PRISON FINANCING
and
CONSTRUCTION PLAN

THE STATE OF TEXAS

112057 c1

Governor William P. Clements, Jr.
July 1987

112057

STATE OF TEXAS
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS 78711

WILLIAM P. CLEMENTS, JR.
GOVERNOR

July 2, 1987

Dear Members of the Legislature:

We are faced with monumental challenges during this special session of the Seventieth Legislature. None of these is more vital to the citizens of Texas than addressing the needs of the criminal justice system. Public opinion is absolutely unanimous in calling for additional prison facilities to house violent offenders.

In my policy budget, introduced earlier this year, I called for the addition of 10,000 new prison beds, as well as additional funding for the Adult Probation Commission and the Board of Pardons and Paroles for community-based corrections. The Legislature saw the need for emergency funding for these agencies and authorized additional funds in February. Several important bills, as part of an omnibus crime package, were passed during the regular session, which should go a long way to help our citizens feel safer on the streets.

The most important element, however, is the expansion of TDC's facilities so that offenders will serve their sentences behind bars instead of on the streets. For this reason, I am submitting to you today a more detailed plan for prison construction and financing. This plan will cure the projected shortfall of prison beds during the next four years. It has been reviewed with the Texas Department of Corrections and forwarded to Federal District Judge William Wayne Justice with assurances that it addressed the requirements of Ruiz.

I encourage your review of this plan and hope that you will join in supporting me in my efforts to restore public confidence in our criminal justice system.

Sincerely,

W. P. Clements Jr.

William P. Clements, Jr.
Governor

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ACKNOWLEDGEMENTS

Without the dedicated efforts of many, the production of this document would not have been possible. Countless hours of research, consultation, and review were provided to the State of Texas, to assure a factual and informed response to the crisis facing our criminal justice system.

The following parties provided not only key personnel to assist, but also invaluable counsel, expertise and resource documents. We would particularly like to recognize the significant contributions of <u>First Continental Financial Corporation</u>, <u>Morgan Stanley</u>, and <u>Johnson & Swanson</u>.

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EXECUTIVE SUMMARY

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PRISON POPULATION GROWTH AND CAPACITY:

- Total admissions to Texas prisons rose by 112.8% from 1980 to 1986, while the capacity of the prison system increased by only 51.5%. Ruiz-mandated "depopulation" agreements will in fact reduce capacity during the period September 1987-1989 by 6,513 beds or 16.1% of capacity.

- The settlement in the Ruiz prison lawsuit signed by the State in May 1985 requires TDC to reduce the population of existing units by predetermined levels. This reduction is to occur by "depopulating" existing units in two stages. The prison system will lose approximately 4,241 beds on the first depopulation date of September 1, 1987 and an additional 2,272 beds on the second depopulation date of September 1, 1989. Either new space must be found to house the offenders displaced by the loss of beds or an equal number of offenders will have to be released from prison.

- The present maximum capacity of the prison system is approximately 40,402 beds or 38,403 usable beds at 95% capacity. The completion of the Michael Unit and ten Trusty Camps will not absorb completely the September 1987 "depopulation" and will therefore result in a slight capacity shrinkage. **No new capacity will be added by any of the construction currently being completed.**

- Additionally, prison capacity must be further reduced on September 1, 1989. After that depopulation of 2,272 beds, the capacity of the system is expected to decline to 38,120, or 36,214 usable beds at 95% capacity.

- Further impacting prison facility needs are Ruiz-required renovations and improvements.

PROJECTED DEMAND FOR PRISON SPACE:

- The Computerized Legislative Analysis Simulation Model (CLASM) projections, using a 50% parole recommendation rate as a reference point and adjusting for the effect of funding diversion programs contemplated for the Board of Pardons and Paroles in the Senate and House versions of the appropriations bill during the 70th Legislature, Regular Session, 1987, show a need for 9,816 prison beds for the 88-89 biennium and 8,562 prison beds for the 90-91 biennium. Therefore, the State will need 18,378 prison beds in the next four fiscal years.

PROPOSED CONSTRUCTION PLAN:

- Objective: to increase prison capacity sufficient to meet projected needs so that other criminal justice policies to deal with the prison population growth can be designed and implemented.

- Number of beds proposed:

		Two Year Plan	Four Year Plan
Capacity on line:	FY 1988	3,000	3,000
	FY 1989	7,950	7,950
	FY 1990	0	124
	FY 1991	0	8,272
	Total	10,950	19,346 (18,378 at 95% cap.)

SUMMARY AND CONCLUSIONS

- Build sufficient prison beds to accommodate projected prison population growth.

- Undertake <u>Ruiz</u> mandated renovations and improvements to existing prison facilities immediately.

- Adopt the necessary legislation to permit maximum flexibility and least cost for financing the necessary new construction, renovations, and improvements.

Each of these recommendations and conclusions is set forth in the body of this report in greater detail. What we seek to accomplish here will impact the safety and security of the citizens of Texas for years to come.

PREFACE

PREFACE

One of the greatest problems facing our nation and the State of Texas today is the tremendous growth in prison populations. In 1974, there were only 200,000 prisoners nationwide; today, there are well over half a million.

In 1972, a prisoner in the Texas correctional system, David Ruiz, sued the State, claiming that the conditions of his confinement violated his constitutional rights. Judge William Wayne Justice, Chief Judge for the United States District Court, Eastern District of Texas, concluded in late 1980 that the practices of and conditions within the Texas Department of Corrections ("TDC") violated the Eighth and Fourteenth Amendments to the Constitution prohibiting cruel and unusual punishment and the deprivation of due process of law. On December 31, 1986, Judge Justice found the state in contempt of court, citing TDC's failure to implement specific improvements before the designated deadline. The State faced fines totalling $800,500 per day unless the stipulations of the court order were met by March 31, 1987.

Under the leadership of Governor Clements, the State has demonstrated its resolve to comply with the Ruiz requirements:

> On January 9, 1987, Governor Clements conferred with Judge William Wayne Justice on measures to bring the Texas prison system into compliance with court orders. Subsequently, Judge Justice commended Governor Clements and the Legislature for demonstrating the good faith pledged in the January 9 meeting.
>
> In February, the Legislature passed the Prison Management Act (SB 215) to relieve chronic overcrowding through selective early releases of certain non-violent offenders and made an emergency appropriation of $12.6 million to address TDC's medical staff shortage;
>
> A package of ten anti-crime bills supported by Governor Clements and House Speaker Gib Lewis gained broad support at the Capitol, and nine of these bills were ultimately approved by the Legislature.
>
> In late April, Judge Justice announced that the State had made a good-faith effort in accordance with Governor Clements' pledges to meet the stipulations and lifted his threat of fines. A hearing is now scheduled before the Court on October 1, 1987, and unless the State is able to evidence further progress in beginning mandated improvements and new facility construction, the threat of substantial fines could become a reality.

The purpose of this paper is to outline the scope of the possible improvements to and extensions of the State prison system, the financing alternatives, and the Governor's recommended course of action.

INTRODUCTION

I. INTRODUCTION

A. THE NEED TO EXPAND PRISON CAPACITY

The criminal justice system of Texas is expanding at an accelerating rate. Between 1980 and 1986, adult arrests for certain offenses rose considerably: violent offenses were up 45.6%; property offenses were up 20.2%; and drug offenses were up 32.4%. Felony convictions increased by 35% during the same period. Improvements in law enforcement technologies and the recent creation of additional state district courts will further accelerate the growth of the system.

Because more offenders are being tried and convicted, prison admissions have also increased. Total admissions to Texas prisons rose by 112.8% from 1980 to 1986, while the capacity of the system increased by only 51.5%. As projected by the Criminal Justice Policy Council (CJPC) , the State of Texas can anticipate an unrelenting growth in the inmate population. A population in TDC of 49,267 inmates is projected by the end of fiscal year 1989, and 55,672 inmates by the end of fiscal year 1991. While recent release activities have mitigated this rate of growth to some extent, the need for additional system capacity is still an explosive issue facing the executive and legislative branches of Texas government.

The current rated capacity of the prison system is approximately 40,402 beds. Taking into account both the agreed-to depopulation of existing units as specified by the Stipulation Modifying Crowding Provisions of the Amended Decree (Crowding Stipulation) and the completion of both the Michael Unit and Trusty Camps, the total system capacity will be effectively reduced to approximately 40,392 beds in fiscal year 1988 and 38,120 in fiscal year 1990. This will result in a near-term (1989) shortfall of over 9,000 beds, and a long-term shortfall (1991) of over 18,000 beds, even adjusting for some diversionary programs already proposed.

In any event, to assume that alternative programs, even if acceptable and effective, will solve the current and future capacity dilemma would be ill-advised. The ultimate solution to allocating resources for corrections in Texas will in all probability require a combination of diversion and construction of new facilities to provide a cost-effective response to projected needs.

The consideration of facility needs also goes beyond simply counting the number of beds to determine total-capacity needs. In assessing the future capacity needs of the system and considering alternative approaches to providing future capacity, the current profile of the system must be analyzed. Such a profile of the system has been reviewed and it is significant to note that, based on current classification criteria, the largest area of projected need is for additional double cells for medium- and close-custody inmates. This is primarily a function of two factors. First, the continued diversion of low-risk inmates from the system leaves the Texas Department of Corrections with a higher-risk population. Second, a significant increase in recidivism results in reentry into the system of offenders with longer sentences. Both system capacity calculation and unit design planning are affected by the trend toward higher classification inmates.

B. THE RUIZ SUIT AND PRISON CAPACITY

In December of 1980, the federal district court in Ruiz v. Estelle found the "totality of conditions" in the Texas Department of Corrections (TDC) to be unconstitutional and ordered prison officials to reduce overcrowding. Among its many responses to the prison litigation, the State adopted in 1983 the Texas Prison Management Act (Art. 6184o Tex. Rev. Civ. Stat.), thereby establishing release procedures to maintain the prison population within 95% of system capacity. In May of 1985, the State entered into a court-approved settlement of the Ruiz case that required TDC to reduce the population in the existing twenty-six units to within prescribed limits. The reduction in capacity is to occur by "depopulating" existing units in two stages, with the first to commence by September 1, 1987, and the second by September 1, 1989. Current capacity projections indicate that the prison system will lose approximately 4,241 beds on the first depopulation date of September 1, 1987, and an additional 2,272 beds on the second depopulation date of September 1, 1989.

The prison system has been operating at or near capacity levels. As detailed in Table 1, on the following page, since the Texas Prison Management Act became law in September of fiscal year 1983, the average prison population has not exceeded (for any extended time) the legal capacity of 95%, although occasionally it has operated very close to this level. Certain measures are being used to maintain the prison population within its legal capacity. However, admissions to TDC have risen significantly, increasing the pressure on the system. In 1984, total monthly admissions to the TDC system fluctuated around 1,800 offenders; by fiscal year 1987, monthly admissions climbed to approximately 2,800 offenders. The prison system has already exceeded the legal capacity on thirty-three different days between January and April of 1987. As a general rule, it will be necessary to release one inmate for every one admitted to prison if the State is to maintain the prison population within the projected capacity of the system during the current fiscal year.

TABLE 1

Texas Department of Corrections Population, Capacity and Percentage Population of Capacity, 1980-1986 (FY)

Fiscal Year	Population	Capacity*	Pop. % of Capacity
1980	28,543	26,576	107.4
1981	30,515	31,296	97.5
1982	34,393	36,588	94.0
1983	36,769	38,658	95.1
1984	35,772	39,658	90.2
1985	37,320	40,134	92.9
1986	38,246	40,277	94.9

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*Annual changes in capacity reflected additional beds put into service and beds deleted from use.

CJPC projections indicate that, as a result of increased admissions and the depopulation requirements of the *Ruiz* settlement, the normal parole process and other diversion measures will not be sufficient to maintain the prison population within the expected prison capacity after this fiscal year, if no new construction is funded during this biennium. After depopulation, no significant gain in the capacity of the prison system is expected in fiscal year 1988, and a decline in the capacity of the system is expected to occur in fiscal year 1990.

Table 2, below, shows the projected capacity of the prison system, assuming that no new construction is authorized for the next biennium. Between April of 1987 and August of 1987, an estimated 4,231 beds will be added to the prison system, and another 444 beds will be added sometime during fiscal year 1988. These additions, however, do not translate into any additional capacity, because of the depopulation requirements of the *Ruiz* settlement. After assessing measurements established for square footage for inmates in dormitories and depopulation requirements for existing units, it is projected that the prison system will lose approximately the same amount of capacity gained by new construction in fiscal year 1988, as well as an additional 2272 beds in fiscal year 1990.

TABLE 2

Projected Capacity of the Prison System Assuming No New Construction in Next Biennium

Fiscal Year	New** Construction	Maximum Depopulation*	*** Capacity	95% Capacity
1987	4,231	-	40,402	38,403
1988	444****	4,241	40,392	38,372
1989	0	0	40,392	38,372
1990	0	2,272	38,120	36,214
1991	0	0	38,120	36,214

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*<u>Ruiz</u> depopulation requirements for existing units after re-measurements of square footage for inmates in dormitories.

**To be completed between April and August of 1987. Includes 1,981 trusty beds and 2,250 beds from the Michael Unit. New construction completed before May 1987 has already been considered in the calculation of capacity.

***Capacity as of the last day of April 1987.

****Diagnostic unit currently under construction and originally scheduled for FY 1987 that will not come on line until some time in FY 1988.

C. PROJECTED DEMAND FOR PRISON SPACE

The need for prison space is a function of the number of offenders admitted to prison and the length of their confinement. Admissions to prison depend, among other factors, on the demographic characteristics of the general population, the ability of the justice system to convict and incarcerate after arrest, and the number of revocations of probation, parole and mandatory supervision. Confinement time depends on factors that include length of sentence, release eligibility requirements and the parole recommendation rate. The Criminal Justice Policy Council's Computerized Legislative Analysis Simulation Model ("CLASM") takes into consideration all of these variables to project prison population.

Table 3, on the following page, presents CLASM prison population projections and bed shortfall as adjusted for special diversion programs of the Board of Pardons and Paroles contemplated in the Senate and House versions of the appropriations bill in the 70th Legislature, Regular Session, 1987. The projections also assume that in fiscal year 1987 enough releases from prison will take place to maintain the population within capacity. For subsequent years, however, the projections assume a parole recommendation rate of approximately 50% as a reference point. The bed shortfall projected should be viewed as the demand for prison beds that will occur given the 50% parole recommendation rate and the projected capacity. Note that these projections take into account changes in prison "good time" awards and parole and mandatory supervision eligibility requirements mandated by the 70th Texas Legislature.

TABLE 3

Prison Population and Bed Shortfall Projections Adjusting for Special Diversions Programs Contemplated for the Board of Pardons and Paroles by the Senate and House Versions of the Appropriations Bill (Regular Session) Assuming That No New Prison Construction will be Funded in the Next Biennium

FY	95% Proj. TDC Capacity	Pop. Proj.	Annual Bed Short-fall per Yr	Diver-sion Impact*	Adjust. Proj.	Annual Adjust.Proj. Bed Short-fall per Yr
87	38,382	38,382	0	0	38,382	0
88	38,372	44,421	6,049	1,080	43,341	4,969
89	38,372	49,267	4,846	-	48,187	4,846
90	36,214	52,973	5,864	-	51,893	5,864
91	36,214	55,672	2,699	-	54,592	2,699
	Total Bed Shortfall					18,378

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*Impact of pre-parole and intensive parole supervision program absorbed during the first year of implementation. It is assumed that funding for these programs will be maintained during the biennium of 1990-1991.

As illustrated in Table 3 above, even adjusting for special diversion programs, a projected bed shortfall of 18,373 will occur by the end of fiscal year 1991. Slightly more than half of this shortfall, or 9,816 beds, will occur in the 1988-89 biennium. Given these projections, two important factors deserve consideration. **First, in fiscal year 1988, the normal parole process will not be sufficient to maintain the population within the expected capacity and, consequently, extraordinary measures will have to be implemented. Second, under the traditional construction process for prisons it will take as long as two years for any new prison capacity authorized by the Legislature to become operational.** It makes sense, therefore, to consider innovative construction delivery methods implemented by other states faced with similar prison capacity needs. The experiences of four states, California, Florida, New Jersey and Virginia, are summarized in Appendix A. These states utilized pre-cast or modular construction techniques to fasttrack completion of prison facilities. Such techniques can enable Texas to increase capacity during the 1988-89 biennium.

D.OTHER RUIZ STIPULATIONS

It is also important to note that several other provisions of the Crowding Stipulation have affected the facility requirements of TDC. Issues a - j, below, summarize many of the major requirements and implications of the various Ruiz stipulations, but do not represent all requirements to date.

a. System Capacity. The current rated capacity of TDC is 40,402. The combined "depopulations" of September 1987 and 1989 will reduce that number to 34,210. Even with the addition of the Michael Unit and the Trusty Camps, usable (95% capacity) beds will plummet to 38,372.

b. Single-celling. Single-celling is required for all administrative segregation inmates, death row inmates, and a major portion of mentally retarded and psychiatric inmates. Where possible, cells at existing facilities to be depopulated can be reallocated from double-celling to single-celling, thereby solving two problems.

c. Expansion of Existing Units. No unit can be expanded beyond a maximum capacity of 2,000 beds (general population vs. special populations not clarified). The entire unit, including all support areas, must support the projected population. Several existing units can be expanded based on the established capacities. In assessing the cost-effectiveness of such expansion as opposed to other alternatives, the supportable capacity of the existing facility should be analyzed based on the standards referenced in the Crowding Stipulation (see below). Proposals to expand existing units may result in a renegotiation of some areas. An area of particular concern may be adequacy of day spaces at existing facilities.

d. Space Standards, New Construction. All new facilities should be developed in accordance with the space standards outlined in the Crowding Stipulation. No new dormitory construction is allowed under the consent decree. All facility proposals must be carefully considered and evaluated prior to funding and implementation.

e. Space Standards, Existing Units. Specific standards are presented for existing facilities, with an emphasis on housing standards and operation. Other areas specifically addressed include recreation, showers, and dining. Additionally, new construction standards are referenced in relation to increasing capacity at existing units. Depopulation of units will be in accordance with established standards in the Crowding Stipulation. Additional renovations will be required to provide dormitory partitions, etc. Although most areas have been addressed, the provision of adequate shower areas is an item of continuing concern.

f. Non-Programmatic Activity. The Crowding Stipulation requires minimum of four hours of out-of-cell time on non-holiday weekdays, exclusive of work or other program assignments, and seven hours of out-of-cell time on weekends and holidays. Adequate facilities and staff will be necessary to meet these requirements.

g. Visitation. The Crowding Stipulation requires indoor contact visiting for SAT 1 through IV class inmates by September 1, 1989. Construction or renovation of existing facilities may be required.

h. Maintenance and Repairs. The Crowding Stipulation requires the development and implementation of a comprehensive maintenance plan and the immediate repair of major deficiencies.

i. Staffing. The Crowding Stipulation set staffing levels for the overall system based on existing facilities, and the staffing of new facilities was tied to these standards. Every effort should be made to minimize staffing requirements at both existing facilities and new facilities through proper planning and facility development.

j. Medical, Psychiatric, and Mentally Retarded Offenders. Previous agreements which set both staffing levels and space standards continue in force. Both staffing and facilities requirements must be met, including single celling, level of care, and compliance with reference Ruiz standards.

Table 4 on the following page shows court-ordered maintenance and repair projects and their costs necessitated by some of the issues outlined above.

TABLE 4

State of Texas
Ruiz-Related Renovations and Improvements
Two Year Plan

Renovations/ Improvements	Start Date	Construction Costs	Date of Completion
Maintenance and Repair Projects Required by Ruiz	9/87	$ 15,000,000	8/89
Reroof Buildings	2/88	4,003,770	8/89
Water Systems	11/87	1,026,000	6/88
Add restrooms at Inmate Dorms	10/87	76,000	4/88
Update Electrical Systems/ 6 Units	11/87	194,000	6/89
Heating and Ventilation Improvements	10/87	256,600	4/89
Remodel Food Service Facilities	9/87	3,564,000	3/89
Medical Facility/ Ellis II	9/87	7,000,000	5/89
Indoor Contact Visitation	9/87	1,788,640	6/89
Law Libraries Ellis I/Ramsey II	5/88	140,000	10/88
Voc. Bldg. Beto I	9/87	1,450,000	8/89
Kitchen Additions	10/87	3,296,851	12/88
Renovations to Law Libraries	9/87	100,000	3/89
Additions to Existing Units	9/87	5,000,000	8/89
Sewer Improvements	9/87	6,947,000	8/89
TOTAL		$ 49,842,861	

OVERVIEW

II. OVERVIEW OF CONSTRUCTION PLAN

The main objective of the proposed prison construction plan* (the "Plan") is to increase prison capacity sufficiently to meet projected growth so that other criminal justice policies can be designed and implemented. As stated in Section I, above, over 9,000 beds will be necessary to meet the demand for prison space in the next biennium. This Plan proposes constructing 8,950 beds and privatizing 2,000 beds for a total of 10,950 beds that will become operational between April of 1988 and June of 1989. Table 5, below, presents a description of the prison units proposed in the Plan for the 1988-89 biennium, along with their capacities, capital development costs, occupancy dates, and operational costs. Table 6, below, presents similar information for the Plan for the 1990-91 biennium except for operational costs. The four-year prison construction plan proposes a total of 19,346 beds or 18,378 beds at 95% capacity, the number needed to address the projected four year bed shortfall.

To maximize capacity increase, the Plan proposes to contract for four 500-bed private prison facilities which are projected to become operational in April, May, June, and July of 1988. Funding is also proposed to build different types of TDC facilities and to expand some of the existing ones. Starting in August of fiscal year 1988, five 200-bed Trusty Camps will become operational, for a total of 1,000 beds. During fiscal year 1989, 5,000 beds in regional reintegration centers and four shock probation centers (providing 500 beds) will be constructed. Furthermore, additions to existing units will be built. In January of 1989, a new wing at the Gatesville unit of 200 beds will be completed, and by September of 1989, a wing of 124 beds will be completed at the TDC hospital. In June of 1989, an additional Michael maximum security prototype will become operational with 2,250 beds.

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*See Appendix C for a detailed presentation of construction costs and timelines.

**A discussion of prison privatization issues is presented in Appendix B.

TABLE 5

Overview of Two-Year Prison Construction Plan

Description	Capacity Increase	Capital Development Costs (in Millions)	Occupancy Date	Operating Costs 88-89 in Million
Contract 4 500-Bed Facilities (Private)	2,000	0	April-July 1988	29.40 *
Construct 5 Trusty Camps	1,000	7.05	August 1988	11.29
Construct 1 Michael Unit (Prototype)	2,250	67.00	June 1989	5.0
Construct 4 Regional Reintegration Centers	5,000	121.30	March 1989	20.12
Construct new wing - Gatesville	200	2.66	January 1989	.97
Construct 4 Shock Prob. Centers	500	9.72	November 1988	.93
Complete Wing at TDC Hosp.	124	1.40	September 1989	-0-
Totals	11,074	$ 209.13		$ 67.74

Capacity on Line:	FY 1988	3,000
	FY 1989	7,950
		10,950 (10,403 at 95%) **

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* Using an average system-wide cost in TDC of $34.64; this does not reflect actual cost levels utilized in SB 251 and should not be relied upon for any contract projection authorized by SB 251.

** Does not include beds at Completed Wing of TDC hospital which come on line September 1990.

TABLE 6

Overview of Four-Year Prison Construction Plan

Description	Capacity Increase	Capital Development Costs (in Millions)	Occupancy Date
Expand Regional Reintegration Units Constructed in Phase I	5,250	$ 117.46	September 1990
Construct One Michael Prototype	2,250	67.00	May 1991
Construct Two Shock Probation Centers	250	4.86	October 1990
Convert Existing MH/MR Facilities to Psychiatric Units	522	10.00	August 1991
Totals	8,272	$ 199.33	

Capacity on Line:	FY 1988	3,000
	FY 1989	7,950
	FY 1990	124
	FY 1991	8,272

19,346 (18,378 at 95% capacity)

Table 6, on the previous page, presents the additional capacity proposed for the second biennium. The expansion of regional facilities constructed during the first biennium provides an additional 5,250 beds by September 1990. A new Michael prototype, two shock probation centers, and conversion of existing Mental Health and Mental Retardation ("MHMR") facilities to psychiatric units will add 3,022 beds to the prison capacity, for a total increase for the 1990-91 biennium of 8,396 beds (including the 124 hospital beds shown in Table 5). Table 6 indicates that the combined short-term and long-term plans provide for a total construction of 19,346 beds (18,378 usable beds at 95% capacity) for the two biennia.

The following is a general description of the types of facilities proposed in the Plan:

* Trusty Camps: minimum-security beds in dormitories. These camps will be developed in conjunction with existing or proposed facilities, utilizing prototypical plans prepared for camps currently under construction.

* Michael Unit: mostly medium-security cells. Construction documents for the Michael Unit prototype will be adapted to accommodate conditions at site selected.

* Regional Reintegration Centers: minimum- and medium-security cells. To be constructed regionally throughout the state in order to increase community contacts, bring inmates closer to their families, emphasize basic literacy and job skills, and provide work opportunities and reintegration into society. Buildings will be in a "campus" layout sharing a common core, with incremental construction of housing compounds possible.

* Shock Probation Centers: minimum-security beds in dormitories. Specialized facilities will be developed to house primarily first-time offenders in an intensive program which emphasizes physical exercise, work, education, and self-image improvement.

It is important to note that the number of beds and/or the types of facilities recommended for the second biennium can be re-examined based on the monitoring of population projections and evaluation of facility needs during the first biennium of the plan.

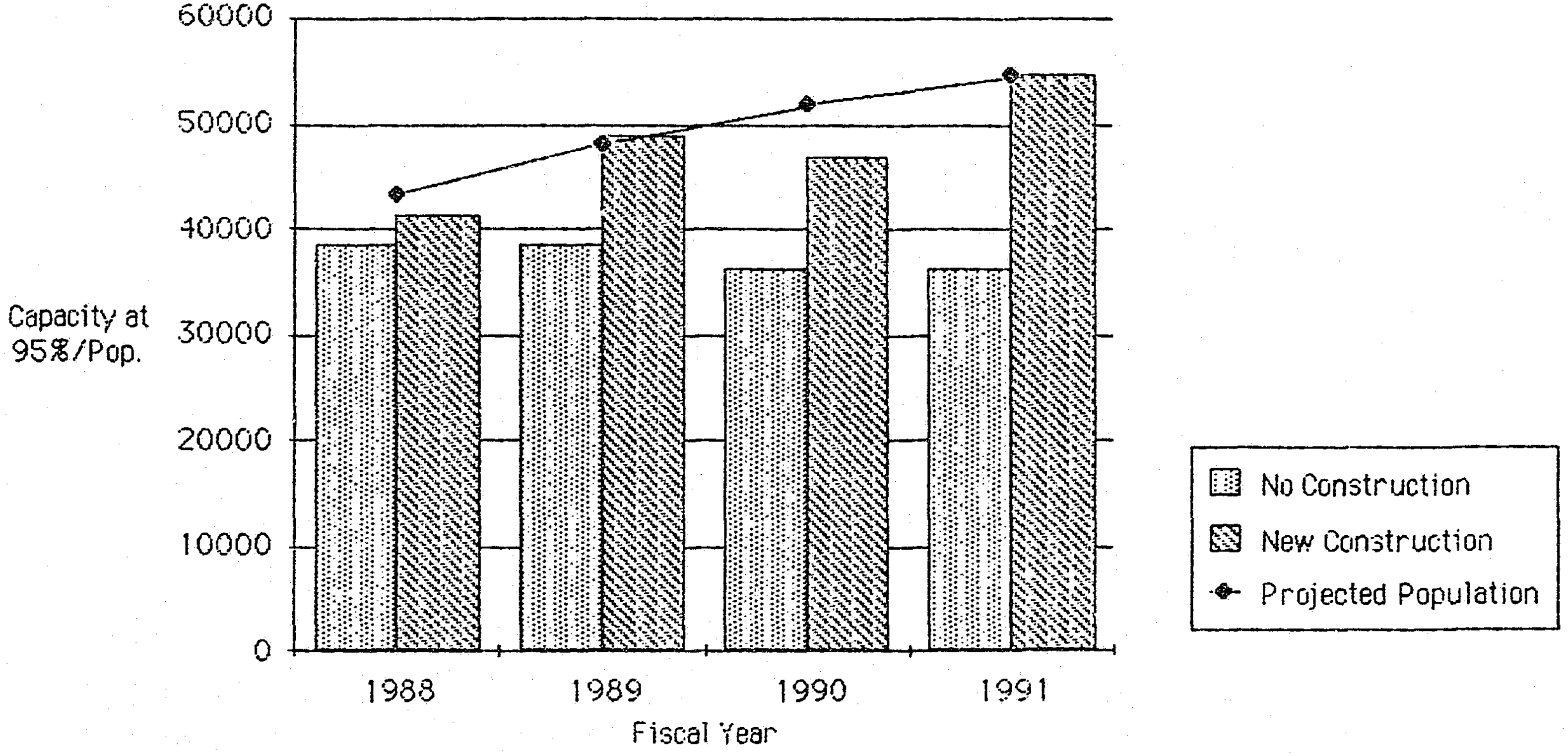
Chart 1, on the following page, illustrates the impact of the Plan on the capacity of TDC as compared to zero funding for new construction and to the anticipated growth in the prison population. As Chart 1 clearly indicates, the Plan is a significant step in designing an overall solution to address the projected prison population growth. By increasing capacity during this biennium and again in the next biennium, the State can create "breathing space" for other criminal justice policies to work while the projected four-year capacity shortfall is met. Delaying construction will only worsen today's crisis. In the long term, it will be necessary to develop a continuum of correctional alternatives that reserves high-security prison capacity for those who cannot or will not accept the restraints of alternative punishment.

The capital development cost of the two-year Plan is $209,134,000.00. To take into consideration the substantial financing problem that faces Texas during this biennium, a discussion of financing options is presented in Section III, which follows. <u>Ruiz</u>-related renovations and improvements are also considered as part of this plan. The total cost of the renovations is $49,842,861.

The operational costs of the plan for this biennium total $67,748,083. Unless a portion of such costs can be funded through alternative financing techniques, these funding needs will have to be considered by the 70th Legislature, Second Called Session.

CHART 1

Projected Prison Population Compared to Capacity of TDC with No New Construction and After Construction Under Proposed Plan.



OPTIONS

III. OPTIONS TO FINANCE CONSTRUCTION

A. CURRENT LEGISLATIVE AND STATUTORY BACKGROUND

Texas state government has traditionally financed facilities construction out of general revenues. In fact, prior to the last regular session of the legislature, the only method available to the State for the financing of additional prison capacity other than general revenue was a complicated form of lease-revenue financing that utilized the issuance of debt obligations by a conduit non-profit corporation. This is the structure of financing used for the Michael Unit in Anderson County.

Several legislators recognized and Governor Clements endorsed the need to expand the options available in Texas to increase prison capacity. These options include privatization of prisons (where private financing provides construction funding) as well as financing mechanisms for use by the State or by the counties where prison facilities are to be located. The two major types of financing can be categorized as general obligation debt issued by the State and lease revenue debt either by the State or by a county. Each of these is described generally in Section III (B), which follows.

During the regular session of the 70th Legislature, some of these options were considered and subsequently encompassed in legislation that was passed and signed into law by Governor Clements. Most significant were SB 1407 (McFarland) relating to the issuance of up to $500 million in general obligation or lease revenue bonds by the Texas Public Building Authority (TPBA); SJR 56 (McFarland) relating to a constitutional amendment authorizing the issuance of general obligation bonds by the State for correctional facility construction; SB 245 (McFarland) which includes provisions permitting TDC to contract with counties for the acquisition of prisons; SB 251 (Farabee) which addresses privatization or prisons; and H. B. 947 (P. Moreno) relating to the lease of unused federal facilities for prisons. Each of these bills is summarized in greater detail in Section III (C) below.

Also of significance was the passage of SB 1027 (Farabee) relating to the creation of a Bond Review Board composed of the Governor, Lieutenant Governor, Speaker, Comptroller, and Treasurer. The

Bond Review Board has general oversight and approval authority, including the ability to adopt rules, in connection with the issuance of any State bonds.

The recently enacted legislation, however, does not fully address the State's current needs. With respect to privately financed prison facilities, existing statutes appear to permit all of the necessary contractual relationships. However, further legislative action is necessary for state or county-financed facilities. In order for the TPBA to issue bonds to finance prison construction, the Legislature must authorize each of the specific construction projects. This can be accomplished by outlining the projects described in Table 5 above in the General Appropriations Act expected to be adopted during the Special Session of the Legislature. Furthermore, the authority to issue general obligation bonds by the TPBA is contingent upon the constitutional amendment election which is scheduled for November 3, 1987. There is currently no clear statutory authorization to allow any capitalization of interest for general obligation bonds. SB 1407 would permit interest to be capitalized on lease revenue bonds issued by the TPBA. Consideration should be given to amending SB 1407 to authorize the capitalization of interest on general obligation bonds. TPBA can issue lease revenue bonds for prison construction as soon as the specific construction projects are authorized as described above.

There is currently no statutory authorization for counties to finance the construction of prisons which could be subsequently leased to the State. Legislation should be introduced in the Special Session of the Legislature to give counties the ability to finance state prison facilities through the use of certificates of participation, certificates of obligation, or lease revenue bonds. Such legislation should be designed to give counties enough flexibility to attain the most cost-effective financing available. The financing structure that is attractive to a particular county may depend on factors peculiar to that county. For example, the issuance of certain types of lease revenue obligations by a county may adversely restrict the flexibility of that county to issue other tax-exempt obligations.

The revenue to repay any such county borrowing would be limited solely to the lease revenues paid by TDC, which would be contingent upon legislative appropriation each biennium. The amount of the lease payments by TDC would correspond exactly to the amounts owed under whatever financing mechanism is used. Therefore, it would continue to be in the State's interest for any county financing of prison construction to be at the most cost-effective rate possible. No funding from the counties would be required, nor would the county's credit be relevant to, such a financing. A draft bill which is intended to give counties the necessary flexibility is enclosed.

The overall goals of the prison financing program and any new legislation should be (i) to minimize the debt service costs for Texas taxpayers; (ii) to meet the Ruiz-mandated requirements for renovation, new construction, and programs on a timely basis; (iii) to work within the immediate short-term budget problems with the least disruption; and (iv) to provide flexibility in the financial market for the types of financing instruments selected.

B. RECENT LEGISLATION RELATING TO PRISON FINANCING AND CONSTRUCTION

The following bills, set forth briefly above, are described in greater detail below. Each was adopted by the 70th Legislature, Regular Session, 1987, and signed into law by Governor Clements.

1. SB 1407/SJR 56 (McFarland). SB 1407 authorizes the TPBA to issue up to $500 million in general obligation or revenue bonds for correctional, mental health, and Texas Youth Commission ("TYC") facilities. Before any bond proceeds are distributed for correctional facilities, the TDC must prepare a master construction plan for review and approval by the Bond Review Board. The Bond Review Board is also charged with the adoption of rules to govern the application and review process. The bill becomes effective on September 1, 1987. No bonds may be issued by TPBA under SB 1407 until the Legislature by law has authorized the specific projects to be constructed. This can be accomplished in the General Appropriations Act expected to be adopted in the Special Session of the 70th Legislature. No general obligation bonds may be issued under the bill unless approved by the voters in a general election which has been called for November 3, 1987.

2. SB 245 (McFarland). SB 245, the TDC "sunset" bill, includes provisions to allow the TDC to contract with counties for the acquisition of state correctional facilities. Counties would be able to submit proposals to TDC for the construction and financing of the facilities, which TDC could then acquire (subject to specific appropriative authority) through lease-purchase agreement, installment contract, or other means. Any county proposals submitted under SB 245 would be subject to the approval of the Attorney General and the Bond Review Board. SB 245 also permits the TDC to accept gifts, grants,or donations of real estate for prison sites. Counties and other political subdivisions, however, are prohibited by Art. III, Section 52, of the Texas Constitution from making any such gifts, grants or donations.

3. SB 251 (Farabee). The bill authorizes the State to contract with private firms and counties for the construction, management, maintenance, and operation of certain types of prison facilities. Individual facilities can not hold more than 500 inmates, and will have to meet both applicable federal constitutional standards and accreditation standards of the American Correctional Association ("ACA").

A major benefit of contracting with private entities for these facilities is the potential of constructing and placing facilities in service more quickly than facilities built by the State.

The bill requires that the TDC board proceed only upon a request for proposals. Each eligible proposal must (i) provide for a comparable level and quality of programs offered in state facilities (but with savings of not less than 10%); (ii) provide for on-site monitoring by TDC; (iii) be subject to the availability of appropriations; (iv) be terminable for cause; (v) be for an initial contract term of not more than three years with an option to renew for succeeding two-year periods; (vi) provide for assumption of liability by the private vendor and for adequate insurance; and (vii) provide for purchase and assumption of operations by the State of Texas in the event of a bankruptcy of, or an inability to perform by, the vendor.

4. HB 947 (P. Moreno). This bill authorized the TDC board to contract with the federal government for

the lease of unused military or other federal facilities to house minimum-security inmates, subject to the appropriation of funds.

C. FINANCING ALTERNATIVES

Texas faces a substantial financing program if it is to implement the prison construction and renovation plans required to meet population needs and the Ruiz requirements during the 1988-89 biennium. The legislation discussed above and the additional legislation proposed during the Special Session will permit the State to proceed with either general obligation or lease revenue bond financing and would additionally permit counties or Home Rule cities to utilize a variety of lease revenue financing techniques including bonds.

The following discussion examines in greater detail the various considerations of the general obligation and lease revenue financing alternatives.

1. General Obligation Bond Financing

General obligation bonds have been the State's traditional method of financing special projects for entities such as the Water Development Board and the Veterans Land Board which are not paid for with current appropriations. General obligation bonds are secured by the full faith and credit of the State and thereby obligate the State to satisfy their debt service requirements until the bonds are fully repaid. As such, they constitute a legal debt and must be approved in a voter referendum. A bond election is scheduled for November 3, 1987. General obligation bond elections for prison construction have been defeated during recent years in a number of states, such as New York and Rhode Island, both of which eventually issued lease revenue bonds.

Notwithstanding the requirements of voter approval, general obligation bonds have a number of intrinsic advantages for financing capital facilities. Since general obligation bonds are backed by the full faith and credit of the State, the bond rating agencies consider them a more secure investment than lease revenue bonds, which require biannual appropriations. State general obligation issues typically receive a rating which is one-half to a full rating grade higher than ratings received by state revenue bonds. Consequently, state general obligation bonds can be sold at interest rates ranging from two-tenths to three-tenths of one percentage point lower than revenue bonds. In addition, a general obligation issue may have lower direct issuance costs than a revenue bond of equivalent size. However, when the cost to the State of holding a voter referendum for general obligation bonds is included, the cost of issuing general obligation bonds can be higher.

Another aspect of general obligation bond financing which should be considered is the probable need for the Legislature to appropriate money in the coming biennium for debt service payments. In general, without express legislative authorization, no interest on general obligation bonds may be capitalized out of proceeds of those bonds. Therefore, the State must appropriate sufficient funds to make payments of principal and interest on the bonds in the biennium during which the bonds are issued. Even if legislation authorizing the State to capitalize interest on the general obligation issues was adopted, the capitalized interest would probably be limited to the completion date of that project or shortly thereafter. Since most of the Ruiz-mandated construction should be completed by the middle of the 1988-89 biennium, the State might have to begin interest payments during the upcoming biennium and must include these payments in the State budget.

One possible use of general obligation bonds might be to refund lease revenue financing at an appropriate time. In other words, it may become financially advisable to issue general obligation bonds (if they are approved on November 3) to refund earlier lease revenue financings.

2. Lease Revenue Financing

Lease revenue bonds would be supported through biennial appropriations and, therefore, would not technically constitute a debt of the issuing entity. Therefore, lease revenue financings as proposed would not require a voter referendum.

The State would own the facilities outright after making all of the lease payments or redeeming the issue in full on specified anniversary dates. Payment for the bonds would be limited to revenue received as lease payments from TDC. Interest on revenue bonds accruing during the planned construction or acquisition period (and for up to one year thereafter) may be funded out of the proceeds of such bonds. Debt service payments could be postponed until after the 1988-89 biennium.

Lease revenue bonds are well accepted in the marketplace and the interest cost to the State would be only slightly higher than the rates for general obligation bonds if both could be issued at the same time. However, because lease revenue bonds do not require voter approval and can be issued within 30 days of the date of authorization, the potential cost savings relating to timing differences and flexibility in issuing the bonds may outweigh any interest cost difference. Lease revenue bonds would bear a slightly lower rate of interest than the alternative lease revenue techniques discussed below because of their better market acceptability. Several other states have recently chosen to finance their prison construction programs with lease revenue bonds. In the past three years, ten states** and numerous local governments have used lease revenue bonds to finance major new corrections facilities construction programs. In addition, within the past three months, the legislatures of the AAA-rated states of Virginia and South Carolina have authorized lease revenue bond financings for prison construction. Appendix F summarizes recent correctional facilities financing in other states.

** California, New York, Louisiana, Ohio, Kentucky, Michigan, Alaska, Alabama, Rhode Island, and Missouri. Many other states (including Texas) have used lease revenue bonds for state office building construction and equipment acquisition.

3. Additional Financing Alternatives

In addition to the general obligation bond and lease revenue bond financing options already described, there are other lease revenue financing alternatives available.

The Michael Unit of Coffield Prison was financed in 1986 through certificates of participation issued in conjunction with a non-profit corporation created by Anderson County. Similar to lease revenue bonds, certificates of participation are interests sold in stream of lease payments from the Department of Corrections (as in financing for the Michael Unit) to the non-profit corporation that contracted to build the Unit and then leased the facility to the Department. Certificates of participation are a recognized financing mechanism for public works, although they generally trade at a slightly higher price than comparable bonds. No election is required for their issuance, and, although under present law Attorney General approval is not required for their issuance, the Attorney General has approved this financing approach to providing correctional facilities.

In addition to certificates of participation, certificates of obligation may provide another financing alternative for building and renovating correctional facilities. Long recognized as a major financing tool for cities and counties in Texas, certificates of obligation are non-voted debt instruments which may be secured solely by a revenue pledge. Simply stated, certificates of obligation represent the sale by a county of its right to receive lease payments. The legislation enclosed would also make this financing technique available by permitting counties and Home Rule cities to contract with TDC to provide correctional facilities (as contemplated by Article 6166g-4 (V.T.C.S.) and adopted during the 70th Legislature, Regular Session, in SB 245) and to pledge the revenues of such a contract for payment of the certificates. Certificates of obligation generally trade in the market at prices generally comparable to certificates of participation and only slightly higher than comparable bonds.

Each of these techniques would rely on biennial appropriations from the Legislature and lease payments from TDC similar to lease revenue bonds. Because of the similarities, the rating agencies should assign the same rating to any Texas-based lease revenue debt instruments relating to prisons. As noted, however, the rate of interest borne by these instruments will vary with market acceptability.

Each of these financing structures can benefit from various types of credit enhancement available in the marketplace, such as bond insurance or letters of credit. Such credit enhancement can raise the rating assigned to the debt instruments and lower the interest rate.

D. REFINANCING ISSUES

In June of 1986, the State of Texas, acting through the Texas Department of Corrections, entered into a lease-purchase arrangement to provide financing for the construction and acquisition of the 2,250 bed Mark W. Michael Unit correctional facility at the Coffield Prison Farm. In October, 1986, TDC entered into similar arrangements in connection with the construction and acquisition of ten Trusty Camps. Both financings bear interest at a variable rate and both have features allowing for early redemption, termination as a result of non-appropriation, and conversion to a fixed rate of interest.

Although the refinancing or restructuring of these transactions will not add any additional bed capacity, certain actions should be considered in connection with both financings. A refunding of the Trusty Camp certificates will result in substantial savings to the State, both in interest rates and annual debt service. The Michael Unit certificates should not be refunded, but consideration should be given to converting the Michael certificates to a fixed rate of interest. Conversion of the Michael Unit financing to a fixed rate of interest is a closer call in terms of possible cost savings.

It is also significant to note that the amount required to be appropriated by the Legislature as annual interest expense will be lower for fixed rate financings than for variable rate financings. This is because variable rate financings require the Legislature to appropriate at the maximum interest rate that could accrue on the certificates. The maximum rate will usually be 15%. A more detailed description of these financings is presented in Appendix E.

SUMMARY AND CONCLUSIONS

SUMMARY AND CONCLUSIONS

It is clear from the figures presented in Section I of this report that Texas faces an immediate and serious prison capacity crisis. The situation is further affected by the sweeping federal court order in Ruiz requiring improvements and significant depopulation of our existing prison facilities. Furthermore, it is necessary to consider financing options to address our prison needs because, with the State's current fiscal constraints on revenue, we can no longer afford to pay cash for major capital construction projects.

The goal of this construction and financing initiative is to bring 10,950 prison beds on line at a manageable cost to the taxpayers in the coming difficult biennium. The intent is not to "build our way out" of the crisis situation we face. The experience of other states, such as California, has demonstrated that even a huge construction program can not by itself solve the problem. Rather, we propose to establish a foundation for bringing about significant improvements in the entire criminal justice system. The construction program will provide breathing room so that creative innovations in probation, parole, the courts, and other areas can be developed.

To implement the steps in this initiative, a number of actions by the Legislature and responsible agencies are indicated at this time.

Legislative Measures

1. Specify the construction projects set forth in Table 5 (or alternative projects) in the General Appropriations Act being considered by the Second Called Session of the 70th Legislature. Such specification would permit, but not mandate, financing of such projects through issuance of TPBA general obligation or lease revenue bonds once all other requirements for such issuances are satisfied.

2. Appropriate the funds indicated in Table 5 to cover operating costs of new facilities as they come on line in the 1988-89 biennium.

3. Adopt legislation to permit the capitalization ofinterest on general obligation bond issues for prison construction by the TPBA. This can be done by amending SB 1407, adopted during the 70th Legislature, Regular Session, 1987.

4. In order to take advantage of the provision in SB 245 permitting the TDC to contract with counties for the

construction and financing of correctional facilities, adopt legislation during the current Special Session to make financing options available to counties and Home Rule cities. No tax-exempt financing alternatives are directly available to counties today. An emphasis should be placed in such legislation on maximum flexibility and lowest cost. Draft legislation is enclosed.

Bond Review Board

SB 1027 and SB 1407 created the Bond Review Board and authorized it to consider and approve all proposed prison construction projects which are to be financed by the issuance of State bonds. So that the Board can begin to function immediately upon the effective date of SB 1407, the following steps are recommended:

1. Create a Bond Review Board Work Group composed of designees from the staff of each of the Review Board members. This Group should begin immediately to promulgate rules and review procedures in accordance with the statutes. A report should be prepared and presented to a preliminary meeting of the full Board no later than August 15.

2. The Work Group should also develop guidelines for the TDC Master Plan as required by SB 1407.

3. Consideration should be given to the process for the selection of the various professionals involved in such a financing.

Michael Unit and Trusty Camp Financings

1. The Michael Unit financing should be closely monitored to determine when or if the financing should be converted from a variable to a fixed rate or if the current bond issue should be refunded with new credit enhanced certificates from the same conduit issuer. Significant overall cost savings as well as lower legislative appropriations could be realized by revising this financing. (See Appendix E.)

2. The Trusty Camp certificates should be refinanced at the earliest opportunity. (Again, see Appendix E.)

Financing Methods

To the extent possible, priority should be given to contracting with county commissioners courts for the financing and construction of the needed prison facilities. To effect the financing of expansion capacity beyond the capability of interested counties, the State should issue revenue bonds through the Texas Public Building Authority as soon as possible after the effective date of SB 1407. In any event, significant financing must be in place within 60 to 90 days in order to accommodate the required construction schedule set forth in Appendix C.

If SJR 56 is approved on November 3, consideration should be given to refinancing any previously issued debt instruments through a new general obligation bond issue.

APPENDIX A

APPENDIX A

INNOVATIVE PRISON CONSTRUCTION DELIVERY TECHNOLOGIES

Introduction

Methods of constructing prisons in the United States have been guided by tradition. The typical process begins with the selection of a qualified architectural firm to program and design the new facility. When the design has been completed, the plans and specifications are advertised for competitive bid by general contractors or a set number of prime contractors. A fixed-price contract is awarded to the low bidder and the facility is built in the field using labor-intensive building systems.

The traditional approach is prudent, but it is also very slow and costly. Today, many counties and states are facing court orders which mandate a prompt increase in the number of beds in the system. The traditional approach has given way to the fast-track method of construction and the use of professional construction managers to deliver the facility months ahead of a traditional schedule.

WHAT OTHER STATES ARE DOING

Recognizing that the traditional method of designing and building prisons may take too long and cost too much, states throughout the country are employing innovative facility delivery technologies. Summarized on the following pages are examples of what four states (Virginia,California, Florida, and New Jersey) are doing.

Virginia

In 1979, the Commonwealth of Virginia began work on a 512-bed prison utilizing the traditional design-bid-build approach. The facility was designed using conventional materials and building systems, including poured concrete, concrete block, and brick. A fixed-price contract was awarded by the state to a general contractor. Due to significant cost and schedule overruns, state officials asked the Virginia Department of Corrections to consider new approaches that might improve the efficiency of the construction process. The Department responded with a building plan using largely the same architectural program, but designed for plant-fabricated concrete panels and construction management.

The project, using pre-cast concrete panels and construction management, was completed in 20 months; less than half the 42 months required for the conventionally built prison. This new approach was employed again at another site. The construction time for this facility was cut to 18 months. Project costs were also reduced.

California

California has embarked upon the most ambitious program of prison construction in the country. It is intended to increase bed capacity by at least 30,000. California plans to expand its current 12-prison system by adding 14 new institutions. California has also decided to utilize the construction management approach. The magnitude of the construction effort makes coordination particularly important, so the state decided to engage one firm to manage the entire state-wide construction effort. The California Department of Corrections developed one correctional facility to serve as a model or prototype for several projects. The job of the program management firm hired by the State was then to site adapt this prototype design at 14 locations. Director Daniel McCarthy of the Department of Corrections selected a plan that relied upon plant-produced concrete panels together with poured concrete floor surfaces. The combination of construction management and prefabricated components resulted in a budget of approximately $50,000 per cell, which to California represented a cost reduction of approximately $40,000 per cell. Techniques such as fast-track construction and phased design enabled the Department to begin occupying the completed segments of the prison only eight months after groundbreaking and less than one year after its initial authorization.

Florida

The State of Florida has extensively tested the modular approach to jail construction. Pinellas County recently constructed a new jail that was assembled primarily from 96 concrete cell units. Each cell unit is 92 square feet and houses two inmates. The cell units were lifted into place by a tractor crane and the building was substantially completed in only 10 months. The cost for the facility was approximately for each 2-person cell. Officials of the State of Florida's Department of Corrections monitored the progress of the Pinellas County project and, in order to meet pending deadlines imposed by a court order, the Secretary of Correction authorized his staff to use similar construction techniques. Maximum security modular units were designed for the Union Correctional Institution in Railford, Florida. The new prison units were opened in only eight months, at a cost of approximately $16,000 per cell. (This project consisted of housing units only). Base on the successful experience of Pinellas County and the state prison project, several counties throughout the state of Florida are now planning to use the same building system for their new jails.

New Jersey

The State of New Jersey Department of Corrections has worked with professional design and construction consultants to alleviate serious overcrowding conditions. New Jersey has implemented fast-track construction utilizing professional construction management in virtually all correctional construction projects since 1983. These professionals have participated in all facets of the building process, including planning, feasibility, evaluation, programming, designing, purchasing, and construction. Three of the most notable projects are described below:

Southern State Correctional Facility - Phase II

A 560-bed, $16,000,000 medium security facility designed in a campus arrangement on a 35 acre tract was built under a construction management contract in 4 1/2 months. This project commenced on September 6, 1983, and was 100 percent complete and ready for occupancy on February 1, 1984. It was the nation's first totally pre-fabricated modular prison facility.

Additional Bedspaces for Various Facilities

Utilizing the same professional team that developed the Southern State Correctional Facility, the State of New Jersey added 544 beds at five separate institutions in nine months. The project consisted of conventionally-built medium security dormitories, prefabricated housing units, and an extensive renovation of an industrial building which was converted into a 80-bed housing and dining facility within the secure perimeter at Rahway State Prison. Additionally, necessary infrastructure improvements including new emergency generators, two new sewage treatment plants, and new mechanical and electrical systems were provided.

Additional Bedspaces Feasibility Study

Still confronted with an increasing inmate population and serious overcrowding conditions, the New Jersey Department of Corrections contracted with an architect/engineer and construction management company to perform feasibility studies for the construction of up to 1,000 bed spaces. The goals of the studies were to develop facilities which would minimize construction time and cost and provide maximum staff efficiency. Both prefabricated modular and conventional construction techniques were evaluated. After an exhaustive study of innovative techniques being utilized throughout the country, the State decided to build a 324-bed maximum security unit utilizing pre-cast concrete panels, and a 162-bed close custody unit utilizing the same construction technology. Both projects are currently under construction using a fast-track team method of facility development.

APPENDIX B

APPENDIX B

PRIVATIZATION

National Results

Corrections departments have long relied on many private organizations to furnish various institutional services and programs. The focus today includes private sector alternatives for prison industries programs, new construction financing, and the total management of facilities.

According to the National Institute of Corrections ("NIC") survey in 1984, 37 adult and 29 juvenile agencies in 39 states contract with private providers for 32 types of services or programs. The most frequently contracted services are medical, educational and vocational training, halfway house and after care programs, and staff training. Generally, the survey found that private sector services are more cost effective than the same agency-provided ones. The most common problem cited was monitoring performance. Five states (California, South Carolina, Virginia, Arizona, and Connecticut) account for 52% of the total number of current contracts reported. Although no secure adult facilities are privately operated, six states (Florida, Massachusetts, Michigan, Pennsylvania, Rhode Island and Washington) have juvenile facilities under contract. Currently, $200 million is spent annually on these services. Public administrators are most interested in medical and health care service contracts because the private provider may deliver a better professional service and qualified staff. Interestingly, administrators indicated that the quality of service, not cost, is their most important consideration.

A National Institute of Justice ("NIJ") study recently concluded that the greatest promise of the private sector may lie in its capacity to bring the totality and flexibility of successful business practices to corrections. That is, to mobilize resources to meet immediate needs; to adapt services rapidly to meet changing circumstances; to experiment with new practices; or to meet specialized needs with an economy of scale not possible in a single jurisdiction. Thus, the challenge becomes not one of replacing public corrections functions with private sector counterparts, but rather developing a system which uses both sectors to their maximum advantage.

Private Sector Involvement in Prison Industries

The NIJ study revealed that initiatives in prison industries were relatively minor, involving 19 businesses operating in nine states. Of the 34,000 state prison inmates involved in industry programs, less than 1,400 were participating in programs established or operated by the private section.

However, the NIJ has found strong interest on the part of correctional administrators, governors, and state legislators in the concept of private-sector employment of prisoners and an overwhelming consensus on the importance of productive and paying work opportunities for inmates. More than half the states have now adopted legislation calling for some form of private sector involvement in their prison work programs. The notion of a prison that provides valid work opportunities for its inmate population, might operate on a profitable basis, contributes to the costs of confinement, and makes restitution to victims is an extremely appealing vision. As former Chief Justice Warren Burger has asked, "Will we continue building warehouses for convicted criminals or will we build prisons that are factories with fences?"

Examples of some of the most creative private sector programs in prison industries include the following:

> At the Arizona Correctional Institution of Women, inmates use computer terminals to make reservations for Best Western Hotels;
>
> In Minnesota, inmates manufacture disk drives and wire harnesses for a subsidiary of Control Data Corporation;
>
> In Florida, a single nonprofit corporation, PRIDE, now operates all prison industries within the state

The potential benefits of creative private/public partnerships in prison industries include reduced idleness, better post-release employment opportunities for inmates, and the potential for prisoners to make restitution to victims.

Financing Alternatives

At an average national construction cost of $60,000 per cell and with states alone planning to expend more than $7 billion on new correctional facilities in the coming decade, it is not surprising to find many government agencies exploring alternatives to the traditional ways of financing construction projects.

Traditionally, governments have financed prison and jail construction with current operating revenues and general obligation bonds or lease revenue bonds.

Due to the uncertainty in gaining voter approval, the volatility of today's credit markets, and often facing court orders to build, many governments are turning to the private sector for a variety of construction and financing alternatives. Lease-purchase revenue bonds and certificates of participation recently have become the fastest growing way for state and local governments to finance correctional facilities, office buildings, and equipment such as computers and telecommunications systems.

Lease-purchase revenue bonds are secured by lease rental payments which flow from the lessee government using the facility to the issuer of the bonds. The issuing entity acts as nominal owner and lessor of the facility, and the lease payments flow through the lessor to the bondholders. Thus, the lease payments, which are paid from annual or biennial appropriations by the government which uses the facility, are the primary security for lease-purchase bonds or certificates.

An interesting twist to the lease-purchase structure is currently being marketed. It is called a "turn-key" development. Here, the government executes a single lease agreement with a private firm which then is responsible for the design, financing, and construction of the facility. Upon completion, the firm leases the prison or jail back to the government. This method can substantially eliminate the time normally required to publicly construct a facility. Similar methods have recently been used by the State of New Jersey to develop a $9 million telecommunication and computer center, and by the City of Austin to develop a $23 million office building.

In order to achieve the most cost-effective and timely results, an acknowledged and experienced investment banking firm or financial advisor is generally selected to structure the financing plan. Under the current volatile market and drastic budgetary constraints, a cohesive and successful plan requires a full scope of professional financing services which will provide a keen understanding of the complexities involved and how best to overcome them.

Private Management of Correctional Facilities

While the private sector has become increasingly involved in the operation of community-based correctional facilities, such as halfway houses and substance abuse treatment centers, private prison operators have not proceeded past the proposal stage in most jurisdictions.

The most interest appears to be at the federal level in response to the critical need for housing illegal aliens. To date, three federal agencies have chosen to contract the confinement services:

1.The Immigration and Naturalization Service ("INS"), which is responsible for the apprehension and confinement of immigration law violators pending deportation;

2.The U. S. Marshals Service, which is responsible for the custody of alien material witnesses; and

3.The Federal Bureau of Prisons ("FBOP"), which has jurisdiction over sentenced aliens.

The INS and U. S. Marshals Service facilities, which have been contracted for, basically provide short-term confinement for aliens. Support services such as educational and vocational training and extensive medical care are not provided. In 1984, the FBOP contracted for the operation of a 60-bed minimum security facility for offenders sentenced under the Federal Youth Corrections Act.

At the state level, with its longer terms, higher security requirements, and more comprehensive service needs, the concept of contracting for prison operation has made little progress. The most widely publicized proposal came in 1985 when Corrections Corporation of America ("CCA") offered the state of Tennessee $50 million in cash and $50 million in notes for the exclusive right to manage Tennessee's prison system. CCA offered to spend an additional $150 million to build two new 500-bed maximum security prisons and upgrade existing facilities. In return for its investment, CCA would be paid by the state for operating the system under a 99-year agreement. Although seriously considered by Tennessee officials, the proposal was not accepted. Another interesting proposal is taking shape in Colorado where a design-build team is developing a 512-cell, $32 million prison on speculation, without knowing if prisoners will fill it.

Despite opposition from the National Sheriff's Association, interest in privatization is growing at the local level. This interest may be due in part to the smaller fiscal and management capabilities at the local level.

Legislation enabling private jail operations has passed in New Mexico and Tennessee. Regionally, the most interest appears to be in the southern and western regions where labor unions are either weak or non-existent. Many local jurisdictions are considering arrangements that will permit the costs of jail construction to be shared across jurisdictions. For example, Reeves County, Texas developed a 548-bed detention center utilizing tax-exempt certificates of participation financing. Reeves County receives $35 per day per inmate from the federal government for housing INS and U. S. Marshals Service prisoners. The facility should provide a net profit of about $2 million a year once the building is paid for.

However, not all the news is as encouraging. Butler County, Pennsylvania had hoped to save money by hiring a private company to operate the county jail, but a financial review indicates that taxpayers spent $154,000 more than expected.

Whether at the federal, state, or county level, the issue of private contracting raises a host of questions. Some of the most critical are described below:

Legal Authority to Contract - Does the state or county have specific statutory authority to contract with private firms? Contracts for facility management may be implicitly prohibited or excluded by omission. In some states, specific statutory language may also be needed to open contracting opportunities for profit organizations.

Liability - Since privatization is a relatively new idea, there is no body of case law to clarify the respective liabilities of public and private agencies. By itself, private contracting offers no new protection to governments. Thus, if the contractor errs, the government may share the liability. In Median vs. O'Neill, a 1984 case involving an illegal immigrant detention center in Houston which is operated by a private company for the INS, sixteen detainees were confined to a cell designed for six. A private security guard shot and killed one detainee and seriously injured another during an escape attempt. Inmates sued both the company and INS under the Civil Rights Act. Chief Judge John Singleton of the U. S. District Court in Houston found that the INS could not delegate its responsibility for the illegal immigrants. "Because both immigration and detention are traditionally the exclusive prerogative of the state, it is evident that the actions of [INS and the private company] were state actions...," the Judge wrote.

Quality - Because the private sector is under competitive pressure to perform and is free of cumbersome bureaucratic procedures, many advocates of privatization argue that the quality of privately-managed facilities is likely to be superior. With so few facilities being privately operated, it is not possible to draw any conclusive judgment. However, adequate monitoring, frequent on-site inspections, public and media accessibility, and strong contracts with built-in renewal procedures and possible buy-out options are key tools to ensure contract performance.

Future Possibilities

Historically, whenever our country has faced a crisis, it has turned to the private sector to supplement and enhance the public sector. Today, the United States is clearly at a crisis point in corrections. Consequently, the future for privatization is bright if private contractors and public administrators are willing to work together to form new partnerships in corrections. States should welcome private sector participation in prison industries to provide full employment opportunities for prisoners. Alternative financing will increase in popularity as both states and counties confront required new construction projects and limited financial resources.

APPENDIX C

APPENDIX C

New Construction and Renovation Timelines

- New Capacity/Construction -- Two-Year Plan
- New Capacity/Construction -- Four-Year Plan
- Ruiz-Related Renovations and Improvements

Texas Corrections Plan

New Capacity/Construction
Two-Year Plan

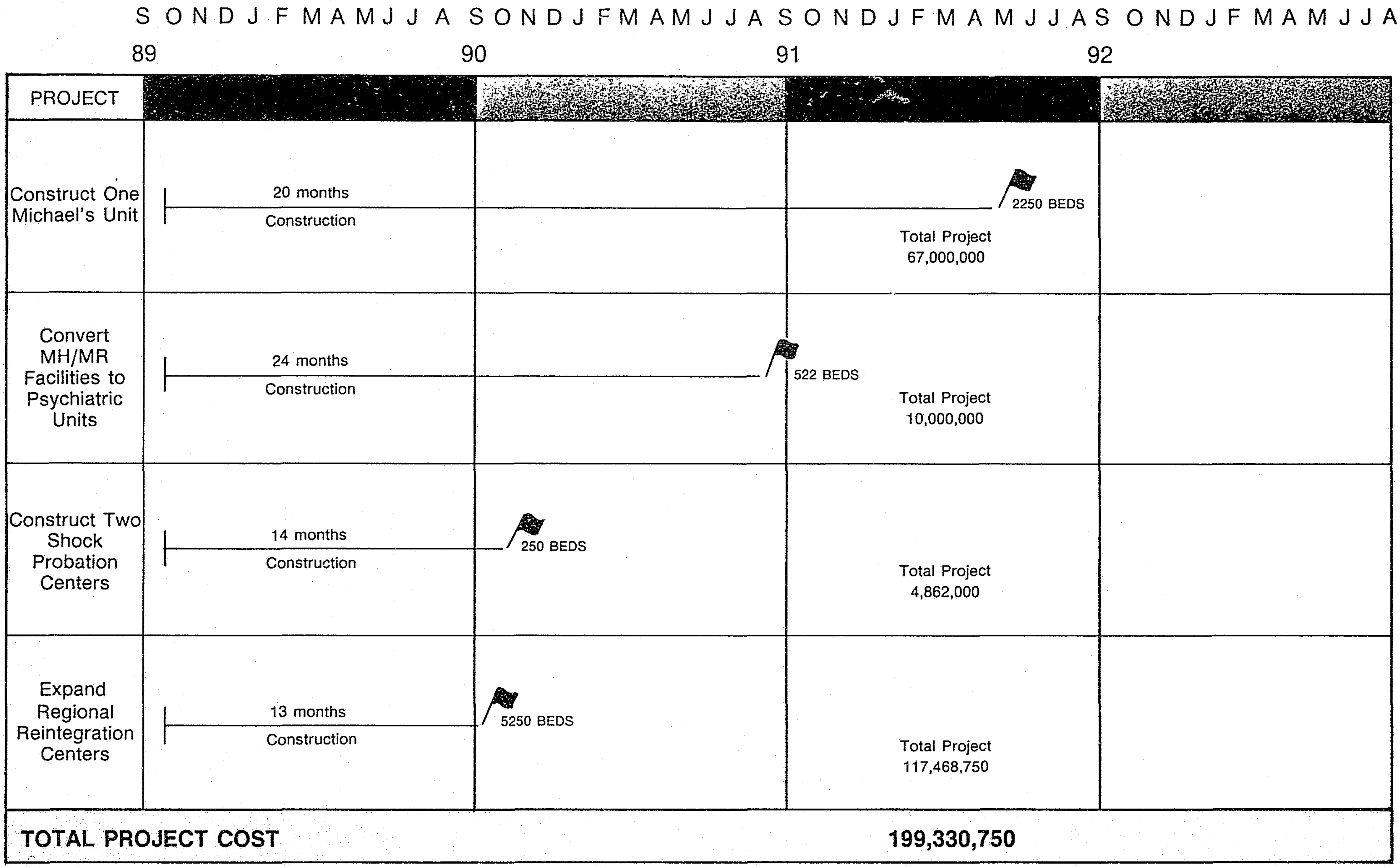
S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M

87 88 89

PROJECT					
Contact For 4/500 Bed Private Facilities	10 months Construction	500 Beds 500 Beds 500 Beds 500 Beds			Required Operational Funding this Biennium 29,400,000
Construct 5 Trusty Camps	3 months Design/Bid 400,000	8 months Construction 6,400,000	1000 BEDS 250,000 Start-up	7,050,000 Total Project	11,297,325 Aug. 88 — Aug. 89 Operational
Construct 1 Michael's Unit (Prototype)	5 months Design/Bid 5,025,000	15 months Construction 60,090,000	1,885,000 Start-up	2250 BEDS 67,000,000 Total Project	5,025,000 June 89 — Aug. 89 Operational
Construct 4 Regional Reintegration Centers	6 months Design/Bid 13,740,000	12 months Construction 100,760,000	6,800,000 Start-up	5000 BEDS 121,300,000 Total Project	20,119,200 March 89 — Aug. 89 Operational
Construct New Wing Gatesville	6 months Design/Bid 288,000	10 months Construction 2,112,000	200 BEDS 260,000 Start-up	2,660,000 Total Project	973,328 Jan. 89 — Aug. 89 Operational
Construct 4 Shock Probation Centers	6 months Design/Bid 1,122,000	8 months Construction 8,228,000	500 BEDS 374,000 Start-up	9,724,000 Total Project	933, 230 Nov. 88 — Aug. 89 Operational
Complete Wing at TDC Hospital	10 months Design/Bid 144,000		14 months Construction 1,056,000 200,000 Start-up	1,400,000 Total Project	124 BEDS
TOTAL	Architect/Engineer Fees 20,719,000	Construction Cost 178,646,000	Start-up Cost 9,769,000	Total Project Cost 209,134,000	Total Operational Funding Required 67,748,083

Texas Corrections Plan

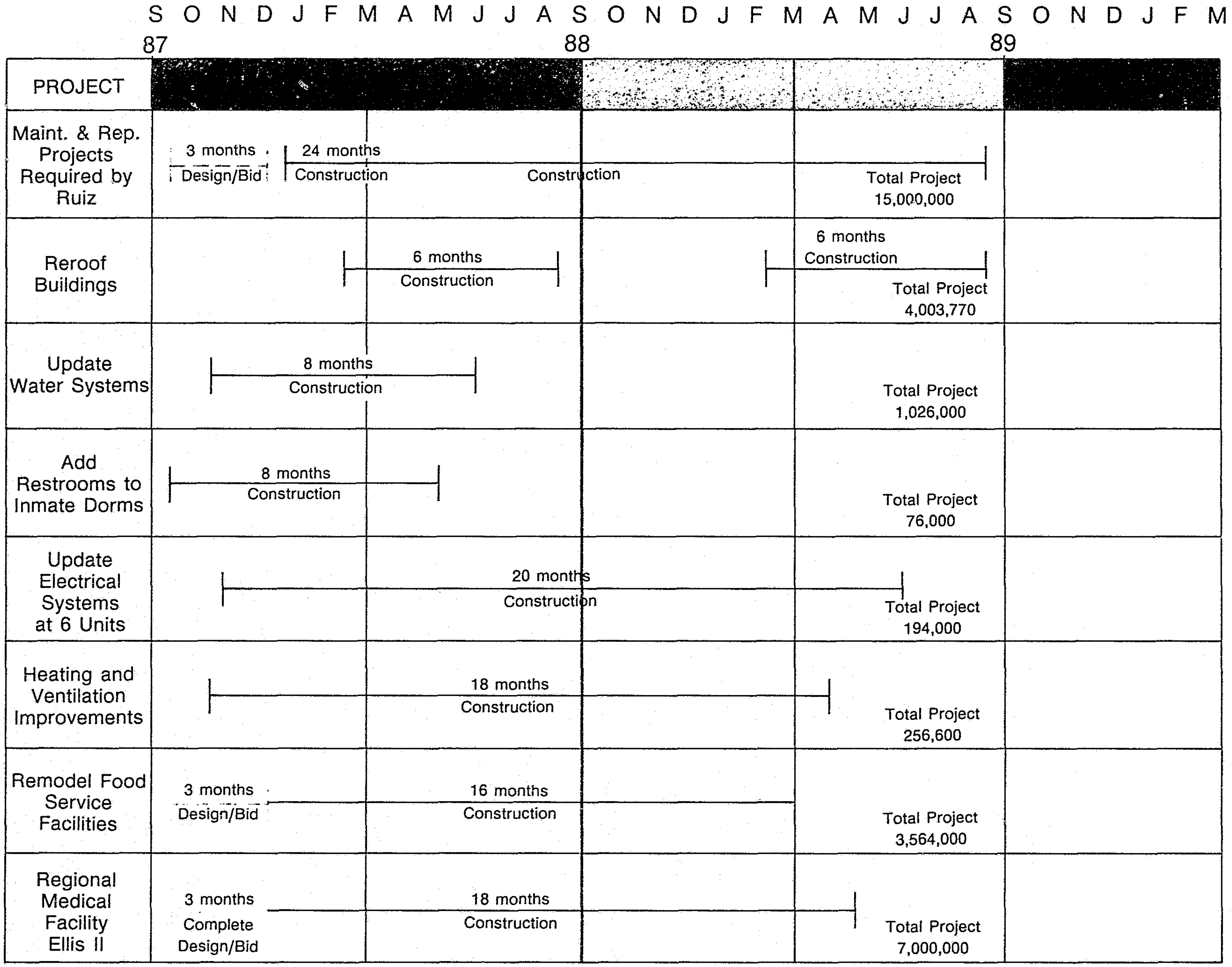
New Capacity/Construction
Four-Year Plan



Texas Corrections Plan

Ruiz-Related Renovations and Improvements

Two-Year Plan



Texas Corrections Plan

Ruiz-Related Renovations and Improvements
Two-Year Plan

S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M
87 88 89

PROJECT				
Indoor Contact Visitation	1 mo. Bid	20 months Construction	Total Project 1,788,640	
Law Libraries Ellis I and Ramsey II		5 months Construction	Total Project 140,000	
Education/ Vocation Buildings Beto I	2 mo. Bid	22 months Construction	Total Project 1,450,000	
Kitchen Additions & Alterations	1 mo. Bid	12 months Construction	Total Project 3,296,851	
Renovate and add to existing Law Libraries		19 months Construction	Total Project 100,000	
Addition to Existing Units	6 months Design/Bid	18 months Construction	Total Project 5,000,000	
Sewer Improvements		24 months Construction	Total Project 6,947,000	
		TOTAL PROJECT COST	**49,842,861**	

APPENDIX D

APPENDIX D

FINANCIAL ASSISTANCE TO COUNTIES

County jails throughout Texas are functioning at or near capacity. The same economic restraints confronted by the State are being experienced by counties. Accordingly, the State should consider implementing a county assistance program similar to the ones developed by the States of New Jersey and Washington. This does not suggest that capacity should be moved from the state level to the county level. However, since new construction is required to increase capacity at the county level (which would obviously require county funding), the State could assist the counties financially and in return receive a commitment from each participating county to house a pre-determined number of state inmates. One possible suggestion would be for the State to contribute a percentage of the construction cost of the a county facility plus total project costs associated with the state beds. In so doing, the State would be ensuring that the counties could construct necessary capacity to meet local needs and also provide state beds geographically distributed throughout the State. This approach could lessen the State's need to construct and operate new facilities.

Implementing a financial assistance program to aid county jails would require that:

TDC coordinate with the Sheriff's Association of Texas and the Texas Jail Standards Commission in the planning and development of the program;

All counties would need to be surveyed for their interest in participating in the program;

Detailed evaluation criteria for selection in the program be developed, with priority given to those counties planning new construction or additions;

A contract for participation in the program between the State and the counties be developed by TDC; and

A committee be appointed to review, rate and approve the county bonding proposals.

APPENDIX E

APPENDIX E

REFINANCING ISSUES

1.Trusty Camps

The primary financing document in connection with this transaction is a Utilization Agreement which has all of the attributes of a financing lease. The initial term of the financing is ten years and is subject to a three year renewal. Rental payments are payable monthly with a balloon payment at the end of the initial term. If the option to renew is exercised, the amount of the balloon payment is to be paid over the renewal period.

The rental payments include an interest component which adjusts annually based on a percentage of the twelve (12) month London Interbank Offering Rate ("LIBOR"). This index reflects conditions in the Euro dollar commercial credit markets and does not relate well to the United States municipal market place. The interest rate is additionally tied to the highest United States tax rate.

This formulation could substantially increase the final payoff due at the end of the financing. Based on the LIBOR rate of 8 1/16% published on June 11, 1987, and the highest U. S. tax rate (34%), the effective interest rate on such date would be 8.836%. Although the rate at which interest on the Trusty Camps accrues increases from time to time, the amount of periodic rental payment remains fixed, causing a reamortization of the rental payments. Such reamortization will increase the final payment due on October 1, 1996 (or the final lease payment due at the end of the three year extension term if the extension is exercised). An applicable rate of 8.835% has the result of increasing interest expense during the year ending October 1, 1988, by more than $575,000 and decreasing the amount of principal paid. Compounded through the remaining term of the financing, such rate will have a dramatic increase in the State's final payoff amount.

Selection of either a fixed rate financing of the Trusty Camps or a variable rate refinancing of the Trusty Camps utilizing an index reflecting domestic municipal market conditions should result in a reduction of annual debt service requirements. Additionally, either refinancing structure can result in a reduction in the appropriation required to be made in connection with such refinancing. Following is a short summary of the terms of the financings:

Current Financial Terms.

Issue Size: $17,694,080.00

Date of Issue: October 30, 1986

Payment Date: On the first day of each month commencing December 1, 1986

Amount of Payment: $85,477.15 due on December 1, 1986 $82,719.82 due on January 1, 1987 and the first day of each month through and including September 1, 1987; $169,117.80 on October 1, 1987 and on the first day of each month through and including September 1, 1986; and all accrued interest and the remaining principal balance is due on October 1, 1986. In the event of exercise by the State of its option to extend the term of the term of the lease, the remaining principal balance is amortized over the remaining three year term, payable on the first day of each month.

Interest Rate: The interest is an adjustable annual rate, adjustable on the first day of October throughout the term of the Utilization Agreement. The effective Interest rate is calculated pursuant to the following formula:

(1.582 x (12 month LIBOR* + .4%)) x (1- Highest U.S. Tax Rate)

The twelve month LIBOR rate is determined on June 30, or the previous business day of each year and applies to the twelve consecutive rental payments commencing with the immediate succeeding October 1. In no event shall the interest rate exceed 15% per annum.

Term: 10 years with option to renew for 3 years.

Prepayment: May be prepaid at any time upon sixty (60) days prior written notice.

Rating:	Not Rated
Comments:	Rate adjusts annually based on LIBOR, which is an inefficient index upon which to base municipal financings. Using the current LIBOR rate of 8 1/16%, State will pay interest at 8.836% for year beginning 10/1/87, resulting in over $575,000.00 in additional interest in year one. Lease payments are level while interest rate varies resulting in an unknown final buy-out price.

2. Michael Unit

The financing structure for the Michael Unit is similar to that for the Trusty Camps in that the primary document is a Utilization Agreement having all the attributes of a financing lease. The initial term of the financing is ten years subject to a ten year renewal. Interest is payable quarterly and principal is payable annually. Interest accrues at a variable rate based upon the 30 Day High Grade Index of Kenny Information Systems, Inc. (the "Kenny Index"), subject to a cap of 11.375% commencing on August 15, 1987. Based on the actual Kenny Index for the period commencing June 27, 1986, through May 15, 1987, the interest rate averaged 4.43% per annum.

A variable rate refinancing of the Michael Unit would result in only marginal benefit to the State, since the Kenny Index reasonably reflects domestic municipal market conditions. However, a fixed rate refinancing could result in a reduction in the amount required to be appropriated for such debt service. If the Michael Unit were refinanced prior to September 15, 1987, the prime contractor is required to pay all accrued interest on the financing from August 15, 1987, to the purchase date, which would allow the State to realize approximately $300,000 of interest savings. Following is a short summary of the terms of the financing:

Current Financial Terms.

Issue Size:	$78,200,000.00
Date of Issue:	June 26, 1986
Payment Date:	Quarterly
Amount of Payment:	$1,210,625.00
Interest Rate:	4.43%/Variable Average

Term:	20 years
Reserve Fund:	$4,770,200.00
Rating:	A-/A - 1+
Prepayment:	May be prepaid on any day upon forty-five (45) days written notice.
Comments:	The purchase price exercisable prior to September 15, 1987 is based on a Certificate balance of $78,200,000.00 less funds on hand under the Trust Indenture. It is assumed that funds exist sufficient to reduce the net purchase price to $67,132,981.00.

APPENDIX F

APPENDIX F

Recent Major State Correctional Facilities Financings

1980 - 1987

Recent Major State Correctional Facilities Financings
1980 - 1987

State	Approximate Amount Financed (000)	Type of Bonds
Alabama	$570,000*	General Obligation and Lease-Revenue
Alaska	263,000*	General Obligation
Arkansas	1,75	Lease-Revenue
California	1,332,490	General Obligation and Lease-Revenue
Delaware	86,000*	General Obligation
Georgia	44,035	General Obligation
Louisiana	180,765	Lease-Revenue
Maine	2,000	General Obligation
Massachusetts	23,400	General Obligation
Missouri	109,025	Lease-Revenue
New Hampshire	4,300	General Obligation
New Jersey	50,000	General Obligation
New York	480,558	Lease-Revenue
Ohio	372,100	Lease-Revenue
Pennsylvania	3,000	General Obligation
Rhode Island	30,000	Lease-Revenue
Utah	29,950	General Obligation
Washington	103,000	General Obligation

**portion of financing used for purposes other than correctional facilities.*