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REPORT ON A STUDY OF ISSUES RELATED TO THE POTENTIAL OPERATION OF PRIVATE PRISONS IN PENNSYLVANIA

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TABLE OF CONTENTS

	<u>Page</u>
I. <u>INTRODUCTION</u>	1
II. <u>STUDY OVERVIEW</u>	3
A. Issue Context.....	3
B. Study Purpose and Objectives.....	4
C. Study Activities.....	4
III. <u>SUMMARY OF STUDY CONCLUSIONS AND RECOMMENDATIONS</u>	6
IV. <u>THE POTENTIAL ROLE WHICH PRIVATE PRISONS MIGHT PLAY IN PENNSYLVANIA</u>	9
A. For State Level Prisoners.....	10
1. Discussion of Potential Role.....	10
2. Background Information Related to Potential Role.....	10
B. For County Level Prisoners.....	15
1. Discussion of Potential Role.....	15
2. Background Information Related to Potential Role.....	16
C. As Business Venture Unrelated to Pennsylvania Prisoners.....	26
V. <u>POTENTIAL BENEFITS AND PROBLEMS ASSOCIATED WITH USAGE OF PRIVATE PRISON FACILITIES AND PROGRAMS FOR ADULTS IN PENNSYLVANIA</u>	28
A. Potential Problems.....	28
B. Potential Benefits.....	33
VI. <u>LEGAL, REGULATORY, CONTRACTING AND OTHER PROVISIONS THAT WOULD BE NEEDED IF PRIVATE PRISONS WERE TO BECOME OPERATIONAL IN PENNSYLVANIA</u>	37

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
<u>APPENDICES</u>	41
A. Recommended Initiatives to Alleviate Crowding in Pennsylvania's Prisons and Jails (PCCD Prison and Jail Overcrowding Task Force, February 1985) and Status of Initiatives as of July 1985.....	43
B. Selected Information on Pennsylvania Counties that Reported Utilization of Prison Facilities in Other Counties, as of June 1985.....	49
C. Selected Information on Per Inmate Daily Charges of PA County Prison/Jail Facilities that Reportedly House Inmates from Other Pennsylvania Counties, as of June 1985.....	53
D. Privately Operated Adult Correctional Facilities Identified by the LB&FC Staff (Proposed and Operational), as of August 1985.....	57
E. Reported Per Diem Costs of Publicly and Privately Operated Federal Immigration and Naturalization Service (INS) Detention Facilities.....	61

I. INTRODUCTION

Increasing attention is being directed among the states to proposals for private sector construction and operation of prisons and jails. This subject was brought to the attention of the Legislative Budget and Finance Committee, and the LB&FC staff began to collect preliminary information on the prison privatization concept during April 1985. At a public meeting held on May 1, 1985, the Committee adopted and directed its staff to carry out a study of the usage of privately operated correctional facilities and their potential implications for Pennsylvania.

LB&FC staff involvement in this study project occurred between April and September 1985. This report presents the results of staff work conducted during this period. The report is structured into six sections plus appendices: Section I provides introductory information; Section II presents a study overview, including brief discussion of the national and Pennsylvania context of the private prison issue, a statement of study objectives, and a description of study activities; Section III presents a summary of conclusions and recommendations; Section IV addresses the potential role which private prisons might play in Pennsylvania; Section V lists potential benefits and problems associated with the usage of private prisons for adult offenders in Pennsylvania with accompanying discussions for each benefit/problem area; and Section VI presents a discussion of legal, regulatory, and other provisions that might be needed if private prisons were to become operational in Pennsylvania, including LB&FC staff suggestions concerning provisions that could be enacted and actions that could be taken in regard to potential problem areas listed in Section V.

The LB&FC staff acknowledges the excellent cooperation and assistance that was provided by the Pennsylvania Department of Corrections during this study project. Commissioner Glen R. Jeffes and W. Scott Thornsley, Legislative Liaison, were supportive of our research efforts. The LB&FC staff also wishes to acknowledge the excellent cooperation received from Phillip J. Renninger and Craig Edleman of the PA Commission on Crime and Delinquency. The staff also received outstanding cooperation from county officials contacted during our staff survey, correction officials from other states, Federal officials, PA Legislators and Legislative staff, and numerous other individuals. The LB&FC staff expresses its thanks to these persons and to everyone else who participated in the study.

IMPORTANT NOTE: This report contains information developed by the Legislative Budget and Finance Committee staff. The release of this report by the LB&FC should not be construed as an indication that the Members of the Committee necessarily concur with all of the report information and/or support the recommendations. The Legislative Budget and Finance Committee as a body, however, supports the publication of the information within this report and believes it will be of use to the Members of the General Assembly by promoting improved understanding of the issues.

The LB&FC staff involved in this study was under the direction of the LB&FC Executive Director Richard D. Dario and Chief Analyst John H. Rowe. The team leader for this study was Senior Analyst Patricia A. White. Members of the study team included Patricia A. Berger, David A. Fitzsimons, Esq., Susan A. Jenkins, Gregory P. Sirb, Mark K. Stine, and Michael G. Warfel. Anne L. Ritter, Donna R. Nell, Shannon P. Opperman, and Earl T. Robson provided additional staff assistance.

Any questions concerning the content of this document should be directed to Richard D. Dario, Executive Director, Legislative Budget and Finance Committee, Room 400 - Finance Building, Harrisburg, PA 17120.

II. STUDY OVERVIEW

A. Issue Context

Privatization is a term which is currently being applied to a practice in which traditional public or governmental functions are being turned over to the private sector to be performed for an agreed-upon fee. There is increasing interest among public officials at both the Federal and state levels in the privatization of corrections.

While many corrections agencies routinely contract with private firms for such services as food, health care, educational/vocational and counseling services and pre-release and halfway house programs, the concept of private ownership and/or management of an entire prison facility is relatively new. In large measure, this expansion of privatization in the correctional field has been in response to pressures resulting from prison overcrowding and unconstitutional prison conditions. As of February 1985, the entire prison system of eight states had been declared unconstitutional, an additional 21 states had one or more facilities under court order to reduce overcrowding and/or to improve the conditions of confinement, and seven more states faced litigation because of crowding.

Interest in private sector involvement in the¹ financing, building and operation of primary adult confinement facilities¹ is increasing. Although limited to date, such involvement has occurred and further expansion in these areas is anticipated by correctional experts. In Pennsylvania, as in other states, many questions and complex legal and policy issues have² arisen concerning the possible development and operation of private prisons.² Proposals for the operation of private prison facilities in Pennsylvania have generated considerable attention and legislative activity. Several pieces of legislation were introduced in the Pennsylvania General Assembly during the 1985 Session, and special hearings were held by the House Judiciary Committee on a proposed "private prison licensing act." Other legislation was introduced which would place a moratorium on the operation of private prisons in Pennsylvania pending further study of the concept.

It was within this context that the Legislative Budget and Finance Committee directed its staff to conduct a study of issues related to the potential operation of private prisons in Pennsylvania.

¹/As defined by the National Institute of Justice, a primary confinement facility is a "first" placement facility for sentenced adult offenders as opposed to "secondary" facilities such as pre-release centers and halfway houses for offenders.

²/For purposes of this study, a private prison is defined as a full-custody primary confinement adult correctional facility which is owned and/or operated by a non-governmental (profit or non-profit) organization.

B. Study Purpose and Objectives

This study was intended to examine the usage of privately operated correctional facilities in other states and the potential implications of the private prison concept for Pennsylvania, especially in regard to potential benefits and problems and regulatory needs.

The 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 would be needed (e.g., law changes, regulations, licensing and oversight mechanisms) if private prisons were to become operational in Pennsylvania.

C. Study Activities

The LB&FC staff conducted study activities during the period April through September 1985. Activities were focused on an examination of pertinent Pennsylvania law and constitutional provisions, prison and jail statistics and projections, a review of current literature and studies related to private ownership and operation of correctional facilities, contacts with correctional officials in Pennsylvania and other states and with private contractors presently providing correctional services on a contract basis. The following information is intended to provide an overview description of the types of activities and contacts made by the LB&FC staff during this study; it is not intended as a comprehensive listing of all activities and contacts carried out during the project.

Throughout the study period, the LB&FC staff consulted with and obtained information from the PA Department of Corrections. Additionally, the LB&FC maintained contact with staff of the PA Commission on Crime and Delinquency and with legislative staff persons who were monitoring developments related to prison privatization. Contacts were also made with numerous state and national associations and organizations that are involved or interested in the privatization issue, including, for example, the American Federation of State, County and Municipal Employees, PA Wardens' Association, American Civil Liberties Union, PA Prison Society, the American Correctional Association, and the National Institute of Justice. Other study contacts were made with U.S. Congressional staff and officials of the Federal Immigration and Naturalization Service (INS) and the Federal Bureau of Prisons, with corrections officials in selected other states (in particular, those in which private adult facilities are operating or are proposed, Tennessee, Kentucky, Texas, Idaho, Minnesota, and New Mexico), and with representatives of a number of private firms that presently provide or propose to provide adult confinement services to governments on a contract basis.

The staff also met with private researchers who were planning a regional conference on the private prison concept for the National Institute of Justice, monitored legislative meetings and hearings held in Pennsylvania on the private prison question and attended a Congressional hearing held in June 1985 in Washington, DC, on the potential usage of private prisons.

Other study activities involved several field visits to correctional facilities and a survey of county corrections officials. Field visits were made to the RCA Weaversville Youth Intensive Treatment Center (a privately run facility for juveniles in Northampton, Pennsylvania), to the Allegheny and Cumberland County Prisons, and to the 268 Center (a ready-for-operation private correctional facility for adults in Armstrong county).

During June 1985, a telephone survey was conducted by the LB&FC staff of Pennsylvania county prison officials. This survey was conducted in order to obtain current information on prison capacities, utilization, costs and the county experience to date in housing the driving under the influence (DUI) offender population.

III. SUMMARY OF STUDY CONCLUSIONS AND RECOMMENDATIONS

There has been increasing consideration in recent years of turning to the private sector to carry out programs and functions that were previously carried out exclusively or almost exclusively by government agencies. There has been a belief among some that the private sector can provide better quality programs than government at less cost. Others disagree, however, and this remains a controversial issue.

One of the traditional government functions receiving consideration in Pennsylvania and throughout the United States at the present time is the operation of adult correctional facilities. At least one agency of the Federal Government and certain local governments in other states currently have active contracts with private prison businesses. Additionally, some states have taken concrete action to provide for use of private prisons. A number of counties in Pennsylvania have been purchasing certain services for county prisons from private vendors, including such services as food services, laundry services, and medical services. At the state level, the Pennsylvania Department of Corrections also purchases some services from private vendors (e.g., medical, vocational training, and prisoner transport services).

At least one Pennsylvania county (Allegheny) seems to be on the verge of going further by contracting with a private firm to take physical custody of and house some of the county's prisoners.^{1/} The firm being considered by Allegheny County has a private prison facility reportedly ready for operation. This facility is located in Armstrong County and is called the 268 Center. It is intended to serve low-risk, minimum-security types of inmates.

Another private prison facility has been proposed for location in Beaver County, Pennsylvania. This facility, known as Riverhaven, is intended to serve state level prisoners who require a protective custody environment. If and when it becomes^{2/} fully operational, it will house up to 700 prisoners from various states.

This type of interest and activity in Pennsylvania is reflected in the General Assembly. A number of legislative proposals dealing with prison privatization are presently being considered. As a result of this interest

^{1/}Additionally, as this report was being finalized, the LB&FC staff was informed that Butler County, Pennsylvania, will turn over the labor and management services of the Butler County Prison to a private firm, Buckingham Security, Ltd., tentatively to be effective October 1, 1985.

^{2/}As this report was being finalized, it was reported that plans to construct this facility had been cancelled.

and concern, the Legislative Budget and Finance Committee directed its staff to research this area and to look particularly at the potential role that private prisons might play in Pennsylvania and the potential benefits and problems that might be encountered.

The LB&FC staff found that state prisons and some Pennsylvania county prisons presently have prisoner populations which exceed their intended inmate capacity. Some county prisons have in fact been ordered by the courts to reduce prisoner overcrowding. The LB&FC staff found that the Pennsylvania Department of Corrections has taken a number of steps to deal with their increasing prisoner population but that the Department has no immediate plans to use the services of a private prison. It was also determined, however, that prison officials in a number of Pennsylvania counties believe that private prisons may be one alternative for meeting the increasing prison population. Some of these local officials indicated a belief that private prisons could be used particularly to serve the growing number of offenders charged with driving under the influence.

Based on contacts with many knowledgeable and interested persons and review of available literature, the LB&FC staff has identified a number of potential benefits and potential problems associated with the usage of private prisons in Pennsylvania. Additionally, the staff has developed several suggestions for legal and other provisions that should exist if private prisons are to become operational.

The staff found that private prisons offer increased flexibility to governments in dealing with changes in prison population and special needs prisoners (see page 33). A related benefit is the opportunity for decreased time and cost associated with construction of new prison facilities (see page 36). It was also concluded that the existence of private prisons would offer a competitive atmosphere^{3/} to the corrections industry which might result in reduced cost (see page 33). A final area of potential benefit is the increased opportunities for business enterprise and related economic benefits to the community that might result (see page 35).

A number of potential problems were also identified. It is clear that an improperly operated prison poses danger to the public and to inmates. There are, however, presently no laws, regulations, or other mechanisms to protect the interest of the public and rights of inmates in the operation of private prisons (see page 28). The realities of the business ethic require consideration of the possibility that inappropriate attention to the profit motive

^{3/}It is important to note, however, that the usage of private prison facilities in the United States to date is not extensive enough to allow a definitive answer concerning whether or not private prisons are generally able to provide quality services at a lower cost than public prisons. In addition to the possible advantages offered by competition, another consideration (possible losses of tax revenues) is discussed on page 32.

could result in improper private prison operations, particularly in an inadequately regulated environment (see page 30). A related danger is the possibility that a government jurisdiction may become overly dependent on a private prison (see page 33).

Other possible problems involve the lack of provisions to deal with emergency situations that might occur at a private prison (see page 28), the potential liability (and related costs) of government jurisdictions, officials and employees for actions of private prison operators (see page 29), the lack of recognition of the role of private prisons in present law and sentencing procedures and guidelines (see page 30), the lack of a defined legal status for private prison employees (see page 30), the possible lessening of accountability to the public (see page 31), the absence of clarity in the status of out-of-state prisoners who may be housed in a private prison in Pennsylvania (see page 31), and relationships between private prisons and other segments of the criminal justice system (see page 32).

To protect against the potential problems discussed above and based on the research performed during this study, the LB&FC staff suggests action in the following areas if private prisons are to be used in Pennsylvania. A definition of private prisons and their role and status in Pennsylvania should be included in state law (see page 37). Also included in state law should be a recognition of the status of private prison employees (see page 37) and requirements related to emergency contingency plans and authorized intervention (see page 38), accountability of private prison firms to the public (see page 38), coordination and cooperation between private prisons and other segments of the criminal justice system (see page 38), mechanisms to protect the rights of inmates (see page 39), the qualifications of private prison operators (see page 39), defined categories of private prisons (see page 40), transport of prisoners to and from private facilities (see page 40), and the participation of private prison inmates in programs outside of the private prison facility (see page 40). State law should also be amended to clarify the status of out-of-state prisoners that may be housed in a private prison in Pennsylvania (see page 38).

Perhaps the most basic requirements if private prisons are to be used in Pennsylvania are (1) provision in state law for a mechanism for governmental oversight of private prisons, including the development of regulations and a licensing and inspection program (see page 38), and (2) requirements in law and regulations for contracts that would be entered into between government jurisdictions and the private prisons that serve them (see page 39).

IV. THE POTENTIAL ROLE WHICH PRIVATE PRISONS MIGHT PLAY IN PENNSYLVANIA

This section discusses the potential role which private adult correctional facilities might play in Pennsylvania. For purposes of this discussion, a private prison is defined as a full-custody primary confinement adult correctional facility which is owned or operated by a nongovernmental (profit or non-profit) organization. The LB&FC staff recognizes that other forms of private sector involvement are occurring and will continue to occur within the correctional system. For example, to date, private sector involvement in the corrections field has occurred in providing specific institutional services and operating secondary placement programs and community-based facilities (e.g., adult pre-release centers, halfway houses, drug and alcohol programs) in relation to publicly owned and operated prisons. The Commissioner of the Pennsylvania Department of Corrections (DOC) has indicated that the DOC has had considerable experience with private contracting for medical services, religious services and pharmaceutical and specialized treatment programs and anticipates the possibility of further contracting in these and other service and program areas.

Considerable private sector involvement has also occurred in the provision of facilities and programs for juveniles (e.g., the privately operated RCA Weaversville juvenile facility in Northampton, Pennsylvania), and to some degree in the area of prison construction and financing. However, this report is not intended to discuss in detail these kinds of activities. Rather, this report is to deal with the potential role in Pennsylvania for an adult correctional facility that is owned and/or operated by a private entity.

While there are many activities involving the private sector, as listed above, there is presently no private adult correctional facility that is operational in Pennsylvania, although¹/at least one such facility may become operational in the very near future.

In this section, three different potential scenarios are discussed in which private prisons may play a role in Pennsylvania: there is a potential role at the state level, a potential role at the county level, and there is a potential role for private prisons as a business venture unrelated to Pennsylvania's prison population.

¹/This refers to the 268 Center, Inc., which is located in Armstrong County, Pennsylvania. See page 25 for further discussion.

A. Potential Role of Private Prison Facilities for State Level Prisoners and Related Background Information

1. Discussion of Potential Role

The State level corrections system is operated by the Department of Corrections, and all state level prisoners are the responsibility of the Department. The vast majority of such prisoners are based in one of the Department's eight State Correctional Institutions (SCIs), two Regional Correctional Facilities, or fifteen Community Service Centers.^{2/} However, a small number of state inmates are based in county prisons. Additionally, there are some state prisoners who are located in mental institutions.

The Department of Corrections does not presently house any of its prisoners in a private prison. As of August 1985, there were no immediate plans for utilization of privately operated prisons for confinement of adult inmates at the State level. The Commissioner of the Department of Corrections stated in a testimony before the House Judiciary Committee on March 28, 1985, that "[a]ny state that elects to undertake this role will be chartering a new course of direction. Therefore, it has been the position of this Department that it will move in a systematic, deliberate fashion to identify issues and concerns, and to ensure that they are satisfactorily addressed before giving our support to any specific private prison operation in the Commonwealth." An official of the Department indicated to LB&FC staff that, although there is no immediate need, private prisons could be considered an option in the future to house special needs inmates. (See discussion of special needs inmates on page 14.)

2. Background Information Related to Potential Role

Population and Capacity of the PA State Correctional System - The Department of Corrections system is presently over capacity. All but one of the ten correctional facilities are above capacity and the Community Service Centers are near capacity as a group. The one SCI that is not over capacity can only house certain inmates because of the nature of its security provisions. On an overall basis, as of June 30, 1985, the state system was 33%, or approximately 3,500 prisoners, over capacity. (See Table 1.)

The Department is attempting through various measures to deal with this over-capacity condition. First, they began double celling in 1981; second, they are utilizing temporary modular housing units;

^{2/}The sentencing judge, on some occasions, may sentence a State inmate to a county facility. In certain cases, the county prisons which are presently overcrowded have been ordered by the courts to return these prisoners to the state system.

TABLE 1

Inmate Capacities and Populations of Pennsylvania State
Correctional Facilities as of June 30, 1985

<u>Institution/Facility</u>	<u>Capacity</u>	<u>6/30/85 Population</u>	<u>% of Capacity</u>
Camp Hill.....	1,626	2,241	137.8%
Dallas.....	1,213	1,687	139.1
Graterford.....	2,144	2,601	121.3
Greensburg.....	408	551	135.0
Huntingdon.....	1,370	1,986	145.0
Mercer.....	304	531	174.7
Muncy.....	465	520	111.8
Pittsburgh.....	1,130	1,586	140.4
Rockview.....	1,260	1,768	140.3
Waynesburg.....	144	60	41.7 ^{b/}
Community Service Centers/ Group Homes.....	<u>325</u>	<u>303</u>	93.2
Total.....	<u>10,389^{a/}</u>	<u>13,834</u>	133.2%

a/Since 1982, the PA Legislature has authorized new construction and renovation of 3,422 cells in DOC State prison facilities to accommodate an expected increase in inmate population. The addition of these cells to the present capacity of the state system would not accommodate even the current inmate population. According to the PCCD, proposed additions to state prison capacity currently under construction will not keep pace with projected population increases.

b/Waynesburg SCI was opened in 1984. According to the Department of Corrections, as of August 1985, no fence was maintained encircling its perimeter and admissions were being limited to referrals from Muncy SCI who do not require the security of an enclosed perimeter.

Source: Developed by LB&FC staff from the PA Department of Corrections' "June Monthly Population Report" prepared by the DOC Finance, Planning and Research Division, Records and Statistics Section.

and, third, they are adding through construction and renovation facilities for approximately 3,400 additional prisoners. As of November 1984, there were over 5,500 inmates double-celled. The Department intends to continue this practice into the immediate future. A total of 1,064 prisoners are housed in modular housing units which are being used at six of the eight SCIs and the two Regional Correctional Facilities. This practice is also expected to be continued into the near future by the Department of Corrections.

In an effort to address the need for increased state prison capacity, the Department of Corrections is expanding the capacities at existing SCIs (by a total of 1,444 cells)^{3/} and building four additional SCIs. Of these four additional facilities, two (Frackville and Smithfield) will be completely new institutions and make available an additional 1,045 cells. The other two involve conversion of existing state facilities (Cresson State Center and Retreat State Hospital) to SCIs (933 additional cells). All four of these facilities are planned to be completed by October of 1987.

The state system, despite being over capacity, is not currently under court order to relieve overcrowding. However, concern as to the prison population conditions was expressed to the LB&FC staff by a local union official representing state corrections officers. This individual stated that overcrowding of the prison population complicates and multiplies already existing problems within the state prison system. According to the union official, overcrowded conditions increase occupational stress-related problems among correctional staff. This individual expressed the opinion that such stress results in a high incidence of alcoholism, divorce, and sick leave among corrections officers. According to the official, the ideal solution to the overcrowding problem is reducing the inmate problem by transferring low risk inmates to trailers and modular units and using that bed space for those inmates requiring more secure housing arrangements. The official further indicated his opposition to private prisons by stating that the private prisons are a passing fad in the corrections field.

Options to Alleviate Overcrowding at the State Prison Level - In recognition of the potentially serious implications of prison and jail overcrowding in the Commonwealth, the Pennsylvania Commission on Crime and Delinquency (PCCD) established a Prison and Jail Overcrowding Task Force "to discuss, debate and put forth proposals to address the problem." The Task Force report essentially indicated that the group's efforts were undertaken in reaction to over-capacity conditions in the state and county correctional systems:

^{3/}Includes expansions at Dallas, Graterford, Greensburg, Mercer, and Pittsburgh SCIs.

The Task Force believes that government must provide prison staff with a safe and manageable working environment. Prison overcrowding conflicts with that responsibility. Correctional overcrowding strains the Commonwealth's ability to provide basic and humane custodial services; it increases the risk of a major crisis; and it diminishes our capacity to respond to a crisis if it occurs. These strains promote violence which directly endanger staff and inmates, decrease staff morale, and increase institutional management problems.

The Task Force, which was composed of criminal justice practitioners, judges, Executive Branch staff and officials and academics, issued a report in February 1985 entitled "A Strategy to Alleviate Overcrowding in Pennsylvania's Prisons and Jails." This report assessed the current and future status of correctional overcrowding and concluded, for example, that:

- Single celling of prisoners is a widely accepted minimum standard--but our state prisons have more than 5,500 inmates double-celled and the number will continue to increase.
- State prisons are 33 percent over capacity.
- Additions to state prison capacity currently under construction will not keep pace with population increases.
- Overcrowding seriously handicaps efforts to control and manage the inmate population, and raises the potential for assaults and violence.

The Task Force recommended implementation of a number of steps intended to reduce and control overcrowding thereby reducing the possibility of court intervention and dealing with management problems faced by correctional facility staffs. These specific recommendations (as well as their implementation status) are listed in Appendix A of this report. The PCCD^{4/} recommendations do not directly discuss the use of private prisons.

The Chairman of the PCCD indicated to the LB&FC staff that the Task Force addressed "the issue of providing prison capacity because that was our main theme, and we did not consider it salient to get into the question of whether that capacity would be provided through private or public management." He also expressed the opinion that:

Regardless of who manages them, the costs will have to be borne by the public in any event. The potential benefits from private management relate to issues of efficiency or innovation, but do not impact the issue of overcrowding.

^{4/}The Task Force recommendations do, however, contain a suggestion that "alternative housing" could be used for certain county prisoners.

Special Needs Prisoners - The Department of Corrections has suggested that a possible future role for private prisons is to serve "special needs" inmates. These special needs inmates could include persons within categories such as the following: (1) protective custody (PC),^{5/} (2) ill or injured, (3) mentally disturbed, (4) handicapped, (5) management problem, and (6) geriatric.

The special needs category of protective custody is the focus of a proposed private facility to be located in Beaver County, Pennsylvania. The facility, if it becomes operational, would be available to house protective custody inmates from Pennsylvania and, also, from other states. (A further discussion of this facility begins on page 26.)

The PA Department of Corrections indicated to LB&FC staff that they house about 150 protective custody inmates in their system. This represents approximately 1% of the total State correctional inmate population. The PA DOC does not routinely develop separate cost figures for PC inmates. The DOC provided an estimate to LB&FC staff, however, that average daily costs for PC inmates are about \$60 per inmate. This is nearly twice as high as the average daily cost for general population inmates (about \$32 per diem).

The DOC indicates that all of the SCIs have the capability of housing protective custody inmates. According to a Department official, the DOC does not presently have a shortage of facility space for such inmates. The Department does not, at least, in the immediate future plan to send such inmates to a private facility such as the one proposed for Beaver County.

Private Prisons at the State Level in Other States - LB&FC staff contact with national correctional organizations and other states revealed that no private prison facility serving state prisoners is operational anywhere in the United States. However, we found that some states (most notably Kentucky, Idaho, and New Mexico) have taken steps to provide for such private prison services. We also found that certain state prisoners in the State of Tennessee are reportedly housed in a private prison that is primarily serving county-level prisoners (see discussion on page 25).

The State of New Mexico enacted legislation (June 1985) which authorizes the New Mexico Corrections Department to lease a state-owned minimum security prison to a private firm for purposes of prison operation if the Governor or Legislature requests them to do so. As of mid-August 1985, no such request had been made.

^{5/}Protective custody inmates are defined as inmates who need separation from the general population inmates for their own safety or the safety of others. This would include prisoners such as police informants, child molesters, persons who owe large gambling debts and overly aggressive inmates.

The Commonwealth of Kentucky issued a Request for Proposal (RFP) in April 1985 for a contract to provide for construction and operation of a 200 inmate minimum security correctional facility for the incarceration of male felons. Reportedly, the operation of the facility must be conducted according to standards developed by the American Correctional Association. According to a Kentucky corrections official, as of late August 1985, all proposals that were received have been reviewed by the Corrections Cabinet and are awaiting review by the Finance Cabinet.

In Kentucky, a factor in their interest in private prisons is the overcrowded condition of the prison system. Reportedly, Kentucky is under a court order to reduce overcrowding in their state correctional system. Many other states also have one or more state institutions which have been ordered by the courts to reduce overcrowding and/or to improve the conditions of confinement. Pennsylvania is reportedly one of only 14 states that do not have any such court orders currently imposed. The entire prison systems of eight states have been declared by the courts as unconstitutional due, in some cases, to overcrowded conditions.

According to the Director of Corrections for the State of Idaho, that State has agreed to send 40 state prisoners to a private facility being constructed for the firm of Buckingham Security, Ltd., in Idaho. Reportedly, several other states have also made commitments or expressed interest in sending prisoners to the planned Buckingham Security prisons. (See discussion on page 27.)

B. Potential Role of Private Prison Facilities for County-Level Prisoners and Related Background Information

1. Discussion of Potential Role

County level prison/jail facilities are maintained by county officials and the county level inmates are the responsibility of the counties.^{6/} The LB&FC staff determined that, of the 67 counties in Pennsylvania, 63 maintain and operate county prisons or jails. The counties of Forest, Fulton, Sullivan and Wyoming were not operating prison facilities at the time of the study.

^{6/}County prisons are generally maintained by first through fifth class counties, while sixth through eighth class counties possess jails. A county-level inmate is one whose term is less than two years. If the maximum sentence is two years or more but less than five years, the court has the choice of sentencing an individual to either a county facility or State Correctional Institution.

According to a June 1985 LB&FC staff survey of county prison officials, there were no county inmates housed in private prisons at that time. One county, however, had plans to utilize a reportedly ready-for-operation private prison in Western Pennsylvania. Further, over one-half of the county prison officials contacted indicated that private prisons could, in their opinions, be used for certain types of county inmates. This opinion was also expressed by the President of the Pennsylvania Wardens' Association (which includes wardens of county prisons). Particularly mentioned as possible candidates for placement in a private prison are those classified as low-risk, minimum security offenders (the type that would be secured by the private prison in Western Pennsylvania that is reportedly ready for operation; see discussion on page 25). Inmates charged with DUI were specifically mentioned. Also suggested for placement in private facilities were county inmates with special needs, such as retarded or handicapped inmates and those requiring protective custody.

2. Background Information Related to Potential Role

Population and Capacity of the PA County Prison System - A survey of Pennsylvania county prison and jail officials conducted by the LB&FC staff revealed that, as of June 1985, the total capacity of the PA county prison system was 10,338. The total inmate population was determined to be 11,111, making the county prison system at 107% of capacity (see Table 2). Of the 63 counties currently operating prisons, 15 were over capacity and 3 were at 100% capacity as of June 1985. Some extreme examples of this condition include Luzerne County Prison which was reportedly at 210% of capacity and Montgomery County Prison which was 176% of capacity. From 1974 to 1983, the average daily population of county prisons increased from 5,745 to 10,146, an increase of approximately 77%. The increasing number of persons in the incarceration-prone age group (age 20-34), tougher and longer sentences being imposed by judges, and mandatory sentencing guidelines (particularly the Driving Under the Influence Law) appear to have had an impact on the county correctional system.

In order to cope with increasing offender incarceration, some county prisons and jails have commenced a program consisting of new prison construction or the expansion of existing facilities. As of October 31, 1984, 16 counties were either building a new facility or expanding an old structure. An additional 10 counties reportedly were planning to expand their existing facility or add a new one. The prison construction and expansion proposals of these 16 counties, once completed, are expected to increase the inmate capacity of the county prison system by approximately 800 to 1,000 by the year 1990. According to an official of the PA Department of Corrections, Blair, Bucks,

7/See page 22 for discussion of a special subsidy program proposed by PCCD Task Force to assist counties in dealing with overcrowding resulting from DUI incarceration, including the financing of "alternative housing" for DUI inmates.

TABLE 2

Breakdown of PA County Prison and Jail
Capacities and Populations as of June 1985

<u>County</u>	<u>Total Capacity</u>	<u>June 1985 Population</u>	<u>Percent of Capacity</u>
Adams.....	55	57	104%
Allegheny.....	540	540 ^{a/}	100
Armstrong.....	62	41	66
Beaver.....	78	100	128
Bedford.....	56	13	23
Berks.....	325	290	89
Blair.....	170	130	77
Bradford.....	46	33	72
Bucks.....	357	300	84
Butler.....	96	75	78
Cambria.....	165	120	73
Cameron.....	6	0	0
Carbon.....	68	44	65
Centre.....	48	48	100
Chester.....	550	460	84
Clarion.....	32	25	78
Clearfield.....	114	107	94
Clinton.....	40	34	85
Columbia.....	70	52	74
Crawford.....	73	79	108
Cumberland.....	210	150	71
Dauphin.....	224	330	147
Delaware.....	650	570	88
Elk.....	19	12	63
Erie.....	238	230 ^{a/}	97
Fayette.....	76	44	58
Forest.....	No Prison ^{d/} - Contracts with Warren County Prison		
Franklin.....	110	74	67
Fulton.....	No Prison ^{d/} - Contracts with Bedford County Prison		
Greene.....	27	22	82
Huntingdon.....	40	19	48
Indiana.....	60	55	92
Jefferson.....	54	35	65
Juniata.....	28	26	93
Lackawanna.....	185	139	75
Lancaster.....	309	323	105
Lawrence.....	75	50	67
Lebanon.....	146	156	107

(See footnotes to this Table on next page.)

TABLE 2

County Prison and Jail Capacities and Populations
(Continued)

<u>County</u>	<u>Total Capacity</u>	<u>June 1985 Population</u>	<u>Percent of Capacity</u>
Lehigh.....	250	282 ^{b/}	113
Luzerne.....	143	300 ^{b/}	210
Lycoming.....	115	127 ^{a/}	110
McKean.....	35	18	51
Mercer.....	70	54	77
Mifflin.....	60	35	58
Monroe.....	72	104 ^{a/}	144
Montgomery.....	188	330 ^{a/}	176
Montour.....	45	45	100
Northampton.....	160	252	158
Northumberland...	150	146	97
Perry.....	12	9	75
Philadelphia.....	2,700	3,700 ^{a/}	137
Pike.....	25-30	15	54
Potter.....	13	7	54
Schuylkill.....	100	95	95
Snyder.....	26	16	62
Somerset.....	60	55	92
Sullivan.....	No Prison ^{d/} - Contracts with Montour County Prison		
Susquehanna.....	20-25	18	78
Tioga.....	28	19	68
Union.....	25	20	80
Venango.....	48	35	73
Warren.....	75	62	83
Washington.....	129	114	88
Wayne.....	30	15	50
Westmoreland.....	76	120	158
Wyoming.....	Closed While Being Rebuilt ^{e/} (Prisoners Sent to Lackawanna)		
York.....	<u>275</u>	<u>335</u>	122
Total.....	<u>10,338^{c/}</u>	<u>11,111</u>	107%

^{a/}Under court order to reduce overcrowding.

^{b/}Court is in process of ordering Luzerne County to alleviate its overcrowding problem.

^{c/}About 67% of all county inmates are reportedly pre-trial detainees.

^{d/}Reportedly does have 48-hour holding capacity.

^{e/}Reportedly to be operational in 1986.

Source: Developed by LB&FC staff through telephone survey of county prison and jail officials conducted in June 1985.

and Cumberland Counties have, since January 1985, completed their construction projects, including the replacement of the oldest county prison in the Commonwealth (Cumberland County Prison) with a new prison in May of 1985 at a cost of approximately \$8.7 million.

Overcrowding of PA County Prisons - As of June 1985, five^{8/} counties were reportedly under court order to reduce overcrowding. In the case of Allegheny County, a Federal District Court had placed a population ceiling on the Allegheny County Jail. According to an Allegheny County official who also serves as the President of the Allegheny Prison Board:

. . . the Federal Court has ordered the release of inmates in order to maintain the population cap. County officials have generally expressed their concern about this procedure since it was not initiated by County personnel. For every inmate released under the Federal Court order, Allegheny County is fined five thousand dollars. These fines have been temporarily stayed by the Third Circuit Court of Appeals pending our appeal on the imposition of the fines. Nevertheless, the release of inmates are reported to a Court Monitor who is computing the fines in the event that Allegheny County loses its appeal before the Third Circuit Court.

Additionally, a Population Control Manager position was created in April 1984. According to the position's job description, duties and responsibilities of the position include reviewing of computer lists in order to effectuate inmate transfer or reassignment, placing of prisoners in county jails of other counties with available bed space and exploring and developing alternative^{9/} sites for prisoners convicted of driving under the influence (DUI).

According to the PCCD Task Force report, the Philadelphia County jails have been under court order to reduce overcrowding for 14 years since a consent decree was entered in 1971 over unconstitutional conditions, and, in 1974, a prohibition against double-celling inmates was imposed by the Court. The report further stated that, to comply with the provisions of this prohibition during a period when the offender incarceration rate grew, a bail review and release program was instituted. The most recent decision of the Court affecting Philadelphia County compels the County to construct three new prison facilities by August of 1987, and, at the time of this study, two correctional facilities

8/The counties reportedly under court order to reduce overcrowding are Allegheny, Erie, Lycoming, Montgomery and Philadelphia.

9/See page 25 for discussion of 268 Center which is being considered as an alternative site for Allegheny County prisoners. It should be noted, however, that Allegheny County is one of the counties currently increasing its capacity level through construction.

were being built in Philadelphia County. Additionally, the City's new Criminal Justice Complex is currently in the schematic design stage and construction of the foundation is reportedly tentatively set for late spring 1986. The County reportedly will be fined \$1,000 per day should the construction time schedule not be met. An inmate capacity limit was established by the Court in June 1984 which placed a ceiling on the inmate population of 2,700. As of June 1985, Philadelphia County reported an inmate population of approximately 3,700.

The escalation in offender incarceration has strained the capacities of many Pennsylvania county prisons. To accommodate the increasing demand for cells, some county prisons are placing multiple prisoners in cells designed for single inmate housing. As stated earlier, one of the problems associated with the overcrowding of county prisons is the efficient and safe management of a facility faced with an over-capacity inmate population. According to the PCCD Task Force, such housing practices may result in constitutional challenge or court review accompanied by possible court intervention. As stated in the PCCD report, ". . . it is not the potential for federal court intervention that should stimulate a response to overcrowding but the difficulties that overcrowding poses for the staffs of our correctional facilities."

According to the LB&FC staff survey, not all prisons and jails at the county level are over capacity. The prisons not filled to capacity as of June 1985 contain a total of 958 unfilled inmate slots (see Exhibit 1). It was determined by the LB&FC staff that 35 counties transfer inmates to facilities of other counties which have space to accommodate additional prisoners. The reported per-diem costs paid by these counties transferring inmates ranges from \$25.00 to \$50.00 per inmate (see Appendix B). There are also instances, however, where reciprocity agreements exist between counties, and no money exchanges hands. Additionally, there are 48 counties which house inmates for other counties. The reported charge to house these inmates ranges from \$24.25 to \$45.00 per inmate (see Appendix C).

Impact of the DUI Law on County Prison Populations- Initial indications are that the Commonwealth's Driving Under the Influence (DUI) Law (Act 289 of 1982) is having a significant impact on the number of offenders who are committed to county jails. The results of a mid-1985 research report on the impact of the DUI Law issued by the PCCD^{10/} and a telephone survey of county prison officials by LB&FC staff indicate increasing strains on the county prison system.

During June of 1985, the LB&FC staff conducted a telephone survey of officials in all county prisons and jails in Pennsylvania. One survey area dealt with involved the handling of DUI offenders. Forty-two of

^{10/}Entitled "The New Driving Under the Influence Law in Pennsylvania: First Year Observations," PCCD, July 1985.

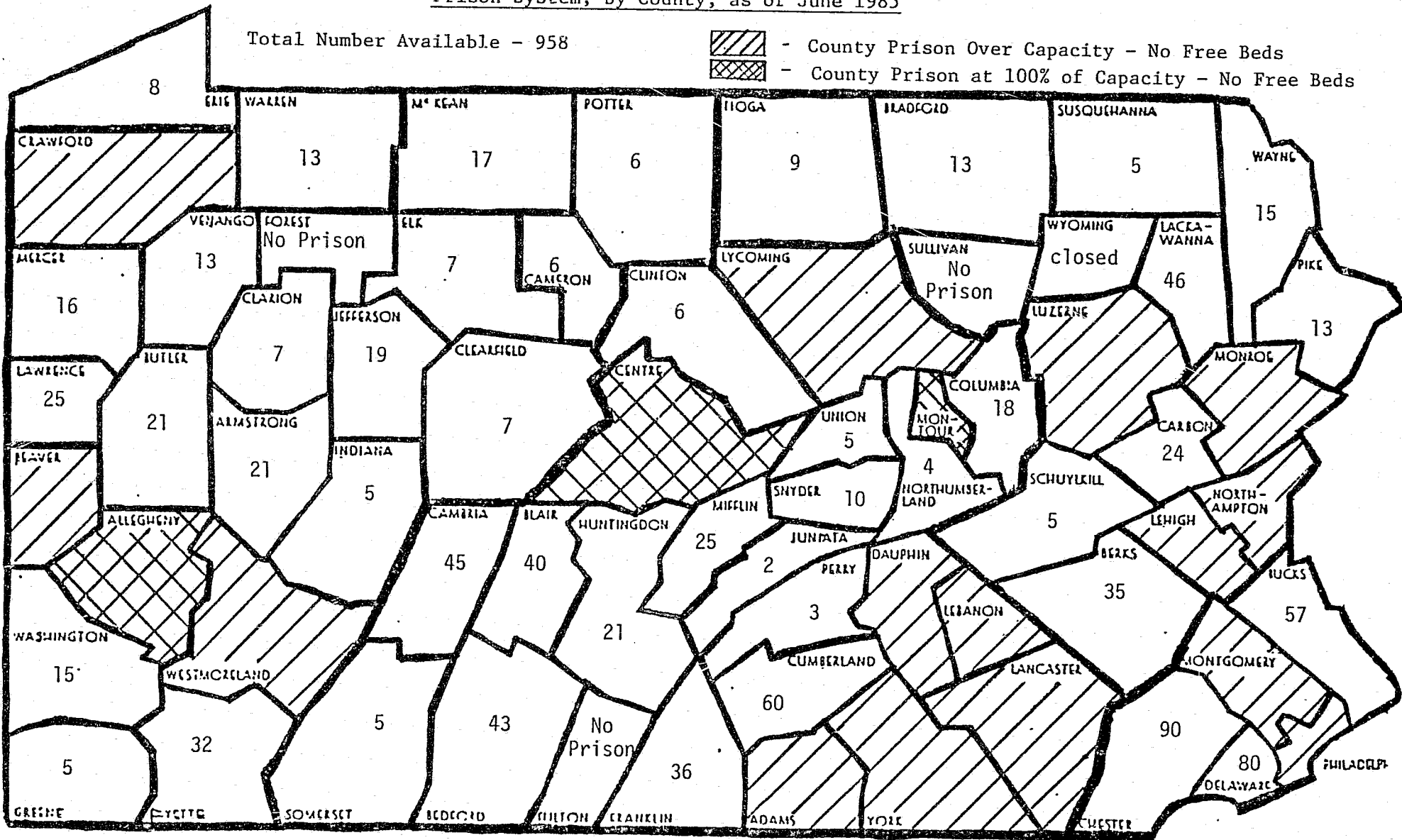
EXHIBIT 1

Number of Available Beds in the PA County
Prison System, by County, as of June 1985

Total Number Available - 958



- County Prison Over Capacity - No Free Beds
- County Prison at 100% of Capacity - No Free Beds



Source: Developed by LB&FC staff through telephone survey of Pennsylvania county prison officials conducted during June 1985.

the 63 county prisons and jails surveyed reportedly house at least some DUI offenders with their general inmate populations. Many DUI offenders, however, are placed in work release programs and/or housed separately from the general inmate population.

The impact of DUI on the populations of county jails was described in July 1985 by the PCCD as follows:

Although jail sentences received for DUI are relatively short, the impact on county jails, where these sentences are generally served, has become a concern of jail administrators. . . . there has been a dramatic increase in the number of offenders committed to county jails.

The PCCD report went on to point out (see Table 3) that the average DUI daily population (ADP) has doubled from 1981 to 1983 (from 101 to 217) and that this creates particular problems for some counties with already crowded jails (such as Allegheny, Centre, Montgomery, and York). Reportedly, these counties are experiencing DUI populations five times greater than was experienced prior to the DUI law and "accommodation of these offenders is becoming an increasing problem."

Among other observations, the PCCD stated that:

The workload on all components of the criminal justice system has increased under the new law. Although their capacity is already strained, probation departments and jails must supervise and house these offenders. Initial information indicates that some of these agencies may not have the resources to accommodate the increasing number of DUI offenders.

PCCD Task Force Suggestions for Alleviating Overcrowding at the County Level - The report prepared by the Prison and Jail Overcrowding Task Force of the PCCD outlined ten initiatives to alleviate crowded conditions. According to the report, strategies that could be implemented at the local level are: the implementation of earned time credits for prisoners demonstrating good behavior; the implementation of pretrial mechanisms that would control the county jail detention population (affecting primarily arrestees and pretrial detainees); and the establishment of a state subsidy program^{11/} to assist county jails in defraying the cost of DUI offenders. A PCCD June 1985 status report on these initiatives is included in Appendix A.

^{11/}The PCCD recommended that "A State Subsidy Program should be established to provide county jails with funding to help defray the costs of housing driving under the influence (DUI) offenders. Fund distribution would be based on the actual average daily DUI population housed in each county, but would not cover the full cost of housing the offender." Under the PCCD proposal, the allocation rate would be established at a level below the current average yearly cost of housing a county jail inmate (approximately \$12,000) and suggested an allocation formula of \$7,500 x (DUI Avg. Daily Population) for each county. At this rate, a statewide program would have cost approximately \$1,600,000 in 1983. See Appendix A for the status of this initiative.

TABLE 3

Selected Information on DUI Populations and Impact on County
Prison Populations (Based on PCCD Report of July 1985)

1. Mandatory Jail Sentences for Drunken Driving^{a/}

	<u>Defendants Convicted</u>	<u>Defendants Receiving Jail Sentence</u>	<u>% of Total</u>
Old Law (1981).....	6,475	807	12.5%
New Law (1983).....	3,494 ^{d/}	2,827	80.9%

2. DUI Commitments to and Population in County Jails

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>% Change</u> ^{e/}
DUI Commitments to County Jails..	629	1,055	2,887	+359%
Avg. Days Served of DUI Offenders Released ^{b/}	59	53	27	- 54%
Estimated DUI ADP.....	101	154	217	+115%

3. DUI Offenders (ARD or Convicted)

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>% Change</u> ^{e/}
Accelerated Rehabilitative Disposition (ARD) ^{c/}	7,461	8,841	14,197	+90%
Conviction.....	5,487	7,410	6,441	+17%
Total.....	<u>12,948</u>	<u>16,251</u>	<u>20,638</u>	+59%

Source: "Research in Brief - The New Driving Under the Influence Law:
First Year Observations," PA Commission on Crime and Delinquency, July 1985.

(See additional footnotes to this Table on next page.)

FOOTNOTES TO TABLE 3

a/The "Driving Under the Influence" (DUI) Law, Act 289 of 1982, became effective in January 1983. If convicted, driving under the influence of alcohol is now a Class 2 Misdemeanor. The maximum penalty is a fine of \$5,000 and two years of imprisonment. The mandatory minimum sentence for DUI offenders is a fine of not less than \$300 and minimum imprisonment as follows: 1st conviction - 48 consecutive hours; 2nd conviction (within 7 years) - 30 days; 3rd conviction (within 7 years) - 90 days; 4th conviction (within 7 years) - 1 year.

b/Although more drunken drivers are going to jail, the average time served by these offenders has decreased 54% from 59 days in 1981 to 27 days in 1983. This decrease in time served is due to a shift in sentence length distributions. According to the PCCD, previously, only the most serious offenders went to jail, and their sentences were reasonably long. Now, a larger number (1,300, or almost half of the sentences) are serving the mandatory minimum 48-hour sentence required by the new law, thus reducing the average time served.

c/ARD stands for the Accelerated Rehabilitative Disposition Program and is a one-time alternative to trial and conviction for first-time offenders. Under this program, the individual choosing ARD receives, among other conditions, a mandatory suspension of his/her driving privilege, makes restitution to any person who incurred determinable financial loss as a result of the defendant's actions, and submits to court supervision of restitution payment schedule or rehabilitative counseling or treatment.

d/Not a full year's data; represents those convicted under the new law in 1983.

e/Percentage change 1983 over 1981.

Private Prisons at the County Level in Other States - As of August 1985, there were at least four states that have taken steps to utilize private prisons at the county level. Texas and New Mexico recently passed legislation that will enable counties to contract with private organizations to provide housing for certain offenders. In early July 1985, up to three counties in New Mexico reportedly distributed Requests for Proposals for private firms to operate their prisons. However, as of August 1985, no programs involving the private operation of a jail facility in New Mexico or Texas were underway.

A privately operated adult correctional facility began operations in the fall of 1984 in Chattanooga, Hamilton County, Tennessee. At that time, Hamilton County officials turned the management of its 300-bed adult female/male Silverdale Detention Center over to Corrections Corporation of America (CCA). Reportedly, the Silverdale Detention Center houses state prisoners serving up to six years for felonies, including murder, county prisoners serving less than a year for misdemeanors, and a growing number of prisoners serving mandatory 48-hour sentences for driving while intoxicated. The prison is also reportedly experiencing inmate population increases for second and third offenders serving a minimum of 45 days and 120 days, respectively, under Tennessee's Driving Under the Influence Law.

Another facility privately operated is a 42-bed, female regional center in Roseville, Minnesota. The Volunteers of America, a non-profit agency which reportedly has long operated halfway houses for released prisoners, began operating the medium security regional corrections center. As of May 1985, the center reportedly had formal contracts with two Minnesota counties and the federal government and noncontractual agreements with six to eight counties on an as-needed basis only. The facility reportedly will not house inmates for a period of over one year. According to the Director the prison facility is leased at a cost of \$50,000 per year from Ramsey County, Minnesota.

A Proposed Private County-Level Prison in Pennsylvania - As of August 1985, Pennsylvania had one for-profit, 55 male low-risk, short-term, minimum-security adult corrections facility reportedly ready for operation in Armstrong County. This facility is referred to as "268 Center." The owner of this facility stated that it is intended to provide short-term relief for counties that are experiencing overcrowding. Allegheny County is reportedly seriously considering using this facility to handle certain prisoners who cannot be accommodated in the County Jail. (See discussion on page 19.) The Federal Judge that has placed a cap on the Allegheny County Jail population has inspected the "268 Center" and has determined that the facility is constitutionally adequate to house inmates.

According to the Director of the "268 Center," other counties (besides Allegheny) expressing an interest in the Center are Bucks, Beaver, and Westmoreland. The Director estimates that the average offender will spend between 30-60 days at the Center, and the maximum stay would be one year. The 268 Center, Inc., reportedly will charge between \$35 and \$40 per day per prisoner.

Reportedly, the Center would, when fully operational, employ approximately 25 employees, 16 of whom would serve as full-time security officers. The owners stated that at no time would a security officer be permitted to carry a firearm.

C. Potential Role as Business Venture Unrelated to Pennsylvania's Prisoners

A private firm, Buckingham Security, Ltd., is considering the operation of a private prison in Beaver County, Pennsylvania. This proposed prison would house up to 700 inmates in a maximum security setting. It would be known as Riverhaven.

As discussed above, the facility would specialize in the housing of state prisoners that require protective custody (PC) conditions (see discussion on page 14). Another unique aspect of this facility is that it is being proposed to serve inmates on a multi-state basis; i.e., it will accept prisoners from other states (in addition, of course, to being available for Pennsylvania state system inmates if the DOC should decide to use their service). If PA DOC chooses not to enter into an agreement with Buckingham, the facility could then operate in Pennsylvania as a private prison without providing service (necessarily) to any Pennsylvania prisoners.

A Buckingham Security, Ltd., spokesman indicated to the LB&FC that several states have expressed an interest in sending PCs to its proposed facility and entering into a contract with them. According to an official of Buckingham Security, Ltd.,^{12/} the approximate cost per PC inmate per day at Riverhaven will be \$70. The contracts reportedly would be seven-year contracts, including six option years subject to annual budget approval.

The owners of Riverhaven stated that, when in full operation, the facility would employ approximately 300 employees. A spokesman for Buckingham estimates that 90% of Riverhaven's employees would live within commuting distance of the facility. Buckingham Security, Ltd., reported that it plans to operate Riverhaven according to the Commission on Accreditation for Corrections standards and indicated that it would welcome inspections by the Pennsylvania Department of Corrections.

^{12/}The firm reportedly plans, however, to provide lesser rates to states that guarantee to send relatively large numbers of prisoners.

Riverhaven is to be located in a facility that has been partially renovated by Buckingham at a reported cost of approximately \$300,000. No specific date is presently established for the facility to be placed in operation.

The firm of Buckingham Security, Ltd., is also planning to operate a private prison facility in Idaho for special needs prisoners from a multi-state area in the western part of the United States. Officials of the Idaho Department of Corrections stated that construction of the facility will begin in the fall of 1985. Reportedly, a resolution was passed by the Governors of several western states endorsing the use of a private regionalized facility for protective custody inmates in 1983. Officials of Buckingham Security, Ltd., indicated to the LB&FC staff that the following states have sent them commitment letters to use the Idaho facility: Oregon, Washington, Idaho, Utah, Arizona, and Colorado.

V. POTENTIAL BENEFITS AND PROBLEMS ASSOCIATED WITH USAGE OF PRIVATE PRISON FACILITIES AND PROGRAMS FOR ADULTS IN PENNSYLVANIA

During our research for this study project, including review of written materials and contacts with many interested and knowledgeable persons, it became evident that potential benefits and potential problems are associated with the usage of private prison facilities. This section will set forth the benefits and problems we have identified.

A. Potential Problems Associated with Usage of Private Prisons

1. Absence of laws, regulations or other mechanisms to protect the interest of the public and the rights of inmates - Pennsylvania does not presently have any state laws or regulations which are specifically intended to define or guide private prisons which may operate in Pennsylvania. In the absence of such laws or regulations, there are no mechanisms existent to monitor such operations and hold them accountable to the public interest. The potential dangers of an unregulated private prison operation are evident. They include, for example, the possibility that prisoners will not be securely maintained and, therefore, will become a danger to the immediate community and even the larger society. They also include the possibility that prisoners will be incompetently managed or improperly treated. These potential problems are illustrated by the incident of the Medina case^{1/} and by incidents which reportedly occurred recently in the State of Florida. In these Florida incidents private firms were being used to transport state prisoners among correctional institutions. No laws existed to regulate this process until early this year. These recent laws were reportedly brought about (at least in part) because of problems such as prisoner escapes and alleged mistreatment of prisoners while in the custody of these private transport firms. The enactment of laws and regulations to control and hold accountable private prisons would require some commitment on the part of the government (e.g., licensing and inspection programs) which would have to be financed either with tax monies or via assessments on the private prisons.

2. Lack of provisions to deal with emergency situations - There are a number of circumstances associated with the usage of private prisons which could result in a public emergency. For example, it appears that under present law (the Federal National Labor Relations Act) private corrections officers would have^{2/} the right to strike in the event of a collective bargaining impasse. Such an occurrence would, of course, create the possible need for government intervention to protect the public, prisoners, and property. Other emergency circumstances that could require various levels of government intervention include

^{1/}See discussion on page 29.

^{2/}Public corrections officers are prohibited by Pennsylvania law from striking.

prisoner riots, prisoner escapes, facility fires, widespread prisoner health problems, natural disasters and financial bankruptcy of the private firm that owns and/or operates the prison. There is currently an absence of specific legal provisions for emergency government take-over of a private prison facility.

3. Liability of the government and government employees - It is possible that a governmental entity and/or employees of that governmental entity could be found liable for actions of a private prison and its employees. A review of legal cases involving the delegation of a public function to a private firm and examination of expert opinion indicates that a government may not be able to divest itself of its responsibility for protecting the constitutional rights of prisoners (e.g., the rights of due process and guaranteed civil rights). If employees of a private prison facility were to violate the rights of a prisoner, it appears possible that the prisoner may have grounds to sue the governmental entity or employees of the entity that arranged for his/her incarceration in that private facility. According to a February 1985 National Institute of Justice report, "(t)here is, however, no legal principle to support the premise that public agencies will be able to avoid or diminish their liability merely because services have been delegated to a private vendor." This principle is illustrated by a Federal Court's ruling in the case of Medina vs. O'Neill, 589 F. Supp. 1028 (S.D. Texas 1984). Medina involved a civil rights suit by several excludable alien stowaways who were detained in a facility operated by a private security firm under contract to a shipping company after U.S. Immigration and Naturalization Service (INS) officials directed the shipping company, under authority of the Immigration and Nationality Act, to detain the aliens until transporting them back outside U.S. territorial waters.

Reportedly, sixteen aliens were detained overnight in a windowless cell designed for no more than six people. The court found that the facility was not secure to hold sixteen people and that the guards were inadequately trained to detain aliens. The combination of the conditions of detention and the accidental death of one of the aliens in a subsequent escape attempt was found by the court to constitute a denial of due process. The court's main finding was that the aliens were deprived of their rights to due process when the INS ordered their detention "but failed to assure they were detained in a facility in compliance with due process dictates." The court clearly criticized the failure of the INS to inspect or regulate the facility.

A possible implication of this potential liability is that additional costs may be incurred for purposes such as payment of legal fees, damage awards and monitorship activities by the governmental entity.

4. Possible misuse of the profit motive - Operation of the correctional system is a traditional government responsibility aimed at protecting the public interest. Entrusting this function to proprietary firms creates the possibility that the profit motive may be placed ahead of service for the public good in carrying out the responsibility. It is possible that some businesses may "cut corners" in order to increase profits at the expense of providing prison services which are in the best interest of the public.

Additionally, it is possible that an unscrupulous private prison operator could take steps to maintain a full prison population, even when such may not be in the public interest. For example, it is possible that prisoner records could be manipulated so as to interfere with a prisoner's opportunity for a pre-release experience or for parole.

While identifying the possibility of such occurrences, the LB&FC staff stresses that it did not become aware of any such incidents in relation to the private prisons that are currently in operation in the United States. See Appendix D for a list of proposed and operational private facilities.

5. Present law and sentencing guidelines do not specifically recognize the potential role of private prisons - Pennsylvania's criminal law and court procedures do not specifically discuss private prisons and the circumstances under which persons can be sentenced or otherwise committed to such a facility. Furthermore, there are no specific sentencing guidelines dealing with private prisons. This is in contrast to the Pennsylvania juvenile justice system which contains specific authorization for judges to place delinquent youth in specific licensed private facilities. Also, specific guidelines have been prepared to assist juvenile judges in making placement decisions.

The absence of specific authorization and guidelines for commitment of adult prisoners to private facilities could result in inappropriate commitments. This may be a particular concern since a number of interested parties have suggested that private prisons should only be used for certain types of prisoners. Most often, it is suggested that low-risk, short-term prisoners are the most likely for commitment to private facilities.

6. Lack of defined legal status of private prison employees - Current law in Pennsylvania does not specifically recognize private corrections officers and, therefore, does not confer on them any special rights or privileges in the area of law enforcement. On the other hand, special rights are conferred upon governmental corrections officers who are classified under law as "peace officers." By virtue of this status, governmental corrections officers, for example, are authorized to use deadly force in certain circumstances, including when necessary to prevent a prison escape.

Private corrections officers, under present law, would have only the same rights and privileges as a private citizen in regard to use of deadly force and firearms. Public corrections officers inside the institution perimeter do not carry firearms during discharge of their daily duties; certain public corrections officers, however, are regularly in possession of firearms as part of their duties. This includes officers who are situated in a guard tower and assigned to observe the outer fence areas to prevent prisoner escapes and those responsible for transporting inmates outside the prison.

Additionally, because of the lack of recognition of private corrections officers under law, no specific restrictions or requirements are imposed. For example, persons with questionable backgrounds are not prevented from serving as private corrections officers, and no special background and training is required of private corrections officers. Such safeguards are present in the public sector and would appear to be necessary to protect the public interest and the rights of inmates.

7. Restrictions may exist on interstate transfer of prisoners - As mentioned above, one of the private facilities being considered for location in Pennsylvania may accept prisoners from other states. The existence of an Interstate Corrections Compact (61 P.S. §1062) adopted by the legislatures in Pennsylvania and several other states may serve as an impediment to such transfers. According to the Pennsylvania Department of Corrections, the Compact provides only for the direct interstate transfer of prisoners between corrections agencies of the involved states. The compact provides for the sending and receiving states to enter into specific agreements for transfer of prisoners between their jurisdictions. The interpretation of the Department's legal counsel is that the Compact currently authorizes transfers between states only and that it would not be proper to bring an out-of-state prisoner into Pennsylvania without a specific agreement between both the sending and receiving state. Based on this interpretation, it would seem to require the involvement of the PA DOC as at least a "middle-man" for any prisoners accepted by private prisons from out-of-state sources. The precise function of the Department and their level of responsibility and liability is not clear. It is possible, however, that additional costs could be imposed upon the Department. The Commission, in a testimony, stated that ". . . [a]ny transfer without the appropriate statutory authority would be a violation of the transferred inmate's civil rights and the Commonwealth could share in the liability."

8. Possible lessening of public accountability - Public prisons are in all cases administered by persons who are responsible to elected public officials. This would not be necessarily true in the case of private prisons. It is possible, therefore, that the influence of the public on prison operation and policy could be diminished. Additionally, there is no guarantee that the public would be able to obtain information such as the annual budget of a private prison. Such information is, of course, available for public prisons.

Another aspect of possible lessened public involvement relates to the construction of prison facilities. Government jurisdictions are often limited in the amount of debt which they may incur without obtaining specific voter approval (e.g., via referendum). Turning to a private firm to construct a prison facility for the jurisdiction (whereby the private firm would own the facility at least until construction is completed) could serve as a mechanism for the government jurisdiction to circumvent the required voter approval. Such an action could, in effect, be mandating a long-term obligation for the government jurisdiction without having subjected the matter to the public for its consideration.

9. Lack of established relationships with other segments of the criminal justice system - Certain other segments of the criminal justice system interact regularly with prisons. This is particularly true for parole officers, sheriffs' offices and police. At least some of these relationships are formalized via law. The existence of a facile working relationship with prisons is necessary, for example, in the case of the State Board of Probation and Parole for that agency to properly carry out its function. The State Board of Probation and Parole uses information developed by prison staffs and maintained in prison files during its considerations. Additionally, the Board conducts hearings and interviews on the premises of the prisons. Lack of access to necessary records and information in private prison files and/or lack of easy access to prisoners and/or private prison officials could hamper the Board in its work and impact upon the opportunity of prisoners for parole.

10. Possible usage of private prisons as a business investment to gain tax advantages - There are certain potential tax advantages available to persons who invest their money in a business venture. For example, a newly constructed or renovated business facility (such as a private prison facility) may provide the owner with tax advantages, such as (1) accelerated depreciation,^{3/} and (2) investment tax credits.^{4/} These could^{5/} reduce the amount of taxes paid to the Federal and State Governments and could be viewed as a "hidden" cost of prison privatization.

^{3/}Officially known as Accelerated Cost Recovery System or ACRS. This allows the taxpayer to depreciate qualifying property on an accelerated basis over a relatively short period of time. The result is to allow the taxpayer increased deductions for business expenses in given years and thereby to lessen his/her tax liability.

^{4/}Investment tax credits provide direct reductions from the taxpayer's tax amount. An example is a rehabilitation tax credit. Such credits would be available under certain circumstances for investments to renovate buildings.

^{5/}Both could impact on Federal taxes, whereas investment tax credits would not impact on state taxes.

11. Potential creation of a private monopoly to meet an essential public function - The usage of a private prison facility by a government jurisdiction over time could result in a dependence on that private business to meet the essential public need of an incarceration facility. This could become a particularly serious problem where a government uses a private facility for large numbers of prisoners and where alternative public or private facilities are not maintained and available. This potential for a "monopoly" by a private prison business could result in the government jurisdiction being forced to pay increased rates to the private provider. Also, it could result in the government jurisdiction having lessened leverage to influence the program and operations of the private provider.

B. Potential Benefits Associated with Usage of Private Prisons

1. Offers increased flexibility to governments in dealing with changes in prison population and special needs prisoners - Generally prison populations in Pennsylvania have been increasing substantially in recent years. This has created a problem of overcrowding of certain of our prison facilities. As mentioned previously, some of the county prisons in Pennsylvania are under a court order to reduce overcrowding. A number of options have been suggested to deal with this problem (see discussion on page 22).

The option of alternative housing for certain prisoners and particularly usage of a private prison facility for such alternative housing is being seriously considered by at least one Pennsylvania county (Allegheny County - see page 25). This option may offer the advantage of providing additional prison space to relieve overcrowded conditions in a shorter time frame than would be required for the government to construct and place in operation a new or expanded prison facility. Additionally, this option may allow the government to deal with a temporary increase in population without requiring a long term commitment through facility construction or expansion and increased prison staff.

Another area of possible increased flexibility is the potential offered by private prison facilities for meeting the needs of special prisoners. A government jurisdiction may find it advantageous to seek the specialized services of a particular private prison facility to serve particular types of prisoners or individual prisoners with unique needs. The government jurisdiction may thereby be relieved of having to provide for these special needs within its own prison program, and the public interest may be better served since individuals may be incarcerated in a more appropriate setting to his or her needs.

2. Offers competitive atmosphere which may result in reduced costs - Historically, state and local governments in Pennsylvania have received prison services solely from public prisons which they have created and control.^{6/} While various methods of cost control are employed, an

^{6/}An exception is that some counties use prison facilities in other counties as needed. (See page 20.)

atmosphere of competition has not been present since the public prisons have held a monopoly on incarceration.

It is, of course, a basic premise of "free enterprise" that the introduction of competition among service providers should result in lessened costs for the service. The National Institute of Justice comments on this possibility in a recent publication entitled, "The Privatization of Corrections". The NIJ indicates that ". . . if there is active market competition, contracting can lead to reduced cost. . . ." ^{7/} The availability of private prison facilities could allow government jurisdictions to consider the costs of providing their own prison facilities and alternatively through the available private facilities. This may also result in additional incentives for further cost control among the public prisons.

During the study, the LB&FC staff extensively researched the comparative costs for existing private prison facilities in the United States. The private prison experience is so new, varied, and limited, however, that a definite conclusion as to comparative public prison and private prison costs could not be made. This is illustrated by a recent statement by the National Institute of Justice which indicates that ". . . no rigorous cost analyses have yet emerged . . . the available anecdotal evidence is incomplete."

The Federal Immigration and Naturalization Service (INS) has perhaps the most extensive recent experience with use of private incarceration facilities. Our staff's analysis of per-diem costs for both publicly and privately operated INS detention centers is inconclusive in that it shows a wide variation in per-diem costs among both public and private facilities (see Appendix E). According to an official of the INS:

INS has utilized contractor facility contracts (i.e., contract detention) not for reasons of any cost efficiencies or economies (although we have achieved certain cost benefits, on the whole) but more for or as a mechanism which permits us to discharge our operational responsibilities as a law enforcement agency in the fastest and most operationally efficient fashion. We can bring a contract detention facility on line in fairly short order and, should our requirements change after contract performance, modify or cancel (terminate) contracts to reflect those changed requirements.

The INS official further indicated that private facilities are not specifically used to realize cost savings, although he has a general sense that usage of such facilities has been cost effective.

^{7/}The NIJ also warns in this publication that private contractors have an obvious incentive to work to restrict competition.

^{8/}A third alternative is presently used by some counties in Pennsylvania - see footnote 6 above.

As discussed previously (see page 25), Hamilton County, Tennessee, has turned operation of its county prison over to a private firm. According to an official of Hamilton County, the private firm is operating the prison for a lower per-diem cost than when operated by the county.

3. Provides additional opportunity for business enterprise and the resulting benefits to the local economy - A private prison can offer certain economic advantages for the community and state in which it is located. Since it is a business, it will be subject to business taxes which are payable to the state government; it will also be subject to property taxes which are payable to local governments. Public prisons pay no such taxes. In some cases, a private prison may also be viewed as an addition to the local economy in terms of new jobs and local purchasing. This is particularly true in the case of a facility such as is proposed by Buckingham Security, Ltd., for Beaver County, Pennsylvania. This private facility is planned to house inmates from states other than Pennsylvania (as well as being available to house Pennsylvania inmates). At least to the extent that it houses out-of-state inmates, it represents a prison activity that would not otherwise be present in Pennsylvania. The owners of this facility project a total employment of more than 300 workers when the facility is fully operational. As mentioned earlier in this report, the owners have estimated that about 90% of these employees will live within commuting distance of the facility.

This same company (Buckingham Security, Ltd.) is also planning a facility in Idaho to serve multi-state inmates (see discussion on page 27). This Idaho facility is planned to hold approximately 700 inmates and employ 300 persons when at total operation (like the proposed Pennsylvania facility). Reportedly, the Idaho facility would have an annual payroll of approximately \$5.0 million.

Another example of a private secure facility that will house prisoners who are not part of the Pennsylvania state or local correctional system is planned for Carlisle, Cumberland County, Pennsylvania. This business will be located in a building which was formerly the Cumberland County Prison. The company leasing this facility (HBS Management Group of Norristown), under an agreement with the U.S. Immigration and Naturalization Service and the U.S. Public Health Service, reportedly will

9/This lower cost was not verified by LB&FC staff. The staff was informed via telephone by Hamilton County officials that the private firm was operating the prison at a savings of \$3 per inmate per day. Our staff was also informed that, at an annualized rate, the cost of the contract with the private provider may run as much as \$200,000 over budget. Reportedly, the higher than expected contract costs are a result of higher than originally anticipated inmate population at the facility (the contract assumed a population of approximately 250 inmates and the actual population during 1984 ranged from 275-325).

house 65 illegal aliens in the facility. According to news reports, it has been estimated that this business will infuse approximately \$1.2 million annually into the local economy.

4. Provides opportunity for decreased time and money required to construct new prison facilities - There are indications that the private sector can have a prison facility constructed more quickly and at less cost than government jurisdictions. A number of persons knowledgeable about prison construction have indicated that private firms can have prison facilities constructed more quickly than can governments. Such persons point out that private firms do not have to follow the same types of bidding and approval procedures as are traditionally required of government entities. They maintain that these governmental approval and safeguard mechanisms are time consuming and add months and even years to the total period between the initial decision by a government to build a prison facility and the actual occupying of that facility. They also contend that this additional facility planning, approval, and construction time adds significantly to the final cost of the project. One private firm with experience in managing construction of prisons has stated that it can design and construct a 350 cell medium security prison facility in less than one-half of the total time traditionally required for government construction of that type of facility.

The U.S. Immigration and Naturalization Service turned to the private sector for construction in 1983 and operation of a private detention facility in Houston, Texas. According to INS officials, this was done because a facility was needed quickly in that area to house illegal aliens. The facility was reportedly constructed by Corrections Corporation of America in a period of six months. INS officials have estimated that it would have required three to five years for the identical construction to have been completed by the Federal Government. INS officials have also suggested that the cost of construction for the Federal Government would have been about twice as much as the \$4.7 million cost incurred by the Corrections Corporation of America.^{10/}

^{10/}Some government jurisdictions have turned to the private sector to oversee and manage construction and/or to arrange for and manage financing of public prisons. An example is the City of Philadelphia which has an agreement with the firm of Morrison-Knudsen whereby the firm is managing construction of new prisons for the City. As part of this same construction activity, the City, through a municipal authority, has used the services of E. F. Hutton in the sale of revenue bonds for construction.

VI. LEGAL, REGULATORY, CONTRACTING AND OTHER PROVISIONS THAT WOULD BE NEEDED IF PRIVATE PRISONS WERE TO BECOME OPERATIONAL IN PENNSYLVANIA

Section V of this report discusses benefits that could result if private prisons for adults were to become operational in Pennsylvania. The actualization of^{1/} at least two such facilities seems imminent as this report is prepared. It is unclear whether or not these two facilities will operate on a long-term basis. The likelihood of additional privately owned or operated facilities being activated is also uncertain. It appears, however, that at least at the county level many officials are seriously interested in the potential use of private prisons. This interest seems heightened by the current over capacity conditions in many county jails and by the recent influx of large numbers of DUI prisoners.

Section V also contains a list of several potential problems associated with the usage of private prisons. Based on our research for purposes of this study project, we, the LB&FC staff, believe that attention should be given to dealing with these potential problems if prison privatization is to become a reality. The following are some suggestions for provisions that could be enacted and^{2/} actions that could be taken in regard to these potential problem areas.

1. Legal Role and Status - If private prisons are to be used, provision should be made in state law to define private prisons, their role and status in Pennsylvania. This could include, for example, specification as to the circumstances, conditions, and procedures under which state and/or county prisoners may be placed in private prisons. It could also specify any limitations desired by the General Assembly. For example, especially in the case of state government, the General Assembly may wish to require the conduct of a cost comparison analysis and/or other formal justification (taking into account future ramifications) prior to administration finalization of any agreement providing for state level usage of private prison facilities.
2. Status of Private Prison Employees - If private prisons are to be used, provision should be made in state law to recognize private prison employees and their status in regard to matters such as use of lethal weapons, use of deadly force, and right to strike.

^{1/}Refers to the "268 Center" in Armstrong County and the HBS facility (former Cumberland County Prison) in Cumberland County.

^{2/}The LB&FC staff recognizes that legislative proposals have been developed and are under consideration in the Pennsylvania House and Senate which address a number of the matters discussed in this Section. The LB&FC staff is not in any way suggesting that Members of the General Assembly and its appropriate standing committees have not given attention to the issue of possible prison privatization.

3. Emergency Contingency Plans/Intervention - If private prisons are to be used, provision should be made in state law for the intervention of appropriate government agencies in the event of specific emergency occurrences at private prisons. Among other provisions, the law should indicate who will be responsible for costs associated with any such intervention and, also, should require private prison operators to develop contingency plans for dealing with emergencies.
4. Interstate Transfer of Prisoners - If private prisons are to be used, provision should be made in state law to clarify the status of out-of-state prisoners that may be housed by a private prison located in Pennsylvania. The role and responsibility of the State Department of Corrections and local jurisdictions in regard to such prisoners should be defined, including where responsibility lies for any unanticipated costs associated with such prisoners (e.g., illness requiring hospitalization).
5. Governmental Monitorship and Control of Prison Operations - If private prisons are to be used, provision should be made in state law for a mechanism for governmental regulation and monitorship of private prisons. The law should designate a specific state agency as responsible for administering this regulation and monitorship program and should define the basic structure and requirements of the program. The designated agency should be required to develop implementing regulations. It is suggested that this program should include the licensing and initial and periodic inspection/evaluation of private prisons as well as the definition of required minimum standards. The law should also specify sanctions (e.g., license revocation, fines, criminal penalties) to be imposed upon private prison operators who do not abide by the specified regulations and requirements. Additionally, the law should specify how costs of the regulatory program are to be met (e.g., through the assessment of licensing and inspection fees).
6. Public Accountability of Private Prison Firms - If private prisons are to be used, provision should be made in state law to require the public accountability of private prisons. Private prison operators should be required to provide periodic reports to appropriate public bodies. At least certain of this information should be required to be made available to the public. It is suggested, for example, that public information could include items such as numbers of employees and inmates, prison capacity, financial data (including per-diem costs, source of revenues, and the results of financial audits), incidents of inmate disturbances and inmate escapes.
7. Coordination/Cooperation with Other Elements of the Criminal Justice System - If private prisons are to be used, provision should be made in state law requiring the cooperation of private prisons with appropriate elements of the criminal justice system. For example, private prisons should be required to maintain all records necessary

for parole authorities and to make needed information, personnel, and inmates readily available to parole authorities. As another example, private prisons should be required to immediately report all inmate escapes, criminal activity, disturbances, and potential emergencies to appropriate law enforcement officials.

8. Inmate Rights/Grievance Procedures - If private prisons are to be used, provision should be made in state law to protect the constitutional rights of inmates and ensure a fair hearing of inmate grievances. It is suggested that private prisons be required to abide by a formal procedure to hear and attend to inmate grievances, which procedure would be developed as part of the regulations to govern private prisons. Additionally, it is suggested that state law require the official regulations to specify all conditions of inmate discipline and the limits of such discipline to be imposed by private prisons. The regulations should also be required to specify such matters as prisoner visitation privileges, conditions for inmate work requirements and remuneration, mail privileges, religious privileges, health, hygiene, and nutrition requirements, personal property safeguards, personal clothing and furnishing requirements, recreation requirements and education requirements.
9. Background and Financial Status of Private Prison Operators - If private prisons are to be used, provision should be made in state law to ensure reasonable financial stability for private prison businesses. Consideration should also be given to ensuring appropriate backgrounds for owners, administrators, and employees of such businesses. For example, the General Assembly may wish to prohibit persons whose backgrounds include at least certain types of criminal activity from participating as an owner, administrator, or employee of a private prison. Also, the General Assembly may wish to require that standards be established specifying minimum education, experience, and/or training required of private prison administrators and employees.
10. Private Prison Contracts - If private prisons are to be used, provision should be made in state law requiring that all relationships between private prison businesses and government jurisdictions be formalized by written contracts and that such contracts be public documents. The law should require that program regulations define the minimum matters to be covered by such contracts. These contracts could then be used by the involved government jurisdiction to place its unique requirements on the private prison operator. For example, the contract could specify what specific representatives of the government jurisdiction are to have ready access to the prison facility and prisoners from that jurisdiction who are housed in the prison. Such access might be desired to insure compliance with contract provisions and to observe the condition of prisoners from that jurisdiction. As another example, the contract could specify any requirements desired by the government jurisdiction concerning the amount of liability insurance to be maintained by the private prison and the responsibil-

ity of the private prison for costs such as legal fees and damage awards associated with suits which involve the contracting government and the private prison.

11. Categories of Private Prisons - If private prisons are to be used, state law should require that program regulations define the various categories of private prisons that may be licensed and for each such category specify such matters as physical facility requirements, minimum staffing levels, minimum program offerings, maximum capacity levels, and characteristics of prisoners to be served.
12. Transport of Prisoners to and from Private Facilities - If private prisons are to be used, the role of private prisons in transporting prisoners to and from the private prison should be defined in state law. The law should require that program regulations contain further specification of the circumstances under which such transport may occur and the conditions to be abided by when such transport occurs. If the General Assembly should decide not to permit private prisons to transport prisoners under any circumstances, the law and regulations should define and specify the responsibility of other agencies for such transport, the responsibility of the private prisons to cooperate with such other agencies and the procedures to be used.
13. Participation of Private Prison Inmates in Outside Programs - If private prisons are to be used, the authority or lack of authority for private prisons to temporarily allow prisoners into the community should be defined in state law. State law and/or regulations should specify the circumstances and conditions under which private prisons may allow prisoners to participate in furloughs, work-release programs and other programs which involve leaving the prison grounds. State law and regulations should also specify the procedures for prisoners in private prisons to leave the prison grounds for purposes such as court appearances and hospitalization.

APPENDICES

APPENDIX A

Recommended Initiatives to Alleviate Crowding in Pennsylvania's
Prisons and Jails (PCCD Prison and Jail Overcrowding Task Force,
February 1985) and Status of Initiatives as of July 1985

APPENDIX A

Recommended Initiatives to Alleviate Crowding in Pennsylvania's Prisons and Jails (PCCD Prison and Jail Overcrowding Task Force - February 1985)

PROGRAM INITIATIVE	TARGET GROUP	COST	START-UP TIME	IMPACT OR BEDS SAVED
A. Implement a system of earned time credits for state inmates and encourage the usage of a similar system at the local level.	Incarcerated inmates serving state sentences (except those under sentence of death or serving a mandatory or life sentence).	Low — primarily some increased administrative costs for Department of Corrections and increased costs for parole supervision.	Department could implement within 30 days of enactment.	Reduce ADP in Department of Corrections by 10% over the next 10 years, with a 6% reduction occurring in the first year (about 900 inmates in first year). A somewhat similar system could reduce county ADP by 3%.
B. Implement a program of intensive supervision for the release of selected state inmates to parole.	Sentenced state inmates past their minimum parole eligibility date, state recommended technical parole violators, and detained state parole violators in county jails.	Medium — additional parole agents would be required to reduce caseloads to acceptable levels. Estimated costs \$1,500,000-\$2,000,000.	Start program 7-1-85.	Reduce ADP in Department of Corrections by 3% (about 300 inmates). Would be minimal impact on county jails for state parole violators.
C. Expand and upgrade the Department of Corrections' community service centers to establish a program of graduated release for all inmates expected to be paroled.	Incarcerated state inmates eligible for parole release.	Low to medium — If Department of Corrections is able to contract for existing space, costs would be low, but if Department of Corrections must expand its own capacity, est. costs could be \$2,600,000.	Could start 7-1-85.	Reduce ADP in Department of Corrections by 3% (about 300 inmates).
D. Establish a 500-bed correctional facility for the southeast to house inmates with maximum sentence of from 2 years or more to less than 5 years.	Sentenced inmates and convicted offenders not yet incarcerated with maximum sentences of 2-5 years from the southeast.	High — \$30,000,000 construction costs plus yearly operating costs of approximately \$3,000,000.	Complete construction 1988.	Reduce ADP in Department of Corrections about 3% (250 inmates). Reduce impact on ADP in southeast county jails by 250 inmates.
E. Increase the capacity of our present correctional system through the use of capacity enhancements (temporary expansion including modulars) and use of available vacant space.	Incarcerated county and state inmates (primarily low-risk).	Low to High — Costs depend on approach ranging from use of existing vacant space (costs could be minimal) to purchasing modulars (costs could be \$20,000-\$30,000 per bed).	Commence immediately.	1 for 1 reduction.
F. Implement a system of pre-trial mechanisms to control the county jail detention population.	Arrestees and pre-trial detainees.	Low — may involve at the most, hiring of personnel (\$20,000-\$100,000 per county).	Commence immediately.	Reduce ADP in county jails by 10-15% (about 1,000 inmates).
G. Provide technical assistance to county jails to advise them regarding methods to reduce or control their populations.	Primarily arrestees and pre-trial detainees.	Low — may involve at the most, hiring of personnel (\$20,000-\$100,000 per county).	Now in process.	Incorporated impact in pre-trial mechanisms.
H. Establish a State Subsidy Program to assist county jails in defraying the costs of housing DUI offenders.	Incarcerated DUI offenders in county jails.	Medium — an allocation formula providing \$7,500 x avg. daily DUI population would cost approximately \$1,600,000.	Start program 7-1-85.	Could provide alternative housing or transfer to other facilities for a reduction in ADP of 1.5%, or 100 inmates.
I. Implement fiscal and programmatic impact analysis of proposed legislation affecting correctional facilities.	State and county correctional systems.	Low	Commence immediately	No direct impact on current population, but can influence level of future population or budget to accommodate changes.
J. Establish mechanism to oversee, monitor, and evaluate implementation of initiatives.	All components of the criminal justice system.	Low	Commence immediately.	No direct impact on current population but can influence level of future populations.

Source: Report of the PA Commission on Crime and Delinquency Prison and Jail Overcrowding Task Force - A Strategy to Alleviate Overcrowding in Pennsylvania's Prisons and Jails, February 1985.

PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

CURRENT STATUS OF THE RECOMMENDATIONS OF
THE PRISON AND JAIL OVERCROWDING TASK FORCE

INITIATIVE A

Implement a system of earned time credits for state inmates and encourage the usage of a similar system at the local level.

CURRENT ACTIONS

Senators Fisher and O'Pake have introduced S.B. 786 - earned time bill recommended by Task Force. Bill is currently in the Judiciary Committee and will probably not be dealt with until the Fall. It is difficult at this time to read support or opposition for the bill.

INITIATIVE B

Implement a program of intensive supervision for the release of selected state inmates to parole.

CURRENT ACTIONS

In the Governor's Executive Budget 1985-86, the Parole Board has received a budget increase from \$18,711,000 to \$19,703,000 although this reflects only some increase in administrative cost. There are no new funds for supervision (no additional parole agents) in the budget. The Board had submit a request for an intensive supervision program as part of its budget request, but the Governor's Office did not submit the proposal to the Legislature for consideration as part of the Board's budget request.

INITIATIVE C

Expand and upgrade the Department of Corrections' community service centers to establish a program of graduated release for all inmates expected to be paroled.

CURRENT ACTIONS

The Governor's 1985-86 Budget proposes an increase from \$4,667,000 to \$5,200,000 for community service centers, which will add 11-20 beds for the fiscal year. The task force recommended 350 additional beds over several years.

INITIATIVE D

Establish a 500-bed correctional facility for the southeast to house inmates with maximum sentence of from two years or more to less than five years.

CURRENT ACTIONS

No known progress at this time — requires appropriation.

INITIATIVE E

Increase the capacity of our present correctional system through the use of capacity enhancements (temporary expansion including modulars) and use of available vacant space.

CURRENT ACTIONS

Governor's 1985-86 Budget calls for cell expansions at Mercer and Dallas (total 278), and these were included in our recommendations. Also, the budget call for modulars at Camp Hill and Greensburg (total 248), which were not included in our report. We had included 276 units for 1985 which are already on line. The 248 are in addition to the 276.

INITIATIVE F

Implement a system of pretrial mechanisms to control the county jail detention population.

CURRENT ACTIONS

This is an area which may receive some federal Justice Assistance Act funding through PCCD. It is part of our county jail technical assistance program. PCCD is conducting a pretrial information system study to determine the feasibility of such a system for the state. As an outgrowth of our Jail TA Workshop, Ms. Carol Thompson is working on the development of a newsletter in this area.

INITIATIVE G

Provide technical assistance to county jails to advise them regarding methods to reduce or control their populations.

CURRENT ACTIONS

PCCD held a workshop for overcrowded counties and is currently providing technical assistance to Beaver, Berks and York Counties (grant awards totaling \$60,000 were made to these counties). We expect to commence work with Lehigh, Centre, Clinton and Bradford Counties in the near future. PCCD has \$100,000 in the Governor's budget to continue the technical assistance effort and we may be able to match this with \$100,000 in JAA funds. We are also considering funding in the mental health area for the jails.

INITIATIVE H

Establish a State Subsidy Program to assist county jails in defraying the costs of housing DUI offenders.

CURRENT ACTIONS

Representative Sweet has introduced H.B. 596 -- subsidy bill recommended by the Task Force. The bill has been recommitted to the Appropriations Committee and expectations are it is unlikely to be in this year's budget request.

INITIATIVE I

Implement fiscal and programmatic impact analysis of proposed legislation affecting correctional facilities.

CURRENT ACTIONS

On-going PCCD function.

INITIATIVE J

Establish mechanism to oversee, monitor and evaluate implementation of initiatives.

CURRENT ACTIONS

On-going PCCD function.

APPENDIX B

Selected Information on Pennsylvania Counties
that Reported Utilization of Prison Facilities
in Other Counties, as of June 1985

APPENDIX B

Selected Information on Pennsylvania Counties that Reported Utilization of Prison Facilities in Other Counties, as of June 1985

<u>County</u>	<u>Population Capacity/Ratio</u>	<u>Home County Reported Daily Per Inmate Costs</u>	<u>Daily Per Inmate Costs Paid to Other Counties</u>
Adams.....	104%	\$19.25	\$37.50
Allegheny.....	100	27.34	32.00-45.00
Bedford.....	23	28.50	25.00
Bradford.....	72	35.00	38.00
Bucks.....	84	40.00	35.00-45.00
Cameron.....	0	4.00	b/
Carbon.....	65	34.00	a/
Centre.....	100	45.00	30.00-45.00
Chester.....	84	28.00	b/
Clarion.....	78	33.47	35.00
Clinton.....	85	21.00	28.00-38.00
Columbia.....	74	22.00	b/
Delaware.....	88	35.50	40.00
Erie.....	97	28.50	45.00
Fayette.....	58	35.00	35.00
Greene.....	82	35.00	35.00
Huntingdon.....	48	35.00	35.00
Indiana.....	92	34.95	b/
Juniata.....	93	30.00	b/
Lawrence.....	67	25.00	b/
Lehigh.....	113	35.00	b/
Lycoming.....	110	14.00-30.00	35.00
Monroe.....	144	29.36	37.50
Montgomery.....	176	39.00-41.00	40.00
Perry.....	75	25.79	35.00-40.00
Philadelphia...	137	50.00	b/
Potter.....	54	40.00	45.00-50.00
Snyder.....	62	37.50	b/
Somerset.....	92	35.00	b/
Susquehanna....	78	22.00-23.00	35.00
Union.....	80	30.00	50.00
Venango.....	73	35.00	b/
Wayne.....	50	b/	40.00
Westmoreland...	158	35.00	25.00-35.00
Wyoming.....	c/	--	40.00-45.00

a/Reciprocal agreement exists between counties.

b/Information on daily per-inmate costs was unavailable from county prison officials contacted during the LB&FC staff survey.

c/Wyoming County Jail is closed while it is being rebuilt.

Source: Developed by LB&FC staff from information obtained through a June 1985 telephone survey of prison officials in all Pennsylvania counties.

APPENDIX C

Selected Information on Per Inmate Daily Charges
of Pennsylvania County Prison/Jail Facilities that Reportedly
House Inmates from Other Counties, as of June 1985

APPENDIX C

Selected Information on Per Inmate Daily Charges of Pennsylvania County Prison/Jail Facilities that Reportedly House Inmate from Other Counties, as of June 1985

<u>County</u>	<u>Home County Reported Daily Per Inmate Costs</u>	<u>Daily Per Inmate Costs Charged to Other Counties</u>
Armstrong.....	\$34.00	\$35.00-40.00
Beaver.....	28.00	35.00
Bedford.....	28.50	25.00-33.00
Berks.....	24.70	35.00
Blair.....	49.00	40.00
Bucks.....	40.00	35.00-38.00
Butler.....	28.00	28.00
Cambria.....	35.00	35.00
Carbon.....	34.00	a/
Clearfield.....	20.00	45.00
Clinton.....	21.00	32.00
Columbia.....	22.00	32.00-40.00
Crawford.....	b/	26.00
Cumberland.....	40.00	40.00
Delaware.....	35.50	40.00
Elk.....	35.00	35.00-40.00
Erie.....	28.50	28.50
Fayette.....	35.00	35.00
Franklin.....	37.00	37.00
Greene.....	35.00	35.00
Huntingdon.....	35.00	35.00
Indiana.....	34.95	35.00
Jefferson.....	21.50	40.00
Juniata.....	30.00	35.00
Lackawanna.....	28.00-35.00	40.00
Lancaster.....	33.64	35.00
Lebanon.....	22.66	35.00
Lehigh.....	35.00	b/

APPENDIX C
Selected Information on Per Inmate Daily Charges
(Continued)

<u>County</u>	<u>Home County Reported Daily Per Inmate Costs</u>	<u>Daily Per Inmate Costs Charged to Other Counties</u>
Luzerne.....	24.00	40.00
McKean.....	32.00-35.00	35.00
Mercer.....	31.00	a/
Mifflin.....	35.00	30.00-35.00
Monroe.....	29.36	a/
Montour.....	16.38	35.00
Northampton.....	35.00	40.00
Northumberland.....	18.00-19.00	38.00
Pike.....	30.00	30.00
Potter.....	40.00	40.00
Schuylkill.....	35.00	35.00
Snyder.....	37.50	37.50
Somerset.....	35.00	35.00
Susquehanna.....	22.00-23.00	35.00
Tioga.....	23.00-25.00	b/
Union.....	30.00	43.00
Venango.....	35.00	b/
Warren.....	30.00	b/
Washington.....	24.25	24.25
Wayne.....	b/	40.00

a/Reciprocal agreements exist between counties.

b/Information on daily per-inmate costs was unavailable from county officials contacted during the LB&FC staff survey.

Source: Developed by LB&FC staff from information obtained through a telephone survey of prison officials in all Pennsylvania counties conducted in June 1985.

APPENDIX D

Privately Operated Adult Correctional Facilities
Identified by the LB&FC Staff
(Proposed and Operational), as of August 1985

APPENDIX D

Privately Operated Adult Correctional Facilities Identified by the
LB&FC Staff (Proposed and Operational), as of August 1985*

Federal Level

Immigration and Naturalization Service - Five privately operated detention centers (ranging in size from 47-350 beds) for illegal aliens: Denver, CO; Houston,^{a/} El Paso, and Laredo, TX; and Los Angeles, CA. (operational)^{b/}

U.S. Public Health Service and the Immigration and Naturalization Service - a residential and treatment center for approximately 65 U.S. Public Health Service/INS detainees at the old Cumberland County Prison, Carlisle, PA.^{c/} (proposed)

State Level

(No primary confinement state facilities for adult offenders are operational.)

Idaho - An interstate maximum security prison to house protective custody adult offenders. (proposed)

Kentucky - A RFP was issued in April 1985 for a contract to operate a minimum security facility for 200 sentenced^{d/} felons. (action pending)

Pennsylvania - An interstate maximum security prison (600-700 beds) to house protective custody adult offenders. (proposed)^{f/}

New Mexico - In June 1985, New Mexico approved enabling legislation that permits the leasing of state-owned, minimum-security correctional facilities to private contractors upon direction of the Governor or Legislature. (no reported action)

Local Level

New Mexico & Texas have passed enabling legislation permitting limited private jail contracting at the county level. (none operational)

Minnesota (Minneapolis) - a 42-bed adult female medium security regional corrections center. (operational)^{e/}

Pennsylvania (Armstrong County) - the "268 Center," a 55-bed adult male minimum security detention center for inmates to be drawn from any PA county. (reportedly ready for operation)

Pennsylvania (Butler County) - have entered into an agreement with Buckingham Security, Ltd., for labor services and management of Butler County Prison. (effective October 1, 1985)

Tennessee (Hamilton County) - a 325-bed adult male/female minimum to medium security facility. (operational)^{g/}

(See footnotes to Appendix D on next page.)

FOOTNOTES TO APPENDIX D

*This Appendix presents information only on adult first or primary confinement facilities; according to the National Institute of Justice, 28 states reported the use of privately operated secondary adult facilities such as pre-release, work-release, or halfway house facilities. Does not include privately operated juvenile facilities. According to the NIJ, a 1982/83 survey indicated that there were 1,877 privately operated residential programs nationwide housing a total of 31,390 juveniles. Examples include: (1) In Okeechobee, Florida, the Eckerd Foundation is operating a juvenile detention center for 400-500 serious youthful offenders; (2) The RCA Services Corporation operates the 22-bed Weaversville Intensive Treatment Unit in northeast Pennsylvania for serious youthful offenders.

a/The Federal Bureau of Prisons contracts for 50 of the beds to house illegal aliens.

b/Operated by Behavioral Systems Southwest, Corrections Corporation of America, Eclectic Communications, Inc., and Christ Is The Answer.

c/Proposed by HBS Management Group of Norristown, PA.

d/According to Kentucky corrections officials, no contract award decision had been made as of late August 1985.

e/Operated by the Volunteers of America, Inc.

f/As this report was being finalized, it was reported that plans to construct this facility had been cancelled.

g/Operated by the Corrections Corporation of America.

Source: Developed by LB&FC staff from information obtained from the National Institute of Justice, the Criminal Justice Institute, private facility operators, and correctional officials at the Federal level and in PA and other states.

APPENDIX E

Reported Per-Diem Costs of Publicly and
Privately Operated Federal Immigration and
Naturalization Service (INS) Detention Facilities

APPENDIX E

Reported Per-Diem Costs of Federal Immigration and Naturalization Service (INS) Detention Facilities*

1. Publicly Operated Facilities:

<u>Location</u>	<u>Number of Beds</u>	<u>Per Diem Costs</u>
New York City, NY.....	224	\$68.14 ^{a/}
Boston, MA.....	50	-0-
Port Isabel, TX.....	668	19.08
El Paso, TX.....	342	20.73
Krome, FL.....	451	33.13
El Centro, CA.....	344	17.65
Florence, AZ.....	160	32.61
Total.....	<u>2,239</u>	\$31.89 (Avg. Per Diem)

2. Privately Operated Facilities:^{c/}

<u>Location</u>	<u>Number of Beds</u>	<u>Per Diem Costs</u>
Houston, TX.....	350 ^{b/}	\$26.84
Los Angeles, CA.....	125	17.76
Laredo, TX.....	210	31.00
El Paso, TX.....	47	22.00
Denver, CO.....	75	88.69
Total.....	<u>807</u>	\$37.26 (Avg. Per Diem)

*As of July 1985. It is important to recognize that reported per diem costs vary significantly between and among publicly and privately operated facilities. The LB&FC staff determined that the differences may depend on a number of factors such as facility location, population, type of security, type of facility, and service expectations.

^{a/}This facility has just opened and cost data was unavailable.

^{b/}The INS has only contracted for 300 of these beds; the remaining 50 beds are contracted with the Federal Bureau of Prisons.

^{c/}Cumberland County Commissioners in Carlisle, PA, recently agreed to lease the old county jail to a private contractor to house illegal aliens for the U.S. Immigration and Naturalization Service and the U.S. Public Health Service.

Source: Developed by LB&FC staff from information from Immigration and Naturalization Service officials.