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REPORT OF THE PRIVATE PRISON TASK FORCE

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General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

March 1987

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GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION

ROOM 108 - FINANCE BUILDING
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March 31, 1987

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Private Prison Task Force. This study was authorized by the 1986 Private Prison Moratorium and Study Act (P.L.64, No.19).

The Commission recognizes with gratitude the dedicated work of the task force members, under the capable leadership of Senator Stewart J. Greenleaf and Representative David R. Wright, as well as of the advisors to the task force who provided valuable assistance.

Respectfully submitted,

A handwritten signature in cursive script, reading "Roger A. Madigan".

Roger A. Madigan
Chairman

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I. Introduction

The Private Prison Moratorium and Study Act, approved March 21, 1986 (P.L.64, No.19), imposed a moratorium on the operation of private prisons and created a legislative task force known as the Private Prison Task Force to study the issue of private correctional facilities in Pennsylvania.

The task force consisted of Senators Stewart J. Greenleaf (co-chairman), David J. Brightbill and Michael A. O'Pake and Representatives David R. Wright (co-chairman), H. William DeWeese and Jeffrey E. Piccola. It was directed to consider "the need for and potential impact of private prisons, State regulations, contract and licensing provisions, liability, security and other related issues." Pursuant to the act, the Attorney General, Commissioner of Corrections, Secretary of Health and Executive Director of the Pennsylvania Prison Society served as advisors to the task force.

This act was the culmination of various events that have occurred in the Commonwealth during the past two years.

During the previous (1985-86) and current sessions of the General Assembly, members of the legislature expressed considerable interest in the subject of private correctional facilities. Two

bills were introduced in the earlier session. House Bill 158 (Private Prison Licensing Act) was introduced on January 30, 1985 and a subsequent version, House Bill 1721 (Private Prisons Act), was introduced on October 2, 1985. The latter was reported from the Judiciary Committee, as amended, on October 23, 1985 and later recommitted to the Appropriations Committee on October 29, 1985. Two public hearings were held on House Bill 158 (Private Prison Licensing Act), the first in Pittsburgh on March 21, 1985 and the second in Harrisburg on March 28, 1985.

Concurrently, the House and Senate considered 1985 House Bill 307 which ultimately was enacted as the Private Prison Moratorium and Study Act. This bill went through eight different versions before enactment.

On May 1, 1985, the Legislative Budget and Finance Committee directed its staff to examine the operation of private correctional facilities in other states and the potential implications of the private prison concept for Pennsylvania, especially with regard to potential benefits and problems and regulatory needs. Specific primary objectives of the study were to determine: (1) the potential role which private prisons might play in Pennsylvania; (2) the potential benefits and problems associated with usage of private prison facilities and programs for adults in Pennsylvania; and (3) what statutory and regulatory provisions would be needed if private prisons were to become operational in Pennsylvania. See Report on a

Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania, October 1985, page 4.

The legal and related issues raised in the report were addressed in enabling legislation proposed in House Bill 307, Pr.'s No. 2460. This version of the bill was in turn extensively analyzed: See Woolley, "Prisons for Profit: Policy Considerations for Government Officials," 90 Dick. L. Rev. 307 (Winter 1985).

On March 15, 1986, fifty-five inmates from a jail in Washington, D.C., under court order to reduce its inmate population, arrived at the 268 Center in Armstrong County, a private for-profit correctional facility. Prior to the arrival, the 268 Center had housed inmates from the Allegheny County Jail (also under a court order to reduce overcrowding). The Attorney General of the Commonwealth, claiming that the 268 Center was not equipped to handle the out-of-state inmates, obtained a Commonwealth Court injunction requiring the inmates to be removed by March 18, 1986. Judge David W. Craig found that "because of inherent limitations of the 268 Center facility and the serious lack of coordination and communication between the governmental agencies involved, disposition of the present group of prisoners from the District of Columbia to the 268 Center presents a clear and present danger and a threat of irreparable harm to the public welfare and interest" Order of Commonwealth Court dated March 15, 1986 (No. 672 of 1986). A few days after the prisoners left the jail, the General Assembly approved House Bill 307.

The Private Prison Moratorium and Study Act was the first legislative expression regarding the operation of private prisons in Pennsylvania. The act prohibits the operation of for-profit adult correctional facilities in Pennsylvania until June 30, 1987. The act created a legislative task force within the Joint State Government Commission and directed that it report its findings and recommendations to the General Assembly by March 31, 1987.

II. Summary of Task Force Activities

On May 6, 1986, the task force held its organizational meeting at which the members were briefed on the background and purpose of their study. It was agreed that public hearings would be useful to the task force's deliberations.

PUBLIC HEARINGS

At the first hearing, held in Harrisburg on June 19, 1986, Commissioner Glen R. Jeffes of the Department of Corrections advised the members that private prisons are not a viable option at the State level. He said that the Commonwealth is better prepared than most states to meet the demands that longer and tougher sentences are placing on the State correctional system. However, he opined that private prisons might be useful at the county level. The number of individuals incarcerated for driving under the influence and summary offenses is increasing and many county jails are presently overcrowded. He strongly encouraged the task force to fully address the important issues involved in the licensing and regulating of private prisons, in particular, the liability issue. At the task force's request, he supplied a copy of the department's Minimum Standards and Operating Procedures for Pennsylvania County Prisons.

Reverend Paul D. Gehris, director of the Pennsylvania Council of Churches' Office for Social Ministry, said that the Council questioned whether the Commonwealth should delegate its responsibility to incarcerate offenders to for-profit private prisons. He suggested nonprofit alternatives to for-profit facilities. A discussion ensued on possible alternatives to incarceration, such as house arrest, community service programs and early release options. Reverend Gehris supplied additional materials on alternatives to incarceration which had been researched by the Council. These were intensive probation, a more elastic bail system, daily work release, tax incentives for businesses to hire probationers, parolees and others and in-house education where the completion of goals would be rewarded with earned time.

William G. Babcock spoke in his capacity as executive director of the Pennsylvania Prison Society and on behalf of the Coalition for a Moratorium on Private Prisons. Prior to and following the enactment of the moratorium on private prisons in Pennsylvania, the Pennsylvania Prison Society issued statements opposing the concept of for-profit prisons on legal, ethical and administrative grounds. However, the Society supports further study on the issue of nonprofit private prisons. Further, it is the Society's position that Pennsylvania should consider alternatives to incarceration such as intensive probation, house arrest and victim-offender reconciliation programs.

Julius Uehlein, president of the Pennsylvania AFL-CIO, David McCann, political action director of the Pennsylvania Social Services Union, and Richard Bloomingdale, legislative director of AFSCME Council 13 testified as a panel in opposition to for-profit private prisons. Mr. Uehlein said that the Pennsylvania AFL-CIO firmly believes that the prison system is a fundamental function of government which may not be contracted out. Mr. McCann stated that the Pennsylvania Social Services Union, opposed to private prisons generally, is specifically opposed because of possible cutbacks in inmate counseling services. Mr. Bloomingdale added that AFSCME Council 13 is concerned about the training and wages of employees in private prisons.

Susan Frietsche, deputy director of the American Civil Liberties Union, expressed concern that with the expiration of the moratorium on private prisons in June 1987, unregulated and unlicensed private prison facilities may appear in Pennsylvania. She urged on behalf of the ACLU that the task force reject the concept of for-profit prisons and enact legislation banning private prisons in Pennsylvania indefinitely. She also asked that the members look into the issue of public prison reform.

The executive director for the Pennsylvania State Association of County Commissioners, Douglas E. Hill, advised the members that his association has long been concerned with the issue of prison overcrowding at the county level. In this connection, the association has considered the use of private prisons at the county

level as one solution to the problem, particularly for those imprisoned for driving under the influence offenses. He felt that private prison facilities would permit the counties to expand and contract the number of cells to correspond to a fluctuating load. Further, private prison facilities would permit authorities to segregate the inmates sentenced for driving under the influence offenses from inmates incarcerated for more serious personal or property offenses.

Robert C. Hauhart, a staff attorney for the Lewisburg Prison Project, Inc., said project members would support private prisons if they were effectively licensed and regulated.

Robert E. Bair, on behalf of the Pennsylvania Association on Probation, Parole and Correction, also supported private prisons provided they were licensed, inspected and operated under standards and guidelines of the Department of Corrections. He noted that these facilities would have to satisfy security and custody concerns.

In written testimony submitted prior to the hearing, Charlotte S. Arnold, executive director, THE PROGRAM for Female Offenders, Inc., a nonprofit agency, described the benefits of a nonprofit agency and urged the members to distinguish between nonprofit and for-profit providers of correctional services.

At a hearing in Kittanning, Armstrong County, July 11, 1986, Donald Sayers informed the members that while the STOP (Stop the Oncoming Prison) Committee of which he is president was formed in 1984 in opposition to the proposed construction of a privately

operated, maximum security correctional facility for out-of-state inmates in Beaver County, Pennsylvania, STOP is now opposed to the operation of all private prisons in Pennsylvania. Ruth Gibbons, secretary of STOP, concurred with Mr. Sayers.

As spokesperson for the Allegheny County Prison Employees Independent Union, John Pastor said that the union is opposed to the concept of private prisons. However, if overcrowding was a problem that private prisons was meant to solve, he suggested other alternatives such as nonprofit centers, work release programs and community service projects.

Gary Lucht, president of the Pennsylvania Prison Wardens' Association, opposed the moratorium on private prisons. Although the association shared the concerns relating to private prisons which had been previously expressed, its members urge that all alternatives to traditional incarceration, including privatization, be considered. He suggested that private prisons could serve prisoners with special needs and inmates in protective custody.

Philip E. Tack, secretary-treasurer of the 268 Center, Inc., enumerated the reasons why he felt that private correctional facilities were needed in Pennsylvania. He said that due to harsher and longer sentences, the growth in an "at-risk" population and the driving under the influence statute which requires incarceration, many county jails were overcrowded. He added that because of the overcrowding, county jails could not provide rehabilitative services for inmates who were incarcerated for more serious offenses or who

were repeat offenders. Additionally, the introduction of private prisons at the county level would provide jobs for the citizens of counties with high unemployment levels.

Charles E. Fenton, president of Buckingham Security Ltd., focused the attention of the members on the use of private correctional facilities for special needs inmates, such as those who are either mentally ill or mentally retarded, chronically ill or old, under protective custody, or juveniles sentenced as adults. He added that such types of inmates could be housed in privately owned and operated regional facilities at the county level. When questioned about the accountability issue relating to private prison facilities, he stated that either statutory regulations or contractual controls would provide the required accountability.

John T. Kilkeary, chief of security of Butler County Prison, stated that the private management of that prison had resulted in a number of administrative improvements.

Robert F. Hawk, attorney for the 268 Center, Inc. and Buckingham Security Ltd., favored for-profit private correctional facilities. He said that minimum security private prison facilities are similar to treatment centers for delinquent youth. Since a number of treatment centers for delinquent youth were already being operated under State licensing and regulation, he believed that private correctional facilities could be operated in a similar fashion.

Vincent L. King, a supervisor of Sugar Creek Township, Armstrong County, the location of the 268 Center, Inc., acknowledged that there is a critical problem of overcrowding in Pennsylvania's prisons and jails. This overcrowding problem stems in part from the fact that although tougher sentencing laws had been enacted, no additional revenues were available to provide for the increased influx of inmates. He contended, however, that private prisons were not a viable alternative. Instead of private prisons, other alternatives such as early release opportunities, work release programs and intensive parole and probation services, should be investigated and utilized. His major concerns regarding private prisons were that their private status would preclude any measure of public oversight. Also, he stressed that such facilities are for-profit operations. He considered that the profit motive would override the benefits of private correctional facilities stressed by proponents. He recommended that private prisons be prohibited from operating in Pennsylvania.

James R. Baker, as spokesperson for Citizens for Community Awareness, said that his organization opposed privately owned and operated prisons. He offered two alternatives to such facilities: the adaptation of abandoned State hospitals and military reservations for use as minimum security prisons, and the addition of a \$10.00 surcharge to all fines to be set aside to finance State prison and county jail construction or renovation.

David F. Megmin, solicitor for Sugar Creek Township, queried whether the traditional governmental function of incarceration should be, or indeed could be, constitutionally delegated to a private prison provider.

Douglas G. Linn II, attorney for Citizens for Community Awareness, said that he did not challenge the professionalism of private prison operators. In his opinion, the Commonwealth could, by statute and regulation, provide a structure which is able to address virtually any technical objection to private prisons. However, he questioned whether a traditional governmental function could be constitutionally delegated to a private provider.

Additional written testimony was submitted prior to the hearing. In his statement, William B. Robinson, manager, National Criminal Justice Program, acknowledged that overcrowding of public prisons was the result of a lack of government funding to build new jails or rehabilitate old ones. He urged the members not to place restraints on local governments which would effectively prevent them from contracting with private providers for the provision of private prisons.

OTHER STATES

In addition to the testimony received by the task force, the Commission staff surveyed the laws of other states relating to the

operation of private prisons. Legislation permitting either state or local governments or both to contract with private providers for the operation of private correctional facilities has been enacted by eight states including Kentucky, Texas, Montana, Colorado, Florida, Massachusetts, New Mexico and Tennessee. An analysis of this legislation showing for each state the type of facility authorized and the provisions relating to controls, regulation and licensing is found in table 1. However, few facilities are actually in operation. A recent Massachusetts law, for instance, permits the financing, operation and maintenance of one state correctional facility by a private organization. With the passage of this legislation, the Massachusetts legislature indicated its support for exploring the private sector's ability to aid the state in reducing prison overcrowding while controlling costs. However, a report issued by the Massachusetts Legislative Research Council entitled, Report Relative to Prisons for Profit on July 31, 1986, claims that the governor, unconvinced of the private sector's ability to reduce costs, and skeptical concerning the government's ability to exercise adequate controls, is unwilling to authorize privately operated prisons at this time. Table 2 sets forth a brief description of the for-profit privately operated facilities in other states. The review of the laws of other states indicates that none has enacted legislation prohibiting privately operated correctional facilities.

A recent Virginia study indicates that an increasing number of private for-profit and nonprofit corporations are operating a wide

Table 1

STATUTES PROVIDING FOR THE PRIVATE OPERATION OF STATE CORRECTIONAL FACILITIES
AND COUNTY AND MUNICIPAL JAILS IN OTHER STATES

State	Type of facility	Contract selection	Contract approval	Contract terms	Contract termination	Regulation	Monitoring/Licensing
KENTUCKY Ky. Rev. Stat. § 439.590 (1972)	Community residential correctional centers for rehabilitation of felons	Secretary, Corrections Cabinet	Local legislative body				
TEXAS Tex. Civil Code § 5115d (Vernon 1983)	Low risk county detention facility	County Commissioners Court	County Sheriff			Contract with certain elected or appointed officials prohibited.	
MONTANA Mont. Code Ann. § 7-32-2231 et seq. (1985)	County or regional jails	County Sheriffs	County Sheriffs	Three-year project. Agreement must include the following: detailed operating standards, performance bond, indemnification for liability, liability insurance, minimum training standards.	For good cause	Powers of private jailer and employees include control over inmates inside jail and outside jail when transporting, pursuing or apprehending inmates.	
COLORADO Col. Rev. Stat. § 17-26-130 et seq. (1986)	Two specific counties	Joint Jail Commission	Written approval of the Div. of Criminal Justice, Dept. of Public Safety	Three-year pilot project. Agreement must include the following: performance bond, paid training, compliance with standards, cost effectiveness, liability insurance.	Ninety-day notice for failure to comply with standards and contract terms.	Biannual inspections	Report by Criminal Justice Div., Dept. of Public Safety to Legislature not sooner than 30 months nor later than 36 months after commencement of operation.

FLORIDA Fla. Stat. § 944.105 et seq. (1986)	1) State correctional facilities 2) County detention facilities	1) Dept. of corrections 2) Local government	1) Legislative approval and funding; compliance with rules. 2) Consultation with County Sheriff and adoption of ordinance.	Private provider liability, access to inmates, certification of employees, responsibility for training, monitoring of contract provisions.		Annual performance and financial audits of department and county contracts.	Contract monitors appointed by department and county.
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MASSA- CHUSETTS 1986 Mass. Acts Ch. 799 § 25	One state correctional facility	Commissioner of Correction				Contract prohibited where department of correction's employees have direct or indirect financial interest.	
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NEW MEXICO N.M. Stat. Ann. § 33-3-1 et seq. (supp. 1986)	County and municipal jails	Attorney General	Attorney General and local gov. div., Dept. of Finance and Administration and Risk Management Div. of General Services Dept.	Three-year project. Agreement must include the following: assumption of liability insurance, mandatory paid training, comprehensive standards.	For cause on 90-days notice	Power of peace officer, same civil and criminal liability protection, no power to award or forfeit "good time," sheriff makes determination of "good time."	Attorney general reports to legislature.
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N.M. Stat. Ann. § 33-1-17 (supp. 1986)	Any minimum security facility	Dept. of Corrections	General Services Dept.	Similar mandatory terms.	For cause on 90-days notice		
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TENNESSEE Tennessee Code Ann. § 41-24-101 et seq. (1986)	One state facility	Commissioner of Corrections	Executive/ legislative approval	Agreement must assure annual cost savings of 5 percent. Three-year project with option to renew for 2 years.	State may cancel any time in first year upon 90-days written notice	Governor develops contingency plan in event of contract termination. Private party cannot calculate release, parole eligibility dates or sentence credit; approve furlough or work release or take disciplinary action.	Executive/ legislative monitoring
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Table 2
 FOR PROFIT PRIVATELY OPERATED PRISONS AND JAILS
 AT STATE, COUNTY AND MUNICIPAL LEVEL
 (March 1987)

State	State level	County level	Municipal level
New Mexico		Santa Fe County Jail, Santa Fe, New Mexico. Over 100 beds - "secure" facility.	
Kentucky	Marion Adjustment Center St. Mary, Kentucky, operated by U.S. Corrections Corp. Minimum security facility for 200 male felons. Opened February 1986 - fully operational since October 1986.		
California	Hidden Valley Ranch, La Honda, California, operated by Eclectic Communications, Inc. Minimum security facility for 80 male parole violators. Has been a private prison for four years, initially for juveniles, then for Federal prisoners. State contract since January 1986.		
Florida	Beckham Hall, Miami, Florida. Operated by National Construction Management, Inc. Minimum security - felons approaching release. Opened in Fall 1985.	Bay County Jail Panama City, Florida Operated by Corrections Corporation of America. Fall 1985. Existing jail plus new annex, Work Camp Jail Annex (opened 6 months)	
Tennessee		Silverdale Correctional Facility, Hamilton County, Tennessee. Operated by Corrections Corporation of America. Minimum security facility for 300 male inmates. Open for three years.	

range of juvenile and adult facilities on behalf of federal, state and local governments. Juvenile institutions include a facility in Florida; three facilities in Tennessee; and a facility for young adults in California. Adult facilities include one facility each in Florida, New Mexico and Kentucky; and two facilities in Tennessee. The federal Immigration and Naturalization Service contracts for the detention of illegal aliens in six facilities in four southwestern states: Texas, Colorado, California and Arizona. The Bureau of Prisons contracts for a facility in Texas. Further, 28 states contract with private nonprofit groups for the operation of pre-release, work release or halfway houses. Major contracts include a treatment center in North Carolina; a facility for women in Minnesota; a number of halfway houses in Colorado, Tennessee and Virginia. For a complete listing of these facilities, see Study of Correctional Privatization, Secretary of Transportation and Public Safety, Commonwealth of Virginia, November 1986, page 64.

PENNSYLVANIA

The Private Prison Moratorium and Study Act identifies four types of correctional facilities (or services) explicitly and one implicitly. The act directly applies only to private for-profit adult correctional facilities (section 2). Excluded from the application of the act are:

- (a) Private facilities certified, licensed or operated by the Departments of Public Welfare or Health (section 2); apparently private for-profit facilities for juveniles cannot operate unless they are certified or licensed.
- (b) Pre-release centers established by the Department of Corrections pursuant to 1968 Act No. 173 (section 2).
- (c) Private contractor for security services (sections 2 and 3(c)).
- (d) Implicitly, private nonprofit correctional facilities.

There was at least one of each of the above types of facilities or service operating in Pennsylvania at the time the act was considered; they continue to operate.

In Pennsylvania, the Weaversville Intensive Treatment Center, Northampton County, has been operated by the RCA Service Company, a for-profit corporation, under contract to the Pennsylvania Department of Public Welfare since 1976. Weaversville, which has a capacity for 20 residents, is a secure training school for the management, treatment and rehabilitation of adjudicated delinquent boys from 10 to 18 years.

Two facilities at the county level which are operated by nonprofit agencies are The Program Center, Allegheny County and Atkins House Residential Treatment Center, York County. The Program Center has been operated by THE PROGRAM for Female Offenders, Inc., since 1984. This facility is a work release center for nonviolent female offenders which serves as an alternative to incarceration in

the Allegheny County Jail. Atkins House Residential Treatment Center has been in operation since 1976. This facility serves the female offender population of York County. It also serves as a pre-release facility for inmates from Muncy State Correctional Institution.

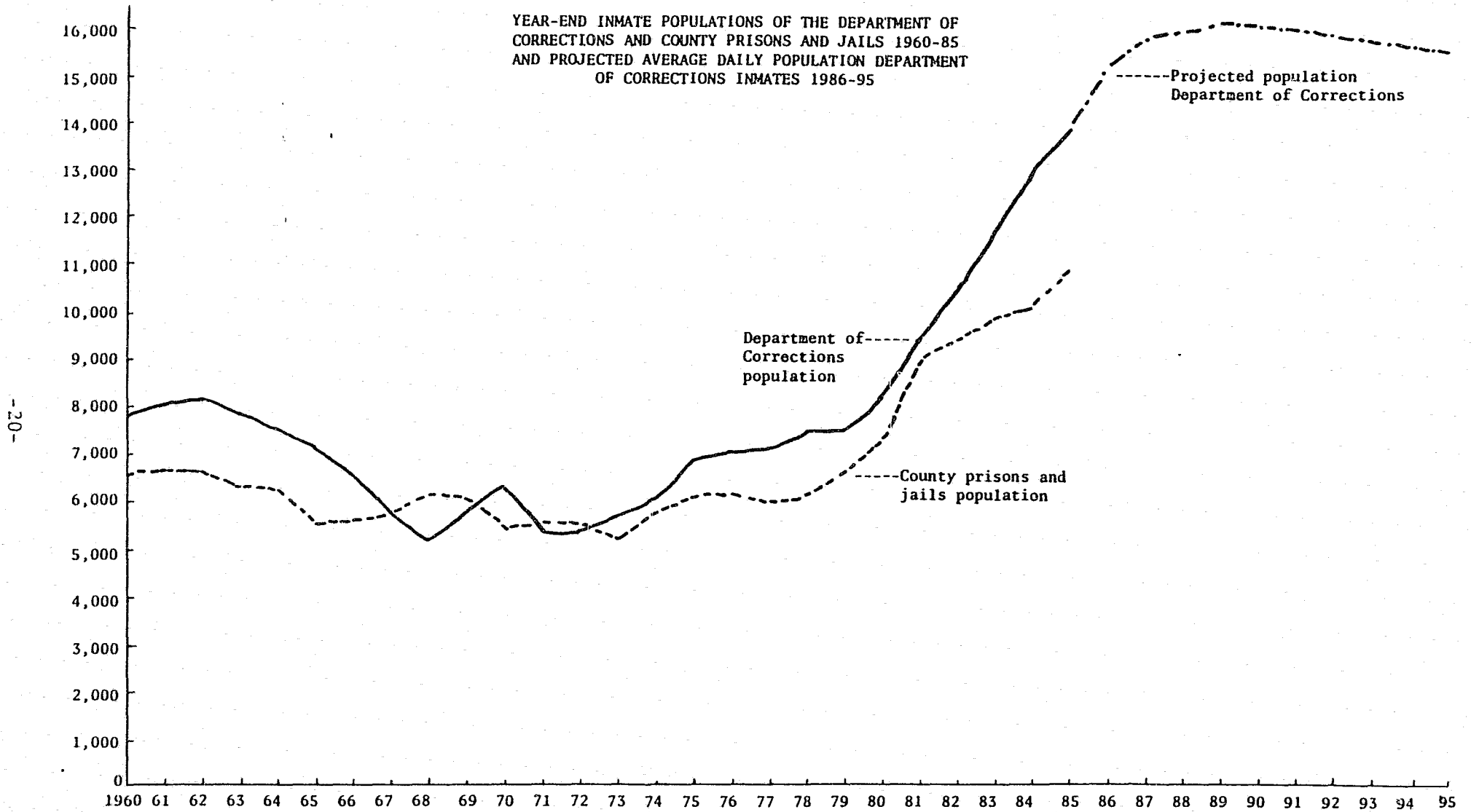
Several private, nonprofit agencies operate pre-release residential facilities under contract with the Pennsylvania Department of Corrections. Onwards, Inc., which has been in operation for 12 years, runs a pre-release center for 11 inmates in Philadelphia. A second Philadelphia pre-release center is operated by Volunteers of America. The center, which has been in operation for one year, has a capacity of 36 inmates. Pre-release status is a transitional stage between incarceration and parole.

Finally, the Butler County Jail, Butler County, has been managed under a contract with Buckingham Security Ltd., a for-profit corporation since 1985. The warden is an employee of Buckingham Security Ltd.; the rest of the staff are public employees. A similar situation exists in Centre County where the county prison has been managed under contract with Wilson Corrections Consultants, a for-profit corporation since 1985.

The year-end inmate populations of the State correctional facilities and county prisons and jails during 1960-85 and the projected average daily inmate population of the State correctional facilities, 1986-95 are presented in chart 1. Table 3 shows State correctional facilities' year-end inmate population and capacity for 1970-86 and projected population and capacity 1987-95. Table 4 shows

Chart 1

YEAR-END INMATE POPULATIONS OF THE DEPARTMENT OF
CORRECTIONS AND COUNTY PRISONS AND JAILS 1960-85
AND PROJECTED AVERAGE DAILY POPULATION DEPARTMENT
OF CORRECTIONS INMATES 1986-95



SOURCE: Pennsylvania Department of Corrections, Division of Finance, Planning and Research.

Table 3

PENNSYLVANIA DEPARTMENT OF CORRECTIONS
 YEAR-END INMATE POPULATION VERSUS
 CAPACITY, 1970-86 AND PROJECTED
 POPULATION AND CAPACITY, 1987-95

	Designed capacity*	Population	Percent of capacity
1970	8,477	6,289	74.2
1971	8,503	5,284	62.1
1972	8,605	5,355	62.2
1973	8,690	5,659	65.1
1974	8,742	6,101	69.8
1975	8,774	6,860	78.2
1976	8,774	7,040	80.2
1977	8,789	7,096	80.7
1978	8,969	7,463	83.2
1979	8,969	7,806	87.0
1980	8,969	8,243	91.9
1981	8,959	9,420	105.1
1982	8,975	10,572	117.8
1983	9,451	11,798	124.8
1984	9,907	13,126	132.5
1985	10,742	14,260	132.8
1986	11,547	15,227	131.8
1987	13,726**	15,814**	115.2
1988	13,726	15,981	116.4
1989	13,726	16,183	117.9
1990	13,726	16,116	117.4
1995	13,726	15,547	113.2

*Includes modular units since 1983.

**Projected capacity includes four new institutions currently under construction and scheduled for opening in 1987. The four new institutions and their capacities are: Cresson, 499, Frackville 540, Retreat 592 and Smithfield 548. Projected population figures are the Department of Corrections projections until 1995.

SOURCE: Pennsylvania Department of Corrections,
 Division of Planning, Research and Statistics.

Table 4

YEAR-END POPULATION OF COUNTY PRISONS
AND JAILS, 1970-1986 AND THE CAPACITY
OF COUNTY PRISONS AND JAILS FOR SELECTED YEARS

	Population	Total capacity	Percent of capacity
1970	5,421	NA*	
1971	5,579	NA	
1972	5,527	NA	
1973	5,209	NA	
1974	5,799	NA	
1975	6,093	8,123	75.0
1976	6,156	NA	
1977	5,940	NA	
1978	6,081	NA	
1979	6,608	NA	
1980	7,553	8,937	85.0
1981	8,977	NA	
1982	9,428	NA	
1983	9,780	NA	
1984	10,156	NA	
1985	10,870	10,338 (June)	105.0
1986	12,955 (October 31)	12,387 (October 31)	105.0

*NA - Not available.

SOURCES: Pennsylvania Department of Corrections, Division of Finance, Planning and Research and Legislative Budget and Finance Committee, "Report on a Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania," (October, 1985).

county prisons and jails year-end inmate population 1970-86 and capacity for selected years. The capacity and population of county prisons and jails as of October 31, 1986 may be found in table 5.

COST EFFECTIVENESS

The relative cost effectiveness of public versus private facility management is a controversial subject. While no cost effectiveness studies are available, a report from the Attorney General of New Mexico and a New York Times article illustrate the extent of this controversy.

In his August 18, 1986 status report to the New Mexico House of Representatives concerning the Santa Fe County Jail, the Attorney General said that significant cost savings had been accomplished by contracting with a private provider. The Santa Fe County Jail, a new facility with a capacity of 100 inmates, has been operated by the Corrections Corporation of America since 1986. The corporation's bid of less than \$45.00 per diem contrasted with a per diem in excess of \$80.00 which the county spent prior to the contract. According to the Attorney General's report, cost savings were accomplished not by a reduction in employee salaries or benefits but by better and fuller use of the facility. Further the corporation has agreed to a maximum charge for the three-year duration of the contract which is below current operating cost.

Table 5

PENNSYLVANIA COUNTY PRISON AND JAIL CAPACITIES
AND POPULATION BY COUNTY, AS OF OCTOBER 31, 1986

County	Total capacity	Population Oct. 31, 1986	Percent of capacity
Adams	55	77	140
Allegheny	975	829	85
Armstrong	62	49	79
Beaver	78	98	126
Bedford	56	15	27
Berks	325	332	102
Blair	170	176	103
Bradford	46	36	78
Bucks	522	472	90
Butler	96	92	96
Cambria	165	126	76
Cameron	6	2	33
Carbon	68	38	56
Centre	48	48	100
Chester	550	468	85
Clarion	32	25	78
Clearfield	114	113	99
Clinton	40	21	53
Columbia	70	53	76
Crawford	73	59	81
Cumberland	210	206	98
Dauphin	368	389	106
Delaware	650	633	97
Elk	19	7	37
Erie	238	234	98
Fayette	76	89	117
Forest	--	--	--
Franklin	110	117	106
Fulton	--	--	--
Greene	27	32	119
Huntingdon	40	34	85
Indiana	60	46	77
Jefferson	54	28	52
Juniata	28	30	107
Lackawanna	185	154	83
Lancaster	309	352	114
Lawrence	75	74	99
Lebanon	146	164	112
Lehigh	300	337	112
Luzerne	143	255	178
Lycoming	115	136	118

Pennsylvania County Prison
and Jail Capacities--Continued

County	Total capacity	Population Oct. 31, 1986	Percent of capacity
McKean	35	28	80
Mercer	70	70	100
Mifflin	60	36	60
Monroe	72	68	94
Montgomery	536	536	100
Montour	45	40	89
Northampton	220	309	140
Northumberland	150	132	88
Perry	12	12	100
Philadelphia	3,500	4,399	126
Pike	25-30	20	73
Potter	13	9	69
Schuylkill	100	110	110
Snyder	26	21	81
Somerset	60	56	93
Sullivan	--	--	--
Susquehanna	20-25	20	89
Tioga	28	22	79
Union	25	22	88
Venango	48	32	67
Warren	75	72	96
Washington	129	118	91
Wayne	30	20	67
Westmoreland	76	86	113
Wyoming	48	42	88
York	275	289	105
Totals	12,387	12,955	105

SOURCE: Pennsylvania Department of Corrections and table 2 in a "Report on a Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania." A Commission telephone survey indicates that several changes have taken place since June 1985: Allegheny County is now using its jail annex with an additional capacity for 435 inmates; Bucks County has opened a new prison with a capacity for 522; Dauphin County has increased its capacity by 144; Lehigh County, by doubling certain cells, increased capacity for 50 additional inmates; Montgomery County has opened a new prison with capacity for 536 inmates; Northampton County has increased its capacity by 60 units; Philadelphia has increased capacity by 800 inmates and Wyoming County has opened a new jail with a capacity of 48 inmates. In addition, ten counties, including Allegheny, Bradford, Butler, Crawford, Luzerne, Monroe, Philadelphia, Susquehanna, Tioga and Westmoreland are planning expansions or building new facilities including work release facilities.

However, a New York Times article of May 21, 1985 reports that Hamilton County, Tennessee paid \$200,000 more than it expected to pay in 1985. In 1984, the county contracted with Corrections Corporation of America to operate the Silverdale Detention Center, a modern facility with a capacity of 325 inmates. The corporation's bid of \$21.00 per diem was less than the \$24.00 per diem previously spent by the county. Cost over-runs resulted when the county seriously underestimated the number of prisoners which increased substantially from the previous year because of vigorous local enforcement of the state's law on driving while drunk.

DISCUSSION

The task force's deliberations, after reviewing the testimony, other Pennsylvania studies and the data presented by staff, reflected the views expressed to it by those appearing at the public hearings. These views ranged from outright opposition to for-profit adult correctional facilities through suggestions of alternative approaches designed to reduce the number of those incarcerated in State and local facilities to cautious support for facilities to house certain types of offenders or special needs inmates.

Those opposing private adult facilities in Pennsylvania contend that such facilities may be unconstitutional as an improper delegation of the government's exclusive duty in the sensitive role

of incarcerating criminals. No United States or Pennsylvania constitutional authority can be found that would prohibit the General Assembly from utilizing private correctional facilities. In fact at both the federal and State levels, persons convicted of or detained for criminal offenses are presently housed in facilities operated by private for-profit and nonprofit entities. See the facilities listed in table 2.

However, the present law supports the view that the delegation of this role to the private sector does not relieve the State or local government from liability for civil rights or tort actions brought by inmates. Furthermore, it does not relieve them of the duty to supervise, or at least inspect, the facilities; the duty to set minimum standards for safety of the residents in the facility's community; and the duty to set health and safety standards for the benefit of the inmates. The failure of a state or county government which enters into a contract with a private provider to address in the contract each of the foregoing items could provide grounds for legal action. Under the federal Civil Rights Act, 42 U.S.C. § 1983, government cannot insulate itself from potential liability by contract.

In Medina v. O'Neill, 589 F. Supp. 1028 (S.D. Tex. 1984), the case which is perhaps most directly relevant to state action in the private prison context, the federal district court found "obvious state action" on the part of both the federal defendants and the private company. In Medina, 16 inmates who had been confined in a

single cell that was designed to hold 6 persons, sued the privately run corporation and the Immigration and Naturalization Service, complaining about these conditions. Additionally, one alien had been killed and another seriously wounded by an untrained guard during an attempted escape. The plaintiffs claimed that they had been unconstitutionally deprived of life and liberty. Additionally, they claimed that the Immigration and Naturalization Service had a duty to oversee their detention and that the failure to do so constituted state action. The court noted that the Supreme Court has recognized a "public function" concept which provides that state action exists when the state delegates to private parties a power "traditionally exclusively reserved to the state." Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 157 (1978).

More recently, the United States Court of Appeals addressed the question of whether a private provider who contracted for the provision of medical care to county jail inmates and appropriate county officials were liable under section 1983 to the estate of a deceased county jail inmate who was improperly diagnosed. The court found that state action was present and stated that where a function which is traditionally the exclusive prerogative of the state (or here, county) is performed by a private entity, state action is present. Ancata v. Prison Health Services, Inc., 769 F.2d 700, 703 (11th Cir. 1985).

In the event of tort actions brought under state law by inmates or third parties injured by inmates against the contracting

governmental entity, the entity is immune from liability except for negligent conduct which falls within the eight exceptions set forth in 42 Pa.C.S. §§ 8522 (exceptions to sovereign immunity) and 8542 (exceptions to governmental immunity).

Other specific arguments against private facilities identified in the testimony and previously raised by the Legislative Budget and Finance Committee report, Report on a Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania, were addressed in proposed amendments to House Bill 307 in the House of Representatives on March 25, 1985 and April 16, 1985 and in the Senate as an amendment to House Bill 307 adopted on November 13, 1985. This amendment was stricken from the bill on March 11, 1986 prior to its passage as Act No. 19. An identical proposal was introduced into the current session by Senator Greenleaf on February 2, 1987 as Senate Bill 229. It contains provisions for licensing, regulating and inspecting private prisons; provisions providing for emergency take-overs by governmental authorities; provisions requiring the private provider to indemnify the government for claims brought against it arising out of the operation of the facility; provisions for guidelines for commitment to private facilities; and provisions for conferring peace officer status on employees of private facilities.

Other issues raised by those opposed to private prisons include concerns that the profit motive may be placed ahead of service for the public good, that private prisons may be used as a

business investment to gain tax advantages and that the potential for a monopoly exists which could result in increased rates to the government. These conclusions cannot be evaluated.

Opponents of private prisons also contend that, rather than authorize private prisons, the General Assembly should explore the various alternatives designed to reduce the number of those incarcerated suggested by the witnesses at the public hearings.

The General Assembly has before it proposals addressing some of these issues. In February 1985, the Prison and Jail Overcrowding Task Force of the Pennsylvania Commission on Crime and Delinquency (PCCD) issued a report, A Strategy to Alleviate Overcrowding in Pennsylvania's Prisons and Jails. Among other initiatives to alleviate overcrowding, the PCCD task force recommended the implementation of a system of good time credits for State prisoners. Legislation providing for a system of earned time was introduced in the spring of 1985 and again in 1987. See 1985 Senate Bill 786 (not reported out of committee) and Senate Bill 424, introduced February 27, 1987.

Those who support private prison facilities point to the overcrowding of present public facilities and the possible increase in demand to be expected in view of legislative directives such as mandatory minimum sentences as evidencing a need for private prisons.

Proponents of private prisons also contend that private prisons could provide alternative forms of incarceration for special needs inmates. According to a Department of Corrections' estimate as

of March 2, 1987, there are approximately 2,968 special needs inmates in the State correctional system out of a total inmate population of 14,930. These special needs inmates include those who: (1) are emotionally unstable, mentally ill or mentally retarded; (2) require ongoing counseling services, placement in a specialized treatment program or select housing in a supportive environment; (3) can be classified as epileptic; (4) are physically handicapped or chronically ill; and (5) require placement into protective custody.

Recent legislation mandating prison sentences has led to concerns that certain other special needs inmates, while requiring incarceration for reasons of punishment and example, should not be housed with those convicted of crimes exhibiting violent anti-social behavior.

Further, there was no testimony presented to the task force which contradicted the legislative decisions in Act No. 19 to limit inmates in private prisons to those committing summary offenses and drunken driving offenses and to prohibit prisons from accepting other states' and federal prisoners. Also, there was no testimony offered objecting to the exclusion of other types of prison facilities from the application of the act.

Faced with a March 31, 1987 deadline for reporting and a June 30, 1987 expiration of the moratorium imposed by Act No. 19, the task force considered at length the status of the Pennsylvania law after the latter date. On the one hand the Private Prison Moratorium and Study Act could be viewed as having completely fulfilled its purpose

as of June 30, 1987; it could be argued that it is, in effect, self-expiring or self-repealing. This would leave Pennsylvania without statutory law authorizing or prohibiting or restricting private prisons. Since the act nowhere provides for its expiration or repeal, it must be concluded that, while the prohibition expires by its terms and section 4 authorizing the study obviously has no ongoing effect, the restrictions in section 5(b) remain in force. Section 5(b) provides:

(b) Restrictions.--Incarceration in a private correctional facility shall be limited to the following:

(1) Inmates sentenced for summary offences [sic] or offenses pursuant to 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

(2) Prison inmates that are not Federal.

(3) Prison inmates that are not from a state other than Pennsylvania.

Since it is agreed that in the absence of further legislative action, after June 30, 1987, any private correctional facility could begin operation, and further that any private correctional facility grandfathered in by section 5(a) would have the restrictions of section 5(b) applied to it, it would be an absurd result to say that the grandfathered facility was restricted by section 5(b) but that a new facility could operate free of restrictions. See 1 Pa.C.S. § 1922, "Presumptions in ascertaining legislative intent"; particularly clauses (1), (2) and (5). In conclusion, again in the absence of

further legislative action, a private correctional facility operating after June 30, 1987 is subject to the restrictions of section 5(b).

TASK FORCE ACTION

Representative H. William DeWeese personally objected to private prisons operating in Pennsylvania under any circumstances. See appendix. Representative Jeffrey E. Piccola maintained the position that private prisons properly regulated offer a flexible response to prison overcrowding. Several of the members of the task force were not convinced that the necessity for private prisons had been sufficiently established--particularly in the light of the paucity of reliable cost effectiveness data.

Some of the members of the task force were willing to take a cautious approach to further legislation as long as the restrictions of section 5(b) were not challenged by any facility hereafter operating in Pennsylvania.

A majority of the task force agreed that legislation to prohibit private prisons in Pennsylvania, thereby extending indefinitely the present moratorium, should be prepared for introduction. This legislation would affirm the efficacy of the restrictions beyond June 30, 1987.

APPENDIX

GENERAL COMMENTARY
OF
H. WILLIAM DeWEESE
MEMBER
PRIVATE PRISON TASK FORCE
CONCERNING
MARCH 30, 1987 REPORT DRAFT

INTRODUCTION: From time to time, an idea comes before both the public and policy makers--such as the private prison concept--which must be rejected, firmly and finally, so that--unlike Mary Shelley's Frankenstein--it cannot rise from burial.

Misconceptions as to the uncontrollability of prison populations have fostered renewed interest in private prisons. However, sentencing practices have made a substantial contribution to overcrowding.

Skilled private prison entrepreneurs will be able to derive profits from imprisonment. Sentencing legislation can control the need for imprisonment facilities and services. Tougher sentences and mandatory imprisonment will increase the demand for such services. Private prison entrepreneurs who invest in lobbying efforts which support tougher sentences and mandatory imprisonment may be able to increase the demand for their service. In an atmosphere charged by "law and order" rhetoric, the vitality of responsible and humane incarceration alternatives can be suffocated.

Responsibility for the punishment, rehabilitation, health and safety of those incarcerated is the touchstone of any serious analysis concerning private prisons. At present the Department of Corrections operates under certain legislative, executive and judicial guidelines, and the State has the intrinsic right of final jurisdiction when its agencies direct that a man or woman serve time in a county or state prison. Enterprise pursues profit, a goal inimical to a practical framework of such governmental responsibility.

Paraphrasing Georges Clemenceau's remark that "War is too important a matter to be left to the generals," responsibility for the corrections' amalgam of punishment, rehabilitation, health and safety is too important a matter to be left in the hands of private enterprise.

EXPERIENCE: Private sector involvement in corrections is not new. Frequently contractual arrangements are made for such services as health care, educational, vocational and staff training programs. Special needs

populations (i.e., drug dependant or juvenile), work release or residential community programs and prison industries have also been areas of private sector participation. However, delegating control of the entire operation of a correctional institution to a private entity is morally wrong, highly unethical and financially irresponsible. (I recognize private hospitals exist, and they are in business to make money, but unlike prisons, men and women exercise a choice when they seek medical treatment.)

The concept of the private prison is both dangerous to the community and a financial boomerang. A private prison, forced to turn a profit, may sacrifice quality for economy and expose the state to a flood of civil rights suits. If that occurs, the State must be prepared to pay the price (literally) or again assume charge of the penal system.

"First, state officials who must oversee private prison operations will be liable for the injuries inflicted at the hands of those granted licenses whose track records indicate brutality or other unfitness with regards to prisoner handling. Second, even where there are adequate safeguards concerning the granting of private prison licensure state officials will also be liable should they fail to inspect for and take corrective measures of those prison conditions which violate prisoners Eighth amendment rights to be free from cruel and unusual punishment. Either of these scenarios will implicate the state treasury as the United States Supreme Court specifically stated in Hutto v. Finney, 437 U.S. 678 (1978), that attorneys' fees arising out of civil rights litigation against state officials must be paid from the state treasury. It is not uncommon for fees in this kind of litigation to exceed six and occasionally seven figures."

Statement of Stefan Presser, Legal Director, ACLU of PA, to the Pennsylvania House Judiciary Committee on March 28, 1985.

(When considering costs, one must also remember that the complexities involved in contracting will prohibit the timely adjustments and flexibility a competitive market demands.) Similarly, concern over the classification and physical control of inmates compounds the privatization puzzle. (Like hospitals which limit the number of indigent patients accepted, will private providers accept only inmates incarcerated for minor offenses and leave the most troublesome inmates to the State?)

In other words, the bottom line is: When liberty is deprived the incarcerating authority has sole responsibility. To consider the issue otherwise is to ignore the State's responsibility to its citizens, both within and without the walls of correctional facilities.

POTENTIAL: A responsible examination of the issue of private prisons demands an analysis wherein one considers the goal of incarceration is: that offenders experience punishment, remorse and reform. One avenue toward reform is an aggressive program of trade school and classroom education. Perhaps this is an area where privatization in Pennsylvania's correctional system could have a positive effect.

Further, one must consider the actual effect of incarceration: upon release the majority of inmates have no marketable employment skills. Most demonstrably, the majority will return to crime. Creation of an education and training program on the largest possible scale (commensurate with the limitations of the State budget and the ultimate goal of reintegration into a free, yet safe, society) should provide a way out of the Corrections labyrinth.

For example, if an inmate has a sentence of three to five years and reads at a fifth-grade level (or lower)--as is often the case--then certain contracts could be formed with those who would teach that inmate to read and to give that inmate a marketable skill prior to release. If we refuse to consider such measures, those dread words, "recidivism," "repeat offender," "incorrigible criminal," and all their ilk will ring in our collective ears as infinite echoes of our failure.

CONCLUSION: The concerns surrounding the issue of privatization justify a continuance of the moratorium on private prisons in Pennsylvania (perhaps with the sole exception of an aggressive program of trade school and classroom education). Until the questions of liability, safety, civil and legal rights and the cost effectiveness of privatization can be resolved, the Commonwealth should not abdicate the awesome responsibility for those individuals whose safety, liberty and welfare are involved.