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## This Issue in Brief

**Corrections Goes Public (and Private) in California.**—Authors Dale K. Sechrest and David Shichor report on a preliminary study of two types of community correctional facilities in California: facilities operated by private for-profit corporations and facilities operated by municipal governments for profit. The authors compare the cost effectiveness and quality of service of these two types of organizations.

**Mandatory Minimums and the Betrayal of Sentencing Reform: A Legislative Dr. Jekyll and Mr. Hyde.**—According to author Henry Scott Wallace, mandatory minimums are "worse than useless." In an article reprinted from the *Federal Bar News & Journal*, he puts mandatory minimums in historical perspective, explains how they fall short of alleviating sentencing disparity, and offers some suggestions for correcting what he describes as a Jekyll-and-Hyde approach to sentencing reform.

**Juvenile Detention Programming.**—Author David W. Roush focuses on programming as a critical part of successful juvenile detention. He defines juvenile detention and programming; explains why programs are necessary; and discusses objectives of programs, what makes good programs, and necessary program components. Obstacles to successful programming are also addressed.

**Legal and Policy Issues From the Supreme Court's Decision on Smoking in Prisons.**—In *Helling v. McKinney*, the Supreme Court held that inmates may have a constitutional right to be free from unreasonable risks to future health problems from exposure to environmental tobacco smoke. Authors Michael S. Vaughn and Rolando V. del Carmen discuss the legal and policy issues raised in *McKinney*, focusing on correctional facilities in which smoking or no-smoking policies have been a concern. They also discuss litigation in the lower courts before *McKinney* and how this case might shape future lower court decisions.

**Community Corrections and the Fourth Amendment.**—The increased use of community corrections programs has affected the special conditions of probation and parole imposed on offenders. Author Stephen J. Rackmill focuses on one such condition—that proba-

tioners submit to searches at the direction of their probation officers. Explaining the importance of the Supreme Court's decision in *Griffin v. Wisconsin*, the author assesses the case law before and after *Griffin* regarding searches and points out that policy regarding searches is still inconsistent.

**A Study of Attitudinal Change Among Boot Camp Participants.**—Authors Velmer S. Burton, Jr., James W. Marquart, Steven J. Cuvelier, Leanne Fiftal Alarid, and Robert J. Hunter report on whether participation in the CRIPP (Courts Regimented Intensive Probation Program) boot camp program in Harris County, Texas, influenced young felony offenders' attitudes. The authors measured attitudinal change in

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# Corrections Goes Public (and Private) in California

BY DALE K. SECHREST, D. CRIM., AND DAVID SHICHOR, PH.D.\*

**T**HE POPULATION of California prisons is the highest of any state in the Nation. On a per capita basis, California ranks 16th nationally; however, from 1985 to 1990 there was a 109 percent increase in the inmate population, from 48,749 to 101,808 in 1991 (Bureau of Justice Statistics, 1992).

As a result of the crowding of its facilities, the California Department of Corrections (CDC) has seen Senate Bill 1591 (SB1591) enacted into law. This bill created publicly operated facilities to house state prison inmates. Its passage came after the California Department of Corrections (CDC) had already begun to fund several privately operated community correctional facilities under previous legislation intended to manage parolees who violated parole and were "returned to custody" for periods of up to 1 year. The legislation that authorized private Return to Custody (RTC) facilities (later community correctional facilities) was penal code section 6250. SB1591 authorized passage of the penal code sections needed to establish publicly operated community correctional facilities such as those established in cities including Delano, Shafter, and Taft (PC 2910.5, as amended, which is the agreement itself). Delegation of responsibility for inmates to the cities is in penal code sections 830.1 and 830.55.

The intent of this new policy was to house parole violators who meet specified criteria in community facilities rather than returning them to state-operated correctional facilities. The original purpose of these facilities and the private contract facilities, which were called "Return to Custody" facilities, was to manage parolees during the period when revocations were increasing in California (State of California, 1990, p. 83). As population pressures increased, corrections officials began to use them for first commitments, and the name was changed to reflect the changing role of these facilities. The CDC can now enter into long-term contracts with cities, counties, and private entities to house inmates and parole violators in Community Correctional Facilities (CCFs), with the goals of relieving

crowding at state prisons, reducing the number of new prisons required, and providing an economic benefit to the contracting city or county. These public and private organizations can realize profits from the operation of CCFs.

The CCF administrator must review new admissions for offenders who have a propensity for violence or escape. Screening criteria contain 18 guidelines for admission (Parole and Community Services Division, 1991). Exclusions include length of time to serve; offense histories of arson, sex crimes, psychotropic drug use, assault on a peace officer, assault with a deadly weapon, or serious or recent (5 years) escapes; protective custody or difficult medical cases; active felony holds; life-termers; and media sensitive cases.

Originally, these parolees were to spend 2 to 3 months in CCFs before release back onto parole. There are currently 12 such facilities. Community Correctional Facilities are contracted with by the Parole and Community Services Division of the California Department of Corrections. They are reimbursed for both capital costs and operating costs (cf. McDonald, 1989).

It is imperative that these facilities be evaluated in order to better formulate future correctional policy and to plan for the more efficient and effective expenditure of scarce correctional resources.

## *Privatization Issues*

The major interest in the privatization of correctional facilities is utilitarian, i.e., cost and flexibility. Advocates of privatization claim that private entities can operate correctional facilities cheaper than government agencies do without lowering the quality of services, or even provide better services (e.g., Logan, 1987). It is also claimed that because private companies are less encumbered with bureaucratic requirements, they can build or remodel facilities faster and are more flexible to respond to correctional needs. These issues were important in the situation that unfolded during the 1980's and early 1990's, when an unprecedented and rapid growth in the prison population resulted in chronic overcrowding and a relentless pressure on shrinking government funds. However, the privatization of correctional facilities is a controversial issue. It has conceptual, legal, economic, political, and administrative implications (see, for instance, Mullen, 1985).

One of the basic questions which has attracted a great deal of attention is whether the government

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should relinquish any part of its authority to punish those who violate the law. Some related constitutional and legal questions have been raised concerning the ultimate responsibility over what is happening in correctional facilities if and when they are operated by private entities.

While conceptual questions are at the heart of the privatization issue, they are not the focus of this exploration—although they certainly should be, and undoubtedly will continue to be, pursued by many scholars, legislators, policymakers, and representatives of business interests.

Regarding the legal issues, both supporters and opponents of correctional privatization seem to agree that there are no constitutional barriers to the private operation of correctional institutions, but the ultimate liability for what is happening in the facilities will remain with the government (e.g., Robbins, 1986; Logan, 1987).

This preliminary study focuses strictly on the utilitarian issues, namely, on the preliminary evaluation of two types of community correctional facilities in California: a facility operated by a private for-profit corporation, which we refer to as a "private proprietary" institution, using Logan's phrase (1987), and two facilities operated by municipal governments for profit. We refer to them as "public proprietary" institutions. Our aim is to provide a preliminary comparison of these two types of organizations concerning their cost effectiveness and the quality of services they provide.

Public proprietary facilities are a new concept in corrections. There are no data available upon which to evaluate their problems or their future prospects. An evaluation of such facilities must consider the quality of services offered, costs, and outcomes.

### *Types of Facilities Studied*

Private proprietary facilities are operated by a private corporation for profit under contract with the CDC. This type can be referred to as a "private proprietary" facility (Logan, 1987). Facilities of this type in California are those located at Baker, Eclectic Communications, Inc. (ECI); Eagle Mountain, Management and Training Corporation (MTC); Live Oak-Leo Chesney Center, Eclectic Communications, Inc. (ECI); and McFarland, Wackenhut Corporation. They are generally operated in smaller communities; some, such as Baker and Eagle Mountain, are quite isolated. For these facilities, lease and program development costs are paid directly. They receive a per diem rate, which is paid based on participant days used. Thus, if the population drops, their reimbursement drops accordingly. However, there is a specified minimum under which they cannot go.

The second type of facility is the SB1591, or legislatively authorized, facility (Senate Bill 1591, Assembly Bill 3401, and Title 15 of the California Penal Code). We refer to these as "public proprietary" facilities. They are operated by municipalities, such as Adelanto, Coalinga, Delano, Folsom, Shafter, and Taft. These are generally small cities without a strong economic base for which the CCFs are a potential source of income and employment. They not only supplement the municipal budget but they contribute to the local economy (Lidman, 1988). The average annual budget for these facilities is about \$5 million with an average of about 65-70 budgeted employees for facilities with populations of 400 inmates. Local merchants and suppliers benefit, as does local employment. This is because each facility is a public entity operated for profit in order to supplement local budgets. The fact that facilities are operated by different entities may affect study findings.

### *Components of the Study*

The components of the study are the facility comparisons and cost comparisons. Facility and cost comparisons will allow for a preliminary examination of programs and the relative costs of public and private proprietary prisons and comparable facilities operated by the California Department of Corrections.

### *Description of Facilities Surveyed*

Since this was a preliminary study, all CCFs did not receive onsite visits. An attempt was made to survey both public and private proprietary operations. Three facilities were selected for surveys: two public proprietary facilities and one private proprietary facility. The facilities selected for site visits were chosen based on the fact that they had made progress in establishing programs for inmates, e.g., work, education, drug/alcohol counseling, individual and family counseling, vocational evaluation, and training.

The issue of the delegation of security to private contractors was relevant. For each facility CDC personnel are assigned who have responsibility for major disciplinary actions and other decisions, such as additional costs for medical care not included in the facility budget. Each CCF is required to have state department of corrections personnel onsite for monitoring purposes, which can be either correctional officers or parole agents, depending on the type of facility. The number and type of state personnel required are based on the number of inmates in the facility and who operates it. Since it is not necessary to specifically identify the facilities, they are referred to as "Public," for the public proprietary facility studied, "Private," for the private proprietary facility, and "Public Civil," for the facility which houses only civil narcotic addicts.

The Public CCF is located in the San Joaquin Valley in a community of about 20,000. The facility opened in mid-1990. It housed 448 inmates on the day it was visited (May 1992). Inmates stay an average of 8 to 9 months, although they can stay up to 18 months. It is a high security facility, with just nine inmates working outside the facility on a given day. It is operated by the local police department, using sworn and nonsworn personnel. The sworn personnel are the captain, two lieutenants, five sergeants, and four police officers. The police department is responsible to the city council. Forty-seven correctional officers, who are nonsworn, wear police uniforms with patches indicating "corrections." Their appearance is very similar to that of the sworn police officers, and while on duty they have "sworn" status.

The facility handles both first commitments and parole violators. Four state parole agents make up the state personnel for the facility, with a supervisor part-time based in another community. The most important feature of the facility is its education program, which uses self-paced computerized instruction in a competency-based curriculum. A prerelease module, mandated by state law, is in operation, as it is at all facilities visited.

The Private CCF is a private proprietary facility operated by Management and Training Corporation based in Utah. The facility is located in California about 50 miles from the Arizona border. The closest community is Desert Center. It is near the site of a closed mine, which is now being considered as a waste disposal facility. Several empty company houses and a closed school make up the remainder of a once viable community.

The facility houses 400 inmates in 17 dormitories. The average stay is 4 months, although 6 months was seen by staff as more desirable. First-termers can do up to 18 months at the facility. Inmate turnover is high, with as many as 165 new inmates arriving each month. Outside crews of 4 to 30 inmates are sent out daily to work on community projects. Five state correctional officers (one lieutenant, four sergeants) and four parole agents, supervised one-third time by an area agent, were stationed at the facility.

The Public Civil facility is located in a small city in the Mojave Desert. It is operated directly by the city administration, which hires staff and manages the budget. The facility director reports to the city manager. The facility opened in mid-1991. By mid-1992 it housed 418 inmates. It accepts only civil narcotic commitments who are parole violators, although they may be first commitments.<sup>1</sup> In this sense this is a unique population, which may account for differences in behavior, attitudes, and opinions from the populations of the other facilities studied. It has five state

corrections employees and four parole agents with supervision provided by one-third of the time of a parole supervisor.

#### *Instrument Used*

A previously developed survey instrument has been used to elicit opinions from staff and inmates, and interviews have been conducted with selected staff and inmates at each site visited, to include program monitors and treatment/program staff.<sup>2</sup>

#### *Administration of Surveys*

Inmate surveys were administered during the summer of 1992 as follows: Public, 29 (6.8 percent) of average population; Private, 27 (6.8 percent of average population); Public Civil, 31 (9.5 percent of average population). An effort was made to administer surveys drawing inmates randomly from living units, which was difficult in some cases due to inmates being out of the units at various programs. Nonetheless, officials were asked to select inmates from these units based on randomly selected bed numbers. This was least well implemented at Private. In spite of these efforts, it is difficult to claim that surveys were completely random.

#### *Defining Quality*

The quality of services in correctional facilities is difficult to measure, especially when different institutions house different types of populations. The quality of services is a concern of the facility administration, the community, and the inmates housed in them. In our analysis, the framework suggested by DiIulio (1987, pp. 11-12) was adopted. DiIulio defines order, amenity, and service as critical components of prison operations:

By *order* I mean the absence of individual or group misconduct that threatens the safety of others . . . By *amenity* I mean anything that enhances the comfort of the inmates . . . By *service* I mean anything that is intended to improve the life prospects of the inmates. . . .

These descriptive categories were used for purposes of comparing the facilities studied.

#### *Preliminary Findings*

##### *Cost Comparisons*

One of the major justifications for private involvement in corrections is economic. The claim is that the private sector can provide the same services cheaper and at least as well, if not better, than the public sector (Logan & McGriff, 1989). Other research to date, however, has been inconclusive (The Urban Institute, 1991).

Operational cost comparisons are shown in table 1. The 1991-92 fiscal year operational cost of incarcerating an inmate in an institution operated by the CDC

is reported to be \$21,564 per inmate per year, an average cost of \$59.04 per inmate per day. This figure includes overhead costs (e.g., Department of Corrections headquarters offices). *Institution construction, or capitalization costs, are not included* (State of California, Governor's Budget, 1991/92, January 1991). Also, the CDC figure represents *costs for all security levels*. The 1991 CDC "system-wide cost of care" per year reported in the American Correctional Association *Directory* (1991) was \$19,874. According to CDC officials, the annual cost was higher 2 or 3 years ago but has come down based on higher occupancy rates at existing facilities. Fiscal year 1992-93 costs are reported to be \$18,171 per inmate per year, an average daily cost of \$49.75 per inmate per day.

TABLE 1. COSTS FOR CDC INSTITUTIONS AND COMMUNITY CORRECTIONAL FACILITIES

| Type Facility           | Annual Cost | Per Day Cost |
|-------------------------|-------------|--------------|
| CDC Data FY 1991-92*    |             |              |
| CDC Institution         | \$21,564    | \$59.04      |
| Public CCF (1591)       | \$18,290    | \$50.08      |
| Private CCF (Contract)  | \$19,902    | \$54.49      |
| P&CSD Data FY 1991-92** |             |              |
| Public CCF (1591)       | \$15,400    | \$42.16      |
| Private CCF (Contract)  | \$15,725    | \$43.05      |

\*California Department of Corrections budget office cost figures.

\*\*Parole and Community Services Division, CDC, reimbursement costs.

CDC costs per year apparently stay in the \$20,000 range because of the fact that CDC institutions are crowded, thus reducing the original projected, or design, costs per inmate bed. Institutions operated at 168 percent of capacity in 1990, which is projected to be 189 percent of capacity by 1994 if only existing construction is completed (State of California, 1990). The current inmate population is at about 180 percent of capacity.

As seen in table 1, the CDC budget office computes CCF costs for public proprietary facility (SB1591) costs at \$18,290 per year or \$50.08 per day for fiscal year 1991-92. (These figures were \$18,171 per year or \$49.75 per day for fiscal year 1992-93.) CDC computes cost figures for private proprietary (contract) facilities at \$19,902 per inmate per year or \$54.47 per inmate per day for fiscal year 1991-92. (These figures were \$20,410 per year or \$55.88 per day for fiscal year 1992-93.) *These cost figures represent all costs for the construction and operation of these facilities, including overhead and capitalization costs.* Also, these facilities operate at level 1, the lowest security level in the system.<sup>3</sup>

The costs of CCFs taken from Parole and Community Services Division payment records reflect slightly different totals. Costs based on contracts negotiated

with CCFs, *inclusive* of capitalization, lease, renovation, program development, and liability insurance, are shown in table 1 for 1991-92: Public, \$15,400 per year, \$42.16 per inmate per day; Private, \$15,725 per year, \$43.05 per inmate per day. Additional costs *not* included here are Parole Division overhead costs (for CCF operations), the costs of monitoring facility operations by state parole agents and CDC supervisors assigned to the facilities (captain, lieutenants, sergeants), medical costs assigned to CDC, inmate clothing, inmate pay, miscellaneous contracts, and other costs paid by CDC. Major medical and emergency costs for the CCFs were often paid from the budgets of CDC facilities near the CCFs on which they relied for these services. In one case parole agents approved \$1,800 for a medical emergency. Pharmaceuticals prescribed are paid for by the CDC unless available at the facility, which has primarily over-the-counter drugs. Also, first year costs were greater due to startup expenses paid by the state, as shown by 1990-91 fiscal year costs: Public, \$20,703 per year, \$56.68 per inmate per day; Private, \$16,465 per year, \$45.08 per inmate per day.

#### Quality of Operations

Preliminary indications are that the populations of the Public and Private facilities studied are about the same in age and ethnicity, with the Public facility holding somewhat more Afro-American inmates but holding inmates almost twice as long as the other facilities. The population of the Public Civil facility is unique in that it contains only civil narcotic addicts. It holds more Anglo and fewer Hispanic inmates than the Public and Private facilities. Using the categories developed by DiIulio (1987), items from the inmate survey suggest some differences between the facilities. These differences are summarized in table 2.

**Order.** Inmates were asked whether the facility was crowded. For the Public and Private facilities, about 40 percent agreed or strongly agreed with this statement, while only 16 percent of the Public Civil inmates felt this was the case. Regarding safety of staff and inmates, generally all rated it as high (two-thirds or more). Public inmates rated security higher than Private, and Public Civil was rated highest of all. Regarding how well the facilities are run, the Public and Private facilities rated below what was found for safety. Public Civil was rated at 94 percent (agree/strongly agree). Regarding staff performance, opinions are somewhat more positive, with everyone happy at the Public Civil, with Private at 58 percent, and Public at 46 percent. The highest in order was the Public Civil, followed by the Private, with the Public at the lowest level.

**Amenity.** In terms of amenities, the Public Civil facility is consistently rated highest, at almost 100

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TABLE 2. PERCENT INMATES INDICATING POSITIVE RESPONSES TO FACILITY QUALITY OF LIFE QUESTIONS

|   | Public | Public Civil | Private |
|---|--------|--------------|---------|
| Total Inmates Surveyed                      | 29     | 31           | 27      |
| <u>Order*</u>                               |        |              |         |
| Safe for inmates                            | 65.5   | 96.7         | 88.9    |
| Safe for staff                              | 75.9   | 100.0        | 96.3    |
| Is facility crowded?                        | 44.8   | 16.1         | 40.7    |
| Is facility well run?                       | 41.4   | 93.5         | 44.4    |
| Staff do jobs well                          | 46.4   | 100.0        | 57.7    |
| <u>Amenity*</u>                             |        |              |         |
| Area/room looks good                        | 93.1   | 100.0        | 81.5    |
| Food tastes good                            | 34.5   | 96.8         | 88.5    |
| Food portions too small                     | 69.0   | 35.5         | 55.6    |
| Toilets/showers work OK                     | 96.4   | 100.0        | 11.1    |
| <u>Service</u>                              |        |              |         |
| Good variety of recreation*                 | 25.0   | 43.3         | 25.9    |
| Able to see counselor when want to**        | 58.6   | 56.7         | 38.5    |
| Satisfied with counselor<br>(somewhat/very) | 35.7   | 56.7         | 20.8    |
| Satisfied with medical services†            | 6.9    | 51.6         | 3.7     |
| Satisfied with education programs†          | 48.1   | 65.2         | 29.6    |

\*All items in these categories indicate responses of "very high" or "high" on the question.

\*\*Indicates the percentage responding "yes" to this question.

†Indicates the percentage responding "satisfied" or "very satisfied" for this item.

percent. It is the newest facility, which may explain this finding. Regarding the facilities, Public scored better than Private, with the biggest difference in the operation of toilets and showers.

**Service.** Regarding the ability to see a counselor, Public and Public Civil scored highest (57 to 59 percent), while Private was considerably lower (39 percent). Regarding counselor satisfaction, the situation was completely different. Public Civil showed the greatest satisfaction with counseling services, while Private showed the least satisfaction. Regarding medical services, Public Civil showed the greatest satisfaction, while the other facilities were very low in satisfaction with medical services. Regarding education, Public Civil had the highest satisfaction, followed by Public, with Private having the least favorable score. Regarding recreation, all were seen as scoring less than 50

percent. Public Civil scored highest, with the others scoring about the same.

### Conclusions and Discussion

The use of Community Corrections Facilities in California is an interesting and ongoing experiment in managing inmate populations. Much is still being learned. While the findings of this study are preliminary, when all factors are considered they do not appear to be more supportive of the use of either the public or private proprietary facilities. Better studies using more data are needed. For example, data on hidden costs must be obtained, and better data on the composition of the inmate populations is necessary in order to draw conclusions in the area of order and safety.

Costs could not be compared with any precision due to the lack of data on capital construction for CDC



facilities, the inclusion of capital costs in proprietary facility estimates, and the lack of uniformity in overhead cost figures, especially "hidden" costs at CCFs for central office, medical, CDC staff positions, contracts, and the like. Without these figures, most of which are simply not available, it is difficult to make accurate cost determinations at this time. Also, it is unclear why CDC figures overestimate the costs of private contract facilities in comparison with reimbursement figures from their own parole division. Private proprietary (contract) CCFs cost less in terms of startup costs but appeared to cost about the same as public proprietary facilities in the second year. Both cost about \$16 less per inmate per day than CDC prisons, although CDC figures reduce this difference to about \$5 to \$9 (see table 1). Considering security levels, overhead, and hidden costs of CDC and CCF facilities, however, the only conclusion at this time is that the relative costs of CDC and CCF operations are probably about the same, especially in comparison with public proprietary facilities. That is, if the CDC operated facilities for just security level 1 inmates, and capital costs could be computed, total operational costs would probably be about the same as for CCFs, especially if CCF hidden costs were known.

The community correctional facilities are not without problems. In June 1992 one municipally operated facility had a riot in which five inmates were stabbed and hospitalized, 32 instigators transferred to state prisons, and 30 inmates reassigned to other CCFs. The riot was seen as being racially motivated (Benjamin, 1992). The riot was quelled by a CDC response team from the closest CDC facility, which is another hidden cost accruing to the CCFs. In September 1992 the same facility was involved in a contract dispute with the state auditors. The claim is that contract funds had been spent on other city services, including land development, and improperly charged to the CCF. An audit of \$6 million in expenditures concluded that one dollar of every three spent was questionable (Green, 1992). While the matter is not settled, it does raise questions about the need for state agencies to monitor such facilities carefully.

It is anticipated that as the study progresses and additional inmate data and cost data become available, it will be possible to gain a better understanding of the quality of services in CCFs as compared to traditional facilities and to each other. It is expected that this will be done with a better understanding of the types of inmates held in these facilities. Also, the data required for more detailed cost estimates are

being pursued. In any case, if privatization of facilities continues as a correctional policy alternative, then the public proprietary concept should be considered and evaluated more thoroughly as a potentially viable option.

#### NOTES

<sup>1</sup>These are offenders sentenced under the Civil Addict Program usually to the California Rehabilitation Center. Addicts are designated "civil" because criminal proceedings are suspended in order to provide treatment. They voluntarily accept a maximum term pending release by the California Narcotic Addict Parole Board. These inmates have no history of escapes or violent crimes such as murder, sexual assault, armed robbery, or child molestation.

<sup>2</sup>The instruments used were taken from a study of prison climates (The Urban Institute, 1991). Adelanto CCF was used as a pretest facility for the instruments to ensure their usefulness in the CCF type facilities. It was used with 21 inmates and 7 staff members; a sufficient number of pretest items are similar to allow for a reliability check of the instruments.

<sup>3</sup>Level 1 institutions and camps consist primarily of open dormitories with a relatively low security perimeter.

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