

REPORT ON  
CORRECTIONS AND THE PRIVATE SECTOR

By Jeanine Duncan

June 18, 1986

COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

Craig L. Barlow  
Executive Director

107380

CORRECTIONS AND THE PRIVATE SECTOR

NCJRS

AUG 25 1986

4 OPERATIONS

Introduction and Background

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

However, whether an increased role by the private sector in the field of corrections is feasible or appropriate has stimulated sharply divided opinions. While the National Sheriff's Associations has expressed its opposition to the concept of proprietary jail facilities, the executive director of the American Correctional Association has suggested that "We ought to give business a try." The ACA policy statement issued in early 1985 was seen as generally endorsing continued experimentation with privatization. "While government retains the ultimate responsibility, authority, and accountability . . . , it is consistent with good correctional policy and practice to . . . consider use of profit and nonprofit organizations to develop, fund, build, operate, and/or provide services, programs and facilities when such an approach is cost-effective, safe, and consistent with the public interest . . . ," the statement read in part.

In contrast, the American Bar Association in February 1986 recommended that "jurisdictions that are considering the privatization of prisons and jails not proceed to so contract until the complex constitutional, statutory, and contractual issues are developed and resolved." The nation's governors, however, increasingly support privately operated prisons as a method to reduce overcrowding and costs according to views expressed at the winter meeting of this year's National Governors Association.

Both deep reservations and high expectations have also come from the research community. Recognizing the flexibility and economic capabilities that reside in the private sector, some foresee the opportunity to introduce efficiency and innovation into a field laboring under the burden of outmoded facilities, rising staff costs, declining resources, increasing executive and judicial demands for improved services, and public calls for more prisoners at half the price. Others fear that the profit motive will interfere with professional corrections practice, and question whether any part of the administration of justice is an appropriate market for economic enterprise.

This report will examine the myriad of issues arising from the prospect of privatization in corrections. It is based primarily on reports by the National Institute of Justice, other literature concerning the private sector in corrections, and conversations with many individuals providing these services and contracting for them. It is not intended to be an exhaustive treatment of the multitude of issues and policy questions surrounding the topic. Rather, it is an attempt to identify the issues in such a manner as to better facilitate the discussion and policy decisions which are generated by the subject. In order to provide the Commission with a broad background of those issues, it will briefly outline first, the participation of private industry in prison work programs and the use of private sector alternatives for financing the construction of prison and jail facilities; second, the emergence of correctional facilities management contracts for adults and for juveniles; third, the political, administrative, and technical issues involved in facility management contracts; fourth, the areas within the corrections system best suited for privatization; and fifth, some suggested statutory provisions and issues that could be recommended if Utah is to utilize the private sector in the management of correctional facilities.

#### Definition of Privatization

At the outset it is necessary to define what is meant by "privatization" in the context of corrections. A pure model of "privatization" would be one in which government abdicates its role entirely to the private sector. The government does not act as a mediator, neither does it pay the private supplier of the good or service. Rather, the user pays the supplier directly for the consumption or use of the service. This model, however, is not possible in the corrections context because the user of the service, the inmate, is unable to pay. Thus, even disregarding the many philosophical and ethical questions, government cannot completely renounce its responsibility to provide correctional services. Privatization in corrections, then, refers to the contracting for goods and services for use in the correctional system. Taken a step further, today it also refers to contracting for total operational responsibility for a prison or jail. The government is still paying for that service, with the taxpayer, of course, paying the government through taxation.

#### Prison Industry and Work Programs

A study published in 1985 by the National Institute of Justice, "The Privatization of Corrections," began its inquiry by examining prison industry and work programs--to some extent the most logical place to find private sector involvement. A captive workforce, free use of space and utilities, and the opportunity to address a major social problem seem designed to satisfy both the entrepreneurial and public interests of the private sector.

The study found that while private sector involvement with prison industry work programs across the nation has been somewhat isolated and limited in scope, the movement has clearly gained momentum. A few examples of successful work programs include the following:

--In Arizona, computer terminals installed by the Best Western organization at a women's facility are used by inmates to make reservations for the hotel and motel chain;

--In Washington, twelve firms operate prison industries under the private sector work programs authorized by the Washington State Legislature.

--In Kansas, a private company has employed a total of 156 inmates to work in a light-metal manufacturing plant.

--In Oklahoma, inmates began to operate a hotel reservation service for the Howard Johnson chain, which recently was purchased by the Marriott Corporation.

All of these efforts assume that prison industries can provide more productive "real world" opportunities and are more likely to function as economically viable enterprises if they are affiliated with the private sector. The anticipated benefits are reduced idleness, better training and preparation for employment for inmates once they are released, opportunities to repay victims and generate revenue for the state. Whether or not all of these benefits can be achieved at once, this area of private sector participation may hold the greatest promise for introducing new models of corrections practice--models where entire prisons are organized around various industrial activities and work opportunities. Thus far, it remains unclear whether these efforts will fulfill Chief Justice Burger's ideal of prisons as factories with fences, rather than warehouses with walls.

#### Financing Prison Construction

Faced with continually escalating prison and jail populations, it is not surprising to find state and local governments searching for alternatives to the traditional methods of meeting the needs for prisoner housing. Therefore, the second type of privatization effort discussed in the National Institute of Justice report is the straightforward opportunity for the private sector to "sell" construction money, allowing a government to move more certainly or rapidly than it might by following traditional public sector financing routes.

States reported plans to expend more than \$5 billion over the next decade to increase their prison capacities by another 104,688 beds. This increase, coupled with serious constraints on the use of public funding mechanisms (e.g. insufficient cash reserves, limitations on capacity to assume additional public debt, and the refusal of voters to

authorize bonds for prison construction) have created a call for private financing alternatives that are not subject to debt ceilings and referenda requirements. The most widely discussed arrangements are lease contracts in the form of lease/purchase agreements, which are used to purchase a facility over time as an installment sale.

Leasing may be less expensive than bond financing, depending on the length and type of lease, prevailing interest rates, and other factors. Perhaps the most significant advantage is the ability to evade debt limits by insisting on an annually renewable lease subject to nonappropriation.

Promoted by investment bankers and brokerage houses, lease/purchase arrangements have been considered in a number of states, and some of the major sponsors reported significant activity at the local level. However, the use of lease/purchase financing to avoid the debt ceilings and referenda requirements of general obligation bonds has been challenged by many observers as fiscally imprudent and politically evasive. These complaints may prompt new regulatory constraints that may dilute the attraction of private financing for state and local governments.

Expedience--not necessarily cost--is the primary advantage of lease/purchase financing. Private financing may be more or less expensive than a public bond issue depending on the circumstances in a given state. In some states, cost questions may not even be paramount, for private financing may be the only option available if bond referenda fail and construction is still considered essential.

#### Correctional Services and Facility Management Contracts

Confinement service contracts are another way of expanding corrections capacity without assuming ownership of the required facilities. In these arrangements vendors are responsible for locating a suitable site, leasing or constructing an appropriate building, and providing all the staff and services necessary to operate the facility. Much like the business of running a full-service hotel, room rates are established based on capital investments, operating costs and expected occupancy. The government is often charged on a per diem basis.

Similar to most state or municipal services, the traditional approach to correctional services such as medical care, food preparation, maintenance, or security has been public operation. However, in some jurisdictions, cost pressures, combined with issues about service availability and adequacy, have led to consideration of contracting with private organizations.

Current correctional contracting practices vary substantially from state to state. In 1984, nine states indicated no private service contracts while 41 states made use of at least one privately contracted



service. Of these, medical/psychiatric and food services are the most commonly used. In addition to service contracts, correctional systems at both the adult and juvenile levels have long been involved in contracting for specific kinds of correctional programs.

In addition to service contracts, correctional systems at both the adult and juvenile levels have long been involved in contracting for specific kinds of correctional programs. In the adult field, these facilities include treatment-oriented programs operated as part of the probation system. Privately operated pre-release, work release, or halfway house programs for adults are also used by many states. The extent of use ranged in 1984 from just a few beds (Hawaii, Iowa, Kansas, Louisiana, Maine, North Dakota, Pennsylvania), to hundreds and even thousands of inmates (California, Massachusetts, Michigan, New York, Ohio, Texas, Washington).

The rationales for the private contracting of these specialized facilities mirror those for service contracting--that is, that privately operated facilities may cost less, offer improved service, or offer greater access to specialized programs. Because these programs are often designed to operate on a small scale and provide community-oriented placements, local vendors may be ideally suited for this type of service.

In Florida, California, Texas, and Massachusetts, the benefits of employing private vendors have been specifically recognized in legislation requiring their use as a means to conserve funds. Thus it may be concluded that by offering less expensive and more flexible alternatives to long-term prison construction, privately operated facilities can aid states in dealing with burgeoning correctional populations.

Given the considerable private sector involvement in operating secondary placement community-based facilities, a logical extension would seem to be the operation of primary placement facilities for adults. It is this expansion of the private sector into corrections that has sparked the hottest debate.

At present there are few adult correctional facilities in operation. The first privately run, full-security adult correctional facility in the United States is the Bay County Jail in Panama City, Florida. Another facility was opened in Kentucky shortly after. Today, there are approximately a dozen facilities currently in operation. This lack of major activity should not be construed as a lack of interest. As noted below, government agencies and private firms around the country are actively exploring opportunities for contracting adult correctional facilities.

#### The Federal Experience

The most active new market for confinement service contracting has

emerged at the federal level in response to the growing demands for housing illegal alien populations. The Immigration and Naturalization Service (INS), the United States Marshal's Service, and the Federal Bureau of Prisons have elected to develop contracted facilities to accommodate these demands. The INS uses privately operated facilities for aliens awaiting deportation are operating in San Diego, Los Angeles, Houston, and Denver. All of these facilities basically focus on providing decent holding space for aliens whose terms of confinement are relatively short. Security requirements are minimal and treatment activities are normally confined to efforts to arrange the return of detainees to their country of origin.

The nation's only privately run federal prison is Hidden Valley Ranch, near Santa Cruz, California. The facility, housing about sixty minimum security juvenile felons, is run by Eclectic Communications, Inc.. One of the facility's more unusual programs has involved teaching inmates how to invest in the stock market. Other programs range from religion to culture to sports.

#### State Adult Experience

As a result of the emerging trend toward contracting for the detention of illegal aliens, a number of corporate providers have entered the market and are actively pursuing contracts to operate adult facilities. One of the most widely publicized providers is the Corrections Corporation of America (CCA), an organization based in Nashville, Tennessee. Unlike the typical nonprofit service organization offering community-based correctional programs, CCA is a profit-making corporation. CCA made national headlines when it attempted to assume control of the entire Tennessee correctional system last year. Corporate officers at CCA now admit that it was too bold a move, yet they will continue to increase their management operations one facility at a time.

The most recent facilities acquired by CCA include a former county jail in Florida, and a juvenile training center in Memphis, Tennessee. The Bay County Jail in Panama City, Florida was under court order to improve conditions when CCA acquired the facility. It houses 250 inmates ranging from minimum to maximum security levels. The facility also includes an annex which houses juveniles and women. The Shelby County Training Center in Memphis was also under court order upon CCA's acquisition of the operation. With a capacity to hold 150 individuals, the facility opened in May 1986.

In the various operations managed by CCA, the corporation has control of approximately 1100 inmates. Furthermore, the corporation estimated that it currently has bids outstanding on 4000 beds. It should be noted that two of CCA's facilities have been accredited by the ACA, and that another is in the final stages of accreditation. That facility, the Silverdale Work Farm, houses 350 adult male and female offenders from the Tennessee county courts. Silverdale also

provides institution and county work programs, as well as G.E.D., religious, and recreation programs.

Another primary adult facility is found in St. Mary, Kentucky. Owned and managed by United States Corrections Corporation (USCC), this facility houses 200 minimum security adult males. It opened on January 6, 1986. In its contract with the corporation, Kentucky guaranteed that the facility would house at least 175 inmates per day; the payment is a per diem rate of \$25 per inmate. Kentucky's Corrections Cabinet reported that USCC was able to provide services very quickly--the facility was open within three months. The contract is for three years, with a two year renewable option.

#### Interstate Prison Proposal

Buckingham Security Ltd., a Pennsylvania corporation, has plans to design, construct and operate maximum security prisons for adult offenders, specializing in protective custody prisoners drawn from the populations of state prisons. A facility is planned for construction in Idaho. Further plans for that facility, however, have been delayed until October. According to the Vice President of Buckingham Security, this delay is due to the company's attention to other projects, including a 100 bed facility for adult men and women offenders in Butler County, Pennsylvania, and is pending further financial commitment from Idaho. Several states, including Oregon, Idaho, Colorado, and Utah have expressed interest in the Idaho facility.

Buckingham Security had planned to build a maximum security 700 bed facility in Pennsylvania, housing inmates from various states. The plans were abandoned, however, when a bill imposing a one-year moratorium on private prisons was introduced in the Pennsylvania General Assembly. The bill, as amended this session, would allow private contractors to operate only minimum security facilities for pretrial detainees and misdemeanants.

#### Juvenile Correctional Facilities Contracting

Additional insight into the benefits and hazards of privately operated adult facilities can be drawn from the juvenile corrections field where deinstitutionalization initiatives have often prompted the development of a broad array of privately managed programs and facilities. In the early 1970's, Massachusetts took action to reduce the number of youths held in traditional incarcerative settings. In 1983, ten years after the closing of the state's five juvenile institutions, sixty percent of the \$38 million budget of the state Division of Youth Services was designated for the purchase of services from private agencies. One hundred percent of the community-based residential facilities are contracted for, as are fifty percent of the secure treatment programs in the state. All contracting agencies are nonprofit. State regulation stipulates that community-based programs must be contracted out only to nonprofits; secure treatment programs



are not legally prohibited from contracting with for-profit corporations, but refrain from doing so.

The largest privately run juvenile facility, and the one most analogous to adult facility operations, is the Okeechobee Juvenile Training Facility operated in Florida by the Eckerd Foundation. Originally operated by the state, the facility was to be closed as a part of a general move to eliminate the state's large, run-down juvenile facilities. In 1982, the governor chose instead to turn over the operation of the facility to the nonprofit arm of the Eckerd Corporation. The Okeechobee facility serves between 400 and 450 committed delinquents, aged 14 to 18; most of these juveniles have committed felonies. The average stay for juveniles is six months, and the school provides both educational and vocational training for its youths.

A thorough critique of the transition period was presented in a study by the National Institute of Corrections in 1985 ("Private Sector Operation of a Correctional Institution"). The report outlined the many difficulties encountered during the two year transition. It did, however, note that subsequent to reading an earlier draft of the report, both the state and the Eckerd Foundation took steps to improve services and programs at the institution.

Cost, of course, is one of the major considerations in private operation of a facility. Eckerd claims that it is able to operate the facility less expensively than the state. Eckerd staff noted that their yearly budget is \$600,000 less than other training schools, even though the others serve only two-thirds the number of students. This is due, in part, to new staffing patterns that eliminated higher priced supervisory staff performing lower-level staff functions. The state's Department of Health and Rehabilitative Services reports, however, that the costs of Okeechobee were, as of late 1984, comparable to those at other state training schools.

Unlike the Eckerd Foundation, RCA Service Corporation is a profit-making company. RCA is also involved in a variety of service programs for youths in a number of states. In 1976, RCA assumed the operation and management of the Weaversville facility in Pennsylvania, a small, 22 bed facility for hard-core delinquents. Although this facility is roughly the equivalent of an adult medium security institution (considering the types of offenders confined), there are no special security measures taken aside from fencing and locked doors. As in the Okeechobee school, the state continues to hold title to the property. Costs are reimbursed by the state on a monthly basis.

A final example of privately run juvenile facilities is the Florida Environmental Institute, operated by the Associated Marine Institutes for serious juvenile offenders. Initiated in 1984, the two-year program involves three distinct phases. The first two phases are operated in a rural setting in central Florida. Security is provided

by the primitive setting (the middle of an extensive swamp). The first six month phase involves intensive work projects coupled with vocational, educational and values training. Following phase one, the youths are accorded more privileges and less arduous work assignments. Finally, during the third one-year phase of the program, the youths return to the Dade County area and participate in non-residential marine biology institutes. This program is considered to be primarily rehabilitative and non-institutional.

#### Advantages and Disadvantages in Contracting Juvenile Facilities

In all the programs discussed, several advantages to the government were reported. Among the most appealing is cost. Since the facilities operate on a contractually fixed per-diem rate, the government faces little risk of cost overruns. There is some evidence to suggest that privately operated facilities may be less costly to the government, as was the case at Okeechobee. In many cases, this is due to the contractor's freedom from civil service standards. He is able to staff on the basis of applicant's qualifications and set salaries on that basis.

Flexibility was an advantage reported by many respondents to a survey by the National Institute of Justice in the course of its study. Through the use of short-term contracts, the state is able to avoid long-term commitments. Furthermore, programs can be started up much more rapidly by private organizations. Due to the limited experience with privatization, it is more difficult to document improved services. There is, however, evidence of upgraded facilities at Okeechobee, and more professional staff at the same cost at Weaversville, which does suggest some service improvement.

Disadvantages to the government are limited due to the fact that these institutions are essentially an expansion of the private juvenile treatment programs operated for years. The most substantial problem reported was the opposition of state employees in facilities that had previously been run by the state. Serious staff shortfalls were reported during the transition at Okeechobee; indeed, state employees blocked the takeover of another planned juvenile facility in San Diego, California.

Liability and enforcement of standards are other potential disadvantages. The liability issue is minimal, first, because contractors carry insurance for many kinds of liability, or may completely indemnify the state; and second, because juveniles remain wards of the state regardless of where they are placed, the state retains much of its liability. There were no reported problems with enforcement of standards since the contractor is responsible for maintaining certain standards of care and thus has a financial incentive to minimize problems where it or the state could incur liability.

**Page 10 missing from NCJRS original copy.**

contracting agencies develop a conscious policy of distributing contract ventures across populations of differing security and service needs?

4. Will contractors be susceptible to the "Hilton Inn mentality"--the pressure to maintain high occupancy rates even in the absence of demonstrated need? Can payment provisions and careful admission, transfer, and release policies minimize this danger?

The anticipated opposition of public employees who may resist the loss of public sector jobs is another political issue. Whether or not there is formal union opposition, resentment from public employees as well as strained relations between public and private corrections staff may occur. Such was the case in the Okeechobee takeover in Florida. To avoid such problems, private management may be considered only for new facilities.

The effects of privatization on the visibility of corrections another issue of political concern. It is argued that privatization will decrease public input into the delivery of correctional services and will shift accountability to faceless private providers. Others argue that the system will become more accountable to the public. Since the concept is new, and there are both high expectations and deep reservations, it is likely that private institutions will receive fairly intense scrutiny. Whether this interest will be sustained in the long run remains to be seen.

#### Administrative Issues

The administrative issues address the quality, accountability and flexibility of private providers. It has been urged that because the private provider is under competitive pressure to perform and is free of civil service restrictions and the cumbersome administrative procedures commonly associated with government operations, he will provide superior services. It is unclear whether there will be sufficient pressure to maintain improvements over the long term. The key tools available to ensure continued performance are adequate monitoring, frequent onsite inspection and judicious rebidding procedures. These are tools that must be carefully designed at the outset.

Appropriate accountability requires a clear definition of roles and responsibilities in the contract itself and continual monitoring efforts. Unless care is taken to define the respective roles of public and private managers, two organizations are responsible, but neither may be clearly accountable.

Perhaps the only issue that most observers agree upon is that contracting offers public agencies the ability to respond to immediate needs with greater flexibility and speed than is typically possible

under government operation. Facilities can be contracted and completed far more quickly than might be possible under public management. In times of severe crowding, this capacity is particularly compelling. The possible cost, however, may be constraints on government's ability to change course over the long term. Transferring facility operations from one contractor to another could be a logistically difficult matter.

### Legal Issues

The first legal issue to be considered is whether states and counties have specific statutory authority to contract with private firms. This issue was resolved in Utah with the passage of the 1985 law establishing the Department of Corrections. The code now provides that the department may contract with private companies for the hiring of prison labor and for the actual "care, treatment, and supervision of offenders . . . if the programs are certified to be in compliance with departmental standards within six months after commencing operation." (Utah Code Annotated 64-13-26 Supp. 1985).

While correctional agencies may wish to delegate both the authority and responsibility for facility operation, there is no legal principle to support the premise that public agencies and officials will be able to avoid or diminish their liability merely because services have been delegated to a private vendor. This issue has been litigated in several cases holding that government liability could not be eliminated by delegation.

The major constitutional question regarding privatization of corrections is whether the acts of a private entity operating a correctional institution constitute "state action", thus allowing for liability under Section 42 U.S.C. 1983 of the Civil Rights Act of 1964. In Medina v. O'Neill (589 F. Supp. 1028 (S.D. Tex. 1984)), a case involving the detention of 16 inmates of a privately run Houston INS facility, the federal district court found "obvious state action" on the part of both the federal defendants and the private company. The court noted that although there was no precise formula for defining state action, the Supreme Court had 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)). The Medina court found that detention came squarely within this test.

More recently, the United States Court of Appeals of the Eleventh Circuit addressed the question whether a private entity that was responsible for providing medical care to county jail inmates was liable to the estate of a prisoner who received improper diagnosis and treatment by doctors of the private health service. In Ancata v. Prison Health Services, Inc. (769 F.2d 700 (11th Cir. 1985)), the unanimous court of appeals panel stated that:



"Although Prison Health Services and its employees are not strictly speaking public employees, state action is clearly present. 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. (Id. at 703).

Other cases such as Milonas v. Williams (691 F.2d 931 (10th Cir. 1982)), and Lombard v. Eunice Kennedy Shriver Center (556 F. Supp. 677 (D. Mass. 1983)), stress that in the context of detention--whether in a prison, a jail, an immigration facility, a juvenile facility, or a mental-health center, the acts of private entities performing functions that are delegated by the state constitute state action. Thus it becomes crucial for public agencies to ensure that contractors observe appropriate staff selection and training standards, as well as adequately maintain the facilities and observe the necessary security precautions.

While there appear to be no legal barriers to the delegation of security functions, the issue is central to the debate on the appropriate roles and liabilities of the government and its private providers. A variety of questions need to be addressed in defining the proper role of the private sector in corrections management. Should positions that may call for the use of deadly or restraining force be retained by the state? What role should the state play in internal disciplinary proceedings? Adequate staff training and supervision, frequent review and inspection by contracting agencies, written client complaint procedures, client access to mechanisms for monitoring abuse, and periodic client surveys have been suggested as useful techniques to ensure the accountability of private providers.

Therefore, the development of explicit contractual standards of performance to ensure that profit goals do not interfere with the government's interest in maintaining safe, secure, and humane facilities is the most important legal issue. The standards of the Commission on Accreditation for Corrections provides a useful reference in drafting this aspect of a solicitation and subsequent contract.

#### The Financial Issues

The relative costs of public versus private management are a highly controversial aspect of the privatization debate. Cost comparisons are difficult since public and private facilities may serve different populations with different security requirements and service needs (particularly if private facilities deal only with the lowest risk offenders).

Advocates suggest that private vendors can operate equivalent facilities at less cost, largely due to the staffing efficiency that may be realized in the absence of civil service requirements. Critics argue that the costs of private management will escalate once vendors become established. They also point out that the burden of monitoring

private providers could be a hidden but potentially large cost of management contracting. However, the central advantages of contracting may be the flexibility and responsiveness of private providers, not necessarily the cost.

Another aspect to the financial issue is that of visibility. It is argued that in contracting, the true costs of the service are more visible. Furthermore, under a contract system, the costs of confining a certain number of clients under specific conditions will also be clearly visible and more difficult to avoid through crowding and substandard conditions.

#### Privatization's Best Uses

Private sector participation in the adult corrections field clearly raises many complex issues of policy and law not encountered in other fields of human service. As such, it provides a particularly critical test of the limits of privatization--a test that requires the most thorough and systematic planning, implementation, and evaluation efforts.

The National Institute of Justice report identified at least five circumstances under which careful experimentation with privately managed facilities may prove useful in order to achieve a number of goals:

1. Rapid Mobilization: to avoid permanent facility expansion but still accommodate near-term population shifts;
2. Experimentation: to test new practices without making permanent commitments or laboring under bureaucratic constraints;
3. Decentralization: to acquire greater geographic and programmatic diversity than is typically possible under a centralized agency;
4. Specialization: to satisfy unique or highly specialized treatment needs that cannot be efficiently handled in a general purpose institution;
5. Regionalization: to develop interjurisdictional facilities among states or counties.

#### Utah Statutory Issues

If it is determined that privatization in corrections would be a useful alternative in solving some of Utah's correctional needs, attention should be given to dealing with the complex issues on a statutory level before contracting. The following are suggestions for actions that could be taken in regard to these potential problem areas:

1. Legal role and status: provision could be made in state law to define private correctional facilities, their role and legal status in Utah. This could include specification as to the circumstances, conditions and procedures under which state and/or county prisoners may be placed in private facilities.
2. Status of private management employees: provision could be made to outline the status of private employees in regards to matters such as use of weapons, use of deadly force, and the right to strike.
3. Emergency contingency plans/intervention: provision could be made for the intervention of appropriate government agencies in the event of specific emergency occurrences at privately operated facilities.
4. Governmental monitorship and control of prison operators: Provision could be made for a mechanism for governmental regulation and monitorship, licensing, and initial and periodic inspection and evaluation.
5. Public accountability: provision could be made to require public accountability, such as periodic reports to the public.
6. Coordination/cooperation with other elements of the criminal justice system: provision could be made requiring cooperation with the other elements of the criminal justice system. For example, the private operator could be required to maintain all records necessary for parole authorities, etc., and to report all inmate escapes, criminal acts, or disturbances.
7. Inmate rights/ grievance procedures: provision could be made to protect the constitutional rights of inmates and ensure a fair hearing of inmate grievances.
8. Background and financial status of operators: provision could be made ensuring reasonable financial stability of the contractor, and prohibiting persons with criminal background.
9. Contract requirements: provision could be made to require that all relationships between operators and government jurisdictions be formalized by written contracts and that the contracts be public documents.
10. Categories of facilities: provision could be made to require program regulations defining various categories of facilities specifying physical facility requirements, minimum staffing, capacity and characteristics of prisoners to be served.

This is by no means an exhaustive list of the issues that must be resolved before contracting with a private provider for facility

management. Perhaps the most important, however, is that there be provision in state law for a mechanism for governmental oversight of private facilities, including the development of regulations, licensing and inspection programs.

### Conclusion

As this report has suggested, privatization in corrections involves very complex issues. It should not be viewed simply as a quick, cheap fix to solve all of the mistakes made by government. Yet, neither should it be adjudged to be a catastrophic move placing the responsibility of corrections at the mercy of profit-hungry entrepreneurs intent only on making a buck from the incarceration of others.

The notion that private organizations can do the same job at a lower cost is a very attractive promise which may or may not prove to be realistic. The greatest promise of the private sector may instead lie in its capacity to develop facilities that can satisfy unique demands or provide the grounds for testing new models of corrections practice. The task, then, is not to replace public functions with private equivalents but to develop a corrections system that employs both sectors to their best advantage.

BIBLIOGRAPHY

Documents and Reports:

American Bar Association. Section of Criminal Justice Report to the House of Delegates. Recommendation on Privatization of Prisons. Feb. 1986.

Arnold, Adrian. "Jail Funding in Kentucky." Legislative Research Commission. Aug. 9, 1985.

Camp, Camille G., and Camp, George M. Private Sector Involvement in Prison Services and Operations. New York: Criminal Justice Institute. Feb. 1984.

Cannon, T.L., and Lehtinen, Marlene. Incapacitation: A Crime Reduction Method That Works. Criminal Justice Research Series. April 11, 1986.

Cannon, T.L., and Lehtinen, Marlene. The Cost of Prosecuting Repeat Felony Offenders. Criminal Justice Research Series. March 31, 1986.

Chabotar, Kent John. "Financing Alternatives for Prison and Jail Construction." Government Finance Review. April 1985: 7-13.

Chi, Keon S. "The Private Sector in State Correctional Industries: The Control Data Program in Minnesota." Innovations Report. The Council of State Governments.

Connecticut General Assembly. "Contracts for Private Prisons." Office of Legislative Research. Jan. 14, 1985.

Funke, Gail S. "Is Privatization Cheaper?" Institute for Economic and Policy Studies, Inc. Correctional Economics Center. Sept. 1985.

Keating, Jr., J. Michael. "Some Thoughts on Prisons for Profit." Feb. 1985.

Kentucky Finance and Administration Cabinet. "Request For Proposal: 200-Inmate Correction Facility." Department for Administration, Division of Purchases. April 12, 1985.

Lang, Tony R. "Financing Construction of Prisons and Jails: How Much Justice Can States Afford?" Eleventh Annual Meeting. National Conference of State Legislatures, Seattle, Washington. Aug. 5, 1985.

Mazzaccaro, Paul R. "Privatization of Corrections." Connecticut Office of Fiscal Analysis. Jan. 1986.



Michigan Department of Corrections. "Corrections and the Private Sector." Memorandum prepared by Marjorie van Ochten. Oct. 8, 1985.

Mullen, Joan. "Corrections and the Private Sector." NIJ Reports, National Institute of Justice. May 1985.

Mullen, Joan, et al. The Privatization of Corrections. National Institute of Justice. Feb. 1985.

Oregon Legislative Research. "Privately Owned and Operated Prisons." Jan. 22, 1985.

Pennsylvania General Assembly. A Joint Committee. "Report on a Study of Issues Related to the Potential Operation of Private Prisons in Pennsylvania." Oct. 1985

Sexton, George E., et al. "The Private Sector and Prison Industries." Criminal Justice Associates, Lafayette Hill, Pennsylvania. 1985.

Tillett, Debbie C. "Private Jails: Contracting Out Public Service." The Council on State Governments. March 1985.

U.S. Department of Justice, National Institute of Corrections. "Private Sector Operation of a Correctional Institution: A Study of the Jack and Ruth Eckerd Youth Development Center, Okeechobee, Florida." April 1985.

Utah Foundation. "Contracting For Corrections." Nov. 1985.

Articles:

"Controversial A.C.A. Policy Calls for Further Privatization." Criminal Justice Newsletter 16, No. 3 (Feb. 1, 1985): 1-3.

Fairchild, Mary. "States Aren't Ready for Privately Owned Prisons--Yet." State Legislatures 12, No. 4 (April 1986): 7-8.

Greengard, Samuel. "Making Crime Pay." Barrister. (April 1986): 12-15.

Krajick, Kevin. "Prisons for Profit: the Private Alternative." State Legislatures (April 1984): 9-14.

"Prisons For Profit?" Public Employee (Dec. 1985): 11-15.

Robbins, Ira P. "Privatization of Corrections: Defining the Issues." Judicature 69, No. 6 (April-May 1986): 10-12.

Walzer, Michael. "Hold The Justice." The New Republic (April 8, 1985): 10-12.