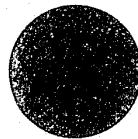


U.S. Department of Justice  
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National Institute of Justice

*Issues and  
Practices*

# Work in American Prisons

## The Private Sector Gets Involved

112331

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**James K. Stewart**

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# Work in American Prisons The Private Sector Gets Involved

by

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JUL 26 1988

May 1988

ASSOCIATIONS

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

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## Foreword

Former Chief Justice Warren Burger often spoke of turning prisons into "factories with fences," where criminals paid their debt to society while they earned wages and learned job skills. His vision is becoming a reality in a number of states. No longer given to simply "warehousing" prisoners in idleness, corrections officials have taken bold steps to strengthen traditional industry programs, forge cooperative agreements with private enterprise and form private-sector prison industries.

In the past decade, burgeoning prison populations and declining revenues have escalated correctional budget expenditures by 400 percent. At the same time widespread inmate idleness and the inherent potential for subsequent violence have underscored the need to involve inmates in productive work. Governors, legislators and correctional administrators have recognized limitations of traditional approaches and have begun to look to the private sector for the most cost-effective approach to these problems.

The infusion of private sector business practice and capital to form prison-based industries means inmates can earn fair market wages as they serve their sentence. The wages they earn also help to compensate the victims of their crimes, assist the inmates' own families, defray the cost of housing inmates in the prison and contribute taxes to the general revenue.

The National Institute of Justice has monitored the development of private sector prison industries for several years. This report, part of the National Institute's series on *Issues and Practices*, reviews progress in this area since 1985, when the Institute published its last report on the subject. As it did in 1985, the National Institute commissioned Criminal Justice Associates to identify and analyze critical issues in private sector prison industries and to conduct this study.

*Work in American Prisons* describes current practice and identifies barriers to growth as well as legislative initiatives necessary for the future

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development of prison based industries. Given what we already know of the benefits made available to both inmates and public officials, taxpayers and private businesses, this report and the prison based industries it describes are a positive addition to more traditional programs and offer much promise for the future.

James K. Stewart  
Director  
National Institute of Justice

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## Abstract

This report describes current and historical developments in private-sector prison industries, analyzes costs and benefits for both the public and the private sectors, and suggests strategies for future growth. The information presented is intended to help private- and public-sector managers weigh the costs and benefits of private-sector prison industries and to alert policy makers to issues and problems in need of attention if these ventures are to expand in the future.

A survey of all fifty states undertaken in spring 1987 in connection with this study found thirty-eight private-sector prison industries operating in twenty-six prisons in fourteen state correctional systems and two county jails. This represents an increase in the number of projects and the number of participating states over the past two years, although the number of inmates working in such projects has remained virtually the same.

Private-sector prison industries result in demonstrable benefits for everyone involved: for correctional systems, a means of reducing prisoner idleness at relatively low cost; for prisons, access to private-sector expertise and positive impact on the institutional environment; for inmates, a chance to earn real-world wages and to gain training and experience that enhances the possibility of employment upon release; for the private sector, access to a labor force that can meet rapidly changing production and service needs; and for taxpayers, funds generated through wage deductions to offset the costs of incarceration, compensate crime victims, help support the families of inmates, and contribute to government revenues through state and federal taxes.

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A model for private-sector prison industries is set forth that maximizes involvement of the private company in the prison setting. Under this model both public and private capital are used to fund the project, but the venture is managed by the private firm. Inmate workers are paid at least the federal minimum wage, and federal and state legal requirements for the payment of taxes and benefits are observed. The private-sector prison industry is located on prison grounds.

Expansion in the number and scope of private-sector prison industries will require that wages and benefits be established at a level that is perceived as fair by all parties, that the Department of Justice's certification program be broadly utilized, that federal laws be amended, that information about such projects be widely disseminated, and that additional incentives for private-sector participation be created.



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## Acknowledgments

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Project staff also wish to acknowledge the assistance provided by correctional administrators and private-sector representatives across the country who responded to our inquiries. They gave willingly of their time, shared their knowledge, and provided valuable information. We thank them for their cooperation and assistance.

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## *Chapter 1*

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# Introduction

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

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

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

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

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

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

## Opportunities for the Future

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

### Flexibility of Labor and Business

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

The AFL-CIO in particular has had a long-standing interest in the rehabilitation of prisoners, as witnessed by the apprenticeship programs it has sponsored in prisons over the years. Leaders of that organization have made it clear that they do not oppose private-sector prison industries but wish to be involved in their development, both because of the knowledge they bring

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to the subject of work and because active involvement would help to ensure that projects avoid the displacement of organized labor's membership.

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

## Governmental and Political Support

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

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

## Economic Trends

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



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

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

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

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

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

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

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

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

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

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

## Scope of the Report

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

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

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

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

Chapter 3 describes state and county experiences with private-sector prison industries, showing how important issues have been handled in selected settings. Chapter 4 details the major findings of the research in a cost-benefit format designed to assist those considering the development of private-sector prison industries. Chapter 5 presents recommendations for promoting the

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development of such ventures and proposes a model for private-sector involvement in prison industries. Appendices set forth a summary of historical developments, with an emphasis on legislation (Appendix I); court cases on the status of inmate workers and the wage and benefits issue (Appendix II); planning steps (Appendix III); an action plan outline (Appendix IV); issues that have arisen in negotiating contracts for private-sector prison industries (Appendix V); and an annotated bibliography (Appendix VI).

## Endnotes

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

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## *Chapter 2*

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# Background

## History

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

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

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

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

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

In 1979 Congress removed federal restrictions on the sale of prisoner-made goods in interstate commerce, an essential step in promoting private-sector involvement in prison industry since most markets today span state borders. The legislation, known as the Percy Amendment after its sponsor Senator Charles Percy of Illinois,<sup>4</sup> set forth minimum conditions under which interstate shipment of prisoner-made goods could take place. Those conditions include: (1) inmates working in private-sector prison industries must be paid at a rate not less than that paid for work of a similar nature in the locality; (2) prior to the initiation of a project, local union organizations

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must be consulted; and (3) the employment of inmates must not result in the displacement of employed workers outside prison, must not occur in occupations in which there is a surplus of labor in the locality, and must not impair existing contracts for service. These conditions sought to reduce the threat of competitive imbalance that was the impetus for earlier anti-prison labor legislation.

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

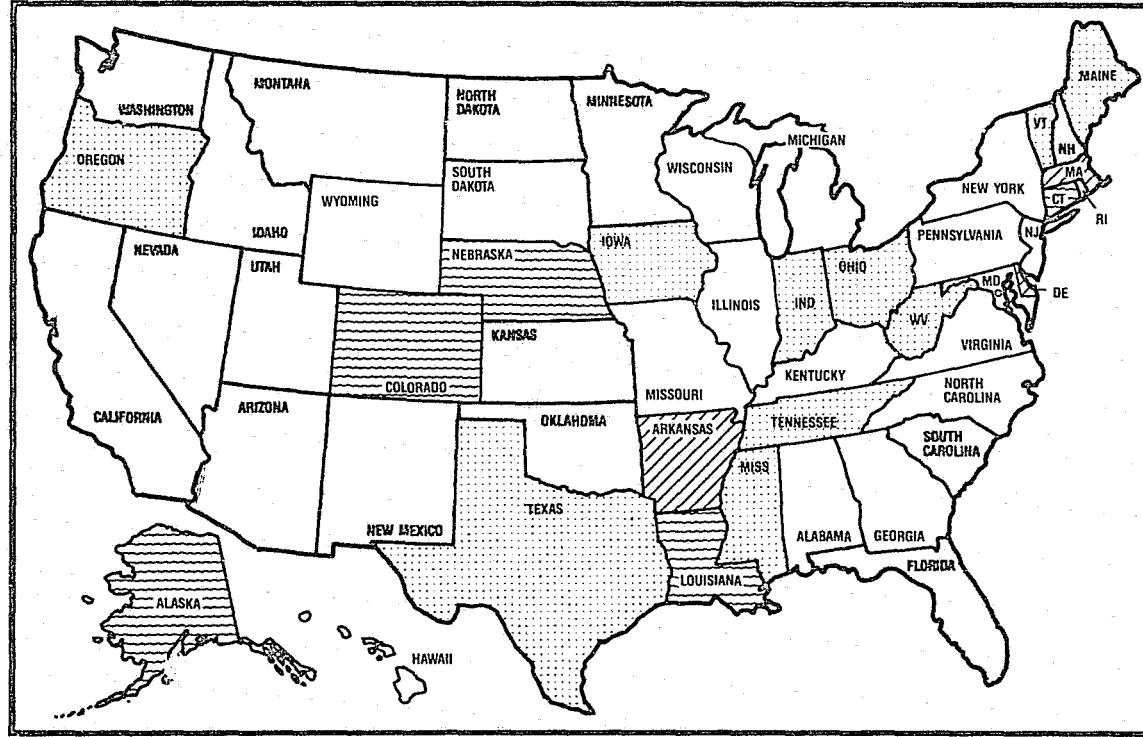
The new law authorized the establishment of seven Prison Industry Enhancement (PIE) pilot projects and subsequently was amended to allow twenty such projects. Congress gave responsibility to LEAA for certifying that a state met the conditions of the Percy Amendment. As of January 1987, seven states and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






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

## **The Current Context**

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

# States with Private Sector Prison Industries



- |  |  |   |
|--|--|---|
|  = Active Venture |  = Authority But No Plans |  = Silent or Unclear |
|  = Advanced Plans |  = Statutory Prohibition  |   |



# Table I Prison Industries Statutory Analysis

	AL	AK	AZ	AR	LA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY			
Private sector employment authorized			•	X	•	•	•	X	•				Δ	•		•		•				X	Δ	•	Δ			•	•		Δ	•		Δ	•	•	•	Δ					•										
Private sector contracting authorized		•	•	X	•	•	•	X		Δ			Δ	•	•							X	Δ	•	•		•	•	•		Δ	•	Δ		Δ	•	•	•	Δ			Δ	•	•	•	Δ		•		Δ			
Private sector sales authorized	Δ	•	•	X	•		•	X	Δ	Δ	Δ	•	Δ	•	•	•	•	•	•	•	Δ	X	Δ	•	•	Δ		•	•	•	Δ	•	Δ	Δ	•	•		•	Δ	Δ	•	Δ		•	•	•	Δ	•		Δ	Δ		
Incentives for private sector authorized														•																																	•						
Prevailing and/or minimum wages authorized			•											•	•	•		•					•	Δ				•									•	•					•				•						
Unemployment Compensation authorized					•		•						Δ	•				Δ														Δ									Δ						•						
Workers Compensation authorized	Δ			•		•	•					Δ		•	•	•		•		•	•	•					•	•			Δ	•		Δ	•			•	•			•	•		•	•		•	•		•		
Prisoner voluntarism mandated		•					•										•		•						•								•									•			•			•					
Project's impact on free world labor addressed		•					•							•	•	•												•									•									•							
Rent/lease of property authorized			•						•					•	•								•	•				•	•								•	•					•	•				•					
Wage deductions authorized		•	•			•			•					•		•	•		•				•	•				•	•	•						•	•	•					•	•			•						
Employee status of prisoners addressed		•						•				•			•									•									•																				
• = Legislative Authorization Exists      Δ = Legislative Prohibition Exists      Blank space indicates that legislation neither specifically authorizes nor prohibits X = Legislation Unclear      *For wards of the Youth Authority only																																																					

• = Legislative Authorization Exists

Δ = Legislative Prohibition Exists

Blank space indicates that legislation neither specifically authorizes nor prohibits

X = Legislation Unclear

\*For wards of the Youth Authority only

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## Wages and Benefits: The Fairness Issue

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

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

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

The Percy legislation is quite definite on the subject of wages: inmates in certified projects must receive wages comparable to those paid for similar work in the area in which the project is located. The legislative history accompanying the bill makes it clear that Congress saw comparable wages as the best compromise among competing positions. But what about non-

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certified projects? Even here there is existing law that must be considered in making wage and benefit decisions.

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

## Recruiting the Private Sector

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

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

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

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

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

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

## Private-Sector Prison Industries Today

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

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

Although no current examples exist today, in recent years three other models were observed:<sup>9</sup>

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

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

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

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

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

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

## Table II Private Sector Prison Industries

[illegible]

**Table II (Contd.) Private Sector Prison Industries**

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

**Table II (Contd.) Private Sector Prison Industries**

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



Table II (Contd.)

## Private Sector Prison Industries

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

Table II (Contd.) Private Sector Prison Industries

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

## FOOTNOTES

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

<sup>2</sup> Kansas State Prison

<sup>3</sup> Kansas Correctional Institution at Lansing

<sup>4</sup> Montana State Prison

<sup>5</sup> North Dakota Penitentiary

<sup>6</sup> Idaho State Correctional Institution

<sup>7</sup> Northern Nevada Correctional Center

<sup>8</sup> New Mexico Penitentiary

<sup>9</sup> Adult Correctional Facility

<sup>10</sup> Strafford County Jail

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

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

## Endnotes

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

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

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

- the company's ability to determine the size of its work force and to hire its workers (Who places the worker in the job, the company or the prison? Can a worker be assigned to the company without its consent?);
  - the company's ability to discipline and fire its workers (Who removes workers from assignments? Can a worker be removed from the job without the approval of the company? Can the company remove a worker from the job without the prison's approval? Is the worker involved voluntarily?);
  - the company's ability to control the supervision of its work force (Are the hours worked by prisoners regulated by prison authorities or by the company? Is the supervision of inmate work performance subject to final control by prison authorities?).
8. A project is defined as a business enterprise operated by either a private firm or a correctional agency using inmate labor to produce goods or services sold on the open market.
  9. Criminal Justice Associates, *Private Sector Involvement in Prison-Based Industries: A National Assessment*, November 1985. Produced under Grant #83-IJ-CX-K451 from the National Institute of Justice.

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## *Chapter 3*

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# Experience with Private-Sector Prison Industries

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

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

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

## Arizona

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

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

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

### The ROBE Program

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

By January 1983 there were fifty-two ROBEs operating inside Arizona's prisons. They employed a total of 103 inmates in thirteen categories of handi-

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craft and service-oriented businesses. Most of the service businesses had prison staff as their principal clientele, while the handicraft enterprises sold the majority of their wares to dealers in the Phoenix area.

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

### Projects at Perryville

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

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

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

### Best Western's Reservations Center

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

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

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

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

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

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



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

## California

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

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

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

### TWA at Ventura

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

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

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

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

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

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

### Other Free Venture Projects

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

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

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

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

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

## Minnesota

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

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

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

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

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

### Subcontracts with Private Firms

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

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

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

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

### Other MCI Shops

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

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

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

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

## Nevada

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

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

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

GHI's management, which had no prior experience in the broom trade, and its plant manager, who had no prior experience in supervising a prisoner

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work force, failed to anticipate the difficulty of maintaining a pool of trained workers who could master the complex techniques of mass production of corn brooms in a prison with a high turnover rate. Because inmates routinely failed to meet production quotas on schedule, GHI hired experienced civilian broom makers to work alongside its prisoner employees. The majority of prisoner workers were unable to produce at even the company's base piece rate, which was tied to the federal minimum wage, and the company instituted a "training" period of several months and a corresponding "training" wage of \$1.00 per hour. Unfortunately, GHI sold the brooms produced by its prisoner-trainees in interstate commerce, a clear violation of the wage requirements of the Fair Labor Standards Act since the employees who produced the brooms were paid less than the federal minimum wage.

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

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

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

### Vinyl Products, Inc.

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

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

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

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

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

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

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

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

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



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

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

## **Hennepin County, Minnesota**

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

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

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

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

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

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

## Endnotes

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

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

2. In its approach to private-sector prison industries, the Youth Authority differs from the adult Corrections Department in two key respects: it has no prior experience with industrial work programs (either state-use or oriented to the free market); and its primary motivation in establishing

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such industries is not to combat idleness but to enhance its education programs by providing general employment skills to its wards. The latter partially explains why Free Venture Industries have been placed under the Youth Authority's education staff.

3. The Job Training Partnership Act provides federal funds through the state Office of Economic Development for vocational training for certain categories of disadvantaged citizens, including inmates.
4. Unlike most other states that have private-sector prison industries, Minnesota does not collect room and board fees from its inmate workers. The department found it cumbersome to collect the fees and difficult to determine a fair rate since its inmate workers live in widely varying types of housing. To avoid charges concerning equal protection under the law the department decided to abandon its room and board charge policy, even though a federal court had found, and the Eighth Circuit Court of Appeals confirmed, that such policies did not violate equal protection laws.
5. The Minnesota Line is sold in Illinois, Iowa, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

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## *Chapter 4*

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# Implementation Issues

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

## The Decision to Proceed

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

### Issues for the Private Sector

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

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

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

### Benefits

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

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

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

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

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

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

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

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

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

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## Costs

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

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

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

## Summary

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

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

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

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

### Issues for the Public Sector

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

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

### Benefits

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

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



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

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

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

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

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

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

## Costs

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

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

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

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

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

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

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

## Summary

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

## Conditions for Success

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

### Issues for the Private Sector

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

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

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

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

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

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

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inmates seem to exploit.

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

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

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

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

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

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## Issues for the Public Sector

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

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

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

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

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

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

One of the public sector's most difficult tasks will be to find a private-sector partner. Most recruitment efforts have not been clearly conceptualized, largely because correctional agencies have had insufficient experience with similar situations to develop the skills required. As a result, most existing private-sector prison industries have been the result of serendipitous circumstances to which the agency has responded, rather than a result of conscious outreach.

As outlined earlier in this chapter, there are certain kinds of businesses for which a private-sector prison industry can make economic sense; thus, it is possible to target recruitment efforts rather than engage in a "shotgun" approach. However, the idea of working with prisoners is still sufficiently novel to most business people that they need the reassurance of knowing that someone else has already demonstrated how it can be done. TWA, for example, made the decision to work with the California Youth Authority only after visiting the Best Western operation in Arizona to see its advantages first-hand.

Misconceptions about prisons and inmates may influence the thinking of business executives when the possibility of private-sector prison industries is raised. Private-sector managers may be similarly apprehensive about working with a government bureaucracy and the possibility of changes in the political climate. The opportunity to see such a project in operation and to talk to the people involved can allay at least some of these fears. As more projects achieve higher visibility in the business community, there is likely to be more opportunity to dispel the misconceptions so that business people can concentrate on the economic aspects of private-sector prison industries in making a decision to proceed.

The background and characteristics of the person selected to do the recruiting are critical to the conduct of a successful recruiting effort. Ideally, this person should:

- have prior department of corrections experience (important because the liaison must have the confidence of institutional administrators and must understand institutional requirements and concerns);
- be aggressive, energetic, articulate, and task-oriented;
- understand the workings of a governmental bureaucracy and know how to get things done in such a setting;

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- understand the problems of business, know how a prison work force can address these problems, and be able to interact comfortably and effectively with business people.

The risks and benefits of private-sector prison industries examined in this chapter make it clear that such enterprises, like all business ventures, will be successful only if both partners approach them with the care and concern necessary whenever new concepts are implemented. There is no magical solution for the private sector in the prison, nor will the public sector's needs be met by private-sector involvement without the hard work required to make any program successful. When properly conceived and implemented, however, private-sector prison industries have met the needs of both parties.

### Endnotes

1. The JTPA is described in Chapter 3, footnote 3. The Targeted Jobs Tax Credits legislation (P.L. 95-66, November 6, 1978, as amended by the Tax Reform Act of 1986) allows an employer of specified categories of disadvantaged workers to be reimbursed of 60 percent of the first year's gross wages earned by year-round employees.



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## *Chapter 5*

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# A Prospectus for the Future

The survey undertaken for this report shows that the number of private-sector prison industry projects is increasing and more states are hosting such projects today than ever before. A study conducted for the National Institute of Justice in 1985 found twenty-six projects operating in seventeen prisons in nine states;<sup>1</sup> two years later there were thirty-eight projects in twenty-six prisons in fourteen states and two counties. Yet the total number of inmates working in private-sector prison industries is small (about 1,000) and has remained virtually constant despite the increase in the number of projects.

Private-sector prison industries are almost all small businesses, averaging twenty to twenty-five workers each. Given the fiscal constraints facing most departments of corrections, which deflect resources from new programs, and the high failure rate of small businesses generally, the amount of growth in the number of private-sector prison industries in the past two years suggests the strength of the concept and its long-term potential. The question facing policy makers and practitioners is how that potential can be achieved. How many prisoners could reasonably be involved in private-sector industries, and how might the number of projects and participating institutions be expanded?

Minnesota provides a source of information from which reasonable estimates of potential growth can be developed. Of all the states with existing projects, Minnesota has the most favorable set of circumstances: a long and uninterrupted history of private-sector involvement in prison industries; strong institutional and corrections department support for the concept; experience with a variety of models that have been well integrated into institutional life;

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and broad enabling legislation. With nine private-sector prison industries, Minnesota has the largest number of currently operating projects.

Minnesota's average total adult prison population during 1986 was approximately 2,290,<sup>2</sup> of which 330 (14.4 percent) were employed in private-sector prison industries. Using a total national state prison population of about 500,000, and assuming that Minnesota's experience could be replicated nationwide, this would mean that perhaps as many as 70,000 inmates could be employed in private-sector prison industries.

This chapter identifies strategies for overcoming barriers to growth as a first step in expanding private-sector prison industries. An industry model is provided that will enable practitioners and policy makers to examine the potential benefits to both the public and private sectors.

## Overcoming Barriers to Growth

Strategies for consolidating and expanding private-sector prison industries can be divided into long-term and short-term approaches. When Congress passed the Percy legislation in 1979 it created a separate category of prisoner workers, setting forth various protections in an attempt to ensure that such workers would not compete unfairly with free-world labor and not be exploited in the prison workplace. This report has presented a number of case studies showing how these protections have worked in practice. The report has revealed a great deal of variation among projects and a lack of coordination and consistency in employment policies for private-sector prison industry workers.

### Long-Range Strategies

Ultimately, private-sector prison industry workers should be integrated into the larger work force. This eventually will ease fears of exploitation and unfair competition because, as part of the outside labor force, private-sector prison industry workers will be subject to the same laws and regulations as other workers. But a healthy transition cannot occur unless a number of existing ambiguities are clarified:

#### **The Issue of Wages and Benefits.**

Accurate determination of wages for workers in private-sector prison industries is extremely difficult. As the administrative agency within the Department of Justice responsible for the implementation of the Prison Industry Enhancement (PIE) certification program, the Bureau of Justice Assistance (BJA) is responsible for oversight of PIE projects through its certification mechanism. No project within a state is certified until the state department of labor (which determines comparable wages by occupation and geographic area) has

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notified BJA in writing that the proposed project wage falls within the comparable wage range for the locality in which the work is being performed. BJA therefore is forced to rely on the ability of state departments of labor to assess accurately the skill levels of inmate workers and to understand the tasks involved (which may have been redesigned to accommodate inmate workers). This is a difficult assignment for departments that generally have had no previous experience with prisoners as employees. Department of Labor policies regarding the calculation of wages and hours have never been evenly applied to private-sector prison industries. While a small number of certified projects have been reviewed by the DOL, none of the non-certified projects has been contacted. Thus the Justice Department, which does not have expertise in wage and hours calculations, has responsibility for its certified projects, and the Labor Department, which does have the expertise, is not involved.

#### **Social Security Coverage.**

Deductions for Social Security have been interpreted differently by the states, so that in some jurisdictions workers in such enterprises have payroll deductions taken for that purpose while in others they do not.

#### **The Targeted Jobs Tax Credit.**

Current IRS regulations and interpretations exclude employers in private-sector prison industries from coverage under the TJTC provisions of the Internal Revenue Code. Those provisions grant generous tax credits to employers of "economically disadvantaged ex-convicts." The Internal Revenue Service and the Department of Labor (DOL) have interpreted the category to include only released convicts, not those currently incarcerated. BJA initiated staff contacts among the Department of Justice, the Department of Labor, and the IRS to explore whether current prisoners, working in partnerships with the private sector, could be included within the scope of the entitlement, but no change has been forthcoming. A reinterpretation of existing law, or an amendment bringing currently incarcerated inmates within its ambit, would offer a substantial inducement to private businesses considering the use of prison labor. The TJTC has been renewed for a three-year period under the new federal tax legislation, but no reinterpretation as to the inclusion of currently incarcerated prisoners has been issued. Various provisions in the new tax code also may work against private-sector investment in prison-based ventures and should be explored for possible alignment with Justice Department policy in this area.

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### **Incentives for the Private Sector.**

Incentives for the private sector are needed to offset the extra costs of doing business in the prison. Some are already in place, but American businesses have options other than the prison. Businesses can, for example, take advantage of the Enterprise Zone concept, which offers tax and other economic advantages, or they can lease labor, look to home-bound workers, or move to other countries in search of cost savings.

Consideration must be given to the creation of incentives in the prison that will be meaningful to the private sector. At the same time, it is important not to create an artificial economic climate inside the prison by over-subsidizing the private sector. To avoid long-term economic failure and unfair competition with free-world labor and business, an appropriate balance must be struck. For example, incentives might be offered for a two- or three-year period, after which time the company would receive no further special treatment.

### **The Fair Labor Standards Act.**

As noted in Chapter 2, the question of whether prisoners employed by private-sector prison industries are covered by the FLSA is of central importance to the future of such projects. The courts continue to rule on cases as they arise, apparently moving in the direction of increased recognition of full employee status. But more direct action should be taken to seek clarification of the issue through Congress. A strong case can be made that workers in private-sector prison industries differ in no substantial way from their community counterparts and thus are eligible for the protections the FLSA provides. Without such protection, gains made to date may prove illusory in the long run.

### **Regulatory Mechanisms.**

It is important that participants understand the regulatory mechanisms that govern the interstate transport of prisoner-made goods. If a project falls under the certification program, it must abide by the Percy Amendment; if not, the interstate transport of such goods is clearly prohibited. In either case, lack of enforcement has led to confusion and, as a result, many states and counties have come to believe that they need not take the interstate commerce requirements seriously.

### **Legislation: The Hawes-Cooper Act and the Percy Amendment.**

A major reason for the success of recent initiatives has been the sen-

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sitivity of those supporting expansion of private-sector prison industries to political interests with a stake in the issue, including organized labor, private industry, correctional administrators, and public interest groups supporting or opposing inmate employment. Gradual change allows all parties to adjust to new circumstances more comfortably.

One cause for concern, however, is the Hawes-Cooper Act. This Act was not amended under the 1979 Percy legislation, and thus it is still possible for states that prevent the open-market sale of prisoner-made goods within their borders to prohibit the entry of prisoner-made goods from other states, even though they are produced in certified projects. Hawes-Cooper holds that a state may treat all prisoner-made goods entering its borders in the same way that it treats goods produced by its own state prisoners.

The Percy Amendment may also be in need of change. The current Percy legislation authorizes up to twenty state or county certifications. While that number has been sufficient to date, new legislation expanding the number of possible certifications will be needed if real growth is to occur. Finally, there may be other laws now on the books that are in conflict with the intentions of the Percy legislation. These laws also should be coordinated with the Percy requirements.

## Short-Range Strategies

While these broad-based issues should be addressed over the next several years, there are steps that can be taken in the short run to promote the growth of private-sector prison industries. Two major problems to be addressed are the need to protect free-world labor and management from unfair competition and private-sector prison industry workers from exploitation and the need to market the concept of private-sector prison industries to the private sector.

## Promoting and Enforcing Certification

The wages and benefits issue must be resolved in such a way that fairness to all is ensured. Nothing will threaten the future of private-sector prison industries more than the suspicion that unfair labor practices are taking place.

The Percy legislation represents a satisfactory compromise that strikes a balance between the position of organized labor and that of supporters of much lower wages for inmate workers. The specter of unfair competition and displacement of free-world workers is avoided, while the inappropriateness of paying union wages to unskilled labor in a setting that itself imposes some

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restrictions on productivity is recognized. The complaints of those who see high wages for prisoners as inappropriate when outside workers cannot find jobs can be mitigated to some extent by requiring that some percentage of inmates' income be subtracted to pay for taxes, room and board, and, in appropriate cases, family support and victim restitution.

If all private-sector prison industries—even those not technically bound to do so—were to seek certification under the Bureau of Justice Assistance's PIE program, a number of problems could be dealt with more equitably than is now the case. The history of private-sector involvement with prisoner labor is clear. Practices that are unfair and exploitative to free-world labor, competitor manufacturers, and prisoners, will result in accusations of wrongdoing and opposition from those who feel threatened by private-sector prison industries. Certification offers the best vehicle for ensuring that private-sector prison industries will be perceived as equitable by all parties involved.

There are a number of projects that are of questionable legitimacy in that by law they should be, but are not, certified under the Percy legislation. The requirements of certification are being avoided, presumably because of the comparable wage and benefits requirement. These projects endanger the survival of all private-sector prison industries. Avoidance of certification requirements will result in suspicion and opposition among many who might otherwise support the concept. Enforcement of legal requirements is therefore essential.

## Information and Marketing

The Bureau of Justice Assistance has made periodic efforts to alert corrections officials to the opportunities available through the PIE program, including a recent survey reminding the states of the availability of PIE certifications and inquiring about the kinds of technical assistance that could encourage their participation. The National Institute of Justice also has assisted departments of corrections interested in private-sector prison industries by providing technical assistance in project planning.<sup>4</sup> Such efforts to inform and encourage states and counties should be continued.

Many potential private-sector participants remain unaware of the possibilities of the prison. It is essential that steps be taken to alert private companies to their options. Growth in private-sector prison industries has been steady but slow, and this slow pace is likely to continue if efforts are not made to better inform the private and public sectors. A core group of business leaders who support private-sector prison industries would be a strong inducement for other private companies to consider such ventures themselves.

The concept of private-sector prison industries is relatively new, and it

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will need more extensive testing. But until current ambiguities are resolved, states and counties may be unable to achieve the "critical mass" that is crucial to the transition to a more mature program. Decisive action on the recommendations made here, both by Congress and by public- and private-sector managers, is an essential first step in that process.

## **A Model for Private-Sector Prison Industries**

Resolving the wages and benefits issue, promoting and enforcing certification, enhancing incentives, passage of enabling legislation, federal encouragement and assistance, and dissemination of information are all ways of removing barriers to the expansion of private-sector prison industries. But the question remains as to the best approach for moving forward once the path has been cleared. Local circumstances will primarily determine the nature of the public-private relationship involved, but experience to date suggests elements of a model project with good chances of success.

The proposed model represents the optimum strategy from the public policy point of view. However, it may not be feasible or appropriate for a given jurisdiction at a particular time, and it may not meet the needs of some private-sector firms. Public-sector managers with a large investment in traditional prison industries will continue to use those resources to provide products to the private sector through the customer model in an effort to increase and stabilize employment opportunities for the inmate work force and to improve cost-effectiveness. Ultimately, the model adopted must reflect local conditions and needs.

The proposed model constitutes maximum involvement of the private sector in the prison environment. It represents the highest degree of interaction of any of the arrangements identified in the survey, and it assumes that the private sector has a sound business reason for entering the prison. For the private company, it also involves the greatest risk in terms of investment, the greatest dependence on the venture for success, and the greatest sharing of responsibility and authority with prison management. At the same time, the arrangement promises maximum potential benefits to both parties. The model's key elements are described below.

### **Private sector management of the operation.**

Private-sector control of the hiring, firing, and job supervision of inmate workers increases the likelihood that working conditions will mirror those of the outside world, and it lessens public-sector costs as well. Under the model proposed here, legal authority for management of the operation and employment of inmates rests with the private sector. This clearly established authority assures the con-

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tinuing on-site presence of company representatives, including a unit supervisor. Responsibility for the financial success of the venture is unequivocally that of the private sector. One of the significant benefits of private-sector management is the sense of the real world of work that it brings to the prison environment. This affects the behavior of both staff and inmates. Inmates working for the private sector see themselves—and are seen by others—as productive members of the labor force, an important difference from the way in which inmates in other work programs are perceived. Inmate workers in private-sector jobs are held accountable for the same results as workers outside, often for the first time. At the same time, institution management is encouraged to adjust the life of the institution to the realities of the work day instead of the reverse. The institution's regimented pattern has a less stultifying effect on inmates, and their subsequent adjustment to unstructured life outside is eased, when work concerns influence institutional life.

**Comparable wages with a wage floor of at least the federal minimum wage.**

Only when wages start at this level can accusations of unfair competition or inmate exploitation be refuted. The Percy legislation requires comparable wages for certified projects. In addition, only at this level will wage deductions be meaningful. The level of inmate pay is the litmus test of the model proposed here. It has been demonstrated that an inmate work force can produce at competitive quality and quantity levels under favorable circumstances. It is also true that there are certain unusual costs associated with the prison environment and the skill and experience limitations of the inmate population. However, those costs should be offset through incentives, not a reduction in wages. Many private-sector prison industries have been based on entry-level, unskilled labor where minimum wages are appropriate. However, in other cases higher wages are justified and should be paid. Comparable wage levels for inmate workers can be calculated easily when the private-sector prison industry has been established as a satellite or counterpart of a company operation in the community and inmate workers are performing essentially the same tasks and producing at the same quality and quantity levels as outside workers.

**Combined public and private capital investment.**

When both parties invest, both maintain an interest in the project's success and both gain a financial advantage. Public-sector investment may be limited to providing an already existing building within



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which the venture is housed, in which case no additional funds are required. On the other hand, substantial building modifications or even construction of a new building may be necessary. Although funding of building modifications by a private company is not uncommon, capital investment by the private sector generally takes the form of providing all or most of the production equipment. As a result of joint investment, both parties achieve a measure of fiscal relief. Corrections authorities need not rely on strained corrections budgets to equip the venture, and private companies are given access to space and utilities as well as training resources in some cases.

#### **Treatment of Inmates as Employees.**

Non-discrimination against prisoners in the provision of employee benefits and payment of taxes is an additional requirement of the Percy legislation, but it also is necessary if the work experience is to reflect free-world conditions. Federal and state legal requirements for the payment of taxes and provision of employee benefits must be observed. Inmate workers must meet their legal obligations of income, social security, and other federal, state, and local taxes required in the area in which they work. The employer must handle the necessary paperwork. The employer also must meet state requirements for worker benefits, such as workers' compensation. Optional benefits, such as sick leave and vacation pay, are dependent on individual circumstances. Most private-sector prison industries are small businesses that provide few if any optional benefits for their employees. When larger companies are involved, a benefit package similar to that offered civilian employees of the organization would provide ample protection against charges of inmate exploitation.

#### **Location on prison grounds.**

The largest number of prisoners will be eligible to work in the venture if it is located inside the prison perimeter. At least one successful operation is based in the community with inmates transported daily to and from work, but this arrangement seems to have little effect on the prison itself. Operating on prison grounds results in a high degree of project visibility, permits inmates of higher security classifications to work in the project, and results in more positive impact on behavior of the inmate population as well as on the flexibility of the institution and its operating procedures.

From a public policy perspective the location of a business on prison grounds represents the ultimate evolution of private-sector

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involvement in the prison work program. Part of the value of private-sector involvement is in helping to instill in the institutional environment some important elements of the outside world and in bridging gaps between the prison and the community. The benefits of maximum private-sector involvement also include educating representatives of the outside world to the realities and problems of prisons and inmates. For the sake of staff and inmates alike it is important for society to maintain close ties with the prison.

There are benefits for the private company as well. The experience of joint ventures created in the business world to transfer technology to developing countries is instructive here.<sup>5</sup> There is a marked similarity between such enterprises and private-sector prison industries of the kind envisioned in this model. Like the government of the foreign country involved in a joint venture for technology transfer purposes, the prison administration imposes certain conditions on the private company and also must adjust to the firm's business-related needs. Each learns from the other, and the two must work together harmoniously if the venture is to succeed. In the process, the culture of the prison (and possibly also of the firm) is altered as inmates and prison managers absorb the productivity ethos and adopt the profit motivation of the private-sector world. The result may be increased efficiency and productivity of the prison-based enterprise.

## Summary

Tremendous energy could result from developing strategies such as those discussed at the outset of this chapter. Perhaps the most important strategy for those interested in the long-term expansion of private-sector prison industries is to be cautious about over-selling the idea. Private-sector prison industries are not a panacea for the ills of correctional systems. Limits set by space, security requirements, geography, and the ability and willingness of corrections departments to commit the necessary resources will affect participation. Private-sector prison industries will not provide opportunities for all inmates, and, even for those for whom they do provide a chance, they are no guarantee of success after release. Nor will they rescue American business from changes in the economy.

However, private-sector prison industries can offer important benefits to each of these groups. Today, when governments at all levels are unable to support costly social experiments, private-sector prison industries offer an unusual opportunity to address some of the challenges facing the public sector with private-sector expertise. These ventures are an obvious testing ground,

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given the public sector's need and the private sector's expertise.

The findings of this report show that private-sector prison industries can generate positive results:

- Such ventures make good business sense for certain types of companies;
- Corrections agencies have had positive results from such ventures to date;
- Prisoners seek opportunities to work for private firms and are capable of producing quality goods and services;
- Taxpayers benefit in tangible and intangible ways; and
- The idea is politically appealing for a variety of reasons.

Nonetheless, entry of the private sector into the prison workplace is a controversial idea. Historically it has been handled badly, and even modern experiments sometimes have had unpleasant consequences. Private-sector prison industries have generated much comment and can easily raise false hopes and false fears. On the other hand, the concept is extremely powerful—work has always been seen as an answer to social problems in the United States, and the crisis in the prisons is one of the nation's most serious. The private sector knows how to operate a business better than anyone else and exposure to the methods and standards of private business is valuable experience for inmates who wish to engage in productive work upon release.

It is never simple to effect a shift in labor policy, even where, as in this case, the total number of jobs involved would be less than one-half of one percent of the jobs currently held by free-world workers. Change usually is difficult, and this is no exception. Public- and private-sector managers are uneasy about such partnerships, and those who must compete with the new ventures are instinctively wary, unsure of what they might lose in the process.

In fact, there will be both winners and losers in the short run. Virtually any job performed by a prisoner is a job not performed by a non-prisoner, which is why the prospect of widespread expansion of private-sector prison industries is a matter of concern for policy makers. If the nation is serious about providing opportunities for change to the men and women who fill the prisons—for the benefit of inmates and of society—will the necessary adjustments be made? The ultimate goal is a societal one: to use private-sector business expertise to open a pathway for those at the very bottom of the social order who might otherwise continue to fail at their own and society's expense. No one questions the need for creative approaches to the growing prison crisis, or the need for all segments of society to share responsibility for the development of positive options for prisoners.

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Future growth in the number of private-sector prison industries will require the support of both the public and the private sectors. However, in the long run, the primary energy will have to come from the private sector. The nation's prisons and jails are filled to overflowing with men and women who are, for the most part, representative of society's underclass. Resources for housing them, let alone programs that might improve their chances of becoming productive citizens, are stretched to the breaking point. Moreover, prison administrators as a group are neither entrepreneurs nor economic developers. But most of those who have hosted private-sector prison industries consider them a success, want more of them, and are willing to make what accommodations they can for their development.

Economic conditions also will play a role. In a robust economy threats to organized labor and private enterprise are minimized, and the climate for favorable legislation is enhanced. Conversely, difficult economic conditions portend difficult political conditions.

There is no doubt that opportunities will continue to exist for the prison labor force in the changing national economy. The question remains whether those opportunities can be realized by private-sector prison industries competing fairly and equitably in the business world.

## Endnotes

1. Criminal Justice Associates, *Private Sector Involvement in Prison-Based Businesses: A National Assessment*, November 1985. Produced under grant #83-IJ-CX-K451 from the National Institute of Justice.
2. American Correctional Association, *Directory*, College Park, Md., 1986.
3. P.L. 95-66, November 6, 1978, as amended by the Tax Reform Act of 1986.
4. Connecticut, Nebraska, South Carolina, and Strafford and Belknap Counties, N.H., are taking part in NIJ's planning effort.
5. For more information on the technology transfer process, see: J.A. Jolly, J.W. Creighton, and P.A. George, *Technology Transfer Process Model and Annotated Selected Bibliography*, (Monterey, CA: Naval Postgraduate School, August 1978).

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## Appendices

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## Appendix I

### Historical Developments

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The early evolution of prison industries in the United States was strongly influenced by developments in two states: the Pennsylvania system of isolated work, which precluded the introduction of factories within prisons for a number of years, and the establishment of the first prison factory at Auburn, New York, in 1824. That year also marked the inception of the goal of self-supporting institutions. Thereafter, the warden's need to meet this self-sufficiency test transformed prison labor "from any moral beneficence it may have contained for guiding the indolent, into an exploitative revenue-producing program for state legislatures." The intent was to use prison labor to defray the costs of incarceration and to generate income for the state. Compensation to prisoner workers and unfair competitive advantage were not issues considered by early prison administrators.

There was considerable diversity during the nineteenth century in the organization of prison labor, but the majority of prisons were operated on the contract system, "under which private contractors operated factories in prisons and paid the states for the convicts' labor. Through this system the Industrial Revolution and the substitution of machine industry for handicraft production entered American prisons and transformed prison industry. Many prisons became prosperous factories..."<sup>2</sup>

From 1870 to 1900 prison factories flourished. This period is often described as the heyday of prison industries, but the totally unregulated use of prison labor led to inequalities in the treatment of prisoners and to resentment by free-world labor and manufacturers of the unfair competition created by unpaid prisoners. Resentment crystallized in legislative restraints. "As early as 1801, New York passed laws limiting production of prison products at the behest of free industry. Beginning in 1870, opposition to prison labor was evident in individual trades."<sup>3</sup>

The period from 1900 to the Second World War saw a steady increase in the passage of legislation restricting prison industry markets. The cordage and garment industries, both of which had felt the economic impact of prison competition, began to exert pressure in New York and other industrial states. In 1925 they were able to attract the attention of Herbert Hoover, then secretary of commerce, who called for a nationwide study as a preface to the introduction of federal legislation that would restrict the sale of prisoner-made goods on the open market. The study resulted in a recommendation to create a commission consisting of representatives of all affected parties to regulate prison industries. Nonetheless, the garment and cordage manufacturers and labor organizations continued to insist upon passage of restrictive federal legislation.

During the 1920s business and labor organizations saw prison industries as unfair competitors, a perception sharpened by the rapidly diminishing market brought on by the economic collapse of 1929. Using its authority

to regulate interstate commerce, derived from Article I, Section 8, of the Constitution, Congress responded to the vociferous complaints of these groups by enacting the Hawes-Cooper Act in 1929.<sup>4</sup> Hawes-Cooper mandated that prisoner-made goods transported from one state to another were subject to the laws of the importing state once the goods entered its borders. The effect of this law was to permit a state, if it so chose, to prohibit the sale of prisoner-made goods, whether made in other states or within its own borders. (However, the state must treat goods made by in-state prisoners in the same fashion as goods made by out-of-state prisoners or risk having its law struck down as discriminatory.)

The rationale for restrictions on prisoner-made goods was aptly summarized by the Supreme Court in 1936 in *Whitfield v. Ohio*,<sup>5</sup> which rejected a challenge to Hawes-Cooper as an unconstitutional burden on interstate commerce:

All such legislation, state and federal, proceeds upon the view that free labor, properly compensated, cannot compete successfully with enforced and unpaid or underpaid convict labor of the prison.<sup>6</sup>

Congress hoped that Hawes-Cooper would quell the fears of labor and industry, but it was only the first step in the attempt to halt the flow of prisoner-made products. When the act was passed in 1929, only four states (New York, New Jersey, Pennsylvania, and Ohio) had laws that prohibited the sale of prisoner-made products on the open market, and Hawes-Cooper had no effect in states without such prohibitory laws.

Hawes-Cooper went into effect in 1934, and in 1935 the Ashurst-Sumners Act was passed, making it a federal offense to ship prisoner-made goods into a state where state law prohibits the receipt, possession, sale, or use of such goods. Ashurst-Sumners was a federal attempt to aid those states that, pursuant to Hawes-Cooper, had banned the sale of prisoner-made goods. But the introduction of federal sanctions proved insufficient to ease the fears of business and labor organizations, since it was still up to the states to pass laws prohibiting commerce in prisoner-made goods. Thus, in 1940, Congress passed the Sumners-Ashurst Act, making it a federal offense to transport in interstate commerce prisoner-made goods for private use, regardless of the laws of the importing state. Sumners-Ashurst, which superseded Ashurst-Sumners, is now codified at 18 U.S.C. Sec. 1761.

Subsection (a) of Section 1761 provides that any person who knowingly transports in interstate commerce any products manufactured, produced, or mined wholly or in part by prisoners is guilty of a misdemeanor. Subsection (b) of Section 1761 excepts from the scope of the statute agricultural commodities, farm machine parts, and prisoner-made goods to be used by federal,



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state, or local governments. An additional exception in subsection (d) authorizes prisoner-made goods to be used in the construction of federally aided highways. That exception, added in 1984, superseded a prior provision of law prohibiting the use of such goods in federal highway construction.<sup>7</sup> In early 1987 Congress again passed restrictions on the use of prisoner-made goods in the construction of federally aided highways. The exceptions permitted in subsection (c) of Section 1761, popularly known as the Percy amendment, are discussed in Chapter 2 of this report.

Another federal law, the Walsh-Healey Act of 1936, forbids the use of convict labor by contractors in the "manufacture . . . production or furnishing of any . . . materials, supplies, articles or equipment used in government contracts where the amount thereof exceeds \$10,000."<sup>8</sup> In the 1940s, with the market for prisoner-made goods drastically curtailed, state prison industries shrank and inmate idleness became a pervasive feature. Most of the remaining private entrepreneurs chose to abandon the prison factory since it was no longer a profitable setting.

One recent change in federal law governing prison industries merits attention as well. The Comprehensive Crime Control Act of 1984 encourages expansion of prison industries and the marketing of prisoner-made goods by amending the Prison Industry Enhancement legislation (the Percy amendment) to increase the number of authorized projects from seven to twenty. This expansion is even more significant in light of the redefinition of "project" in the Bureau of Justice Assistance's PIE guidelines. Under the original guidelines, a project was defined as the prison industry operations of a single shop. The new guidelines expand the term to include statewide or multi-institutional prison industry programs. The new legislation could, in practice, authorize twenty states to place all their prisoner-made goods in interstate commerce. As can be seen from Table 2 in Chapter 2, fifteen such projects have been created as of January 1987.

## Endnotes

1. David Fogel, *We Are the Living Proof* (Cincinnati: W.H. Anderson Company, 1975), p. 44.
2. Gordon Hawkins, "Prison Labor and Prison Industries," in *Crime and Justice, An Annual Review of Research*, Vol. 5, Michael Tonry and Norval Morris, eds. (Chicago: University of Chicago Press, 1983) p. 95.
3. Howard B. Gill, unpublished paper (Philadelphia: The American Foundation, 1975) p. 6.

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- 4 Now codified at 49 U.S.C. Sec. 11507.
  5. 297 U.S. 431 (1936).
  6. *Whitfield*, 297 U.S. at 439.
  7. See 23 U.S.C. 114(b).8. Codified at 41 U.S.C. Sec. 35.

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## Appendix II

### Court Cases on Status of Inmate Workers

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The first federal case examining the issue of the legal status of inmate workers was *Huntley v. Gunn Furniture Co.*<sup>1</sup> In this case a Michigan prison contracted with the defendant to produce shell casings. Participating inmates were selected by the prison and performed their work at the prison. The defendant paid Michigan prison industries for the goods produced. The court, finding no legal relationship between the defendant and the inmates, concluded that the FLSA did not apply on the grounds that the labor of the inmates belonged to the state and that their relationship to the defendant did not meet the FLSA definition of "employee." In 1971 a district court in Louisiana applied the same analysis to similar facts involving inmates working in a plasma pheresis program in the Louisiana State Prison and reached the same conclusions.<sup>2</sup>

In *Sims v. Parke Davis & Co.*<sup>3</sup> the court used the "economic reality" test commonly applied by courts in determining employment relationships under the FLSA. In this case drug companies were authorized by the Michigan Department of Corrections to conduct clinical research on inmates in buildings constructed by the companies on prison grounds. The prison determined the assignment and removal of participating inmates, regulated their working hours, and determined their tasks. The inmates' day-to-day job performance was supervised by the defendants. The Department of Corrections paid the inmates and was reimbursed by the drug companies for their wages.

The court cited the "almost identical relationship" between the prisoners and the private entity in *Huntley* and determined that the "economic reality" of the facts presented was that the inmates were not employees of the drug companies. The court explained that:

As state prisoners, they have been assigned by prison officials to work on the penitentiary premises for private corporations at rates established and paid by the State. In return for the use of this convict labor, the private corporations have relinquished their normal rights: (1) to determine when, and whether, their enterprises need additional help; (2) to select the members of their work force; (3) to remove from their work force members with whom they are dissatisfied; (4) to control that labor force except in the most routine matters. To find on those facts that an employment relationship exists between the prisoners and private corporations is contrary to the economic reality of their relationship.<sup>4</sup>

The court also expressed doubts about whether Congress intended the FLSA to cover inmates, but cautioned that it was not holding that any prisoner assigned by a prison to perform work for a private corporation on the premises of the prison was, by virtue of his prisoner status, outside the coverage of the act.

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Two later court decisions in the 1970s summarily rejected inmate claims for FLSA coverage, largely on the basis of their doubts that Congress intended the FLSA to apply to inmates.<sup>5</sup> Several recent cases, however, have questioned some of the premises underlying the early decisions and have placed a heavier burden on the private entrepreneur to demonstrate that it was not the inmate's employer. The first of these was the decision in *Alexander v. Sara, Inc.*<sup>6</sup>

In *Alexander* the Louisiana Department of Corrections (LDC) contracted with the defendant to establish a plasma pheresis program at the state penitentiary in Angola. Participating inmates were paid at the rate of \$3.00 per day. Payment was made by Sara to the LDC, which made deposits in the inmates' accounts. LDC had the right to screen inmates proposed for assignment to the program and to veto their assignment.

The district court held that LDC had "ultimate control" over the inmates by virtue of its veto authority and that, therefore, the inmates were not employees of Sara.<sup>7</sup> The lower court also noted that because the FLSA's declaration of policy addressed the "standard of living" and "general well-being" of American workers, the act was not intended to apply to inmates.

The circuit court affirmed, but in a markedly unenthusiastic manner, observing that, "on the surface, at least, Sara's relationship with the inmates appears to have all the characteristics of an employment relationship, even though the state agency had the ultimate authority over the inmates."<sup>8</sup> The higher court noted, however, that the district court's decision was in accord with all the prior decisions on the issue and concluded that it was "unable to hold that the district court erred."

In *Woodall v. Partilla*,<sup>9</sup> the plaintiff inmate complained, inter alia, that Servomation, the food service contractor that paid him for his labor on its behalf at the prison, did not meet the minimum wage standards of the FLSA. The court found it "not unreasonable to infer that Servomation civilian employees, in conjunction with prison staff, directed Woodall's work,"<sup>10</sup> but ultimately determined that it lacked sufficient information to rule on his FLSA claim. The court gave the parties forty-five days to submit documentation demonstrating the relationships among the prison, the contractor, and the inmate. No final decision has been reported.

The case having the greatest potential impact on the issue is also the most recent decision in the area. In *Carter v. Dutchess Community College*<sup>11</sup> the circuit court reversed and remanded a lower court decision that based its dismissal of the inmate's claim on the "ultimate control" principle first advanced in *Alexander v. Sara, Inc.* The plaintiff was a teaching assistant in Dutchess Community College's (DCC) education program at the prison. The

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college initiated the program and screened potential inmate assistants on the basis of selection criteria it established. The prison made the final selections, but the college paid the selected inmates directly.

The magistrate who first examined the case applied the "economic reality" and "ultimate control" tests and recommended to the district court that the defendant's motions for summary judgment be granted because the prison retained "ultimate control" over participating inmates. The district court adopted the magistrate's recommendation as its decision.

The court of appeals, however, found that the district court's decision was "an absolute preclusion of FLSA coverage for prisoners." More specifically, it found that the lower court had misconstrued the "economic reality" test by according too much weight to the "control" factor. The appeals court stated:

We do not agree that an entity's control over a worker must be 'ultimate' in order to justify a finding of an employer-employee relationship. The statute is a remedial one, written in the broadest possible terms so that the minimum wage provision would have the widest possible impact in the national economy. It runs counter to the breadth of the statute and to the Congressional intent to impose a qualification which permits an employer who exercises substantial control over a worker, but whose hiring decisions occasionally may be subjected to a third party's veto, to escape compliance with the Act.<sup>12</sup>

The court rejected the argument that the prison's ultimate authority always precludes a finding of an employer-employee relationship between a prisoner and an outside business for three additional reasons: (1) the FLSA was intended to establish minimum standards in the workplace generally; (2) inmates are not listed as an exempt category on the extensive list of FLSA exemptions set forth at 29 U.S.C. 213; and (3) prior cases have always turned on a "particularized inquiry" into the relevant facts.

The court of appeals accordingly required a "full inquiry into the true economic reality" of the case on remand. The following facts were found to be material to the determination of economic reality: "whether the alleged employer could hire and fire the workers, control work schedules and conditions of employment, determine the rate and method of payment, and maintain employment records."<sup>13</sup> In conclusion the court noted that:

The case strikes us as quite different from the typical case in which prisoners seek FLSA coverage . . . DCC made the initial proposal to 'employ' workers; suggested a wage as to which there was 'no legal impediment'; developed eligibility criteria; recommended several inmates for the tutoring positions; was not required to take any in

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mate it did not want; decided how many sessions, and for how long, an inmate would be permitted to tutor; and sent the compensation directly to the inmate's prison account. While perhaps not the full panoply of an employer's prerogatives, this may be sufficient to warrant FLSA coverage.<sup>14</sup>

The most recent case involving the status of prisoner workers has not been finally decided as of this writing. According to the New York Times of May 10, 1987, a federal prisoner fired for filing a complaint under the Clean Air Act involving allegedly unsafe conditions in his prison workshop at Lompoc Prison, was found to be an "employee" and thus protected by whistle-blower laws. The case is on appeal, but if upheld will have far-reaching implications for the status of all prisoner workers.

## Endnotes

1. 79 F.Supp 110 (W.D.Mich. 1948).
2. *Hudgins v. Hart*, 323 F.Supp. 898 (E.D.La.).
3. 334 F.Supp. 744 (E.D. Mich.), *aff'd.*, 453 F.2d 1259 (6th Cir. 1971), *cert. denied*, 405 U.S. 978 (1972).
4. *Sims*, 334 F.Supp. at 787.
5. See *Wentworth v. Solem*, 548 F.2d 773 (8th Cir. 1977) and *Worsley v. Lash*, 421 F.Supp. 556 (N.D.Ind. 1976).
6. 721 F.2d 149 (5th Cir. 1983).
7. *Alexander v. Sara, Inc.*, 559 F.Supp. 42 (M.D.La. 1983).
8. *Alexander*, 721 F.2d at 150.
9. 581 F.Supp. 1066 (N.D.Ill. 1984).
10. *Woodall*, 581 F.Supp. at 1067.
11. 735 F.2d 8 (2d Cir. 1984).
12. *Carter*, 735 F.2d at 12.
13. *Id.* at 14.
14. *Id.* at 15.

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## Appendix III

### Planning for Private-Sector Prison Industries



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Most private-sector prison industries have been initiated with a minimum of planning, but such an approach tends to place both the correctional agency and its private-sector partner in a reactive and opportunistic mode. Shorter results may be adequate, but lack of planning can leave the enterprise vulnerable in the long run. The failure to plan can result in mistakes in the selection of partners and the conditions of the venture and thus in higher costs or fewer benefits than anticipated.

Each potential participant in private-sector prison industry should approach the idea through a formal decision-making process to ensure that it is a sound solution to a real problem and that factors affecting its success have been considered in advance. Planning enables both parties to clarify what they want to accomplish and at what cost. It provides staff of both organizations with a consistent view on the nature of the proposed relationship and the responsibilities of each. Ideally, planning for private-sector prison industries should be integrated into the broader process of organizational planning and be consistent with the strategies, goals, and objectives of this process. Otherwise, such enterprises may end up as isolated appendages rather than fully integrated components of the organization. For both private and public-sector managers there is a process to follow that will help in deciding whether private-sector prison industry is appropriate. The steps outlined below, first for the private sector and then for the public sector, are based on the experience of others. As more such ventures emerge, more information about what works and what does not will become available to guide others in their deliberations.

## **The Private Sector**

For the private firm the following steps should be taken to ensure that sound decisions are made in planning and implementing a private-sector prison industry.

- **Visit the site representative.**

The company, preferably at the management level, should visit the correctional institution to obtain first-hand information. The visit should include meeting with institution representatives, talking with inmates, inspecting the prospective work area, and reviewing existing prison industries.

- **Define company objectives.**

In considering private-sector prison industry the company presumably is seeking to solve some problem or change some existing condition. Company managers should be clear about their

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objectives and the business-related interests that underlie the firm's interest in the venture.

- **Identify the operations appropriate for the prison.**

In deciding which operations are most appropriate for the private-sector prison industry, the company should consider equipment needs and worker skills required. Self-contained operations that minimize movement of material between the plant and the prison are most desirable. Storage needs for raw materials and finished goods should be considered.

- **Specify company needs as precise as possible.**

The company must be explicit about its requirements for the private-sector prison industry. Among the items to consider are the type of work to be done, number of workers, skills required, prior training necessary, size and characteristics of physical space needed, utility requirements, and the expected duration of the venture. It is helpful to think through the work processes to anticipate problems that might arise from the geographic location of the work site.

- **Negotiate a contract with the prison.**

Negotiations with prison management should result in a written contract that specifies the responsibilities and expectations of each party. An item of particular concern is the cancellation clause, which should provide the company with adequate protection.

List issues that have appeared in contracts between correctional agencies and private companies to govern the operation of private-sector prison industries is contained in Appendix V. Now every item will appear in every contract, but the list is useful as a discussion guide.

- **Select a supervisor.**

The crucial role played by the on-site supervisor has already been noted. The company should consider only skilled and experienced supervisors who have demonstrated initiative and resourcefulness. The company may wish to use the assignment as an opportunity to test the skills of an employee who has already demonstrated management capabilities.

- **Provide continuing management support.**

The start-up period is particularly important. The climate of the workplace is established early and is difficult to change. Despite advance planning, unanticipated problems will arise. All of the problems normally encountered in establishing a new business venture are likely to occur, plus some others associated with the prison

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setting. Even with a strong supervisor, the private-sector prison industry needs continuing attention from the management as well.

## **The Public Sector**

Key steps for correctional administrators in preparing for a private-sector prison industry are described below. An action plan outline, included in Appendix IV, provides a more detailed explication of the planning process for public-sector management.

- **Determine the location of the venture.**

The correctional agency should first decide which institution is most appropriate for a private-sector prison industry. Among the factors to consider are size, location, inmate work force, availability of suitable space, and attitude of institution management. More than one institution may be designated, but the number should be limited to facilitate the recruitment of private-sector partners.

- **Inventory available resources.**

The resources the correctional agency can make available to a private company, including whatever incentives can be offered, should be catalogued.

- **Designate a staff person to act as liaison.**

Overall responsibility for locating suitable private companies and handling preliminary negotiations should be assigned to one person. That person should have departmental experience, demonstrated initiative, and be articulate. This is essentially a selling task, and the designated liaison should have the personality and skills normally associated with successful salespersons.

- **Institute a company recruitment process.**

Locating suitable companies is a difficult, time-consuming, and sometimes frustrating task. Recruiting efforts should focus on those kinds of private companies for which the use of inmate labor seems to provide the most apparent benefits. The approach should be based initially on the potential advantages to those companies, not on the benefits the venture will provide to the correctional agency. Public service aspects may be discussed, but the primary emphasis initially should be on how a private-sector prison industry can meet the business-related needs of the firm. Institution visits should be arranged as early in the discussions as possible to avoid misconceptions and assuage unwarranted fears on the part of company representatives.

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- **Spell out the conditions of the venture.**

The correctional agency, in concert with prison management, should determine exactly what is being offered to the private company and what in turn is expected from the venture. Formal proposal should be elicited from each company expressing interest.

- **Evaluate prospective private-sector partners.**

Each written proposal received should be formally analyzed and evaluated. In addition, there should be an evaluation of each company, including its financial status and standing in the community.

- **Negotiate a contract.**

Before any private-sector prison industry is finalized, there should be a written contract, signed by both parties, covering the responsibilities of each. As noted in the discussion of steps for private-sector firms, a list of issues that have appeared in such contracts is contained in Appendix V.

- **Provide continuing management support.**

Both institutional and departmental management should ensure that unexpected problems are solved quickly. Institutional management should see an early pattern of demonstrated interest in the success of the project, including the establishment of a channel of communication with company management.

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## Appendix IV

### Action Plan Outline

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## **Introductory Information**

### **1. Problem Identification**

- 1a. Identify the principal condition(s) and/or problem(s) currently existing within the correctional agency that need to be addressed.
- 1b. Identify the principal ways in which the conditions and problems identified above could be addressed by the agency.
- 1c. Identify why the development and operation of a cooperative industrial venture is a viable option for addressing the conditions or problems identified above.

### **2. Purpose**

- 2a. Succinctly state why the agency plans to develop and operate a cooperative venture and what is to be accomplished by such a project.

### **3. Goals**

- 3a. Identify the goals of the proposed project. Each goal should be measurable and accompanied by a target date.
- 3b. Describe how it was determined that the goals identified above are desirable; i.e., identify the information and experiences on which each goal is based.

## **Departmental Planning**

### **1. Legal Analysis**

- 1a. Document the legal or statutory authority (or the absence of legal or statutory impediment) to operate a cooperative venture of the type planned by the agency.

### **2. Environmental Analysis**

- 2a. Describe the socioeconomic and political context in the state or county within which the proposed venture will operate.
- 2b. Identify indications of support for, interest in, or opposition to the proposed project among key decision makers in the state or county.
- 2c. Identify indications of support, interest, or opposition among interest groups in the community.
- 2d. Describe how the correctional agency will involve the individuals and organizations identified above in project planning, development, and operation.

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### **3. Labor Force Analysis**

- 3a. Describe the process by which the correctional agency will determine the number of prisoners available to work in the proposed cooperative venture.

### **4. Policy Review**

- 4a. Describe the process by which the correctional agency will identify policies that need to be created or revised in order to facilitate and support the development and operation of cooperative ventures.

### **5. Resource Analysis**

- 5a. Identify the specific resources (e.g., government agencies, universities, etc.) that may be of assistance to the correctional agency in both planning and operating the proposed project.
- 5b. Describe how the agency plans to involve the resources identified above, and how their assistance will be coordinated during the planning and operational phases.

### **6. Incentives**

- 6a. Identify incentives that could be used by the correctional agency to encourage and support private-sector participation in the proposed project.

### **7. Organizational Analysis**

- 7a. Identify and describe where the planning process for the proposed project will be placed within the agency.
- 7b. Describe how top-level management in the agency will be involved in the planning process.
- 7c. Describe how middle management and line personnel (on both departmental and institutional levels) in the agency will be involved in the planning process.
- 7d. If the agency has identified a specific model or models of cooperative venture to be implemented, describe how the operation of such model(s) will be integrated into the agency's organizational structure.

### **8. Private-Sector Involvement**

- 8a. Describe how the agency will recruit private-sector partners.
- 8b. Identify and discuss the criteria the agency will use to screen and select potential private-sector firms.

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- 8c. Describe the process by which a private-sector company's proposal to enter into a cooperative venture will be evaluated within the agency.

## **Institutional Planning**

1. **Space Analysis**
  - 1a. Identify space currently available for the proposed project. If no space is currently available describe how space will be developed for the project.
2. **Labor Force Analysis**
  - 2a. Describe how the agency will determine which prisoners will be eligible and/or targeted for the proposed project.
3. **Institutional Site Analysis**
  - 3a. Identify and discuss both positive and negative institutional characteristics that may affect the feasibility and/or operation of the project being planned by the agency—for example, location of the institution in relation to airports, railroad sidings, major highways; security concerns in relation to products/raw materials, etc.
4. **Staff Training**
  - 4a. Discuss how staff will be trained to facilitate the introduction and operation of the cooperative venture. Discuss how training will be conducted, who will be trained, and the content of the training.

## **Research and Evaluation**

- 1a. Identify the information the agency intends to collect during both the planning and operation phases of the proposed project.
- 1b. Describe the process by which information will be collected, maintained, and updated.
- 1c. Describe how the quality of information will be assured.



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## Appendix V

### Contractual Issues

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The following issues have appeared in contracts between correctional agencies and private companies involved in joint ventures in prison work. The list is intended as a discussion guide. Not all issues will appear in every contract, but it may be helpful to consider each issue so that roles and responsibilities in relation to the proposed project are clearly understood.

**Contract Commencement Date**

- date on which contract will take effect.

**Parties to the Contract**

- principal contractual parties.

**Intent of the Parties**

- so-called "whereas" statements;
- authority of parties to enter into the contract;
- purpose of the proposed project;
- the general role of each principal party in the proposed project;
- the intent of the principal parties that operations pursuant to the contract will facilitate the proposed manufacturing processes and will not unreasonably disrupt the host prison's routines.

**Lease Agreements**

- agreements pertaining to the lease of public lands and/or buildings;
- length of lease;
- renewal periods;
- description of leased property;
- method of payment for leased property;
- frequency of payment for leased property;
- cost of leased property;
- agreements as to which party owns buildings situated on leased land;
- agreements as to which party owns equipment situated on leased land;
- identification of party responsible for maintenance of equipment situated on leased land;
- agreements as to just and due compensation to relevant party if lease is terminated or not renewed.

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### Utility Agreements

- identification of party responsible for providing gas, electric, compressed air, sewer, water, etc.;
- identification of party that will pay for utilities;
- agreements as to how the cost of utilities will be determined (i.e., rates);
- cost of utilities;
- method of payment for utilities;
- frequency of payment for utilities.

### Manpower

- approximate number of offenders anticipated for direct labor in initial period and/or later stages of contract;
- approximate number of offenders anticipated for indirect labor in initial period and/or later stages of contract;
- identification of vocational skills required to work in the proposed project;
- identification of party responsible for assessing eligible applicants' vocational skills;
- identification of party responsible for training offenders in the minimum job skills necessary to work in the proposed project;
- identification of non-vocational criteria that will determine offender eligibility for employment in the proposed project (e.g., custodial, medical, educational, psychological status, length of time left to serve);
- identification of party responsible for screening job applicants in relation to eligibility criteria, and party responsible for maintaining up-to-date file of eligible applicants;
- identification of party responsible for hiring eligible and qualified offenders for the proposed project;
- identification of each party's role and responsibilities regarding agreements pertaining to the provision of vocational counseling, job-seeking skill training, and post-release job placement/referral for offenders employed by the proposed project;
- identification of each party's role and responsibilities as to firing, dismissal, or termination of offenders employed in the proposed project.

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### **Offender Supervision**

- identification of party responsible for providing on-the-job employment-related supervision of the offender work force;
- identification of party responsible for providing on-the-job custodial supervision of the offender work force;
- identification of party responsible for the costs of on-the-job custodial supervision;
- agreements pertaining to training of private-sector civilian staff in correctional issues/procedures;
- agreements pertaining to the correctional agency's right to exclude for good cause civilians deemed unsuitable to supervise offenders.

### **Wages and Benefits**

- description of pay plan (including bonus if applicable);
- identification of benefits (including workers' compensation);
- identification of party responsible for paying wages and benefits.

### **Payroll**

- identification of party responsible for "standard" payroll deductions (e.g., FWT, FICA);
- identification of party responsible for "correctional" payroll deductions (e.g., victim restitution, family support, room and board, enforced savings);
- identification of method by which payroll funds will be transferred from the account of the private firm to the account of each offender working in the project.

### **Work Schedule**

- anticipated regular days/hours of project operation;
- identification of each party's responsibilities pertaining to notification regarding changes in work schedule;
- provision for anticipated and/or unanticipated overtime operation;
- identification of each party's responsibilities pertaining to notification of anticipated and/or unanticipated overtime requirements;
- provision for anticipated and/or unanticipated work stoppage;
- identification of each party's responsibilities pertaining to notification of anticipated and/or unanticipated work stoppage;
- anticipated schedule for lunch;

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- identification of party responsible for providing meals to employed offenders during the work day;
  - identification of each party's responsibilities pertaining to timely transport/movement of employed offenders to and from the proposed work site.

### **Institutional Custody**

- provision for regular and emergency counts of employed offenders;
- provision for regular and emergency searches and/or "shakedowns" of the proposed work site;
- identification of each party's rights and responsibilities regarding work interruption/stoppage due to anticipated and/or unanticipated institutional lockdowns, etc. (e.g., the correctional agency may agree to give priority status to unlocking offenders employed in proposed project as soon as possible; provisions may allow private-sector partner to replace offenders with civilian workers during lockdowns; arrangements may be provided for lease payment abatement during work stoppage caused by institutional conditions);
- provision for regular custodial inspection of vehicles entering and leaving the prison complex;
- statement of intent not to interrupt normal operations except under emergency conditions as defined by the warden or director of corrections.

### **Liability**

- identification of each party's rights and responsibilities pertaining to liability claims arising from the use of products manufactured in the proposed project;
- identification of each party's rights and responsibilities pertaining to accidents or unanticipated hazards that cause harm to buildings, equipment, and/or materials situated on the proposed work site.

### **Health and Safety**

- agreement that the relevant party shall conduct operations in conformity with generally accepted industrial safety practices or such higher standards as are utilized by the relevant party in similar manufacturing facilities it operates elsewhere;
- agreement that the relevant party shall comply with all prevailing

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local, state, and federal occupational health and safety codes, regulations, and procedures;

- identification of each party's role and responsibilities pertaining to training and supervision of the offender work force in health and safety principles generally accepted in the relevant industry.

#### **Waste Disposal**

- identification of each party's role and responsibilities regarding transportation/disposal of waste so as to prevent environmental pollution, and assurances that waste transportation/disposal will comply with applicable federal, state, and local laws and regulations.

#### **Publication and Publicity**

- assurances that articles, papers, bulletins, reports, or other material reporting the plans, progress, or results of the proposed project shall not be presented publicly or published without prior approval of the principal parties to the contract.

#### **Equal Employment Opportunity**

- assurances that each party will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin.

#### **Length of Contract**

- identification of the specific length of time for which the contract binds the principal parties.

#### **Termination of Contract for Cause**

- provisions allowing either party to terminate the contract if, through any cause, the other party fails to fulfill, in a timely fashion, their obligations under the contract or if either violates the contract.

#### **Termination of Contract for Convenience**

- provisions allowing either party to terminate the contract at any time by giving written notice to the other party of such termination specifying the effective date of such termination.

#### **Contract Initiation Contingency**

- agreement providing that the contract shall not be binding until the relevant party receives a PS/PIEC certification from the U.S. Department of Justice.

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