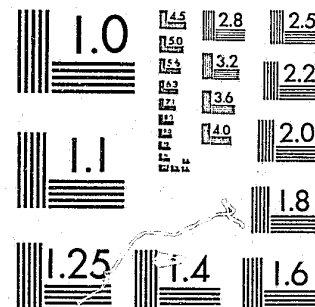


National Criminal Justice Reference Service

**ncjrs**

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART  
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice  
United States Department of Justice  
Washington, D. C. 20531

8/16/84

94071

U.S. Department of Justice  
National Institute of Justice

94071

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by  
Public Domain

NLIJ/US Dept. of Justice  
to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.



94071

NIJ

MF-1

# NJ National Institute of Justice

## Research in Brief

June 1984

### Corrections and the Private Sector

by Joan Mullen

#### The Debate

Few proposals in the field of corrections have stimulated as sharply divided opinions as the prospect of contracting with the private sector for the management of prison and jail facilities. While the National Sheriff's Association has expressed its disapproval and opposition to the concept of proprietary jail facilities, the executive director of the American Correctional Association has suggested that "We ought to give business a try." Both deep reservations and high expectations have also come from the research community. Recognizing the flexibility and economic capabilities that reside in the private sector, some foresee the chance to introduce efficiency and innovation to a field laboring under the burden of outmoded facilities, rising staff costs, declining resources, increasing executive and judicial demands for improved services, and public calls for more prisoners at half the price. Others fear that the profit motive will interfere with professional corrections practice and question whether any part of the administration of justice is an appropriate market for economic enterprise.

#### The Available Research

Far more testing and evaluation are required before the ideological debate

that surrounds these issues can be waged in more practical terms. Although the adult corrections field has a long history of contracting with private organizations for secondary community corrections placements, the concept of contracting for primary

facilities is relatively new and has yet to be tested on any significant scale. For the most part, information on the benefits and hazards of privately operated adult facilities must be inferred from the experience of correctional agencies in contracting for

#### From the Director

Overcrowding and the escalating costs of American prisons and jails are among the factors prompting public officials and the private sector to experiment with new alliances in the field of corrections. Corrections departments have long relied on private vendors to furnish specific institutional services or to operate aftercare facilities and programs. But they now are turning to the private sector for help in financing new construction and in managing primary confinement facilities.

Some of the controversial issues of such arrangements—quality, accountability, security, and cost—have been hotly debated and widely reported in the news media, including *Newsweek*, *The Wall Street Journal*, and *Cable News Network*. Only fragments of experience, however, have been documented, and no comprehensive discussion of the issues has been available.

To respond to this clear need and to inform the debate, the National Institute of Justice, as the research arm of the U.S. Department of Justice, reviewed the extent of private-sector involvement in the corrections field. A special *Issues and Practices* report was commissioned to identify major trends in the privatization movement through the quick assembly of literature, expert

opinion, and assessment of field practices. Corrections departments in all 50 States were contacted as well as many private vendors involved in correctional operations or construction financing.

Because data collection was completed in less than 6 weeks, the information developed is neither exhaustive nor detailed. The objective, however, was to conduct an extended research project but to provide decisionmakers with timely information and to lay the foundation for future experimentation and evaluation.

This *Research in Brief* summarizes some of the significant findings of *The Privatization of Corrections* and outlines the issues surrounding the new proposals for private financing, construction, and operation of prisons and jails. It also reviews other important background work sponsored by the National Institute of Corrections. The views and conclusions presented are, of course, those of the author and do not necessarily represent the official view of the National Institute of Justice. They do, however, provide a foundation for further inquiry into the private sector's potential for contributing to corrections management.

James K. Stewart  
Director  
National Institute of Justice

specific institutional services and aftercare programs. Additional insight can be drawn from related fields of human service (such as health care) as well as the juvenile corrections field, where deinstitutionalization initiatives have prompted the development of a broader array of privately managed programs and facilities. Two recent reports have addressed this experience in the course of reviewing current developments in the movement toward proprietary adult facilities.

### The National Institute of Corrections Study

One study, conducted by the Criminal Justice Institute for the National Institute of Corrections, focused on the extent to which the private sector is involved in providing services to juvenile and adult corrections agencies.<sup>2</sup> In this survey, contracting was found most frequently in juvenile rather than adult agencies and was typically used to provide health services, educational and vocational training, aftercare services (including halfway house placements), and staff training. Generally, privately provided services were reported to be more cost effective than those that public corrections agencies could provide. Respondents particularly favored medical service contracts, noting improvements in both the quality of service and staff. Overall, the perceived advantages of service contracting outweighed the disadvantages, although the two most common problems mentioned by respondents were monitoring the performance of providers, followed closely by poor quality of service. Contracting agencies stressed the importance of clearly defining contractor roles and responsibilities, thoroughly checking prospective vendors' competence, and establishing careful contract monitoring and evaluation systems.

While the majority of respondents indicated plans for expanding their use of contracts for specific services, far more uncertainty was attached to the prospect of contracting for the management of entire facilities. Only 22 percent of the responding agencies suggested that facility management

contracts might be considered; about 75 percent would not consider such an arrangement and roughly 4 percent were unsure.

### The National Institute of Justice Study

A second inquiry, conducted by Abt Associates for the National Institute of Justice, provides an overview of several aspects of the emerging trend toward greater private-sector involvement in corrections.<sup>3</sup> Three areas are discussed: (1) the participation of private industry in prison work programs, (2) the use of private-sector alternatives for financing the construction of prison and jail facilities, and (3) the involvement of private organizations in actual facility management and operations.

In many respects, the first area may hold the greatest promise for introducing new models of corrections practice. The aggressive participation of private industry in organizing institutions as places of work might go far toward achieving Chief Justice Burger's vision of prisons as "factories with fences" instead of warehouses with walls. To date, however, the private sector's involvement in prison work programs has been relatively

3. Joan Mullen, Kent Chabotar, and Deborah Carrow, *The Privatization of Corrections*, Abt Associates for the National Institute of Justice, Washington, D.C., May 1984.

modest. Thus, while activity in this area is discussed in the full report, this summary focuses on private financing arrangements and facility management contracting—the two areas that lead the current privatization debate.

### Private Financing Alternatives for Facility Construction

Faced with continually escalating prison and jail populations, it is hardly surprising to find State and local governments searching for alternatives to the traditional ways of meeting the needs for prisoner housing. At the State level alone, more than 77,000 beds have been added over the past 5 years. And, as Table 1 indicates, States reported plans to expend more than \$5 billion over the next 10 years to increase their prison capacities by another 104,688 beds.

Recognizing the new market opportunities presented by these expansion plans, the private sector has become increasingly active in marketing financing packages for prison and jail construction. Traditionally, governments have financed prison and jail construction with current operating revenues and general obligation bonds. By paying cash rather than borrowing, the use of current revenues (the "pay-as-you-go approach") avoids interest

TABLE 1—State Prison Expansion Plans (for the 10-year period beginning Jan. 1984)

Region <sup>1</sup>	Number of Beds			Estimated Cost <sup>2</sup> (in millions)		
	Funded	Proposed	Total	Funded	Proposed	Total
Northeast	15,590	933	16,523	969.4	22.5	991.9
North Central	22,288	4,099	26,387	871.95	151.94	1,023.89
South	15,272	9,742	25,014	385.7	403.5	789.2
West	10,975	25,789	36,764	665	1,561.7	2,226.7
Total U.S.	64,125	40,563	104,688	2,892.05	2,139.64	5,031.69

Source: As estimated by respondents to a telephone survey of State departments of correction administered in Jan./Feb. 1984 and displayed by State in The Privatization of Corrections.

Notes: 1. Northeast (ME, NH, VT, MA, RI, CT, NY, NJ, PA); North Central (OH, IN, IL, MI, WI, MN, IA, MO, ND, SD, NB, KS); South (DE, MD, DC, VA, WV, NC, SC, GA, FL, KY, TN, AL, MS, AR, LA, OK, TX); West (MT, ID, WY, CO, NM, AZ, UT, NV, WA, OR, CA, AK, HI).

2. Estimated costs not provided for 5,206 beds (900 in the Northeast, 770 in North Central, 1,574 in South, and 1,962 in West). Note that estimates are for capital expenditures only, exclusive of operating costs.

2. Camille G. Camp and George M. Camp, *Private Sector Involvement in Prison Services and Operations*, Criminal Justice Institute for the National Institute of Corrections, Washington, D.C., February 1984.

TABLE 2—  
Facility Management Contracting Activity in Early 1984<sup>1</sup>

Federal Contracts	State Corrections Contracts	Local Jail Contracts
<b>Immigration &amp; Naturalization Service</b> <ul style="list-style-type: none"><li>4 facility contracts for aliens awaiting deportation were operating (in San Diego, Los Angeles, Houston, Denver), providing a total capacity of 625 beds.</li><li>3 facility contracts were nearing award (in Las Vegas, Phoenix, San Francisco), providing another 225 beds.</li><li>2 additional facility contracts offering a total of 270 beds were planned in the near term (Laredo and El Paso, Texas).</li></ul> <b>U.S. Marshal's Service</b> <ul style="list-style-type: none"><li>2 small (30-bed) facilities operated under contract in California.</li><li>Plans to open a larger (100- to 150-bed) contracted facility in Los Angeles for alien material witnesses.</li></ul> <b>Federal Bureau of Prisons</b> <ul style="list-style-type: none"><li>Plans to operate a 400- to 600-bed contracted facility for sentenced aliens in the Southwest region. (Project delayed due to siting difficulties.)</li></ul>	<b>Secondary Adult Facilities</b> <ul style="list-style-type: none"><li>28 States reported the use of privately operated prerelease, work-release, or halfway house facilities. Largest private facility networks found in California, Massachusetts, Michigan, New York, Ohio, Texas, and Washington.</li></ul> <b>Primary Adult Facilities</b> <ul style="list-style-type: none"><li>No contracts reported for the confinement of mainstream adult populations; most private proposals still focused on community corrections facilities.</li><li>One interstate 720-bed facility for protective custody prisoners planned by private contractor. (Project delayed due to siting difficulties.)</li></ul> <b>Juvenile Facilities</b> <ul style="list-style-type: none"><li>A 1979 survey of private juvenile facilities found 1,558 privately operated residential programs holding a total of 28,678 juveniles, 9,603 of whom were adjudicated delinquents.<sup>2</sup> Only 42 institutions were classified as strict security and 333 as medium security.</li><li>Departing from the small, less secure settings characteristic of contracted juvenile facilities, a private contractor operates the Okeechobee (FL) Training School for 400 to 500 serious juvenile offenders.</li></ul>	<ul style="list-style-type: none"><li>Legislation enabling private jail operations was pending in Colorado and had passed in New Mexico and Texas.</li><li>While the National Sheriff's Association registered formal opposition to privately operated jail facilities, corporate providers reported significant interest and a number of pending proposals for jail operations in the Southern and Western regions.</li></ul> <b>Shared Facilities</b> <ul style="list-style-type: none"><li>One private organization in Texas planning to construct and operate a facility that would serve local detention needs as well as the needs of Federal agencies responsible for confining illegal aliens.</li><li>Other proposals have called for the development of regional jail facilities that would serve multicounty detention needs.</li></ul>

1. Reported in phone contacts made in January/February 1984 with additional followup in mid-May 1984.

2. *Children in Custody: Advance Report on the 1979 Census of Private Facilities*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., 1980.

charges and long-term liabilities. It is, however, difficult to implement when construction costs escalate and cash reserves are insufficient. With general obligation bonds, governments can raise large amounts of investment capital at competitive interest rates because their "full faith and credit" is pledged to repay the debt. The problem is that general obligation bonds are subject to debt limits and voter approval which, in an era of economic uncertainty and taxpayer revolts, are often insurmountable obstacles.

For these reasons, some governments are turning to the private sector for access to a variety of lease financing alternatives. Most widely discussed are lease contracts, in the form of lease/purchase agreements, which are

used to purchase a facility over time, much like an installment sale. Depending on the length and type of lease, prevailing interest rates, and other factors, leasing may be less expensive than bond financing, but the most significant advantage is the ability to evade debt limits by insisting on an annually renewable lease subject to nonappropriation. Private investors underwrite lease arrangements because they gain tax advantages, a steady cash flow from periodic lease payments, and the opportunity to transfer some of the risks of ownership to the lessee (for instance, buying insurance against accidental damage or loss). As a result, the costs may be competitive with bond financing.

Stimulated by the successful development of office buildings, port facil-

ities, school buildings, and telecommunications systems, lease/purchase financing is relatively new to corrections. A legal entity such as a joint powers authority or nonprofit corporation finances the project "on behalf of" the government through the sale of revenue bonds or certificates of participation (which split the lease into \$5,000 pieces), both of which are backed by the lease payments. Promoted by investment bankers and brokerage houses, lease/purchase arrangements are being seriously considered in a growing number of States:

- In early 1984, enabling legislation had been introduced in Arizona and Missouri and had passed in Illinois, States where lease/purchase was under active consideration.

- California, Kentucky, and Minnesota had or were then evaluating proposals for lease/purchase financing of State facilities.
- While Alaska and Ohio were the only States that had acquired beds through lease/purchase, some of the major sponsors of lease/purchase agreements (Merrill Lynch Capital Markets, E.F. Hutton, and Lehman Brothers Kuhn Loeb) reported significant activity at the local level: a \$30.2 million jail and sheriff's facility in Colorado, a \$50 million jail project in Philadelphia, a \$5 million jail project in Rutherford County, Tennessee, and a project in Los Angeles County for a jail and criminal justice training center.

The most controversial aspect of lease/purchase financing is its use to circumvent the debt ceilings and referenda requirements of general obligation bonds. Because no voter approval is required, lease/purchase agreements undeniably reduce citizen participation in corrections policy. Arguably, however, the public often expresses inconsistent preferences, simultaneously demanding stiffer penalties but refusing to authorize funds for prisoner housing. All too often public officials are left with no clear directions for developing realistic corrections policy.

### Private Facility Ownership and Operations

Confinement service contracts are another way of expanding corrections capacity—without assuming ownership of the required facilities. In these arrangements, vendors are responsible for locating a suitable site, leasing or constructing an appropriate building, and providing all the staff and services necessary to operate the facility. Much like the business of running a full-service hotel, room rates are established based on capital investments, operating costs, and expected occupancy, and the government is often charged by the day for each (unwilling) guest. Table 2 highlights some of the major developments in this area. Since the Abt assessment focused on contacting Federal and State adult corrections agencies, information on contracts for the confinement of juveniles and offenders under local jurisdiction is necessarily limited but nonetheless instructive.

### Federal Experience

The most active new market for confinement service contracting has clearly emerged at the Federal level in response to growing demands for housing illegal alien populations. Three Federal agencies have elected to develop contracted facilities to accommodate these demands:

1. The Immigration and Naturalization Service, which is responsible for the apprehension and confinement of immigration law violators pending deportation;
2. The U.S. Marshal's Service, responsible for the custody of alien material witnesses—essentially, smuggled aliens held to testify against their smugglers; and
3. The Federal Bureau of Prisons, which has jurisdiction over sentenced aliens—generally violators who have reentered the country following deportation.

All of these facilities basically focus on providing decent "warehousing" or holding space for aliens whose terms of confinement are relatively short (often a matter of days). Security requirements are minimal and treatment activities are normally confined to efforts to arrange the return of detainees to their country of origin.

### State Adult Experience

Although the publicity that has surrounded Federal facility management contracts has led many to infer the emergence of a national trend toward "prisons for profit," little change was found in the contracting practices of State adult corrections agencies. Although new corporate providers had entered the field more aggressively than ever before, their most immediate prospects appeared to be confined to contracts for community-based facilities, closely resembling the halfway house or prerelease model that has been a standard feature of State corrections for many years. The population pressures that have required States to respond fairly rapidly to the need for larger facility networks may simply be prompting a shift in the characteristics of providers—from smaller voluntary groups to firms with stronger organizational capabilities. Whether this apparent trend will lead to contracts for the management of more secure adult facilities remains unclear, particularly in view of the

hesitance expressed by the majority of respondents to the NIC survey.

### Juvenile Facility Contracting

In the juvenile field, where so-called primary facilities often resemble secondary adult facilities in their community treatment emphasis, facility management contracts have been far more prevalent. The largest of these efforts, and the one most analogous to adult facility operations, is the Okeechobee Juvenile Training Facility operated in Florida by the Eckerd Foundation, the nonprofit arm of a major U.S. drug manufacturer. Awarded in the fall of 1982, the contract called for Eckerd to take over the operations of an existing facility serving between 400 and 450 committed delinquents. Currently the subject of an evaluation by the American Correctional Association, the Eckerd experience is certain to offer valuable lessons to contracting agencies in both juvenile and adult corrections.

### Local Jail Contracting

In many respects, the smaller fiscal and management capabilities at the local level provide a climate that may be most conducive to the development of private facilities. As Table 2 indicates, while opposition is high, so too may be the interest of local governments—particularly in arrangements that will permit the costs of jail construction and management to be shared across jurisdictions. In order to proceed with the construction of a local jail in Texas, one private contractor had sought Federal guarantees for the use of a portion of the space to detain aliens; the balance of the facility would serve moderate-risk county prisoners. Another contractor was aggressively marketing regional jail facilities that would be shared by two to four counties. (Notably, the only primary adult facility under negotiation at the State level was also based on the concept of interjurisdictional operations. A number of States had reportedly expressed interest in an institution slated for construction in Pennsylvania that would specialize in protective custody prisoners drawn from the populations of a number of State prisons.)

In short, while the market for confinement service contracting at the State and local levels is clearly in its nascent stages, interest is sufficiently high to warrant a careful examination

of the issues that may attend any further expansion of the private sector's role in correctional management.

### The Issues

In the politically charged environment of corrections, the concept of privately managed facilities raises a host of questions that range from relatively simple matters of legal feasibility to more complex issues of political philosophy. Figure 1 outlines the key issues to be considered in planning the development of proprietary institutions.

**Political Issues.** The political issues identified in the Abt report cover both conceptual and strategic considerations.

1. *Conceptual.* In a facility entirely operated by the private sector, a range of management functions involving

the classification and control of inmates (including the use of deadly force) might be delegated to a private contractor. Quite apart from any legal constraints on the delegation of these functions, some observers have questioned the fundamental propriety of such a shift. There are those who will argue that some functions (including the administration of justice) are the *raison d'être* of government and cannot nor should be delegated. With equal vigor, others will argue that there is a legitimate and necessary role for private enterprise in corrections management, and the level of individual decisions that may be required to manage the flow of inmates through a facility hardly constitutes an abrogation of the broader role of government in forming system policy. In the final analysis, the issue is grounds for lively ideological debate that calls for a careful definition of

the appropriate role of private providers and the limits to be placed on contracted functions.

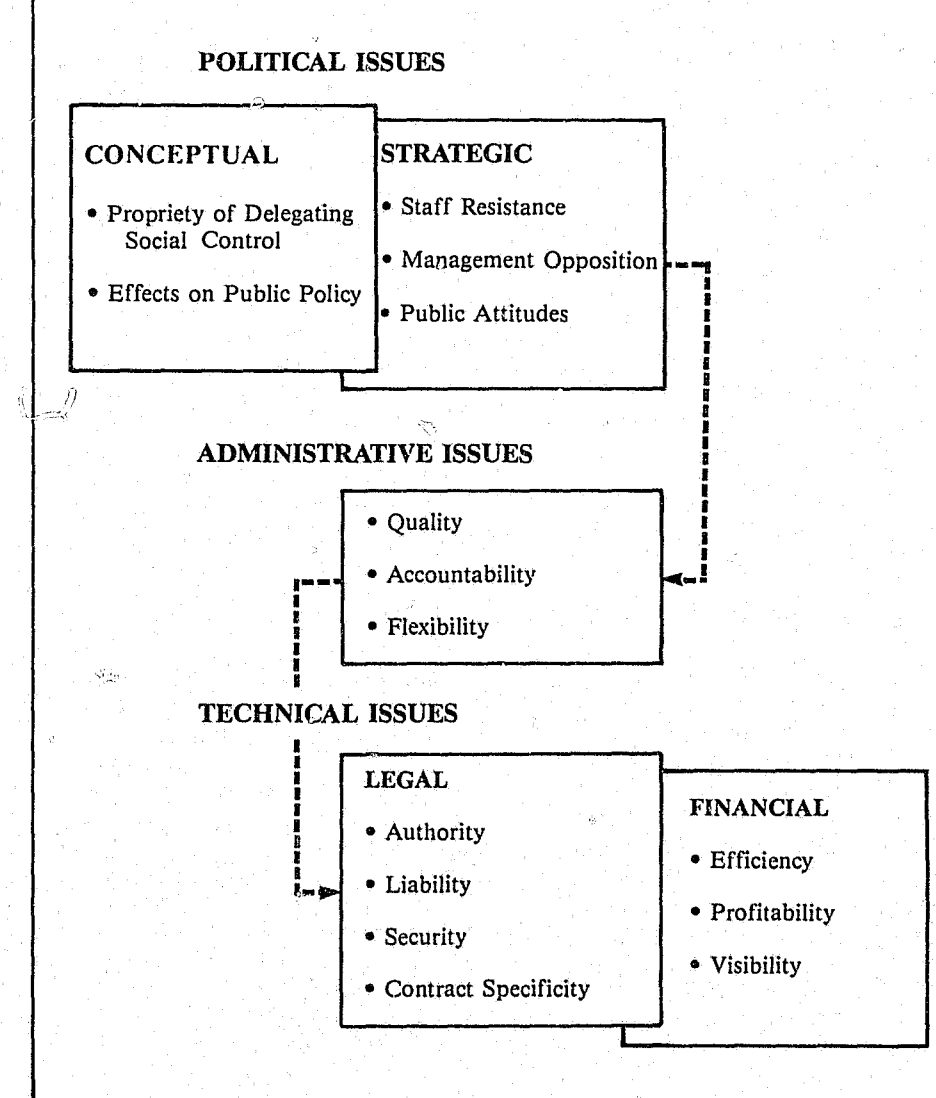
Another level of conceptual issues relates to the general concern that privatization may have unintended effects on public policy:

- Will private providers use their political power to lobby for the development or continuation of programs that may not be in the public interest? Or, will the corrections field, which typically operates without political advantage, benefit from the new lobbying skills of private providers?
- Just as the critics of commercialized hospital facilities fear that a larger share of the burden for providing nonreimbursable public services may be placed on public hospitals, will private facilities "skim off the cream of the crop," leaving the public correctional system with the most troublesome inmate management problems? Or, can contracting agencies develop a conscious policy of distributing contract ventures across populations of differing security and service needs?
- Will the economic motives of business conflict with the objectives of providing decent conditions of confinement? Or, will public agencies develop sufficient proficiency in contract specification and monitoring to resolve this concern?
- Will contractors be susceptible to the "Hilton Inn mentality," referring to the pressure to maintain high occupancy rates even in the absence of demonstrated need? Will the availability of a network of private facilities result in a "widened net of social control" as so often happened with the expansion of community corrections programs? Can payment provisions and careful admission, transfer, and release policies minimize these dangers?

Although no answers are now available, anticipating these issues may assist in controlling any unintended consequences.

2. *Strategic.* In the category of strategic issues, at least three sources of opposition to privately operated facilities can be anticipated. First, public employees may resist the loss of public-sector employment opportunities. Whether or not there is formal union opposition, some resentment from public employees as well as

FIGURE 1: Issues in Facility Management Contracting





strained relations between public and private corrections staff may be inevitable—particularly if private providers take over an existing public facility. The Okeechobee facility in Florida faced a good deal of opposition and staff turnover, leading most participants to agree that the time requirements for the takeover were extremely unrealistic.

General public attitudes may also constrain the development of private facilities. Fear about the security of private facilities may join traditional public reluctance to host a corrections facility in the community. In this context, private providers face substantial risk since they have no access to the override powers of government in coping with problems of community resistance.

Finally, corrections management may not be uniformly supportive of private operations that may threaten a loss of agency control. As the NIC survey has noted, "loss of turf" may, in fact, be more of an inhibitor to expanding the role of the private sector than the actual loss of employment for State workers. In short, contracting ventures are certain to require carefully planning precontract and startup activities, thoroughly calculating and communicating the anticipated benefits to the State, and actively lobbying to diffuse these sources of opposition.

**Administrative Issues.** Issues of quality, accountability, and flexibility dominate discussions of the managerial consequences of privatization.

1. **Quality.** Because the private provider is under competitive pressure to perform and is free of civil service restrictions and the cumbersome administrative procedures commonly associated with government operations, many contend that the quality of privately provided services is likely to be superior—at least in the short run. Whether there will be sufficient market pressure to sustain improvements over the long term remains uncertain. Adequate monitoring systems, frequent onsite inspection programs, and judicious rebidding and renewal procedures are the key tools available to ensure continued performance, and need to be carefully designed at the outset.

2. **Accountability.** As respondents to the NIC survey have suggested, the difficulties and the importance of the monitoring function cannot be overestimated. The potential loss of control over agency operations was a major reservation expressed by respondents in considering the liabilities of contracting. Addressing the issue of "who's in charge" requires clearly defining roles and responsibilities in the contract document and continuing efforts to communicate and review performance expectations. While quality control is inherently more difficult when the government is dealing with an independent provider and can exert only indirect control, corrections departments remain accountable for contracted services and will be faced with the need to adapt their supervisory practices in order to create an effective public-private alliance.

3. **Flexibility.** Most observers would agree that contracting offers public agencies the ability to respond to immediate needs with greater flexibility and speed than is typically possible under government operation. In times of severe crowding, this capability is particularly compelling. The possible cost may, however, be constraints on the government's ability to change course over the long term. Transferring facility operations from one contractor to another can be a logistically difficult matter. Contracting also means reducing the public sector's own facility management capabilities, making it more difficult to revert to public management or limiting the personnel pool available to meet future corrections management needs. Finally, fewer publicly operated facilities may mean fewer opportunities to shift staff or inmates among facilities for purposes of staff training or population management.

No one of these issues poses an insurmountable barrier. Many, in fact, become irrelevant if population pressures ease, for the option to terminate contracted facilities is then readily available. All, however, need to be considered in planning the types of facilities and contract arrangements best suited to the circumstances in a given correctional jurisdiction.

**Legal Issues.** Turning to more technical matters, at least four legal issues require careful consideration in the course of planning the development of proprietary facilities:

1. **Authority.** The first issue to be considered is whether States and counties have specific statutory authority to contract with private firms. Even where service contracting is authorized, legislative amendments may be required to permit contracts for primary facility operations. Specific language may also be needed to open contracting to for-profit organizations.

2. **Liability.** While correctional agencies may understandably wish to delegate both the authority and responsibility for facility operations, there is no legal principle to support the premise that public agencies and officials will be able to avoid or diminish their liability merely because services have been delegated to a private vendor. In this context, it becomes crucial to ensure that contractors observe appropriate staff selection and training standards.

3. **Security.** While there appear to be no legal barriers to the delegation of security functions, the issue is central to the debate on the appropriate roles of the State and its private providers. A variety of questions needs to be addressed in defining the proper role of the private sector in corrections management. Should positions that may call for the use of restraining or deadly force (e.g., perimeter security) be retained by the State? What role should the State play in internal disciplinary proceedings? Once again, if the decision is to contract these functions, staff training and supervisory requirements must be carefully specified. In addition to frequent review and inspection by contracting agencies, written client complaint procedures, client access to mechanisms for monitoring abuse, and periodic client surveys have been suggested as useful techniques to ensure the accountability of private providers.<sup>4</sup>

4. J. Michael Keating, Jr., *Public Ends and Private Means: Accountability Among Private Providers of Public Social Services*, National Institute for Dispute Resolution, N.Y., February 1984.

4. **Contract Specificity.** Perhaps the most important contracting issue is the development of appropriate standards of performance to govern the operations of private facilities. Without explicit standards, the goals of profit maximization may well conflict with the State's interest in maintaining safe, secure, humane facilities. The standards of the Commission on Accreditation for Corrections will provide a useful reference in drafting this aspect of the solicitation and subsequent contract.

**Financial Issues.** Last, but among the foremost issues of technical concern, are questions regarding the efficiency, profitability, and cost visibility of private facilities.

1. **Efficiency.** The relative costs of public vs. private management are a highly controversial aspect of the privatization debate. Advocates suggest that private vendors can operate equivalent facilities at lower cost due largely to the staffing efficiency that may be realized in the absence of civil service regulation, lower private-sector pension and benefits costs, and greater market incentives to increase productivity. Critics fear that the costs of private management will escalate once vendors become established, and point also to the costs of monitoring private providers as a potentially large hidden cost of management contracting.

Comparisons are difficult since public and private institutions may differ and the true costs of public facilities are often hard to isolate. The privately operated juvenile facilities described in the Abt report involved costs ranging from roughly \$30 per day at Okeechobee in Florida to \$110 per day at the Weaversville facility in Pennsylvania. The INS facilities for illegal aliens operate on average rates of \$23 to \$28 per day. It is difficult to determine, however, whether any of these facilities are less costly than public institutions, since figures for comparable public facilities are not generally available. Even where adequate data exist, strict cost comparisons may be confounded by the fact that the public corrections function is frequently underfunded. In this situation, higher costs may be a precondition for operating private institutions in accord with minimum professional standards.

Despite the difficulties, rigorous assessments of the cost issue are clearly needed. In fact, respondents to the NIC survey emphasized the importance of conducting a thorough cost-benefit analysis prior to contracting.

2. **Profitability.** The question of whether private providers should profit from providing a public service is an issue of both conceptual and financial concern. Some are offended by the concept of corrections as a business enterprise and fear that profit may be taken at the expense of sound corrections practice. Others point to the equivalent financial motivation of nonprofit organizations, the small and highly regulated opportunities for accruing profit, and the management and fiscal advantages of for-profit status. In the final analysis, choosing a private provider is no more or less than a decision to hire additional staff and is best made by evaluating the provider's history of performance, staff competence, and correctional philosophy, rather than its organizational classification.

3. **Visibility.** One of the advantages typically ascribed to contracting in public-sector areas is its ability to reveal the true costs of the public service. Corrections is no exception. The dollars required to serve particular numbers of clients under specified conditions will be clearly visible and more difficult to avoid through crowding and substandard conditions. While this may be a feature welcomed by correctional administrators, it remains unclear whether legislators and their voters will be prepared to accept the real costs of confinement practices that meet professional standards.

## The Next Steps

Private-sector participation in the adult corrections field clearly raises many complex issues of policy and law not encountered in other fields of human service. As such, it provides a particularly critical test of the limits of privatization—a test that warrants the most systematic planning, implementation, and evaluation efforts. The Abt report identifies at least five circumstances under which careful experimentation with privately managed facilities may prove fruitful:

1. **Rapid Mobilization.** Given the widely acknowledged ability of the private sector to move more rapidly to bring additional facilities and manpower on-line, combined with the uncertainty that surrounds future population trends, contracting may be useful at the State level to avoid permanent facility expansion but still accommodate near-term population shifts.

2. **Experimentation.** An agency can test new models of institutional corrections practice without making a permanent commitment or laboring under the constraints to innovation typically present in traditional corrections bureaucracies.

3. **Decentralization.** Greater geographic and programmatic diversity may be possible by calling on local contractors rather than trying to provide the same community-oriented services under the direct control of a centralized agency.

4. **Specialization.** The flexibility of private contractors to satisfy unique demands suggests that contracting for the confinement of offenders with special needs may offer significant relief to general-purpose institutions as well as more opportunities for the successful treatment of the "special management" inmate.

5. **Regionalization.** Finally, the private sector is not typically bound by the jurisdictional politics that might otherwise impede efforts to develop shared facilities among States or counties within a State.

As this list implies, the major challenge is not simply to turn "business as usual" over to the private sector, but to develop true private-sector alternatives to traditional public-sector corrections practices. As one former corrections official has asked, "Are they just going to run an outmoded system more efficiently or are they going to bring some real improvements and new ideas?" If the latter can be achieved, the emerging interest of the private sector in corrections management can only be welcomed.

**END**