

National Institute of Justice

BRIEFING BOOK

THE JUSTICE SYSTEM AND THE PRIVATE SECTOR:
TRADITIONAL PRACTICE AND EMERGING TRENDS
IN THE PRIVATE DELIVERY OF POLICE, COURT AND CORRECTIONS SERVICES

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THE JUSTICE SYSTEM AND THE PRIVATE SECTOR

INTRODUCTION

Beginning with law enforcement services, proceeding on to various court-related functions (including prosecution, defense, judicial and probation services), and concluding with institutional corrections, this briefing will touch on emerging trends toward the privatization of functions traditionally performed by public agencies within the justice system.

In this field, privatization has typically meant contracting with private organizations to provide a publicly-funded service. To a lesser extent it has also involved the private assumption of some services that public agencies have not been able to fund, as well as the selective imposition of user fees.

NOTE:

- Left-hand pages present summary briefing charts or slides.
- Right-hand pages provide more detail on the points presented on the slides.
- To distinguish each segment of the briefing, slides pertaining to police services are presented in blue, court-related services in red, and corrections services in green.

I. PRIVATE SECURITY AND PUBLIC POLICING

TRADITIONAL PRACTICE

- PUBLIC POLICE: CRIME RESPONSE
 - ENFORCEMENT AND APPREHENSION
- PRIVATE SECURITY: CRIME PREVENTION
 - GUARDS, ALARM SYSTEMS

NEW TRANSFERS OF POLICE FUNCTIONS

- BY DEFAULT: PRIVATES FILL GAPS IN PUBLIC SERVICES
 - INVESTIGATION OF COMPLEX ECONOMIC CRIMES
 - NEIGHBORHOOD PATROLS
- BY ACCOMODATION
 - COOPERATIVE TRAINING PROGRAMS
- BY LEGISLATION: SOME POLICE POWERS GRANTED TO PRIVATE SECURITY PERSONNEL
 - CAMPUS POLICE
 - RETAIL SECURITY PERSONNEL
- BY CONTRACTING A BROADER RANGE OF LAW ENFORCEMENT SERVICES

SLIDE 1

PRIVATE SECURITY AND PUBLIC POLICE

Traditional Practice

While public law enforcement has traditionally focused on crime response, the private security industry has concentrated on crime prevention. Private security services have been geared to control access to property, goods or people belonging to client organizations by supplying guard or alarms.

First private companies were formed in 1850s to protect goods shipped on railroads from train robbers. Use of private security companies increased in 1900s to protect businesses during labor strikes from union members. Additional growth occurred during World War II to control access to military supplies and information.

New Transfers

New transfers of public police functions to the private security industry have occurred in a number of ways:

By Default: Government does not provide a needed or valued service; private industry fills vacuum.

Example: Growth of computer technology has created opportunities for new crimes, such as financial fraud involving electronic data processing. Police are not trained to investigate these crimes. Corporate security has absorbed this function; in most cases, bypassing police and presenting cases directly to the district attorney or attorney general.

By Accommodation and Cooperation

Example: Private security provides protection for homeless in temporary shelters during freezing nights; police are able to persuade homeless to move into shelter because of protection. In return police give excellent response to private guards in shelters when situation requires law enforcement.

Example: Bank security personnel and police cooperate to produce a training film for bank staff on actions to take if a robbery takes place. The film reduces potential risk to bank employees and increases chances of police obtaining good evidence and eye-witness accounts.

By Legislation: Some police powers have been granted to private security personnel.

Examples: Campus police at several private Boston universities have been granted deputy sheriff status and arrest powers. Some campus police have assumed law-enforcement in areas adjacent to campus in addition to their on-campus duties.

SLIDE 1

PRIVATE SECURITY AND PUBLIC POLICE

(continued)

Retail security personnel in New York have been granted peace officer status and can "book" cases of theft without involving local police.

By Contract:

Government contracts with private companies for specific security services.

Examples:

Private guards protect federal installations such as courts, veterans hospitals, presidential libraries, as well as nuclear test sites and Department of Energy sites. They also protect state, county, and municipal office buildings, university campuses and buildings, parking lots, recreational areas, and court facilities. As the next slide shows, contract security is an extremely large and rapidly growing industry.

ESTIMATES OF SIZE OF THE PRIVATE SECURITY INDUSTRY
COMPARED WITH PUBLIC LAW ENFORCEMENT

	<u>PRIVATE</u>	<u>PUBLIC</u>
PERSONNEL (1982)	680,000	580,000
FEDERAL PROTECTIVE SERVICE PERSONNEL (1982)	4,000	2,600
EXPENDITURES FOR SERVICES (1979; 1980)	\$22 BILLION	\$14 BILLION
GOVERNMENT EXPENDITURES (1979; 1980)	\$3 BILLION	\$4 BILLION*
PROJECTED GROWTH 1980-1990	33%	18%

*FEDERAL AND STATE COMBINED.

SLIDE 2

SIZE OF PRIVATE SECURITY INDUSTRY

Comparison of the private security industry and public police.

- The private security industry employs more people than public law enforcement agencies.
- The largest clients of private security industry are manufacturing concerns and retail businesses. Government is the third largest client. For example, the Federal Protective Service contracts for over 4,000 private security guards -- one and one-half the number of guards directly employed by the agency.
- More money is spent each year on private security services than on public law enforcement.
- Government agencies pay \$3.3 Billion to private security companies -- almost as much as the federal government and state governments pay for public police forces (\$4.0 Billion).
- The private security industry is projected to grow more rapidly than public law enforcement -- twice as fast.

TYPES OF CONTRACTUALLY TRANSFERRED LAW ENFORCEMENT SERVICES

<u>TYPE OF SERVICE</u>	<u>REQUIRED LEVEL OF SKILLS</u>	<u>PRIVATE SECURITY</u>	
COMPLETE LAW ENFORCEMENT SERVICES	MIXED	No	
HOMICIDE INVESTIGATION	HIGH	No	
ARMED RESPONSE	↑ ↓	No	
RESPONSE REQUIRING "HOT PURSUIT"		No	
RESPONSE TO BURGLAR ALARMS		SOMETIMES	
PATROL PUBLIC AREAS (OUTSIDE)		SOMETIMES	
PATROL PUBLIC AREAS (INSIDE)		SOMETIMES	
TRAFFIC DIRECTION		SOMETIMES	
PARKING ENFORCEMENT		SOMETIMES	
TOWING OF ILLEGALLY PARKED CARS		LOW	YES

SLIDE 3

SERVICES THAT HAVE BEEN CONTRACTUALLY TRANSFERRED TO PRIVATE SECURITY SERVICES

- There is NO jurisdiction that has successfully transferred delivery of all police services to a PRIVATE company; [complete delivery has been transferred from cities to counties].
- As this chart indicates, tasks requiring lower skills are more likely to be transferred than high-skilled tasks.
- Other than providing guards for government buildings, the only service that is performed by private companies in a relatively large number of cities is towing illegally parked cars.
- Contracting with private companies for other low-skilled services is currently taking place in a small number of cities. These services include guarding school crossings (Idaho Falls, Idaho, Flagstaff, Arizona); and transporting prisoners (Santa Barbara, California).
- However, some high-skilled tasks are being privately provided to PRIVATE clients -- for example, investigation of crimes involving computers.

CONTRACTING FOR POLICE SERVICES

OBSTACLES

- THREAT TO JOB SECURITY OF UNIFORMED PERSONNEL
- UNION OPPOSITION
- EMPLOYEE QUALITY AND TRAINING
- POSSIBLE CORRUPTION OF MUNICIPAL EMPLOYEES
- "BODY RESOURCES" TAKEN FROM PUBLIC LAW ENFORCEMENT
- UNCLEAR LEGAL STATUS
- LIABILITY INSURANCE PROBLEMS FOR PRIVATE COMPANIES

ADVANTAGES

- LOWER COSTS/EMPLOYEE
- LOWER ADMINISTRATIVE COSTS
- RAPID RESPONSE TO TEMPORARY NEEDS FOR MORE PERSONNEL
- FLEXIBILITY TO REMOVE PERSONNEL AND SERVICES WHEN NO LONGER REQUIRED
- ABILITY TO PROVIDE "BLUE" VISIBILITY
- ACCESS TO SPECIALIZED TECHNOLOGICAL SERVICES

SLIDE 4

OBSTACLES AND ADVANTAGES TO CONTRACTING FOR POLICE SERVICES

Obstacles

- Threat to job security of uniformed personnel: Police have learned from past experience that hiring of civilians to perform less skilled jobs led to decrease in numbers of uniformed sworn officers.
- Unions are strongly opposed, since replacement of uniformed officers would lead to fewer members and less power.
- Employee quality and training
 - Private companies compete for publicly-trained personnel. Officers are permitted to moonlight in some jurisdictions, but are forbidden in others. Some jurisdictions allow private clients to pay a fee for the temporary use of special-duty officers. For example, Dade County, Florida, routinely contracts with organizations for the use of uniformed police officers.
 - Non-publicly trained personnel are thought to be of poor quality: the low pay offered by the private companies frequently limits applicants to under-age, over-age, poorly educated, or unstable people that may not understand the legal aspects of their work. Some private concerns promote high employee turn-over to keep salaries and benefits low, with the result that most staff are untrained and inexperienced.
 - Some private companies cannot administer or train employees well. There is a wide variation in the capabilities of the private companies in the industry. Some are highly respected and long-term, with knowledgeable personnel; others are fly-by-night concerns.
- Possible corruption of municipal employees
 - Potential points where corruption might occur include reviewing bids, auditing private providers, and administering "charge backs" for personnel who failed to appear for assignment.

Most recent example: New York City scandal involving enforcement of parking tickets by a private concern.
- Economic Problems and Legal Problems
 - Some of the most reputable companies don't want to contract with cities because of difficulties with receiving prompt payment for service delivered

SLIDE 4

OBSTACLES AND ADVANTAGES TO CONTRACTING FOR POLICE SERVICES

(continued)

- Police have several tasks that can be performed by non-uniformed, lower-paid people in their agency. If private contractors replace non-uniformed police department employees and provide only one or two services, police have fewer appropriate persons to carry out the remaining tasks requiring lower-paid personnel.
- Members of the public and security personnel are frequently unclear about the legal powers of contractual employees and restrictions on their legal powers
- Liability Insurance
 - In addition to other issues of liability, private companies may be held liable for abuses of legal power.
 - If the potential liability is higher than the anticipated revenue, private companies don't want the contract.

Advantages

- Lower costs per employee:
 - Planned turnover of private security personnel prevents salary increases; personnel receive less training than uniformed officers and fewer fringe benefits.
- Lower administrative costs:
 - Private companies assume responsibility for preparing payroll, for dealing with disciplinary problems and with day-to-day problems like personality conflicts.
- Private companies can respond rapidly to temporary situations requiring an increase in personnel. Required hiring practices in cities take a relatively long time to implement.
- Private companies have flexibility to remove personnel and services when they are no longer required. Once the number of government employees is increased, it is very difficult to make cut-backs.
- Private companies can provide "blue" visibility without affecting the police department's personnel budget. Often, citizens want presence of uniformed personnel in situations not actually requiring skilled police officers.
- Private companies can provide specialized technological services that public police do not have resources or time to provide.

II. THE PRIVATIZATION OF COURT FUNCTIONS

PROBLEMS:

- COURT CONGESTION, DELAY, AND COST
- GAPS IN PUBLIC DEFENSE AND PROSECUTION SERVICES
- DEMAND FOR NEW METHODS OF PROBATION SUPERVISION, TO REDUCE RELIANCE ON PRISON AND JAIL

RESPONSES:

- ALTERNATIVES TO PUBLIC COURT HEARINGS
- PRIVATE SPECIAL PROSECUTION
- CONTRACTED INDIGENT DEFENSE SERVICES
- PRIVATE PROBATION SERVICES

SLIDE 5

THE PRIVATIZATION OF COURT FUNCTIONS

Problems

The inability of public court resources to keep pace with rising demands for court services has produced several related problems:

- Severe court congestion and delay -- increasing the costs and reducing public access to the court;
- The need to preserve prosecutorial resources for the most serious cases -- leaving gaps in the kinds of cases that can be publicly investigated and prosecuted;
- Increased cost or reduced quality of services due to overloaded defender and probation caseloads.

Responses

Four kinds of privatization responses are outlined in the next several slides:

- (1) Private dispute resolution services as an alternative to public court hearings;
- (2) The use of court-appointed private special prosecutors;
- (3) The use of contracts instead of individual appointments for indigent defense services;
- (4) A variety of private probation services.

ALTERNATIVES TO ADJUDICATION:
PRIVATE DISPUTE RESOLUTION SERVICES

TYPES OF CASES	MINOR CRIMINAL CASES	SMALL CLAIMS	MAJOR CIVIL LITIGATION	ADMIN. LAW MATTERS
MEDIATION	X	X	X	X
ARBITRATION	X	X	X	X
RENT-A-JUDGE			X	
MINI-TRIALS			X	X
INDEPENDENT ADJUDICATIVE SERVICES			X	

SLIDE 6

PRIVATE DISPUTE RESOLUTION SERVICES

Turning first to the kinds of quasi-judicial services that have become available through the private sector, the top of this chart lists the types of cases typically handled by private dispute resolution services:

Minor Criminal Cases (Such as harassment or assaults among acquaintances);

Small Claims Cases (Typically disputes involving amounts under \$1,000);

Major Civil Litigation (Involving amounts over \$1,000);

Administrative Law Matters (Including appeals of federal benefits, violations of federal regulations and other matters handled under the Administrative Procedures Act).

Along the vertical axis of the chart are some of the techniques commonly used to resolve these cases short of a public hearing:

Mediation/ Arbitration

Under Mediation and Arbitration, cases are heard by a third party mediator or arbitrator. Mediation seeks to encourage the parties to reach their own settlement. Arbitration is generally a more formal proceeding that results in a binding agreement. Over 200 programs provide mediation and arbitration for minor criminal and civil cases. Some are operated by the court; others operate independent of the court system. In the latter category are such firms as ADR, Inc., founded by a former judge, a law professor, and an attorney who recommend their services at the time of discovery, eve of trial, and pre-appeal.

Rent-A-Judge

Rent-A-Judge programs involve the referral of cases to private judges who are paid by the disputing parties. California has the most fully developed Rent-A-Judge program. Since 1976, California has permitted civil litigants to ask the court to refer their case to a private judge of their choice. (In most cases, litigants choose retired members of the California judiciary, hired through the California Judicial Arbitration Service.) The decisions of private judges are binding and are entered as decisions of the court. Every state, with the exception of Vermont, has a similar capacity to recognize the decisions of private judges.

Mini-Trials

In a mini-trial, attorneys present a summary version of their case to a hearing officer in the presence of attorneys and other principals who are authorized to agree to a settlement. At the close of the presentation, a non-binding recommendation is delivered, and the parties are encouraged to resolve the matter in light of this evaluation. Private for-profit firms such as ENDISPUTE structure mini-trials for clients.

SLIDE 6

PRIVATE DISPUTE RESOLUTION SERVICES

(continued)

General Adjudicative Services

A number of firms offer mediation arbitration rent-a-judge services and minitrials, tailoring specific services to the needs of clients:

- Based in Washington, D.C., ENDISPUTE offers such services as mediation, negotiation, private judging, minitrials, litigation management, and training.
- In San Francisco (with branch offices in Los Angeles and Darien, Connecticut), AMERICAN INTERMEDIATION SERVICE specializes in complex multi-party cases (at an average cost per case of \$12,000 - \$15,000).
- PRIVATE ADJUDICATION CENTER, INC. in Durham, North Carolina, handles all types of monetary civil disputes using private judges and masters. A private trial costs approximately \$1,400 per side per half day.
- In Seattle, Washington, U.S. ARBITRATION SERVICES, INC. operates a nationwide network of dispute resolution firms offering mediation, arbitration mini-trials, and customized services delivered by former and retired judges.

One firm seeks to emulate the full range of services of the public court system:

- Founded in 1984, JUDICATE is a national private court system that uses former judges to handle a variety of civil cases. Clients are charged fees for various court events such as discovery conferences and trial hearings. In 1986, 400 cases were settled.

PRIVATE DISPUTE RESOLUTION SERVICES

STRENGTHS

- PROCESS EMPHASIZES COMMUNICATION, UNDERSTANDING AND COMPROMISE
- MORE RAPID, INEXPENSIVE CASE PROCESSING
- CONFIDENTIAL, IF DESIRED
- DEFENDANTS MAY BE MORE LIKELY TO PAY MEDIATED SETTLEMENTS
- TYPICALLY VIEWED FAVORABLY BY DISPUTANTS
- MAY RESTRAIN GROWTH IN COURT CASELOADS

LIMITATIONS

- NO PRECEDENTIAL IMPACT AND MAY INHIBIT PUBLIC AWARENESS OF PATTERNS OF ABUSE
- FEE-BASED PROGRAMS RAISE EQUITY ISSUES
- QUALITY CONTROL CAN BE UNEVEN
- ENFORCEABILITY OF SOME SETTLEMENTS IS LIMITED
- SOME CASES REQUIRE PUBLIC ADJUDICATION
- LIMITED IMPACT IN REDUCING COURT CASELOAD

SLIDE 7

PRIVATE DISPUTE RESOLUTION SERVICES

STRENGTHS

- In contrast to the adversarial process which encourages a win/lose mentality, dispute resolution emphasizes communication, understanding and compromise and may, as a result, help parties (who are relatives, neighbors or acquaintances) maintain an on-going relationship.
- Many of the mechanisms discussed may be faster and cheaper than the formal adjudication process, and the proceedings can be confidential if the parties so desire.
- Because the dispute is often handled in more human terms, defendants may be more likely to pay mediated settlements and often express more satisfaction with the service than with formal court procedures.
- While there is little evidence of any substantial reduction in court workload, the availability of these alternatives may have forestalled additional growth in court caseloads.

LIMITATIONS

- Because proceedings are off-the-record and may be entirely confidential, no precedents are created, and patterns of abuse may not be revealed.
- Fee-based programs tie access to these more convenient forms of justice to the ability of disputants to pay for the service.
- Just as some parties may be more likely to pay mediated settlements, others may be less prone to do so.
- Because many programs are run independent of the court, quality control can be uneven.
- Some cases -- for instance those involving questions of citizen rights -- are best handled in public court proceedings -- and not by more informal, less visible means.
- No programs have yet handled a sufficient number of cases to affect court workloads.

PRIVATE PROSECUTION

FEDERAL APPROACHES

- INDEPENDENT COUNSELS
- PRIVATE PROSECUTORS FOR CRIMINAL CONTEMPT CASES
 - HISTORICALLY AVAILABLE AND MOST RECENTLY USED FOR SUCH CASES AS PRODUCT PIRACY
 - ATTORNEYS FOR COMPLAINANTS MAY NOT SERVE AS SPECIAL PROSECUTORS

STATE APPROACHES

- PRIVATE PROSECUTORS FOR CONFLICT OF INTEREST AND DECLINED CASES
 - ALSO HISTORICALLY AVAILABLE
 - USE DECLINING
- CONTRACT PROSECUTION
 - FOR MISDEMEANORS (E.G., LAKEWOOD COLORADO)
 - FOR QUASI-CRIMINAL OFFENSES (E.G., CHILD SUPPORT)

SLIDE 8

PRIVATE PROSECUTION

Given the power of the American prosecutor, the opportunities to privatize this function are understandably limited. Nonetheless, private prosecutions are permissible under certain circumstances.

FEDERAL APPROACHES

At the federal level, perhaps the most well-known use of private prosecutors involves the appointment of federal "independent counsels" for the investigation of specific classes of senior federal officials.

The federal courts also have the authority to appoint private special prosecutors to investigate and prosecute cases involving criminal contempt (Rule 42 (b), Federal Rules of Criminal Procedure).

- An example of this procedure is provided by a recent case involving the counterfeiting of Luis Vuitton luggage, a prestige brand product. Vuitton attorneys were appointed as special prosecutors for the case after the defendants violated a preliminary injunction, were convicted of criminal contempt, agreed to a permanent injunction, and then resumed counterfeiting the luggage. Costs of the investigation were paid by the complainant, and the defendants were convicted, pending appeal.

Notably, in May, 1987, the U.S. Supreme Court held that an attorney representing a private civil litigant may not later be appointed as a special prosecutor to prosecute his adversary's criminal contempt of a court order. This decision may effectively eliminate private prosecution of criminal contempt cases.

STATE APPROACHES

Many states also have provisions for the use of private prosecutors if state or local attorneys decline to prosecute a case or can be shown to have a conflict of interest.

- This practice was common in rural areas of the country when local prosecutors were part-time employees. State provisions for private prosecution are now used only rarely. More often, prosecuting attorneys who are unable to handle a given case will turn to neighboring prosecutors or the Attorney General's office.

Contract prosecution--the practice of contracting with a private lawyer or law firm to provide prosecution services in a given area for a given class of cases--has made some inroads. It appears to be limited to misdemeanors and quasi-criminal offenses:

- Lakewood Colorado incorporated as a city in 1969, decided to contract for city ordinance prosecution and appeal rather than establish a city office.
- Many states contract with private attorneys to prosecute child support cases.

PRIVATE PROSECUTION

ADVANTAGES

- THE EXPANSION OF PROSECUTORIAL CAPABILITY IS THE PRIMARY ADVANTAGE OF PRIVATE PROSECUTION:
 - MAY BE USEFUL WHEN NEW OR EXPANDED SERVICES MUST BE PROVIDED BUT THE NEED DOES NOT JUSTIFY A NEW PUBLIC OFFICE
 - MAY ALSO BE OF SERVICE IN QUASI-CRIMINAL AREAS OF PRACTICE MORE SUITED TO THE EXPERIENCE AND EXPERTISE OF A PRIVATE ATTORNEY (E.G., PROSECUTION OF CHILD SUPPORT CASES)

LIMITATIONS

- CAREFUL PROVISION MUST BE MADE FOR PUBLIC ACCOUNTABILITY IN ALL PRIVATELY PROSECUTED CASES
- CARE MUST BE TAKEN TO AVOID CONFLICTS OF INTEREST

SLIDE 9

PRIVATE PROSECUTION

ADVANTAGES

- Expansion of Prosecutorial Capability
 - Private prosecution may be a useful alternative when a governing authority is suddenly charged with a duty to offer new or greatly expanded services but a new public office is not warranted or desired.
 - Private attorneys, many of whom have related expertise in domestic relations and judgement collection, have often been used to prosecute child support cases in lieu of public prosecutors who may be unfamiliar with appropriate collection techniques or overloaded with cases perceived as higher priorities.

LIMITATIONS

- Public Accountability
 - Critics contend that private prosecution opens the door to overzealous prosecution and may undermine the public accountability of the prosecutorial function. (In Lakewood, Colorado, where city ordinance prosecution is handled by a private law firm, public accountability is maximized by a complaint department in the city-run City Manager's office.)
- Conflicts of Interest
 - Private prosecution is not suitable where the prosecuting attorney also represents private individuals with a direct and personal interest in the prosecution.

PRIVATE INDIGENT DEFENSE SERVICES

TRADITIONAL SYSTEMS

- APPOINTMENT OF INDIVIDUAL MEMBERS OF THE PRIVATE BAR
- USE OF PUBLIC DEFENDER AGENCY

NEW CONTRACT DEFENSE SYSTEM

- USED WHERE PUBLIC DEFENDER IS UNAVAILABLE
 - NO PROGRAM EXISTS
 - PROGRAM EXISTS BUT HAS OVERFLOW
- REPLACES ASSIGNED COUNSEL SYSTEM
- INSTEAD OF APPOINTING INDIVIDUAL LAWYERS, SINGLE LAW FIRM RECEIVES CONTRACT
- IN 1982, 200 SMALLER COUNTIES HAD CONTRACTS FOR OVERFLOW CASES
- BY 1987 SUBSTANTIAL GROWTH IN CONTRACT DEFENSE SYSTEMS
 - PREDOMINANT FORM OF SERVICE DELIVERY IN SEVEN STATES
 - SIGNIFICANT PRACTICE IN 14 ADDITIONAL STATES

SLIDE 10

PRIVATE INDIGENT DEFENSE SERVICES

TRADITIONAL PRACTICE

Historically, two systems have been used to meet constitutional requirements for providing defense services to indigents:

- (1) The public defender system, which dominates the nation's more populous counties, involves the use of staff attorneys in a defender agency which is typically an organization of state or local government.
- (2) So-called "assigned counsel" systems require judges to assign cases to available private attorneys who are paid by the case. This system is the norm in smaller counties and may be used in public defender jurisdictions to handle overflow cases.

NEW CONTRACT DEFENSE SYSTEM

Where a public defender program is unavailable or is available but cannot handle all indigent cases, contract systems have been developed to replace assigned counsel systems. Faced with escalating private bar rates and an inability to project costs from year-to-year, many governments have looked to the contract system for fiscal relief. Instead of appointing individual lawyers and paying each lawyer for each case assigned, a single contract is awarded to a law firm or organization of legal professionals. Contractors often charge a fixed amount for the provision of all defender services during a given period, or fixed amounts per case.

PRIVATE INDIGENT DEFENSE SERVICES

ADVANTAGES

- EFFICIENCY
- CONVENIENCE
- CONCENTRATION OF CAPABILITY
- COST REDUCTION

OBJECTIONS

- MAY THREATEN REQUIREMENTS FOR "ADEQUATE ASSISTANCE OF COUNSEL"
 - IF LOW COST BIDDERS ARE FAVORED
 - IF FIXED AMOUNT CONTRACTS HAVE NO FINANCIAL ESCAPE CLAUSE
 - IF NO PROVISION IS MADE FOR SUPPORT SERVICES
 - IF ONLY INEXPERIENCED ATTORNEYS ARE ASSIGNED
- CHALLENGED BY ARIZONA SUPREME COURT; OPPOSED BY ABA AND NLADA IF BIDDING FOCUSES ON COSTS

SLIDE 11

PRIVATE INDIGENT DEFENSE SERVICES

ADVANTAGES

Contract defense systems appear to be a convenient and efficient method of providing defender services in rural areas where a full-time public defender service might not otherwise be available.

Contract systems also offer certain advantages over traditional assigned counsel systems.

- A single firm assumes responsibility for coordinating and administering the provision of private counsel services, removing the burden from the court.
- A contractor who specializes or devotes a larger portion of attorney staff time to indigent defense is likely to be a more effective advocate.
- Some state and county officials favor contract systems as a means of cost reduction.

OBJECTIONS

Some courts (e.g., the Arizona Supreme Court) and legal professional organizations (the ABA and the NLADA) have objected to awarding contracts on the basis of low bid cost -- on the grounds that such a practice threatens our constitutional mandate to provide "effective assistance of counsel."

PRIVATE PROBATION SERVICES

TRADITIONAL PRACTICE

- CONTRACTS FOR SPECIALIZED SERVICES SUCH AS ALCOHOL AND DRUG ABUSE TREATMENT

NEW FORMS OF PRIVATIZATION

- PRIVATE PROBATION SUPERVISION
 - BULK OF ALL MISDEMEANANT SUPERVISION PROVIDED BY SALVATION ARMY IN FLORIDA
 - SOME JURISDICTIONS IN IDAHO AND OKLAHOMA ALSO USE CONTRACTORS TO SUPERVISE PROBATIONERS
- ELECTRONIC MONITORING CONTRACTS
 - FOR TRACKING PROBATIONERS ON HOME DETENTION (OR PRE-TRIAL RELEASEE)
 - SMALL PILOT PROJECTS IN TEXAS, COLORADO AND KENTUCKY
- OFFENDER-PAID ALTERNATIVE SENTENCING
 - OFFENDERS (IN L.A. AREA) REQUEST SENTENCING TO PRIVATE FACILITY IN LIEU OF JAIL
 - CASES HANDLED INCLUDE DWI, SEXUAL ASSAULT, AND WHITE COLLAR CRIMES
- SUPPORT SERVICES
 - CLIENT SPECIFIC PLANNING REPORTS
 - PRISONER EXTRADITION

SLIDE 12

PRIVATE PROBATION SERVICES

TRADITIONAL PRACTICE

Probation agencies have traditionally contracted with the private sector to provide such specialized services as drug and alcohol abuse treatment. At the federal level, for instance, the Probation Division of the Administrative Office of the U.S. Courts has contracts with over 350 private alcohol and drug abuse treatment centers.

NEW FORMS OF PRIVATIZATION

Four new forms of privatization activity are outlined on this slide:

1. Full-service privately provided probation supervision. Since 1974 the Salvation Army has provided about 60% of all misdemeanor probation supervision in Florida. Contractors in Oklahoma and Idaho also supervise probationers in selected jurisdictions).
2. Electronically monitored house arrest. Electronic monitoring is a fairly recent innovation that has not yet been adopted by a majority of probation agencies. Already, however, several jurisdictions (in California, Colorado and Kentucky) have chosen to contract for these services.
3. Offender-paid residential placements. In the Los Angeles area, one residential "Alternative Sentencing" program solicits clients directly through attorneys and T.V. advertising. If the program is acceptable to the sentencing judge, the offender pays for his or her own supervision, which includes evening and week-end lock-in and electronic monitoring during the work week. Cost is \$1000/month (\$35/day)
4. Other private services. Available since the early 1970s, private clients are reported to pay between \$1,000 to \$5,000 or more for so-called client-specific planning reports. Prepared at the request of defense attorneys, these reports do not replace but present an alternative to the presentencing reports prepared by probation officers. The public presentence reporting function is rarely performed by the private sector. The Oklahoma contractor providing full service probation supervision is an exception: some presentence investigations are provided at a flat fee of \$100 per case.

Prisoner extradition services are also provided by at least one company, the Extradition Corporation of America. Costs average about \$650 per 1,000 miles transported.

PRIVATE PROBATION SERVICES

POTENTIAL BENEFITS

- ABILITY TO FILL GAPS IN THE DELIVERY OF PROBATION SERVICE
- REDUCTION IN COST FOR OFFENDER-PAID SERVICES
- WITH CONTRACTS FOR ELECTRONIC SURVEILLANCE, ABILITY TO FOCUS PROBATION STAFF TIME ON SUPERVISION AND TREATMENT

OBJECTIONS

- EQUITY OF OFFENDER-PAID SERVICES
- QUESTIONABLE COST ADVANTAGES
- RELIABILITY OF PRIVATE PROVIDERS

SLIDE 13

PRIVATE PROBATION SERVICES

POTENTIAL BENEFITS

- Ability to fill gaps. In Florida, for instance, the Salvation Army filled a void left when the Florida legislature removed the State Probation Commission's authority to administer misdemeanor probation.
- Reduction in cost for offender paid services. At least two private programs have capitalized on tight probation budgets by administering offender-paid supervision. (The Los Angeles Alternative Sentencing program and the electronically monitored home arrest program in Louisville, Kentucky).
- With contracts for electronic-monitoring, reallocation of probation staff time. If electronic monitoring is handled by contract, surveillance functions (and associated equipment installation, maintenance, and staff training) are handled by a private provider, allowing probation staff to focus on the treatment and supervisory aspects of their role.

OBJECTIONS

- Equity. Once again, offender-paid supervisory alternatives raise equity issues (unless, of course, they are equally available to the indigent, as is the case in the Louisville home detention program. There, offenders are charged \$3 or \$10 per day, depending on ability to pay, and the county assumes the cost for the indigent).
- Cost. While offender paid services may reduce costs, most states have already instituted mandatory fees that non-indigent probationers must pay to the state for their supervision. Generally, these are comparable to the fees paid to private providers.
- Reliability. Critics contend that private firms might tend to underreport violations in an effort to show that their supervision is effective or to avoid financial penalties for failure.

III. PRIVATIZATION IN CORRECTIONS

PROBLEMS

- CROWDING AND COURT ORDERS TO REDUCE POPULATIONS
- INABILITY TO MOBILIZE PUBLIC SECTOR FACILITIES AND PERSONNEL
- COSTS OF MAINTAINING IDLE PRISONER POPULATIONS

RESPONSES

- "PRIVATE" FINANCING OF PRISON AND JAIL CONSTRUCTION
- MANAGEMENT AND OPERATION OF CORRECTIONS FACILITIES BY PRIVATE CONTRACTORS
- PRIVATE WORK PROGRAMS IN PRISON SETTINGS

SLIDE 14

THE PRIVATIZATION OF CORRECTIONS

PROBLEMS

The problems facing correctional agencies at all levels of government need little introduction. A majority of states and many county systems face court orders to remedy crowding and substandard conditions. Yet, voters in many jurisdictions have refused to authorize bond issues for prison and jail construction. At the same time, the operating costs of existing facilities and programs have reached all-time highs, and many departments are struggling to address the problems of managing largely idle prisoner populations.

RESPONSES

Three responses involving the private sector are reviewed in this concluding segment of slides:

1. Lease/Purchase financing for constructing publicly-owned prison and jail facilities.
2. Private operation (which often involves private ownership) of corrections facilities.
3. Public-private partnerships in prison industries.

"PRIVATE" FINANCING FOR PRISON AND JAIL CONSTRUCTION

TRADITIONAL GENERAL OBLIGATION BONDS

- GOVERNMENT ISSUES THE BOND AND OWNS THE FACILITY
- BACKED BY FULL FAITH AND CREDIT OF JURISDICTION; TAXES PLEDGED TO PAY INTEREST

NEW LEASE-PURCHASE BONDS--A METHOD FOR BUYING THROUGH INSTALLMENT PAYMENTS

- BUILDING AUTHORITY ISSUES DEBT OBLIGATION AND HOLDS TITLE UNTIL INSTALLMENT PAYMENTS COMPLETED
- BACKED BY LEASE PAYMENTS DRAWN FROM ANNUAL APPROPRIATIONS

SLIDE 15

PRIVATE FINANCING FOR PRISON AND JAIL CONSTRUCTION

Lease-purchase financing is often considered a form of privatization, although the arrangement does not change the role of government agencies in the management and operation of corrections facilities. It is simply an alternative method of construction financing that substitutes lease bonds for the general obligation (GO) bonds typically used to finance construction projects:

- The involvement of private sector investors in lease-purchase agreements is not substantially different from their traditional involvement as purchasers of GO bonds.
- In both cases, investors purchase a security in the bond market that provides tax-exempt income and a promise to repay the invested cash on the date of maturity. The government issues a GO bond; a quasi-public entity such as a Building Authority or non-profit corporation issues the LP bond.
- The central difference between the two methods lies in the sources of money used to pay interest and return principal to investors: A GO bond is backed by new tax revenues; a lease-bond by lease payments drawn from annual legislative appropriations.

The next slide outlines the advantages that are gained by this difference.

"PRIVATE" CONSTRUCTION FINANCING

ADVANTAGES

- BYPASSES VOTER APPROVAL--NO REFERENDUM REQUIRED
- AVOIDS DEBT LIMITS--LEGALLY QUALIFIES AS A LEASE
- REDUCES FINANCING TIME--CONSTRUCTION CAN START FASTER

OBSTACLES

- VOTERS MAY OPPOSE EFFORTS TO CIRCUMVENT THEIR APPROVAL
- MORE COSTLY
 - HIGHER INTEREST COSTS DUE TO GREATER RISKS
 - TAX REFORM HAS REDUCED OPPORTUNITIES TO OFFSET HIGHER COSTS
- GOVERNMENT STILL MUST LOCATE SOURCE OF REVENUE TO PAY FOR FACILITY

NOTE:

UNDER LEASE-PURCHASE, GOVERNMENT STILL OPERATES AND ULTIMATELY OWNS THE FACILITY.

- NO MAJOR PUBLICLY-OPERATED FACILITIES FINANCED AND OWNED BY PRIVATE FIRMS
- MANY PRIVATELY-OPERATED FACILITIES ARE ALSO PRIVATELY OWNED

SLIDE 16

PRIVATE CONSTRUCTION FINANCING

ADVANTAGES

- Bypass voter approval. Since lease bonds are not guaranteed by the "full faith and credit of the government" and do not use tax revenues to pay debt service, voter approval is not required.
- Avoid debt limits. Because a government agency can terminate a lease purchase agreement through non-appropriation, the agreement legally qualifies as a lease, and the amount borrowed is not typically counted against the debt limits of a jurisdiction.
- Reduce set-up time. If state law permits lease financing, it may be arranged in as little as 45 to 90 days, reducing financing time by six months or more.

OBSTACLES

- Adverse public opinion. Since lease-purchase issues bypass referenda requirements, taxpayers may perceive them as an effort to evade the public will.
- Higher financing costs. Because LP bonds are less secure than GO bonds, a fixed rate issue will tend to carry an interest rate up to about one percentage point higher than a GO bond. With the Tax Reform Act of 1986, this difference is now more difficult to narrow, since it is no longer possible to set aside a portion of the proceeds of an LP bond issue in a reserve fund that can earn interest at a higher rate than that of the LP bond itself.
- Source of Revenue for Lease Payments. Despite higher costs, interest in LP financing remains high, due to its ability to bypass voter approval. At the same time, however, because taxes are not pledged, a jurisdiction must locate other sources of revenue to make payments. In many jurisdictions, this has proven to be an insurmountable obstacle.

Note that under LP financing, the government still operates and ultimately owns the facility. Another form of privatization reviewed in the next slide, calls on private contractors to actually operate a facility; those contractors may also be responsible for furnishing the facility itself. In these cases, construction financing is entirely a private matter. The public sector need not worry about making a large, up-front investment, as it typically pays for the use of the facility in the form of a per diem rate for each offender confined. At the same time, however, while the government eventually pays for a portion, or even all of the capital investment, it acquires no equity in the property.

PRIVATELY OPERATED PRISONS AND JAILS

TRADITIONAL PRACTICE

- CONTRACTS FOR SERVICES (SUCH AS MEDICAL OR FOOD SERVICE);
- CONTRACTS FOR THE OPERATION OF COMMUNITY FACILITIES;
 - PRE-RELEASE, WORK RELEASE, HALFWAY HOUSES FOR ADULTS;
 - SMALL, RESIDENTIAL FACILITIES FOR COMMITTED JUVENILES.

EMERGING TRENDS

- NEW CORPORATE PROVIDERS OF TRADITIONAL SERVICES;
 - ABOUT 20 NEW FOR-PROFIT ORGANIZATIONS;
 - LARGEST PROVIDER IS CORRECTIONS CORPORATION OF AMERICA, A PUBLICLY-HELD CORPORATION BASED IN TENNESSEE.
- MANY CONTRACTS FOR LARGER FACILITIES FOR LOWER RISK POPULATIONS;
 - NON-CRIMINAL, UNDOCUMENTED ALIENS;
 - PRE-RELEASE AND MINIMUM SECURITY STATE INMATES;
 - JUVENILE OFFENDERS.
- SOME PLANS FOR PRIVATE MEDIUM SECURITY FACILITIES.
- A NUMBER OF PRIVATELY OPERATED LOCAL JAILS.
 - PRE-TRIAL DETAINEES;
 - SHORT-TERM SENTENCED PRISONERS.

SLIDE 17

PRIVATELY OPERATED PRISONS AND JAILS

TRADITIONAL PRACTICE

The concept of contracting for total confinement services is an extension of a long tradition of contracting:

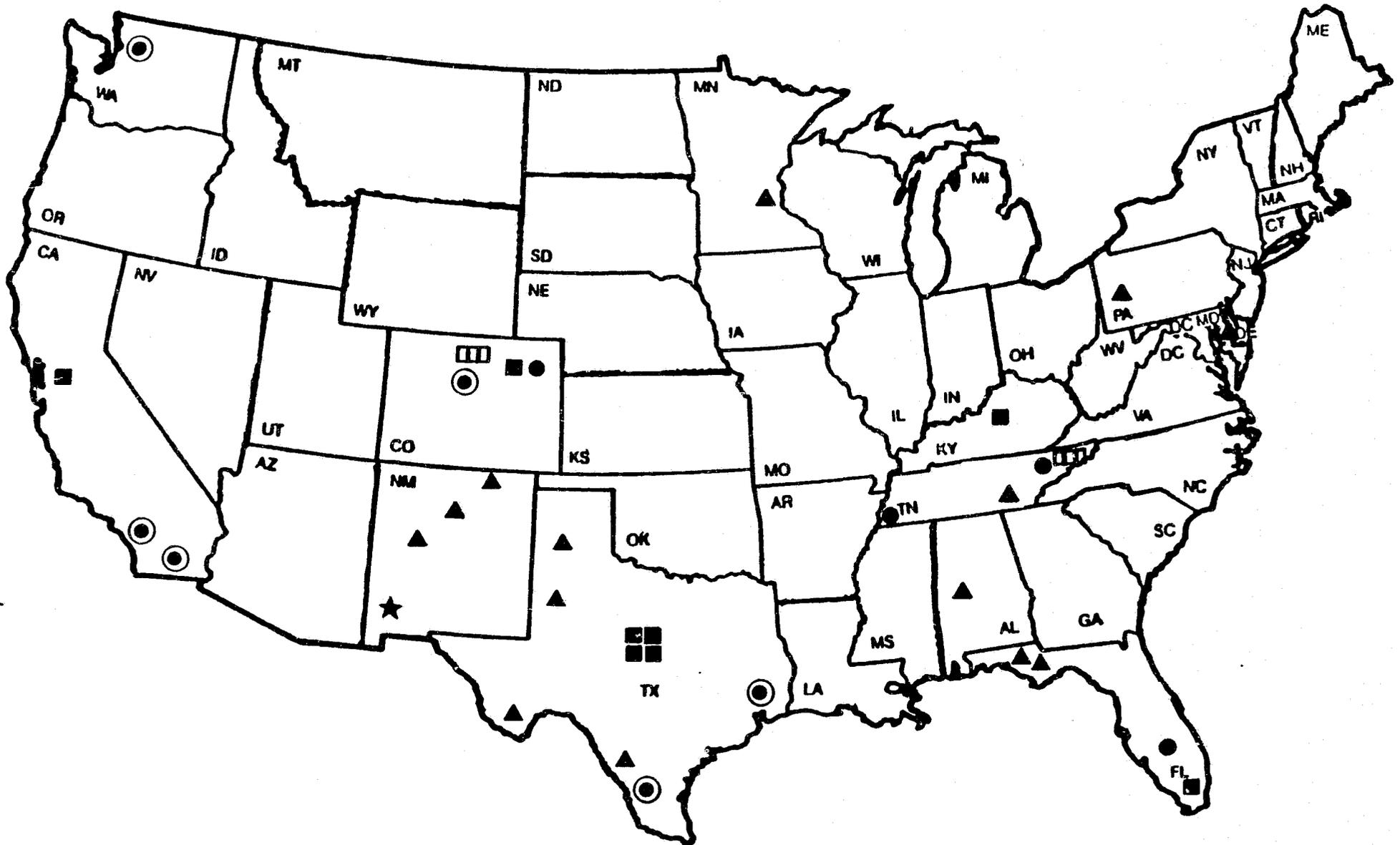
- For specific institutional services (such as maintenance, medical care or food service); and
- For community based facilities including pre-release, work release and half-way houses for adult offenders and small residential facilities for juveniles.

EMERGING TRENDS

Over the past four to five years, three new trends have emerged.

1. New Corporate Providers. About 20 new for-profit organizations have become confinement service providers -- joining a field typically dominated by non-profit groups and voluntary organizations. The largest is Corrections Corporation of America, an organization based in Tennessee and initially capitalized by the backers of Hospital Corporation of America. In late 1986, CCA went public and has been vigorously traded.
2. Larger Facilities. Many of the contracts awarded to new providers resemble the small community facilities typically operated by private organizations. But a number of more ambitious ventures have been launched to deal with minimum risk populations.
 - The federal INS has contracted for several privately-owned and operated facilities for undocumented aliens.
 - Several state corrections agencies have used the contracting option to deal with larger numbers of pre-release or minimum security inmates. (Plans have been developed for 2 medium security facilities but neither is operating.)
 - Contracts for housing juvenile offenders in larger training school environments have also been developed.
3. Contracting for Local Jails. Despite the opposition of professional groups (such as the National Sheriffs Association), at the local level (where there has been no tradition of facility contracting) several county/city jails have been contracted. These facilities hold defendants awaiting trial or those sentenced for short terms (typically up to one year).

PRIVATE FACILITIES OPERATING OR PLANNED



SLIDE 18

- ⊙ Immigration and Naturalization Facilities (6 facilities/813 beds)
- Larger Minimum Security State Adult Facilities (8 facilities/2658 beds)
- ▤ Medium Security State Adult Facilities (2 facilities/600 beds)
- Larger State or County Juvenile Facilities (4 facilities/795 beds)
- ▲ County/City Jails (14 facilities/4975 beds)
- ★ New Mexico plans several contracts for juvenile & minimum security adult facilities

SLIDE 18

MAP OF PRIVATE FACILITIES

As this map shows, most of the facility contracting activity is centered in the South and Southwest. Generally speaking, conditions in these regions have favored privatization due to:

- their higher rates of incarceration and more intensely crowded conditions;

and/or

- the rural nature of local economies which has produced greater receptivity to the concept of purchasing private fiscal and administrative support.

Thirty-four facilities that represent the trend toward larger confinement service contracting ventures are located on this map:

- 6 INS facilities -- all of which are or will be both owned and operated by private contractors.
- 10 State adult corrections facilities -- three of which were "take-overs," and seven of which are or will be both privately owned and operated. Eight are minimum security facilities; only two (now in the planning stages) intend to provide medium security confinement; none will house maximum security prisoners.
- 4 Larger juvenile facilities--only one of which is a public facility taken over by a private contractor.
- 14 County/city jail facilities -- four actual takeovers; one possible take-over; and nine that are or will be privately owned and operated.

Notably, two of these facilities--both in Colorado-- are entirely speculative ventures. In both cases no contracts have been awarded but private developers are planning to construct facilities that will accept offenders from various jurisdictions in the region. One facility (now under renovation to meet federal standards) will hold about 165 juvenile offenders; the second will have a capacity of 500 beds for medium security inmates.

Four of the jail facilities are also somewhat speculative. Designed to hold local, state, and federal prisoners, only local contracts have been signed.

Not shown on this map are the state of New Mexico's specific plans for contracting for the operation and management of several existing state facilities and the financing, construction and management of at least one new facility.

PRIVATELY OPERATED PRISONS AND JAILS

NATURE OF PRIVATE SECTOR INVOLVEMENT

- PARTIAL OPERATIONS
- TOTAL OPERATIONS
- OWNERSHIP AND TOTAL OPERATIONS

RECENT LEGISLATIVE ACTIVITY

- 4 STATES AUTHORIZED PRIVATE JAIL CONSTRUCTION AND OPERATION (FLORIDA, MONTANA, NEW MEXICO, AND TEXAS).
 - LEGISLATION PENDING FOR AN ADDITIONAL FACILITY IN NEW MEXICO, FOR JUVENILE FACILITIES IN CALIFORNIA, AND FOR LOCAL DETENTION FACILITIES IN MISSOURI.
- 3 STATES AUTHORIZED PRIVATE OPERATION OF ONE OR MORE STATE FACILITIES (FLORIDA, MASSACHUSETTS, AND TENNESSEE).
 - LEGISLATION PENDING IN 6 STATES -- ARIZONA, MASSACHUSETTS (AN ADDITIONAL FEMALE FACILITY), MISSOURI, OKLAHOMA, OREGON, AND TEXAS
- IN OTHER STATES, AUTHORITY MAY EXIST UNDER EXISTING STATUTES.

SLIDE 18A
(OPTIONAL)

SLIDE 18a (Optional)

PRIVATELY OPERATED PRISONS AND JAILS

NATURE OF PRIVATE SECTOR INVOLVEMENT

As suggested by the last slide, private sector involvement can take three forms:

- Partial Operations where a facility may be managed by a private contractor, but staffed in whole or part by public sector employees. (This is the case in only one of the facilities reviewed [a jail in Pennsylvania]. There, the guards' union objected to a totally private operation.)
- Total Operations where the contractor takes over an existing public facility, but supplies all staff and services.
- Ownership and Operations, where the contractor is responsible for constructing its own facility or finding a suitable building on the private market. Increasingly, governments are turning to this model, since take-overs may be politically difficult, and total privatization places the burden of facility siting and construction on the private contractor.

RECENT LEGISLATIVE ACTIVITY

As this slide also indicates, legislative interest in facilitating private operations is relatively high.

The next several slides provide more detail on the privately operated facilities that have been developed at each level of government.

FEDERAL EXPERIENCE WITH PRIVATE CORRECTIONAL FACILITIES

IMMIGRATION AND NATURALIZATION SERVICE

- LARGEST FEDERAL USER OF PRIVATE FACILITIES
 - FOUR FACILITIES IN OPERATION (605 BEDS)
 - TWO FACILITIES PLANNED (208 BEDS)
- SHORT-TERM MINIMUM SECURITY SPACE FOR NON-CRIMINAL POPULATION OF UNDOCUMENTED ALIENS HELD APPROXIMATELY 10 DAYS.

BUREAU OF PRISONS

- TRADITIONAL RELIANCE ON COMMUNITY CORRECTIONS CONTRACTS
- PLANS FOR LARGE FACILITY CANCELLED, IN PART DUE TO SITING DIFFICULTIES
- INSTEAD PURCHASES SPACE IN INS AND LOCAL FACILITIES

U.S. MARSHALL'S SERVICE

- NO STATUTORY AUTHORITY TO CONTRACT WITH PRIVATE DETENTION SERVICE PROVIDERS; CONTRACTS THROUGH PUBLIC AGENCIES.

SLIDE 18b (Optional)

FEDERAL EXPERIENCE WITH PRIVATE CORRECTIONAL FACILITIES

IMMIGRATION AND NATURALIZATION SERVICE

Faced with cumbersome, time-consuming federal building procedures, limits on the number of authorized federal staff positions, and a diminished ability to buy space in local jails, the INS has been the largest federal user of private facilities. These are short-term detention facilities where undocumented aliens are held prior to administrative hearing and deportation.

BUREAU OF PRISONS

- The BOP has an extensive network of privately operated community corrections facilities (approximately 220 serving over 3,000 pre-release or work-release inmates).
- Plans for a large private facility that would have housed sentenced aliens under BOP jurisdiction were canceled when the contractor was unable to develop an acceptable site. Instead, BOP purchases space in private INS facilities or contracts with localities that may, in turn, use private facilities.

U.S. MARSHALL'S SERVICE

Because the U.S. Marshall's Service is prohibited from contracting directly with private detention service providers, the use of private facilities to handle its detention needs can only occur indirectly through contracts to a public agency that may in turn be executed by private providers.

STATE ADULT CORRECTIONS FACILITY CONTRACTS

- LONG TRADITION OF CONTRACTING FOR PRE-RELEASE AND AFTERCARE FACILITIES
 - AT LEAST 28 STATES WITH PRIVATE COMMUNITY FACILITIES
- RECENT MOVES TO CONTRACTS FOR LARGER PRE- OR POST-RELEASE FACILITIES:
 - 80 BED FACILITY IN CALIFORNIA FOR PAROLE VIOLATORS
 - 120 BED FACILITY IN COLORADO FOR PRE-RELEASEES
 - 158 BED FACILITY IN FLORIDA FOR WORK RELEASEES
 - FOUR 500 BED PRE-RELEASE FACILITIES PLANNED IN TEXAS
- ONE 300 BED FACILITY IN KENTUCKY HOUSES MINIMUM SECURITY INMATES FOR THEIR ENTIRE TERM OF CONFINEMENT
- NEW MEXICO MAY LEASE ALL MINIMUM SECURITY FACILITIES TO PRIVATE VENDORS
- PLANS FOR MORE SECURE INSTITUTIONS REJECTED BY STATE LEGISLATURES OR ABANDONED BY CONTRACTOR
 - PRIVATE BID TO TAKE OVER ALL TENNESSEE PRISONS REJECTED (SOME PRIVATE OPERATION AUTHORIZED)
 - PLANNED INTERSTATE PRISON IN PENNSYLVANIA STOPPED BY MORATORIUM LAW
 - SIMILAR FACILITY IN IDAHO STALLED FOR LACK OF FUNDS
- TENNESSEE PLANS 100 BED MEDIUM SECURITY FACILITY (FIRST SOLICITATION ISSUED, BUT SINGLE BIDDER REJECTED).
- PRIVATE CONTRACTOR BUILDING 500 BED MEDIUM SECURITY PRISON ON SPEC (IN AULT, COLORADO).

SLIDE 18c
(OPTIONAL)

SLIDE 18c (Optional)

STATE ADULT CORRECTIONS FACILITY CONTRACTS

This slide elaborates on the larger privately operated state facilities that have emerged -- all within the last year and a half:

- Three minimum security facilities for pre-releasees and parole violators are now operating.
- Four additional 500 bed minimum security facilities -- the largest planned to date -- are scheduled for award in Texas, pending the governor's approval of enabling legislation.
- In contrast to the pre-release facilities, a 300 bed facility operating in Kentucky houses minimum security inmates for their entire term of confinement.
- New Mexico has been considering a plan to turn over all of the state's minimum security facilities to private vendors. In the near future, proposals will be solicited for four different projects: (1) the operation and management of a large, minimum security facility providing juvenile services and treatment; (2) the financing, construction and management of a 200 bed facility in Albuquerque; (3) the operation and management of an existing 230 bed facility in Los Lunos; and (4) the operation and management of a 70 bed facility in Stanton.

As indicated, confinement service contracting for higher risk populations has often been constrained by financial or legislative problems.

- In Tennessee, the Corrections Corporation of America proposed to buy all of the state's prison facilities. The legislature rejected the bid, but passed legislation permitting the private operation of a single facility.
- In Pennsylvania, a contractor proposed to develop a large regional facility exclusively for protective custody prisoners to be drawn from a multi-state area. State was concerned about hosting a facility that would bring other states' prisoners into Pennsylvania (adding to the state's security and liability concerns). Legislature passed a one-year moratorium on private operations and is presently considering regulatory legislation.
- The same contractor (Buckingham Security Limited) proposed to open a facility in Idaho (a former tuberculosis sanitarium) to house protective custody prisoners from the western states. The state was amenable, but Buckingham has not been able to obtain sufficient capital to start the project.

SLIDE 18c (Optional)

STATE ADULT CORRECTIONS FACILITY CONTRACTS

(continued)

At present, at least two privately operated medium security facilities show promise of opening as planned:

- (1) Based on its new enabling law, the Tennessee DOC issued a solicitation for the operation of a medium security facility. Due apparently to the restrictive conditions imposed on bidders, only a single bid was received, and that proposal was rejected. The state reportedly remains interested in re-issuing its solicitation.
- (2) A large, highly speculative venture has been mounted in Colorado by a consortium composed of Bechtel Construction, a Korean-financial holding company, and a new prison management firm, American Correctional Systems. This team is building a 500-bed medium security prison with the expectation of receiving contracts from the State of Colorado, neighboring jurisdictions, and the federal INS and BOP. A full-service rehabilitation facility is planned, drawing on the expertise of faculty from a nearby university.

PRIVATE CORRECTIONS FACILITIES FOR JUVENILES

- LONG TRADITION OF CONTRACTING:
 - IN 1982-1983, 1,877 PRIVATELY OPERATED RESIDENTIAL FACILITIES HELD OVER 31,000 JUVENILES
 - MOST WERE SMALL, MINIMUM SECURITY SETTINGS

- RECENT MOVES TO CONTRACT LARGER JUVENILE FACILITIES
 - 380 BED TRAINING SCHOOL IN FLORIDA
 - 150 BED SECURE SCHOOL IN SHELBY COUNTY, TENNESSEE
 - STATE OF TENNESSEE PLANS 100 BED SECURE FACILITY
 - PRIVATE COMPANY PLANS 165 BED FACILITY IN COLORADO FOR JUVENILES FROM VARIOUS JURISDICTIONS

SLIDE 18D
(OPTIONAL)

SLIDE 18d (Optional)

PRIVATE FACILITIES FOR JUVENILES

The largest and oldest example of the shift toward larger facility management contracts for juveniles is the Okeechobee Training School in Florida:

- In late 1982, the Ekherd Foundation--the nonprofit arm of a major drug manufacturer--took over the facility which holds about 400 committed delinquents.
- An evaluation sponsored by the National Institute of Corrections gave the facility mixed reviews--in large part due to the limited correctional experience of the private sector managers and the inadequate planning time permitted by a rapid transition. Only minimal cost savings were reported by the evaluators.

The remaining facilities listed may fare better:

- While large by traditional standards, all are small relative to Okeechobee.
- All have or will avoid the problems of a take-over as the facilities will be furnished by the contractors.

The last facility listed is a speculative venture:

- A private company, "Private Corrections Corporation," is planning to operate a 165 bed facility in Colorado for juveniles from the state as well as the Federal Bureau of Prisons. No firm contracts have been signed pending renovation of the facility to meet federal standards.

PRIVATELY OPERATED LOCAL JAIL FACILITIES

- NO TRADITION OF FACILITY CONTRACTING
 - JAILS TYPICALLY OPERATED BY CITY OR COUNTY SHERIFFS
 - NATIONAL SHERIFF'S ASSOCIATION AND AMERICAN JAIL ASSOCIATION OPPOSE PRIVATIZATION
- DESPITE OPPOSITION, SIGNIFICANT ACTIVITY AT LOCAL LEVEL:

ALABAMA	144 BED FACILITY IN TUSCALOOSA CITY/COUNTY
DELAWARE	POSSIBLE TAKEOVER OF 600 BED FACILITY IN DELAWARE COUNTY
FLORIDA	370 BEDS IN 2 FACILITIES IN BAY COUNTY
MINNESOTA	44 BED REGIONAL FACILITY IN ST. PAUL
NEW MEXICO	133 BED JAIL IN SANTA FE PLANS FOR 44 BED REGIONAL FACILITY IN RUTON AND 600 BED UNIT IN ALBUQUERQUE.
PENNSYLVANIA	160 BED BUTLER COUNTY FACILITY (MANAGEMENT ONLY)
TENNESSEE	360 BED FACILITY IN HAMILTON COUNTY
TEXAS	PLANS FOR 4 PRIVATE COUNTY FACILITIES WITH TOTAL OF 2,520 BEDS

SLIDE 18e
(OPTIONAL)

SLIDE 18e (Optional)

PRIVATELY OPERATED LOCAL JAIL FACILITIES

- Although both the National Sheriff's and American Jail Associations have opposed any moves toward privatization, the local market is viewed by many contractors as a promising arena for privatization. And since the fiscal and management support available at the local level is often extremely limited, localities may more readily welcome the financial and administrative capabilities offered by private organizations.
- As indicated, seven jail facilities are currently privately managed or operated, and another seven ventures are under discussion in Delaware, New Mexico and Texas. The latter facilities are the largest private ventures to be considered to date:
 - The Delaware facility has a capacity of 600 beds;
 - The facility in New Mexico would also contain 600 beds. Current plans call for a location across the street from the courthouse in Albuquerque.
 - Three of the four facilities planned in Texas will each hold 768 prisoners. These facilities will operate as multijurisdictional detention centers for county prisoners as well as state and/or federal detainees. Current plans call for the facilities to open near the end of 1987. Contracts have reportedly been signed for the county beds, but construction has not started pending the completion of financing arrangements.

PRIVATE PRISONS AND JAILS

KEY ADVANTAGES

- SPEED
- NON-PERMANENCE/FLEXIBILITY
- REGIONAL ECONOMIES OF SCALE
- IMPROVED LOCAL ACCESS TO CAPITAL AND ADMINISTRATIVE SUPPORT

CENTRAL OBSTACLES

- QUESTIONS OF PROPRIETY
- UNION OPPOSITION/MANAGEMENT RESISTANCE
- LIABILITY CONCERNS
- POTENTIAL INSTABILITY
- LOSS OF EQUITY IN THE FACILITY
- SITING PROBLEMS

OPEN QUESTIONS

- COST ADVANTAGES?
 - COSTS RANGE FROM \$20-\$45 (AVER. \$32) FOR ADULTS
 - SOME MODEST REDUCTIONS REPORTED, BUT FULL COSTS OF PUBLIC FACILITIES HARD TO ISOLATE
 - GIVEN TIGHT CORRECTIONS BUDGETS, SIGNIFICANT REDUCTION UNLIKELY
- IMPROVEMENTS IN QUALITY OF SERVICE?
 - MAY DEPEND LARGELY ON QUALITY OF PRIOR PUBLIC MANAGEMENT

SLIDE 19

PRIVATE PRISONS AND JAILS

KEY ADVANTAGES

- Speed. Contracting can allow the government to move faster in getting new facilities on-line.
- Non-permanence and Flexibility. Government agencies can accommodate population overflow or pilot new programs without committing to permanent expansion. If space is no longer required or the approach is ineffective, contract can be terminated.
- Economies of Scale. Combining the general housing needs of several counties or specialized needs of several states may give a jurisdiction access to a full-service facility that it couldn't otherwise afford.
- Improved Local Access. Similarly, single localities may benefit from the availability of more capital and administrative support than is often available.

CENTRAL OBSTACLES

- Questions of Propriety. Many commentators are offended by the notion of delegating the deprivation of liberty to private entrepreneurs.
- Union Opposition/Management Resistance. Privatization can threaten public employees' jobs and public managers may resist the "loss of turf."
- Liability Concerns. States and counties remain accountable and therefore liable for operations not under their direct control. Liability concerns are particularly acute with interjurisdictional operations. This is not only a public sector concern, as private providers may have difficulties obtaining insurance.
- Potential Instability. While there are advantages to non-permanence, there are also disadvantages. If private contractor goes out of business, government must be prepared to cope. Potential strikes by private workers also are a concern.
- Loss of Equity. While contracting offers greater speed and flexibility in meeting prisoner housing needs, the government buys space, but does not accumulate any equity in facilities furnished by the private sector -- a concern if housing needs persist in the long term.
- Siting Problems. Private contractor has no greater advantage in locating sites acceptable to local residents. May reduce the speed with which contractor can respond to urgent needs.

Organizations Opposed

AFSCME
National Sheriff's Association
American Bar Association
American Jail Association

Cautious Endorsements

American Correctional Association
National Governors' Association

SLIDE 19

PRIVATE PRISONS AND JAILS

(continued)

OPEN QUESTIONS

Cost Advantages?

- The per diem rates of most private facilities (\$20-45/day) are considered competitive by states and counties.
- While some modest reductions in cost have been reported, cost comparisons are difficult, since public and private facilities may not be comparable. (INS, for instance, reports a 5-7 percent saving, but INS operated facilities are typically larger, higher security centers). Compounding the problem, information on the true costs of public facilities is often hidden in a variety of budgets. (Many payroll costs don't appear in a facility's operating budget; many overhead costs are also difficult to locate.)
- In the final analysis, significant cost reductions are unlikely. Since corrections agencies are typically underfunded in relation to the number of offenders confined, more rather than fewer resources are likely to be required -- regardless of which sector is responsible for providing confinement services.

Improvements in the Quality of Services?

- Most of the accumulated experience has been limited to specialized, low-security populations (inmates nearing release, juveniles, deportable aliens). Contracting agencies appear to be satisfied that contractors are performing well.
- Many of the more ambitious private facilities are still in the honeymoon stage, or only on the planning boards. When more experience accumulates, we are likely to find that the extent of improvement depends largely on the quality of prior public management. If a public facility has been unresponsive to the challenges of correctional facility management, private management may result in qualitative improvement. If, on the other hand, public management has been reasonably effective, there may be little difference in the quality of privately provided service.

THE PRIVATE SECTOR AND PRISON INDUSTRIES

TRADITIONAL PRACTICE

- CONTRACTS FOR PRISONERS' LABOR COMMON IN THE 19TH CENTURY
- OPPOSITION LED TO STATE-USE SYSTEM
- 1979 PERCY AMENDMENT EASED STATE-USE RESTRICTIONS

RECENT EXPERIENCE

- 35 PRISON INDUSTRIES WHERE THE PRIVATE SECTOR IS A CONTROLLING CUSTOMER OR OWNER/OPERATOR.
- 12 STATE AND 2 COUNTY PRISON SYSTEMS

ARIZONA	NEVADA
CALIFORNIA	NEW MEXICO
IDAHO	NORTH DAKOTA
KANSAS	OKLAHOMA
MINNESOTA	UTAH
MONTANA	WASHINGTON

- OVER 50 PRIVATE COMPANIES HAVE BEEN INVOLVED:
 - PRIVATE SECTOR INVESTMENT OF OVER 4.1 MILLION
 - FY 85-86 SALES OF 39 MILLION
 - VAST MAJORITY PROFITABLE

SLIDE 20

THE PRIVATE SECTOR AND PRISON INDUSTRIES

Another type of private sector involvement in corrections has occurred in the area of prison industries.

Traditional Practice

- Most common prison industry systems in the 19th century were the contract labor, lease, and public account systems.
 - under contract labor and lease systems, private firms contracted with state for prisoners' labor.
 - under public account system prison-made products sold on open market
- By late 19th century, opposition from organized labor and reform organizations led to the passage of state-use laws and later legislation restricting interstate commerce in prison-made goods.
- In 1970s, new interest in expanding prisoner work opportunities and reducing costs of corrections produced the Percy Amendment which lessened the statutory constraints in selected states provided inmates were paid prevailing wages.

Recent Experience

- By 1987, there were over 35 prison industries with substantial private sector involvement--mostly in the West.
- These programs operate in 12 states and 2 counties. While the number of inmates employed is relatively small (about 1,000), the ventures that have emerged to date have clearly demonstrated the feasibility and potential of this form of public-private partnership.

Over 50 different private companies are involved in the 35 projects. Such large firms as:

TWA;
Best Western International;
Louisiana Pacific Corp; and
Northwest Airlines

are involved as either employers or customers.

THE ROLE OF THE PRIVATE SECTOR AS A CUSTOMER OF PRISON INDUSTRIES

- AS CUSTOMER:

THE PRIVATE SECTOR PURCHASES A LARGE PORTION (OR ALL) OF THE OUTPUT OF AN INDUSTRY WHICH IS OWNED AND OPERATED BY THE CORRECTIONS AGENCY. AGENCY MAY ALSO RECEIVE HELP FROM PRIVATE SECTOR IN SETTING UP THE INDUSTRY (CAPITAL, MATERIALS, TECHNICAL SUPPORT).

EXAMPLES:

HENNEPIN COUNTY	NORTHWEST AIRLINES	CLEANING SILVERWARE
MONTANA	LOUISIANA PACIFIC	TIMBER HARVESTING
UTAH	WALKER SAFETY SIGNS	TRAFFIC SIGNS

SLIDE 21

PRIVATE SECTOR AS A CUSTOMER OF PRISON INDUSTRIES

In the Customer Model, the private sector:

- purchases all (or a significant portion) of the output of an industry which is owned and operated by corrections;
- frequently provides material, financial, and technical support.

For Example:

In Hennepin County (Minnesota) Northwest Airlines contracts with the correctional facility to have all of its silverware cleaned and polished.

In Montana Louisiana Pacific Corp. purchases timber from the logging operation run by the state prison.

Utah correctional industries sells a significant portion of its traffic signs to Walker Safety Signs which in turn sells the signs throughout the Northwest.

THE ROLE OF THE PRIVATE SECTOR AS EMPLOYER OF INMATES IN PRIVATELY OWNED AND OPERATED PRISON INDUSTRIES

- AS EMPLOYER:

THE PRIVATE SECTOR OWNS AND OPERATES A BUSINESS (LOCATED IN OR NEAR A PRISON) WHICH EMPLOYS PRISONERS TO PRODUCE GOODS AND/OR SERVICES. THE PRIVATE FIRM CONTROLS HIRING, FIRING, AND SUPERVISION OF THE WORKFORCE. THE PRISON PROVIDES SPACE AND MAINTAINS A POOL OF READILY AVAILABLE WORKERS.

EXAMPLES:

ARIZONA	BEST WESTERN INTERNATIONAL	TRAVEL RESERVATIONS
CALIFORNIA	OLGA MANUFACTURING, INC.	GARMENTS
KANSAS	ZEPHYR PRODUCTS, INC.	METAL PRODUCTS

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THE ROLE OF THE PRIVATE SECTOR AS AN EMPLOYER OF INMATES

In the employer model, the private sector:

- Owns and operates the business;
- Controls the work force;
- Markets the product or service
- Bears the financial risk; and
- Reaps potential financial rewards (profits).

For Example:

In 1981 Best Western International needed a readily available work force to man its toll free 800 lines on nights holidays, and weekends and to answer calls for room reservations during peak call periods.

Best Western established a telephone reservation center in the Arizona Correctional Center for Women in Phoenix. The Center has maintained a work force of 25 reservationists for the past 6 years.

In Kansas, Zephyr Products, Inc. (a sheet metal fabricator) deliberately located near the Kansas State Penitentiary in order to employ inmates.

Since 1981, Zephyr's all inmate work force has paid over \$216,000 in taxes and \$314,000 in room and board.

THE PRIVATE SECTOR AND PRISON INDUSTRIES

POTENTIAL PROBLEMS

- OPPOSITION FROM COMPETITIVE BUSINESSES, OUTSIDE LABOR AND PUBLIC-AT-LARGE
- COMMITMENT OF PRIVATE BUSINESSES
- CONCERN FOR PRISONER-WORKER EXPLOITATION

ADVANTAGES

- FOR PRISONERS, REAL WORK EXPERIENCE, JOB TRAINING AND REDUCED IDLENESS
- FOR CORRECTIONS AGENCIES, SOURCE OF OUTSIDE CAPITAL AND MANAGEMENT SUPPORT
- FOR MANY INDUSTRIES, A COMPETITIVE SOLUTION TO UNIQUE LABOR REQUIREMENTS
- FOR TAXPAYERS, CONTRIBUTIONS FROM INMATE WAGES TO:
 - TAXES
 - ROOM AND BOARD
 - FAMILY SUPPORT
 - VICTIM COMPENSATION

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PRIVATE SECTOR AND PRISON INDUSTRIES

Potential Problems

To address the three problems listed on this slide, prison industry partnerships must be constructed to be fair to all of the key participants or stake holders by:

- Generating taxes, family support, room and board, and victim's compensation through wage deductions;
- Allowing private partners a legitimate opportunity to compete in the marketplace and to make a profit;
- Avoiding displacements of outside labor and disruption to competitive businesses; and
- Protecting the rights of prisoner-workers by guaranteeing safe working conditions and payment of real world wages and benefits.

PL 96-157, passed by Congress in 1979 and administered by the BJA, addresses protection of stakeholders' interests.

NIJ is currently sponsoring a nationwide training and demonstration project in 7 states to encourage the development of new prison industry partnerships which conform to the principles of fairness described above.

Advantages

When properly structured, real world jobs for prisoners can produce tangible benefits for everyone:

- Prisoners can develop valuable work habits and learn job skills which enhance their chance of post release employment.
- Correctional agencies can productively employ prisoners (who might otherwise be idle) at reduced cost to the taxpayer since partnerships are frequently capitalized by the private sector.
- Businesses which are in transition and require a flexible and readily available workforce can have their unique labor needs met by a prison which can guarantee a steady pool of qualified workers which can be an attractive alternative to offshore labor markets.
- Taxpayers benefit when prisoners become taxpayers too.

FUTURE PROSPECTS

- SIGNIFICANT TRANSFERS OF TOTAL POLICE SERVICES UNLIKELY

- SCOPE FOR EXPANSION IN:
 - THE COURT ARENA

 - MINIMUM AND SELECTED MEDIUM SECURITY STATE CORRECTIONS SETTINGS

 - SINGLE OR MULTI-JURISDICTIONAL LOCAL JAILS

- MAXIMUM SECURITY CONFINEMENT LIKELY TO REMAIN IN THE PUBLIC DOMAIN WITH THE POSSIBLE EXCEPTION OF SINGLE STATE OR REGIONAL FACILITIES FOR SPECIAL NEEDS INMATES, E.G.:
 - PROTECTIVE CUSTODY INMATES

 - AIDS CASES

 - SEXUAL OFFENDERS

- SIGNIFICANT POTENTIAL FOR PUBLIC-PRIVATE PARTNERSHIPS IN PRISON INDUSTRIES

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FUTURE PROSPECTS

- Significant transfers of total police services unlikely. Delegating the use of restraining or deadly force to private entrepreneurs and coping with the inter-governmental nature of many police functions are key political barriers. Nonetheless, the private security industry has significant opportunities for growth and the delivery of a broad range of services that public police agencies are unable to provide.
- Scope for Expansion in:
 - The court arena, particularly in the areas of private dispute resolution services and privately provided probation services.
 - Privately operated minimum security institutions, which are outgrowths of a long history of community corrections contracting. Some medium security private institutions are likely to develop, but the higher the security level, the more caution states will exercise.
 - Single or multi-jurisdictional local jails. In view of the fiscal and management limitations at the local level, and the needs to realize greater economies of scale, the local jail environment may be uniquely amenable to privatization.
- With possible exception of facilities that might serve "special needs" inmates from single or multi-state areas, maximum security confinement is likely to remain a direct public sector responsibility.
- In the corrections arena, the privatization opportunity that offers significant potential rewards is the greater involvement of private industry in using prison workforces. Reducing idleness, getting inmates habituated to a real world work ethic, providing businesses with a stable source of assured labor, and making contributions to the costs of confinement, are some of the important payoffs of this strategy. While many of the contracting ventures that are happening across the system can provide public agencies with important support and logistical relief, the concept of private prison industries is a form of collaboration that does not merely provide the private sector with funds to perform a public function. Rather, it creates a partnership in the best tradition of privatization, using both sectors to their best advantage.