.2	0	0.2	31
LINCOLN	18	22.5	1	0.3	19
OXFORD	27	31.2	3	1.8	27
PENOBSCOT	136	107.0	0	0	136
PISCATAQUIS	23	15.0	0	0	23
SAGADAHOC***		1.1		0	
SOMERSET	56	46.0	2	0.7	58
WALDO	16	19.3	0	0	16
WASHINGTON	32	27.8	7	2.5	32
YORK	58	89.4	0	0.2	58
STATEWIDE	690	754.0	21	8.6	697

* Average daily population for 1989.
Jail capacities summary January 31, 1990.
** Total capacity does not equal sum of adult and juvenile capacities.
Some cells may be used to house either juveniles or adults.
*** Sagadahoc County has no jail, does have a 48 hr holding area.

Prepared by: OFFICE OF POLICY AND LEGAL ANALYSIS
Information Source: Maine Department of Corrections

Committee on the Protection of Public Safety and Health
Special Commission on Governmental Restructuring

August 9, 1991

I. 2½ hrs Committee briefing from Department of Corrections
Donald Allen, Commissioner

- Discussion of physical infrastructure needs in the corrections system and the reasons for those needs.
- Discussion of educational programs within the corrections systems

II. ½ hr Committee Housekeeping

- Discussion of how committee will approach the Department of Justice proposal; data sought, presentations required etc.
- Discussion of how committee will approach the coordination of law enforcement question; data sought, presentations required etc.

9106opla

1990 ADULT MASTER PLAN UPDATE
EXECUTIVE SUMMARY

The Department of Corrections' 1990 Adult Master Plan Update reflects the Department's efforts to develop a plan to guide it through 1995. In spite of limited resources, the Department has managed to implement many of the recommendations contained in its 1985 Master Plan. This Master Plan Update considers the viability of those remaining recommendations and, as appropriate, uses them as a basis for the recommendations contained in this Master Plan Update. As the Department's population has grown and as additional needs have been recognized, recommendations to meet these needs have been developed.

This Master Plan Update describes the current status of the Department, its adult correctional facilities, and its services to adult offenders, including those who are clients of the Division of Probation and Parole. This Master Plan Update does not, with a few exceptions, deal with the Department's juvenile facility or services, because they are being dealt with in a separate plan to be developed by January 1, 1991.

This Master Plan Update includes a discussion of issues that affect the Department in its entirety, its institutions, its programs and services, its operations, its construction needs, and the Division of Probation and Parole. It identifies overcrowding as the Department's overriding concern because of the effect an increasing population has on all aspects of the Department. The recommendations deal with all these issues and provide a balanced approach to resolving them.

In considering the issue of overcrowding, the Department recognizes that simply building new facilities will not solve the problems of overcrowding. Therefore, it proposes implementation of four options, as soon as possible, to help limit the number of prisoners coming into its facilities. If these four options - the establishment of three diversion centers and two day centers, an expansion of Intensive Supervision, and all offenders with sentences of one year or less to serve their terms of incarceration in county jails - are implemented by 1995, the Department estimates there would be approximately 300 fewer prisoners entering its facilities. This number would reduce the projected bedspace deficit from 893 beds to 593 beds.

The Department's greatest need for beds lies in the areas of maximum-security and minimum-security/community beds. By 1995, even with the construction of the 100-bed, maximum-security facility at Warren, the Department projects it will need 375 additional maximum-security beds and 229 minimum-security/community beds. The number of maximum-security beds needed is based on the number of prisoners projected to be classified as maximum-security. The Maine State Prison's rated capacity does not include maximum-security housing. (See Appendix A, p 225, for reasons why the Maine State Prison is not a maximum-security facility.) Therefore, the Department proposes to house its medium-security prisoners at the Maine State Prison and the Maine Correctional Center, which will provide the beds necessary to meet the 1995 projected need for medium-security beds, and to build additional maximum-security beds.

The need for minimum-security/community beds will be addressed by the above-mentioned diversion centers, additional pre-release centers, halfway houses, and minimum-security housing units at existing facilities.

The Department's proposed 1990 Bond Issue, described on p. 159, reflects a balanced approach to dealing with some of the bedspace needs. The proposal provides for an additional 330 beds, of which 100 would be maximum-security beds and 220 would be minimum-security/community beds. These beds would be built in various locations around the state. However, even after all authorized construction is completed and even if the proposed Bond Issue is passed, the Department will still have a bedspace deficit of 393 beds in 1995.

This Master Plan Update strongly supports the need for an expansion of existing and the addition of new community programs to provide services to offenders who are on probation, as well as those who are serving the final months of their sentences. The need for additional resources for the Division of Probation and Parole is acute. There has been a 60% increase, from 4,180 probationers in 1986 to 6,927 in 1989, in the number of adult probationers since 1986.

Programs within the institutions have failed to keep pace with the growth in population, as well. Program space, in some instances, has been converted to housing space. The sheer number of prisoners has overwhelmed programmatic resources within the institutions, resulting in waiting lists for available programs and services of all kinds and increased prisoner idleness. Implementation of the recommendations contained in this Master Plan Update will help reduce both waiting lists and prisoner idleness.

This Master Plan Update also identifies new needs that were not apparent in 1985. Chief among these needs is the necessity of dealing with an older population. Due to the longer sentences of more prisoners, there are an increasing number of prisoners over fifty years old. Many of these prisoners do and will continue to require specialized medical services, such as nursing home and geriatric care, as well as hospitalization and recovery care. There are also a number of younger prisoners, who, because of their long sentences, some of which include natural life sentences, will grow old and die in the Department's custody and, in most cases, its facilities. The Department's proposed Bond Issue contains funds for a feasibility study of a new correctional facility, to include housing prisoners in need of nursing home, geriatric, and medical care.

The Department's committed population has grown an average of 6.5% annually over the past ten years. Since 1981, it has grown a total of 51.6%. From January 1989 to March 13, 1990, the population grew by 231 prisoners, or 17%. This rate of growth, coupled with the Division of Probation and Parole's increased growth of 60% since 1986, indicates the Department's critical need for additional resources, to include community and institutional programs, additional staff at all levels, and additional beds. It also confirms the pressing need to reexamine the state's sentencing practices. While community-based diversion programs and facilities will help reduce the total number of prisoners requiring incarceration, they will have no impact on the number of prisoners being sentenced or their length of stay.

Sentencing reform must be seriously considered if Maine is to have any hope of reducing the number of prisoners entering the system and the length of their sentences. Consequently, one of the Department's strongest recommendations is the recommendation for the Legislature to create a Task Force to examine current sentencing practices and their impact on the correctional system. This effort, combined with additional beds, may, at some point, enable the Department to provide appropriate and adequate housing for those prisoners committed to its custody, who require secure housing. Failure to implement these recommendations will result in continued, unprecedented growth and the likelihood of law suits against the Department and the state. The pending law suit by the ACLU/MCLU illustrates the consequences of not having enough beds to house prisoners.

The Department recognizes that implementation of these recommendations is largely contingent on the amount of money available in the General Fund and the willingness of the Legislature to appropriate the necessary amount of money. The Department also recognizes that its proposed Bond Issue, and any

future bond issues, must first be approved by the Legislature and then by the voters of Maine. Since the Department has no control over the appropriations process, the Legislature, or the voters, the recommendations may not be able to be implemented within the time frames or to the extent suggested by the Department. Nonetheless, the Department believes it is of critical importance to implement the recommendations contained in this Master Plan Update, in as timely a manner as possible, to enable the Department to provide necessary services and beds to the ever increasing population for which it is statutorily responsible.

In conclusion, the Department believes that this Master Plan Update presents a balanced approach to meeting, in part, its growing needs for the next five years. Further work needs to be done to identify additional resources to meet the correctional needs of Maine up to and beyond 1995. It is hoped that the proposed Bond Issue will be approved by the voters in November, as a first step towards meeting the needs that have been identified.

The recommendations included in this Master Plan Update are summarized below.

SUMMARY OF RECOMMENDATIONS

ISSUES

Overcrowding

1. Establish a departmental committee to review the good time provisions and to make recommendations to the Commissioner by November 1, 1991.

2. Amend the statute to require offenders with sentences of one year or less to serve their sentences in county jails, beginning in 1994.

3. Support passage of L.D. 2098 and encourage judges to place more offenders on ISP and more prisoners to apply for ISP by August 1, 1990.

4. Review the electronic-monitoring pilot program and make recommendations to the Commissioner by November 15, 1990.

5. If the recommendations regarding the electronic-monitoring program include charging a fee for the equipment, submit legislation to allow judges to order

reimbursement of the cost of the equipment by the prisoner to the 115th Legislature in January 1991.

6. If the electronic monitoring program proves effective, encourage judges to order the use of such equipment for border-line offenders by March 1, 1991.

7. Establish three Diversion Centers by 1995.

8. Increase programs for substance abusers, as soon as resources permit.

9. Support the use of ISP for probation violators and encourage its expanded use by judges by December 15, 1990.

10. Expand community counseling services for Probation and Parole clients, as soon as resources permit.

11. Submit recommendations regarding the establishment and operation of Day Centers to the Commissioner by September 15, 1990.

12. Establish two halfway houses for males, in Kennebec and York Counties, one to be operated by the Department and the other through a contractual arrangement, as soon as resources permit.

13. Establish a halfway house in Bangor, in conjunction with the Federal Bureau of Prisons, if possible, as soon as resources permit.

14. Establish a halfway house for females, as soon as resources permit.

15. The Legislature should create a Task Force to examine all possible release options and make recommendations to the Governor, the Legislature, and the Commissioner by November 15, 1992.

16. Defer the possibility of establishing work camps until 1993.

17. Add additional staff to existing facilities, in order to increase the number of outside restitution crews, as soon as resources permit.

18. Defer the establishment of shock incarceration programs until further results of existing programs are available, sometime in 1993.

19. Develop impact statements for all bills affecting the Department of Corrections, beginning in January 1991.

20. The Legislature should establish a task force to examine current sentencing practices and their impact and should submit its recommendations to the Governor, the Legislature, and the Commissioner by January 1, 1993.

21. Encourage counties to develop and implement pretrial screening programs, using funds available from the Community Corrections Act, by November 15, 1990.

Human Resources

22. The Department should seek funds to hire additional Human Resources personnel, as soon as resources permit.

Cost: $ 242,821

Employee Incentives

23. Provide more training opportunities for all staff, as soon as resources permit.

24. Establish a Task Force by September 1, 1990, to explore employee incentives and to make recommendations to the Commissioner by August 15, 1991.

25. Obtain financial assistance through the National Institute of Corrections to determine an appropriate career ladder for employees of the Department by January 31, 1991.

Overtime

26. Establish a Task Force to determine ways to reduce unscheduled overtime, with recommendations for the Commissioner by August 15, 1991.

27. Establish a process by which unscheduled overtime can be budgeted by October 1, 1991.

Retirement

28. Equalize retirement benefits throughout the Department by proposing legislation to amend Title 5, paragraph 17851, subsection 11, by January 15, 1993.

Staff Development and Training

29. Hire additional personnel to implement the training plan, as soon as resources permit.

    Cost: $147,630

30. Implement the Division of Probation and Parole's proposed training curriculum, as soon as resources permit.

    Cost: $104,000

31. Develop a training plan for supervisory and management personnel, support staff, and caseworkers, treatment providers, teachers, etc., by July 1, 1991.

Office of Advocacy

32. Centralize all personnel, fiscal, and payroll functions of the Office of Advocacy by July 1, 1991.

33. Expand the Office of Advocacy by hiring three additional advocates and a secretary, as soon as resources permit.

    Cost: $116,956

34. Review the need for an advocate for the Division of Probation and Parole by August 15, 1992.

35. Review the statutes relating to the Office of Advocacy and make recommendations to the Commissioner by October 1, 1990.

Female Prisoners

36. The recommendations contained in the Report of the Task Force on Female Offenders should be carefully considered and implemented, as appropriate, as soon as resources permit.

37. Explore the possibility of reactivating the Flagg Dummer Building or the Cleveland Building at Stevens School as a minimum-security/pre-release facility for female prisoners by December 1, 1990.

    Cost: $50,000

38. If it is not possible to reactivate either of the Stevens School buildings, the Department should build or rent a facility for use as a minimum-security/pre-release facility for female prisoners, as soon as resources permit.

39. The Department should establish a halfway house for female prisoners, as soon as resources permit.

Cost: $275,000

Correctional Management Information System

40. Implement the recommendations in the MIS Master Plan, as appropriate, as soon as resources permit.

41. Implement the changes proposed by the Bureau of Data Processing, as soon as resources permit.

42. Complete the automation of Probation and Parole records by December 1993.

43. Explore the possibility of developing a centralized financial record-keeping system for all fees collected by the Division of Probation and Parole, and develop recommendations for the Commissioner by December 15, 1990.

44. Complete the development and automation of a database for juveniles by December 1993.

45. Develop the necessary systems and software, as soon as resources permit.

Cost: $125,000

46. Hire a Computer Operations' Manager for Central Office, as soon as resources permit.

Cost: $47,522

47. Hire six Computer Operations' Assistant Managers for the five major facilities and the Division of Probation and Parole, as soon as resources permit.

Cost: $227,845

48. Purchase necessary computer equipment, as soon as resources permit.

Cost: $285,646

49. Ensure that training is provided to all employees who use computers on an ongoing basis, as soon as resources permit.

Classification

50. The Classification Advisory Committee should review the report of the classification expert and develop recommendations for the Commissioner by July 15, 1990.

51. The Correctional Administrators should review the report and the recommendations of the Classification Advisory Committee and develop their recommendations for the Commissioner by October 15, 1990.

52. Develop a policy on the transfer of classification records by November 30, 1990.

53. Conduct quarterly training sessions for classification personnel, beginning by January 1, 1991.

Handicapped Accessibility

54. Ensure that the structural modifications necessary to make the Southern Maine Pre-Release Center handicapped accessible are completed by January 1, 1991.

Cost: $3,000

55. Develop departmental procedures governing the transfer of handicapped prisoners to MCC by October 15, 1990.

56. MCC should ensure that its procedures conform to the Department's procedures by January 15, 1991.

57. MCC and MYC staff should be provided with specialized training to enable them to appropriately and effectively supervise handicapped prisoners, beginning by November 1, 1990.

Public Relations/Education

58. Each institution and the Division of Probation and Parole should develop a Speakers' Bureau, a visual

presentation program, and informational and program brochures by September 1, 1990.

59. Central Office should develop a Speakers' Bureau, a visual presentation program, and informational and program brochures by October 1, 1990.

60. Seek funds to establish a public relations/education capability, as soon as resources permit.

Cost: $62,715

61. Develop public service messages and informational programs by January 15, 1994.

Correctional Advisory Commission

62. Support passage of L.D. 43, as amended.

63. If L.D. 43, as amended, is enacted, ensure its implementation by August 15, 1990.

Central Office

64. In addition to the positions mentioned elsewhere, the Department should hire additional personnel for Central Office, as soon as resources permit.

Cost: $351,971

65. Acquire additional office space for Central Office, as soon as resources permit.

PROBATION AND PAROLE

66. Hire a Public Service Coordinator, who would also serve as an administrative assistant, for each Probation and Parole District, as soon as resources permit.

Cost: $186,090

67. Reduce the probation caseload ratio to 1:75 for adults and 1:40 for juveniles by hiring 30 additional officers and creating two new districts, as soon as resources permit.

Cost: $1,477,272

68. Support L.D. 2098 to expand the use of Intensive Supervision, so more prisoners would be eligible, by establishing three-person ISP Teams in every county, as soon as resources permit.

Cost: $1,775,599

69. Expand Intensive Supervision to include a pilot project for juveniles in Cumberland, Androscoggin, and Penobscot Counties, as soon as resources permit.

Cost: $226,500

70. Hire a restitution specialist, who has an accounting background, to handle both adult and juvenile restitution in each District, as soon as resources permit.

Cost: $165,348

71. All probationers being transferred to another state should contribute to an escrow account to cover the cost of return to Maine in case of a violation, by October 1, 1991.

72. Study the possibility of charging all adult probationers a probation fee and make recommendations to the Commissioner by September 30, 1990.

73. Hire seven additional clerical personnel to provide for at least one clerical person in each suboffice, as soon as resources permit.

Cost: $171,199

74. Develop a comprehensive management plan for Probation and Parole, to include validation of risk scale items, addition of a formal needs scale, and development of a formal reassessment process, by January 1, 1991.

75. Implement Probation and Parole's training proposal, as soon as resources permit.

Cost: $104,000

76. Increase funding for Mental Health Counseling Services from $382,495 to $482,495, as soon as resources permit.

Cost: $100,000

77. Increase the amount of money available to Probation and Parole for Emergency Services from $69,000 a year to $120,000 a year, as soon as resources permit.

Cost: $51,000

78. Fund a pilot project in one District to provide a substance-abuse evaluation for all Pre-Sentence Investigations, as soon as resources permit.

Cost: $160,644

79. Establish a Substance-Abuse Halfway House for probationers, as soon as resources permit.

Cost: $397,900

80. Expand urinalysis testing in all Districts, as soon as resources permit.

Cost: $50,000

INSTITUTIONAL PROGRAMS

Mental Health Services

81. Hire additional mental health staff, including social workers, psychologists, and psychiatrists, as soon as resources permit.

Cost: $651,275

82. Determine the feasibility of establishing a forensic unit by July 1, 1992.

Substance-Abuse Services

83. Determine if there is an existing unit at MCC, which could serve as an intensive residential treatment unit for substance abusers, by October 1, 1990.

84. Identify additional space at MCC for a substance-abuse treatment program, or, if no such space exists, develop recommendations regarding how to obtain such space for the Commissioner's consideration by August 1, 1990.

85. Hire additional substance-abuse counselors and support staff for all facilities, as soon as resources permit.

Cost: $303,379

Sex-Offender Services

86. Persuade the Department of Mental Health and Mental Retardation to provide additional services to sex offenders through its Community Mental Health Centers by July 1, 1991.

87. Establish new and expand existing community-based services for sex offenders, as soon as resources permit.

88. Increase sex-offender treatment services in all facilities, to include an intensive treatment component at DCF by 1993 and one at MCC by 1995; through contractual community-service treatment funds for the Division of Probation and Parole; and in Central Office, as soon as resources permit.

Cost: $857,129

89. Explore the possibility of establishing halfway houses for sex offenders, who require a structured setting while transitioning from a correctional facility to the community, by 1995.

Medical Services

90. Expand current medical coverage, support, and space, to include infirmaries, to provide needed services and coverage in all facilities, as soon as resources permit.

Cost: $391,220

91. Assess the medical needs of the Department, to include hospital, nursing home, and geriatric care, as soon as resources permit.

Cost: $75,000

Educational Programs

92. Develop recommendations regarding evaluation and integration of correctional education programming within each facility, coordination among all facilities, and the advisability of implementing either of the options of having DECS approve the school departments at MSP and MCC or registering MSP and MCC as School Administrative Districts, to be presented to the Commissioner by June 15, 1991.

93. Consider the possibility of awarding additional good time for successful completion or involvement in an educational program by November 1, 1991.

94. Consider including the TIE concept in the development of Industries Programs by August 15, 1992.

95. Review the course offerings in all facilities, in order to assess their availability and appropriateness to the prisoners in each facility, and develop recommendations for the Commissioner by September 15, 1992.

96. Increase the educational and vocational staff at all facilities, as soon as resources permit.

Cost: $382,667

97. Renovate/create additional educational and vocational space and purchase additional equipment, as soon as resources permit.

Cost: $203,361

98. Hire a Director of Adult Correctional School Facilities, as soon as resources permit.

Cost: $41,200

99. Consider the possibility of using prisoner teachers and develop recommendations for the Commissioner's consideration by April 15, 1991.

Industries

100. Hire a Director of Corrections Industries, as soon as resources permit.

Cost: $40,509

101. Hire two Industrial Shop Supervisors and an Industries Salesperson for MSP, as soon as resources permit.

Cost: $79,052

102. Request funds for industries buildings, renovations, and equipment, as soon as resources permit.

Cost: $840,000

103. Establish an Industries Advisory Committee at each facility by August 1, 1990.

104. Develop proposals for a pay plan by December 1, 1990.

Recreation

105. Provide funds to restore/build athletic areas and purchase necessary equipment, as soon as resources permit.

Cost: $13,500

106. Provide funds to hire additional recreational personnel, as soon as resources permit.

Cost: $123,453

Other Programs

107. Seek funds to continue the Helping Incarcerated Parents (H.I.P.) Program when the federal grant terminates in October 1991.

Cost: $19,500

108. Determine what aspects, if any, of the H.I.P. program might be suitable for other facilities by August 15, 1991.

109. Seek the necessary funding to expand H.I.P. to other facilities, if appropriate, as soon as resources permit.

110. Seek funding to continue the Drivers' Rehabilitation Program at MCC, as soon as resources permit.

Cost: $3,000

111. Assess the possibility of expanding MCC's Drivers' Rehabilitation Program to other facilities and develop appropriate recommendations by August 1, 1992.

112. Offer the Defensive Driving course to all MCC staff members by July 1, 1991.

113. Seek funds to continue MCC's Visiting Artists' Program, as soon as resources permit.

Cost: $6,200

FACILITIES

114. Continue to work with interested parties to improve conditions of confinement at the Maine State Prison, during 1990 and beyond, if necessary.

115. Make a concerted effort to persuade the Legislature and the voters to support the proposed Bond Issue in November 1990.

Cost: $20,250,000

Institutional Security/Support

116. Hire additional security and support personnel for all adult facilities, as soon as resources permit.

Cost: $3,252,899

EDUCATIONAL PROGRAMS

The Department of Corrections' commitment to educational programming is inclusive of all facilities for which the Department is responsible: Maine Correctional Center, Maine State Prison, Maine Youth Center, Downeast Correctional Facility, Charleston Correctional Facility, the Bolduc Unit, Bangor Pre-Release Center, Southern Maine Pre-Release Center, and Central Maine Pre-Release Center.

Depending on the site involved, the Department offers broadbased educational programming, ranging from preliterate reading skills through adult basic education programs and vocational training to post-secondary college degree programs. In addition, the Department is working with the Department of Educational and Cultural Services to address the needs of prisoners who are mentally retarded and/or learning disabled and to clarify the role of the Department of Corrections and the Department of Educational and Cultural Services in regard to the law, with respect to responsibility for mentally-retarded and learning-disabled prisoners.

The Maine State Prison does not offer vocational education programs. It sends prisoners to the Bolduc Unit or the Charleston Correctional Facility for such programs. Pre-release centers, such as Central Maine Pre-Release Center, provide for secondary educational needs of prisoners through contract GED teachers or by using community educational programs.

All academic and vocational teachers in the system are certified through the Department of Educational and Cultural Services. Teachers are required, under both Department of Corrections' administration and Department of Educational and Cultural Services' requirements, to maintain State Teacher Certification.

The following breakdown of educational and vocational programs within the Department's adult facilities will provide a specific overview of each facility's educational programs.

Maine State Prison

The Maine State Prison, with a population of 500 prisoners, many of whom are older than the average prisoner in other facilities, has a small academic educational program. The Prison's academic offerings are divided into several categories. The first category is GED Training, which is provided to enrolled prisoners an average of two to three hours per week. This program offers a high school equivalency diploma, on a continuing basis, to all

interested prisoners. Currently, there are eleven prisoners pursuing their GEDs. Remedial Reading is offered on the same basis as GED Training. Because of the specialized nature of remedial reading, the Literacy Volunteer Program is used exclusively. There is no waiting list for the GED Program.

Maine State Prison has had an agreement with the University of Maine at Augusta for several years, whereby University faculty visit the prison regularly to offer basic courses in college science and English. Prisoners may work toward associate degrees in Liberal Studies. The program is ongoing in the spring and fall semesters, with two and one-half to three hours per week, per program. The present prisoner enrollment in the University of Maine at Augusta College Program is 28, and there is no waiting list.

In addition, the Maine State Prison offers typing, an art program, and an extensive computer science laboratory. Included in the computer science program, which involves up to ten prisoners at any one time, is the "combat group," a regularly-scheduled, individual computer-use program, which involves 23 prisoners, who pay $10.00 a year to use the computers. The computer program depends on qualified prisoner instructors and would be greatly enhanced if there were a qualified computer instructor and more computers. The Maine State Prison has a prisoner teacher program, with six prisoner teachers, who assist the certified teachers in instructing their peers.

Some MSP classrooms require renovation, and additional equipment and support capital are also needed.

Bolduc Unit

The vocational unit at the Bolduc Minimum Security Unit has well-maintained and ongoing vocational programs, which include woodshop, wood refinishing, printing, upholstery, culinary arts, a Craftroom for for-profit crafts, and a number of auxiliary programs. At present, prisoners are involved in the combined academic vocational programming, taught by one teacher, seven vocational instructors, and one academic/vocational counselor. The Bolduc Unit requires some minimum capital improvements for its academic program.

Maine Correctional Center

The Maine Correctional Center's academic and vocational education department is the largest education department in

the Department of Corrections' adult facilities. The academic department includes a GED Program, currently enrolling 22 prisoners, who are involved an average of four and one-half hours per week. There are 30 prisoners in the Remedial Reading Program, which provides an average of five and one-half hours of programming per week. There is a waiting list of about 29 prisoners for these programs. It should be noted that 40% to 50% of the population reads below the fourth reader level. Twenty-two prisoners are enrolled in college courses, which ultimately lead to Associate Degrees in Liberal Studies. Prisoners have seven and one-half hours of courses per week. Two or three college courses are offered each semester through the University of Southern Maine and are open to all qualified prisoners. A program in math and reading for high school graduates, who do not have enough skills to continue with further education, is provided. An art program, which enrolls forty prisoners for four hours a week, and a pilot life-skills program, which has six participants for 20 hours per week, round out the academic program. If successful, the life-skills program will eventually involve a total of 20 prisoners.

The vocational program at MCC includes Graphic Arts, which involves eight prisoners for thirty hours a week; Business Education and Computers, with twenty-five prisoners; Automotive Reconditioning and Front-end Alignment, with ten prisoners; Meatcutting, with six prisoners; Welding and Metal Shop, with eight prisoners; Building Trades, with eight prisoners; and a Fleet Maintenance Program, with five prisoners.

The Educational Department at Maine Correctional Center involves approximately 239 prisoners, 42% of the total population at MCC. The educational staff comprises seven full-time academic faculty, including one School Principal, one Guidance Counselor, one Art Teacher, three teachers, and a Librarian. The vocational staff comprises eight full-time vocational instructors, including a non-certified meatcutting and slaughterhouse instructor. All academic and vocational instructors, with the exception of the meatcutting instructor, who is a Correctional Trades Instructor, are certified by the Department of Educational and Cultural Services.

However, to accommodate the continuing increase in population, three additional academic teachers, as well as a Clerk Typist, will be needed to eliminate the current waiting lists, develop an evening educational program, and provide basic education/GED to prisoners in the

Multipurpose Unit. The vocational program requires a Vocational Teacher for the meatcutting program, which is now taught by a Correctional Trades Instructor, and a Driver Education Teacher, as well as industrial machinery and additional computers.

Charleston Correctional Facility

Charleston Correctional Facility, which has a population of 122 prisoners, has an academic and vocational department which serves sixty prisoners, or approximately 50% of its population. Included in the academic department are GED courses, remedial reading, and computer-assisted instruction.

The vocational program, which includes Wood-Harvesting, Sawmill Operations, Building Trades, and Welding, enrolls twenty-four prisoners for 35 hours per week. There are waiting lists for the Building Trades and Welding programs.

There are three full-time academic teachers and four vocational teachers, as well as two teacher aides, funded under the federal Carl Perkins Act. This Act also funds the Wood-Harvesting and Sawmill Programs. Charleston requires two teacher aides to accommodate its growing population.

Downeast Correctional Facility

Downeast Correctional Facility's academic programs enroll 32 prisoners for an average of 2 hours per prisoner, per week. The principal focus of the academic programs is on the GED program and, for those prisoners whose skills are less advanced, the Adult Basic Education program. An External Credit Option, which leads to a high school diploma from Machias Memorial High School, is also available. Individual tutoring is available to all prisoners who wish to improve their skills in a particular area, such as reading, writing, or spelling, without enrolling in an academic program. Three prisoners are enrolled in a conversational French course. There is no waiting list for prisoners in any of the above-listed programs. A part-time Special Education teacher to work with learning-disabled prisoners would provide necessary services for those prisoners with special educational needs.

DCF offers no college courses but does provide assistance to prisoners interested in pursuing college-level correspondence courses. Such assistance includes, but is

not limited to, seeking financial aid and providing course monitors and test proctors. Three inmates are currently involved in correspondence courses.

Three vocational programs are offered: Building, Electrical, and Welding Trades. The Building and Welding Trades' programs are each six-months long, with a capacity of six prisoners at a time in each program. The programs are "open-ended," thus permitting a prisoner to enroll as openings occur, rather than wait for the beginning of a new class. Vacancies in the program are filled almost immediately, as each program has a waiting list of about four prisoners at any given time.

The Electrical Trades program, with an enrollment of six prisoners, was originally designed as a formal, six-month course, leading to licensure as an apprentice electrician. Last year, the Legislature passed a bill which would allow restructuring of the program to a full year and would lead to a Journeyman-in-Training license. This change has not yet been implemented, due to a lack of funds necessary to purchase the additional training materials required.

All vocational programs serve a dual function, in that the prisoners perform facility- and community-support projects as part of the instruction. Each prisoner involved in the programs works an average of 33 hours per week, not including any study required outside the classroom. Only the salaries of the teachers and the vocational trades instructors are funded. To make the vocational programs fully accreditable, additional funding for equipment and training materials is required, and additional space is needed for the Electrical Trades' program.

The 1989 bond issue authorized the installation of a boiler in the Training Center (location of the adult education department and two of the vocational programs) and additional classroom space.

Bangor Pre-Release Center

Most of Bangor Pre-Release Center's educational programming takes place at the Learning Center at Bangor Adult Basic Education Program. One prisoner is enrolled in the University of Maine at Orono. Prisoners are offered the opportunity for GED, remedial reading, and college courses on a part-time basis. Currently, no one is participating in these programs. Prisoners wishing to participate in vocational educational programs may attend the Eastern Maine Vocational Technical Institute one or two evenings a

week. The current educational programs at the Bangor Pre-Release Center are sufficient to meet the needs of the prisoners housed there.

Central Maine Pre-Release Center

The only educational programming at Central Maine Pre-Release Center involves one prisoner who studies part time at the University of Maine at Augusta. There is no GED or Remedial Reading Program at this time, due to the resignation of the contract teacher. Three prisoners attend the Capitol Area Regional Vocational Training Center part time.

The school departments at each of the Department's adult facilities are neither traditional schools nor are they separate departments within each institution. They provide education in the sense that they offer various levels of schooling to the prisoner population, including basic reading and basic literacy skills, GED preparation and diploma certification, college courses and associates degrees. The Department's educational curricula do not have to be approved by any state department, there is little or no classroom teaching, and there is no one administrative unit to oversee all the necessary interaction between disciplines. Most school units would benefit from more coordination among their own programs. For example, in many cases, reading operates as its own unit, GED is an independent program, and vocational education has no direct link with anything but its own craft.

In addition to the need for more cohesiveness within the academic sector of correctional education and between the ordinarily disparate units of activity, which include vocational education, more prisoners should be encouraged to become involved in educational programming. At present, prisoners prefer to be involved in vocational education, because they can earn additional good time and what they believe to be more valuable skills in terms of work. In addition, many prisoners are not made aware of the benefits of education, be it academic or vocational. If present school departments are seen as isolated units of activity, which have no connection to each other or to the remainder of the institution, there is little attraction for the reluctant prisoner to become involved. School participation, if appropriate, should be an essential component of correctional programming, i.e., a prerequisite for work release, furloughs, etc., provided the necessary resources are in place for all eligible prisoners to participate.

Traditionally, correctional education has involved itself in basic educational skills and vocational trades. Today, the world of work offers a much broader range of basic skill occupations, to even those with minimum formal education, that far transcends GED and a vocational welding course. A broader range and a more sophisticated spectrum of correctional education need to be considered for current correctional education. For example, there are many occupations requiring basic computer skills that did not exist ten years ago. Entry-level data processing is a skill that could be acquired by most prisoners with moderate skills within a relatively short period of time. It also contains the hidden value of requiring basic education, such as literacy and high school diploma equivalency.

In summary, the basic correctional educational programming in Maine needs to be brought up-to-date. Instead of islands of activity represented by basic academic and vocational course work, a coordinated and comprehensive educational system should be instituted, to include modern, up-to-date, world-of-work skills. Moreover, the concept of correctional education as a viable rehabilitative tool should be encouraged and fostered throughout the Department. Correctional education, from basic literacy through advanced academic and vocational skill training, should be seen as a potent force against recidivism. Other states have recognized the importance of education and have, as a result, significantly reduced the number of recidivists. For example, since 1976, the Illinois Department of Corrections' Vienna Correctional Center has maintained a close relationship with Southeastern Illinois College, which sponsors and maintains Vienna's comprehensive academic and vocational program. As of 1989, Vienna has a 2% recidivism rate. Virginia has instituted a policy to prevent prisoners in its custody from being released before they have achieved either basic reading skills or a GED. There is also pending federal legislation (S. 181) to "require states to assure that prisoners have training in a marketable job skill and basic literacy before releasing them on parole."

There are several options, which the Department might pursue, to develop such an educational philosophy.

Option 1: In order to bring correctional school departments on line with public schools, there are two possibilities to examine. The first possibility involves having the Department of Educational and Cultural Services approve the school departments in the two largest facilities, MSP and MCC. In this case, both school departments would come under the aegis of the Department of Educational and Cultural Services and would be required to file curricula and educational

plans with DECS, in order to comply with the same standards of education as the public schools.

The second possibility involves registering one or both of these facilities as a School Administrative District. Both of these suggestions would, in one way, force a superficial sense of organization on the respective school departments and would require them to comply with a statewide mandate on school organization and performance. Moreover, linkages would be established between correctional education in Maine and the public school system. Teachers would be required to conform to the same standards to which all public school teachers must adhere. School administrators would be in contact with superintendents and principals from public school administrative districts, and the Commissioner of the Department of Educational and Cultural Services would have some oversight responsibility for education within the facilities.

Although teachers might benefit if correctional educators were included in the greater system of state education and although the benefits of the Department of Educational and Cultural Services' resources and counsel might enhance the quality of correctional education, there is one overriding factor to be considered. Educational programming within correctional facilities bears little resemblance to the framework of education in public schools. State education specialists and administrators have little or no understanding of the educational needs and academic requirements of prisoners, who often have been alienated from the public school system. Correctional education is, of necessity, tailored to the needs of a special population of students. The combination of correctional education and the Department of Educational and Cultural Services would, in all likelihood, have the potential for misunderstanding and the possibility of negligible positive results. While facility school departments might gain some benefits from student teacher resources and would clearly benefit from access to academic and vocational material, the concept of student teachers inside correctional facilities presents problems, from both perspectives. Student teachers would not gain the required classroom experience, and the requirement that they be supervised by teachers would be difficult to meet, given the tutorial emphasis in correctional education. The facilities' concerns would include screening, security, and supervision.

In addition, a Department of Corrections' School Department in an adult facility would find itself in the difficult position of trying to serve two masters, the Department of Educational and

Cultural Services and the Department of Corrections, whose primary functions are very different.

In discussing these options with officials at the Department of Educational and Cultural Services, it appears that both these suggestions would require a facility to be recognized as a municipality under state law. A municipality is, by definition, a township or group of townships, permitted by statute to borrow money, levy taxes, organize a police force, etc. School Administrative Districts are quasi-municipalities, which must contain a minimum number of students, a number that far exceeds the total population of the Department's major facilities.

For these reasons, the solution to the lack of cohesion within the different educational units in and among the Department's facilities lies in reforming the concept of education from within the Department. However, the Department believes both the above options should be discussed to determine if, even if statutes permitted one or both of these options to be implemented, either option would be advantageous. These options will be referred to the Commissioner's Educational Administrators' Advisory Committee for further review.

RECOMMENDATION:

92. The Commissioner's Educational Administrators' Advisory Committee should develop recommendations regarding evaluation and integration of correctional education programming within each facility, coordination among all facilities, and the advisability of implementing either of the above-referenced options, to be presented to the Commissioner by June 15, 1991.

Option 2: Award additional good time for a long-term, goal-oriented commitment to academic and vocational programming.

Presently, there is no real incentive, beyond self-motivation and the need to escape the confinement of dormitories and cells, to participate in a long-term educational program. If a prisoner can be awarded three days-a-month good time for sweeping out his cell in the morning and doing a few rudimentary tasks during the day, why should he/she commit to a six-hour-a-day, intensive educational program? It could be argued that self-motivation should be the only reason for inclusion in a program. However, since many prisoners have had a negative experience with schools and since many of them see little value in an education, efforts to motivate prisoners should be increased and incentives for participation developed.

Additional good time for prisoners enrolled in educational programs could be a powerful incentive. Current statutes presently permit the awarding of five days-a-month good time for work release and public restitution for those prisoners involved in such work. Consideration should be given to awarding five days-a-month good time for successful progress through a long-term educational program, as well as awarding three to five days a month for those prisoners working 15 or more hours a week on GEDs or basic education. Criteria, to include the extent of participation, goals to be reached, eligible programs, etc., would have to be developed. In addition, the Department would have to ensure that all prisoners meeting the criteria would have access to the necessary programs and that those programs were available in sufficient quantities at all facilities, so all prisoners would have an opportunity to participate and earn additional good time.

RECOMMENDATION:

93. The Department should charge the Task Force to be established to review good time (see p. 30) to consider the possibility of awarding additional good time for successful completion of or involvement in an educational program, to include the development of criteria and any necessary statutory changes, by November 1, 1991.

Option 3: Institute the Training Industries Education (TIE) concept.

TIE is a concept growing in popularity nationwide among departments of corrections. TIE involves a prisoner's progress through a correctional system, from initial assessment through industrial training, education, and post-release follow-up. Among other benefits, implementation of this concept would reduce the isolation of educational units within each facility. TIE involves planning ahead for a prisoner's education and training from the time he or she enters the institution to the time of release. Instituting TIE would require substance-abuse counselors to cooperate and interact with academic education teachers, who, in turn, would interact with vocational training teachers, who would cooperate with supervision and training in the Industries Program. This concept makes a prisoner's education and training one unit of activity, rather than a number of separate, and often conflicting, units of activity.

The Department's Industries Program would be greatly enhanced if the training education component were also instituted. For example, if a facility were manufacturing a certain, private-

sector product, participating prisoners, in order to hold positions and earn money and good time, would be required to address such things as substance-abuse needs, reading deficiencies, lack of a high school diploma, and any other issues, which, together, may have contributed to their incarceration. Implementation of this process would require otherwise separate treatment units within a facility to cooperate, in order to assist each prisoner to successfully complete the entire process, resulting in a better trained and better educated prisoner.

RECOMMENDATION:

94. The Department of Corrections should consider including the TIE concept in the development of its Industries Program, in order to enhance and coordinate the educational, vocational, industrial, and treatment programs of prisoners, by August 15, 1992.

Option 4: Increase educational and vocational staff and equipment and expand course offerings, to include more nontraditional learning experiences.

One of the deterrents to successful education and vocational skill acquisition is the long waiting lists many prisoners must endure to be included in school programming. As a result, many prisoners are discharged before they have a chance to become involved in such programming, and many others, if they are admitted, never complete a GED or a vocational program, because the time remaining on their sentences is too short. An increase in the number of available academic and vocational staff, together with sufficient equipment for programs such as computer literacy, would enable more prisoners to participate in these programs.

RECOMMENDATIONS:

95. The Commissioner's Educational Administrators' Advisory Committee should review the course offerings in all facilities in order to assess their availability and appropriateness to the prisoners in each facility by September 15, 1991, and should develop recommendations for the Commissioner by September 15, 1992.

96. The Department should increase the educational and vocational staff at all its facilities in order to reduce waiting lists, as soon as resources permit.

Maine State Prison

(1) Computer Instructor		
Personal Services		$ 27,861
All Other		500
Capital		555
	Subtotal:	$ 28,916
(1) Clerk Typist II		
Personal Services		$ 19,561
All Other		1,299
Capital		1,264
	Subtotal:	$ 22,124
	MSP Total:	**$ 51,040**

Maine Correctional Center

(3) Teachers		
Personal Services		$ 83,583
All Other		1,500
Capital		1,197
	Subtotal:	$ 86,280
Convert one Chapter I position to a state position.		
(1) Teacher		
Personal Services		$ 37,159
(1) Clerk Typist II		
Personal Services		$ 19,561
All Other		1,299
Capital		1,264
	Subtotal:	$ 22,124
(1) Vocational Teacher		
Personal Services		$ 27,861
All Other		500
Capital		555
	Subtotal:	$ 28,916
(1) Vocational Trades Instructor		
Personal Services		$ 27,861
All Other		500
Capital		555
	Subtotal:	$ 28,916
	MCC Total:	**$ 203,395**

Charleston Correctional Facility

(2) Teacher Aides		
Personal Services	$	42,500
All Other		1,000
Capital		798
Subtotal:	$	44,298
(1) Teacher (Business/Computer)		
Personal Services	$	27,861
All Other		500
Capital		555
Subtotal:	$	28,916
(1) Library Assistant		
Personal Services	$	21,250
All Other		500
Capital		555
Subtotal:	$	22,305
CCF Total:	**$**	**95,519**

Downeast Correctional Facility

(1) Library Assistant		
Personal Services	$	21,250
All Other		500
Capital		555
Subtotal:	$	22,305
Contract with a Special Education Teacher for 8 hrs./week @ $13.00/an hour.		
All Other	$	5,408
DCF Total:	**$**	**27,713**

Central Maine Pre-Release Center

Contract with a GED and Remedial Reading Teacher for 10 hrs./week @ $10.00/hour.		
All Other	$	5,000
CMPRC Total:	**$**	**5,000**
TOTAL:	**$**	**382,667**

97. The Department should seek funds to renovate/create additional educational and vocational space and purchase additional equipment, as soon as resources permit.

Maine State Prison

Computer Hardware Capital		$ 18,000
MSP Total:		**$ 18,000**

Maine Correctional Center

Embosser (Art Department)	($ 500)	
Meat Freezer (Slaughterhouse)	($25,000)	
Drill Press (Welding)	($ 3,500)	
Grinder (Welding)	($ 1,200)	
Storage & Work Area (Building Trades)	($ 3,000)	
2 Electric Static Exhausts (Building Trades)	($12,000)	
2 Sanders (Building Trades)	($ 5,000)	
Computer Air Conditioner	($ 600)	
4 Wheel Alignment Machines (Front End)	($ 9,000)	
Light Table (Graphic Arts)	($ 1,000)	
Electronic Course Startup Equipment	($15,000)	
Plumbing Startup Equipment	($ 2,000)	
Fleet Maintenance Equipment		
Laser Printer/Computer	($ 7,400)	
Paper Folder Machine	($ 3,700)	
Test Equipment/Tools	($ 3,000)	
Engine Measuring Device	($ 3,000)	
Safety Equipment & Materials	($ 8,000)	
Capital		$ 102,900
MCC Total:		**$ 102,900**

Charleston Correctional Facility

4-wheel tractor	($27,000)	
Expansion of Program Space	($21,000)	
Capital		$ 48,000
CCF Total:		**$ 48,000**

Downeast Correctional Facility

Renovations and Fire and Safety Alarm System	
Capital	$ 27,000
Create audiovisual learning center and purchase necessary equipment	
Capital	$ 3,500
Educational materials, to include funds for the Electrical Trades Program	
All Other	$ 3,961
DCF Total:	**$ 34,461**
TOTAL:	**$ 203,361**

Option 5: Hire a Director of Correctional Education.

Since each facility within the Department of Corrections has particular needs relative to the nature of its population and since correctional education in itself demands more and different expertise from its teachers than does noncorrectional education, it is necessary to not only involve correctional education in the whole philosophy of corrections in Maine but also to ensure that the Department is apprised of national trends in correctional education. A Director of Correctional Education could facilitate the development of correctional education holistically, could serve as a conduit to state and national networks and resources, and, as the coordinator for the various school units, could provide resource information, including grant sources, to enhance correctional education programming.

RECOMMENDATION:

98. The Department should hire a Director of Adult Correctional School Facilities, as soon as resources permit.

(1) Director of Adult Correctional School Facilities

Personal Services	$	40,145
All Other		500
Capital		555
Subtotal:	$	41,200
TOTAL:	**$**	**41,200**

Option 6: Recruit prisoner teachers to supplement and complement existing academic and vocational staff.

With the increase in population at all the Department's facilities, voluntary programming is becoming increasingly understaffed, particularly in the education departments. More prisoners are availing themselves, or would like to avail themselves, of academic and vocational programming. Many prisoners who have been involved in education for an extended period of time, due to both their interests and length of sentences, have become trusted and expert enough in various disciplines to become instructors themselves. With strict guidelines, proper training, and close supervision by existing academic and vocational staff, it is possible that the untapped resources of educated prisoners could be used to assist in teaching responsibilities, as they do at the Maine State Prison. Prisoner teachers might be used in basic educational programs, such as pre-GED training, basic literacy, math, and language tutoring. From a vocational aspect, prisoner teachers might be used to assist vocational trade instructors in teaching safety techniques, basic skill competency, and shop procedures. Prisoner Teachers would work under the direct supervision of a full-time academic/vocational staff member.

Policies and procedures would have to be developed to ensure that a consistent means of background investigation, competency testing, and training were given to prisoner teachers. With proper controls and adequate guidelines, such as a record of positive institutional behavior and cooperation, plus documented academic/vocational background and endorsements from academic, vocational, and security representatives, the use of prisoner teachers might enhance the availability of current staff and, at the same time, create a meaningful liaison between correctional education and the prisoners themselves.

RECOMMENDATION:

99. The Commissioner's Educational Administrators' Advisory Committee should consider the possibility of using prisoner teachers and, if feasible, should develop recommendations for the Commissioner's consideration by April 15, 1991.

TOTAL EDUCATIONAL PROGRAMS' COST: $ 627,228

INDUSTRIES PROGRAM

The 1985 Master Plan recommended that a correctional industries program be developed. Since then, the Department has taken several steps to implement that recommendation.

The Maine Department of Corrections is one of 20 correctional jurisdictions to be certified by the federal government to participate in the Private Sector/Prison Industries Enhancement Program. This certification also allows the county jails to establish industries programs under that certification. This certification means that the Department will be able to enter into agreements with private sector firms to draw upon their expertise in manufacturing, training, and marketing of products and services. The prohibition against use of prisoner labor in jobs funded by federal contracts and production of goods and services entered into Interstate Commerce is nullified by this certification.

Legislation permitting county jails to qualify as cost centers under the Department's certification and providing for counties to pay into the Crime Victim Assistance Program was passed during the second session of the 114th Legislature. This legislation also clarifies the composition of the required advisory committee.

In November, 1989, the Commissioner appointed a Commissioner's Advisory Committee on Correctional Industries. This committee, comprising representatives from MSP, MCC, DCF, CCF, and Central Office, is charged with the development of recommendations and proposals to create a unified and orderly development and implementation of correctional industries within the Department. Development, coordination, implementation, and ongoing review must occur at the Central Office level, in order to assure that the Department does not, within its own structure, operate industries which are in competition with each other or which unfairly compete with programs in the community.

It is expected that the industries ultimately developed will be based on the following premises:

1. Prisoners will be paid for their labors;

2. Adequate measures will be taken to ensure that there is no displacement of nonprison workers or any significant adverse impact on nonprison industries;

3. An attempt will be made, wherever feasible, to build in incentives for prisoners to successfully complete academic, vocational, and treatment programs during their incarceration;

4. The industries will, to the extent possible, be expected to operate as "real world" industries, to produce revenues to help cover the cost of operation, to produce quality products, which will be able to compete on their own merits, and to provide a realistic work setting for those involved; and

5. Prisoners in these programs will pay room and board to help defray the cost of their incarceration.

A description of the current status of industries programs in the Department's facilities follows:

Maine State Prison

The Maine State Prison is the only facility which operates industries programs. Those programs currently consist of a woodshop, in which tables, chairs, desks, and similar items are produced; a print shop, where mostly black and white printed matter is produced; and an upholstery shop, where furniture is refinished and recovered. There is also a craft program, where prisoners produce goods, in their spare time, for sale in the Prison store. Prisoners receive the money for each item sold.

Bolduc Unit

The Bolduc Unit operates a small agricultural program in which various crops are produced and recently began raising beef cattle. Although it is a function of the Department of the Secretary of State, there is a building at the Bolduc Complex, in which a metal license plate manufacturing operation is housed. Prisoners make Maine license plates and are paid by the Motor Vehicle Bureau.

Maine Correctional Center

The Maine Correctional Center, although it has produced some novelty items, is essentially without an industries program. One of the reasons for this lack of industries at MCC is that the building designed for industries is currently being used for housing. It is expected that, when the new buildings at MCC open this spring, this building will revert to its intended use as an Industries Building.

With the recent hiring of an Industries Manager at MCC, planning is well underway to create MCC's first industry, a commercial sewing operation, which will initially produce basic items, such as towels and washcloths, for departmental use.

Other facilities have no industries programs, although, at times, various items are produced for other agencies at no profit to the facility.

Many issues regarding industries remain to be addressed, chief among them being the compensation of prisoner employees. The current practice of providing paid employment only at MSP creates two problems:

1. The number of paid prisoner employment slots available is restricted, since many of these jobs are held by prisoners with long-term sentences; and

2. Prisoners do not willingly leave MSP for the other facilities, since they will lose their sources of income.

The Department should explore providing unified compensation to all participating inmates and should develop a pay plan. Such a plan might consist of the following steps:

1. During the initial intake, orientation, and observation periods, a prisoner would be assigned to unpaid, unskilled service-type jobs.

2. Following successful completion of the preceeding step, the prisoner would be placed in an unskilled, very minimum pay (such as $1.00 per day) job. The prisoner would be advised of the various employment opportunities in basic industries and would be required to reach certain minimum educational and/or skill levels in order to qualify. He/she also would be required to participate in recommended counseling, educational programs, etc. Upon the attainment of the necessary goals, the prisoner would be eligible to apply for promotional opportunities and, concurrently, would have to maintain all necessary educational and programmatic activities, as well as a clean disciplinary record.

3. At this point, a prisoner could be considered for employment in a certified industry, which would pay a wage comparable to that paid on the outside for comparable work. Continued participation in

counseling, educational, and treatment programs, as appropriate, would be required, as would counseling on handling personal finances, applying for jobs, how to be interviewed, etc.

It is hoped that the Industries Program will eventually generate sufficient income to pay the prisoners for work performed.

In order to provide necessary advice on the development and operations of the Industries Program, many people, from the Department and its facilities, business, labor, the legislature, etc., must be involved. A Citizens' Advisory Committee, comprising representatives from business, labor, the Chamber of Commerce, law, the legislature, etc., is in the process of being established by the Commissioner. In addition to the Commissioner's Advisory Committee and the Citizens' Advisory Committee, each facility should have an Industries Advisory Committee, comprising representatives from academic and vocational programs, security, and industries.

In order to coordinate the Industries Program, including all the committees, there should be a Director of Industries, located in Central Office, whose responsibilities would also include oversight of any industries programs established by county jails.

In addition, seed money to purchase equipment and create industry space will be needed. Such money would have to come from the General Fund, unless a private employer were willing to provide it.

RECOMMENDATIONS:

100. The Department should hire a Director of Corrections Industries, as soon as resources permit.

(1) Director of Corrections Industries		
Personal Services	$	37,315
All Other		2,639
Capital		555
Subtotal:	$	40,509
TOTAL:	**$**	**40,509**

101. The Maine State Prison should hire two Industrial Shop Supervisors and an Industries Salesperson, as soon as resources permit.

(2) Industrial Shop Supervisors		
Personal Services	$	50,132
(1) Industries Salesperson		
Personal Services	$	25,066
All Other		3,299
Capital		555
Subtotal:	$	28,920
TOTAL:	**$**	**79,052**

102. The Department should request funds for industries buildings, renovations, and equipment, as soon as resources permit.

Maine State Prison

Industries Storage Building	$	200,000
Site preparation and miscellaneous		75,000
Subtotal:	$	275,000
MSP Total:	**$**	**275,000**

Maine Correctional Center

Industries Space (60' X 100')	$	180,000
Site preparation and miscellaneous		37,500
Equipment		37,500
Subtotal:	$	255,000
MCC Total:	**$**	**255,000**

Downeast Correctional Facility

Industries Space (40' X 60')	$	72,000
Site preparation and miscellaneous		15,000
Equipment		17,000
Subtotal:	$	104,000
DCF Total:	**$**	**104,000**

Charleston Correctional Facility

Industries Space (40' X 60')	$	72,000
Site preparation and miscellaneous		15,000
Equipment		16,000
Subtotal:	$	103,000
CCF Total:	**$**	**103,000**

Bolduc Unit

Industries Space (40' X 60')	$	72,000
Site preparation and miscellaneous		15,000
Equipment		16,000
Subtotal:	$	103,000
Bolduc Total:	**$**	**103,000**
TOTAL:	**$**	**840,000**

103. Each facility should establish an Industries Advisory Committee by August 1, 1990.

104. The Commissioner's Advisory Committee should develop proposals for a pay plan to be presented to the Commissioner by December 1, 1990.

TOTAL INDUSTRIES PROGRAM COST:	**$**	**959,561**

Special Commission on Governmental Restructuring
Committee on the Protection of Public Safety and Health

Agenda
September 20, 1991
State House Room 436, 9:30 a.m.

9:30-Noon — Panel Discussion: Interdepartmental Coordination of Corrections Services and Programs

Panel Members

- Donald L. Allen, Commissioner
  Department of Corrections
- Charles A. Morrison, Commissioner
  Department of Labor
- Robert Glover, Commissioner
  Ronald S. Welch, Associate Commissioner
  Department of Mental Health and Mental Retardation
- Lynn Wachtel, Commissioner
  Department of Economic and Community Development
- Jamie Morrill, Associate Deputy Commissioner of Programs
  Department of Human Services
- William H. Cassidy, Associate Commissioner,
  Department of Education

Noon (12:30?) — Committee Lunch with Full Commission

After Lunch — Committee Discussion