

Approved 2-22-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on February 14, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Robert Frey, Kansas Trial Lawyers
Terry L. Hurley, United Telecommunications, Inc.
Dan McGee, centel Corporation
Dick Dilsaver, The Coleman Company, Inc.
Doug Mays, Kansas Securities Commission

Robert Frey, Kansas Trial Lawyers, requested a bill be introduced concerning the screening panel law K.S.A. 65-4903. Senator Yost moved the bill be introduced. Senator Parrish seconded the motion. The motion carried.

Senate Bill 116 - Corporations, business combinations with interested stockholders.

Terry L. Hurley, United Telecommunications, Inc., appeared in support of the bill. He testified this bill is virtually identical to Section 203 of the Delaware General Corporation Code, which was enacted and signed into law early last year. He stated it is important to point out what this bill does not do. This is not an "antitakeover bill". A copy of his testimony is attached (See Attachment I). Following his testimony, a committee member inquired does it apply to closely and publically held corporations? Mr. Hurley replied on page 6 of the bill, it does not apply to closely held corporations. Another committee member inquired what is the rationale of three years? Mr. Hurley replied the three year period is a compromise that was arrived at in Delaware. It is a pretty good balance to provide stability with corporations.

Dan McGee, Centel Corporation, testified the failure by the Kansas legislature to pass the bill may result in the reincorporation of Kansas companies under the laws of other states. The harm to Kansas from the resulting reduction in franchise taxes seems unnecessary, especially in light of the growing acceptance of takeover statutes. A copy of his testimony is attached (See Attachment II).

Dick Dilsaver, The Coleman Company, Inc., appeared in support of the bill. He testified passage of this bill would give Kansas the benefit of much hard work, deliberation and thought that went into the Delaware statute. It would provide numerous opportunities to effect a desired business combination within the specified three-year period if the proposed transaction is acceptable to the independent public stockholders when considered in a noncoercive atmosphere. A copy of his testimony is attached (See Attachment III). Following committee discussion Mr. Dilsaver suggested adding the word or on p. 6 (d)(1).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~p.m.~~ on February 14, 19 89

Senate Bill 116 - continued

Doug Mays, Kansas Securities Commissioner, stated he has no objection to this bill. The chairman asked Mr. Hurley to respond to questions from Mr. Mays. In response to a question Mr. Hurley stated from what I understand the bill is intended to apply to any corporation organized under the laws of Kansas. If you are organized under Kansas law then you come under the bill. This bill is so narrowly drawn it stands a very good chance of surviving a test even if it goes to the Supreme Court. Further committee discussion was held.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

Copy of an article from State Legislatures is attached (See Attachment V).

Mr. Chairman and Members of the Committee, I appreciate the opportunity to be here today. My name is Terry Hurley, and I am Senior Attorney with United Telecommunications, Inc. of Westwood, Kansas. I am appearing on behalf of United to express our support for Senate Bill No. 116.

United, incorporated in 1938 under the laws of Kansas, is a holding company with subsidiaries in a number of telecommunications markets. Currently, United owns 16 telephone operating companies doing business in 19 states, including the State of Kansas. United also is majority owner of US Sprint Communications Company, the nation's third largest long-distance telephone company, which is headquartered in the greater Kansas City metropolitan area.

Senate Bill No. 116 is virtually identical to Section 203 of the Delaware General Corporation Code, which was enacted and signed into law early last year. The Delaware law represents the cumulation of one of the most extensive legislative efforts concerning a corporation statute ever undertaken. Clearly, the bill before this Committee today is a well researched, carefully crafted piece of legislation.

It is important to point out what this bill does not do. This is not an "antitakeover bill". The proposed law does not in any way restrict the public's ability to acquire the stock of

Attachment I
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Kansas corporations on the open market. The bill also does not restrict or impair the voting rights of shareholders. Thus, this bill would not impair shareholders' ability to conduct a proxy fight or otherwise to influence Kansas corporations through the exercise of their voting power. Finally, nothing in this bill will prevent fully-funded tender offers that are extended to shareholders in a fair and equitable fashion.

The proposed legislation is aimed at curbing the use of abusive "two-tier" takeovers which have been employed repeatedly by takeover specialists in recent years. A two-tier takeover involves the acquisition of control of a target company (e.g., 50% plus 1 share) followed by a transaction, usually a merger or liquidation, in which the remaining target company shareholders are involuntarily squeezed out. These remaining shareholders often do not receive the same consideration for their shares as is paid initially by the takeover specialist in gaining control of the target company. This legislation would discourage these two-tier transactions by imposing a three-year moratorium on such transactions.

The proposed legislation is very narrowly drawn. The bill contains the following self-limiting provisions:

- (a) The board of directors may opt out under the law within 90 days of its effectiveness.
- (b) The shareholders may opt out under the law at any time, subject to a twelve month waiting period.
- (c) The bill does not preclude a less than 15% stockholder from proposing to the target's shareholders that they vote for a takeover of the company.
- (d) If the shareholder acquires 15% or more of the target's shares, he faces the three-year moratorium period with respect to transactions involving himself, but there is no prohibition against his operating the business if he can get control.
- (e) The three-year moratorium will not apply if the target's board agrees to the shareholders acquisition of 15% or more of the target's shares.
- (f) If the takeover specialist obtains 85% of the target's shares in a transaction which takes him above the 15% level, he does not need the consent of the target's board or disinterested shareholders. (Shares held by any director-officers and by certain employee stock ownership plans are excluded.)
- (g) If a 15% shareholder secures the board's approval to a combination and the approval of two-thirds of the disinterested shares, the three-year moratorium period will not apply.
- (h) In the event the target's board voluntarily entertains competing offers, the moratorium would not apply.

We believe the proposed legislation strikes a fair balance between two guiding public policy principals: holding management accountable for their actions; and encouraging long-term stability in our business institutions. Irresponsible management

will not be insulated from accountability by this bill. Managers still will be susceptible to proxy contests, derivative shareholder lawsuits, liability for breaches of fiduciary duty, and legitimate tender offers. On the other hand, the bill will discourage the kind of highly leveraged, speculative takeovers which have resulted in the dismemberment of very profitable, highly successful companies. Those transactions generally result in the erosion of our competitive base, adversely affecting long-term investors, employees, and the communities which are served by targeted companies.

Finally, some of the concerns which may be raised about this bill should be addressed. First, the proposed legislation will not cause share prices to go down over the long-term. Studies have been conducted on the share prices of companies organized under the laws of other states in which similar legislation has been adopted. Those studies have indicated no perceptible long-term decrease in share prices. Second, this bill does not significantly impair shareholders' basic property rights in their stock. The bill affects only business combination transactions involving the target, not the right to buy or sell shares.

Third, there is no indication that this legislation is unconstitutional. The Delaware law, after which this bill is patterned, has withstood several constitutional challenges since its adoption. Finally, the proposed legislation is not duplicative of the control share acquisition statute adopted last year in Kansas. This bill focuses on business combination transactions, not on shareholder voting rights. While the control share acquisition statute would apply only to those Kansas corporations having a substantial presence in Kansas, the proposed bill would apply to all major, publicly-held corporations organized and existing under Kansas law.

Testimony Presented to the
Senate Judiciary Committee
Senate Bill No. 116
February 14, 1989

Thank you Mr. Chairman for the opportunity to comment on SB 116, an act relating to business combinations. My name is Dan McGee. I am Director of Government Relations in Kansas for Centel Corporation.

As you may know, Centel Corporation is incorporated in Kansas. Centel supports SB 116 and appreciates the opportunity to inform you of our reasons for believing that the bill would serve the best interests of Kansas corporations and their shareholders, as well as the communities, employees and other businesses having relationships with Kansas corporations.

In recent years, there has been a tremendous number of corporate takeovers, both friendly and hostile. There is a good deal of debate whether these transactions are good or bad. On the one hand, some of these takeovers have led to the dismemberment of going businesses to pay off acquisition indebtedness, causing the loss of jobs and disruption of communities. On the other hand, there is also a recognition that in some instances, managements have done a poor job in their role as managers. The adoption of the bill does not require a resolution of this debate. With the increased volume of takeovers a consensus has developed to prevent the abuses that frequently accompany takeovers.

Attachment II
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Accordingly, many states in recent years have begun to address this issue with a view to setting up some ground rules, particularly for hostile takeovers. At this point, 33 states have adopted legislation. The bill is substantially identical to legislation adopted in February 1988 by Delaware, home to more than 50 percent of the Fortune 500 companies and more than 45 percent of all companies listed on the New York Stock Exchange. The Delaware legislation was adopted after the receipt of input from many different sources, including over 150 comment letters received from corporations, lawyers, Commissioners of the Securities and Exchange Commission and the Federal Trade Commission, executives, institutional investors, academics and others. Like the Delaware legislation, the bill is designed, not to prohibit takeovers, but to establish ground rules that serve the interests of all who have a genuine stake in the interests of the enterprise.

The bill contains the following features:

- The board or the shareholders can decide that they prefer not to be subject to the proposed statute.
- The bill does not preclude any shareholder from conducting a proxy fight to take over the management of the company.
- The bill does not preclude a less than 15% shareholder from proposing to the shareholders that they vote for a takeover of the company.
- If the shareholder acquires 15% or more of the shares, he faces a three-year cooling off period with respect to mergers with a

corporation he owns or other transactions with himself, but there is no prohibition against his operating the business if he can get control.

- The three-year cooling off period will not apply if the board agrees to the shareholder's acquisition of 15% or more of the shares.
- If the acquiror obtains 85% of the shares in a transaction that takes him above the 15% level, he does not need the consent of the board (shares held by director-officers and by certain employee stock ownership plans are excluded in determining whether the 85% level has been crossed).
- If a 15% or higher shareholder secures the approval of the board and the holders of 2/3 of the disinterested shares, the three-year cooling off period will not apply.

These provisions indicate that the bill is restrained, moderate and in no way stops takeovers. Nothing in the bill will prevent an acquiror from making a full and fair offer for all of the company's shares. By the same token, the bill provides for an orderly process by which shareholders can decide whether they favor a change of control in the company and does so in a manner that affords minority shareholders substantial protection against abusive takeover tactics.

Although it has adopted a control share acquisition statute, Kansas should nevertheless adopt the bill. Like Centel, many Kansas corporations may not be covered by the Kansas control share acquisition statute because they have an insufficient number of Kansas shareholders. When the Delaware statute was under consideration, there was some concern that the statute would not withstand a constitutional challenge because of its applicability to corporations that, apart from being

incorporated in Delaware, did not have significant contacts there. The Delaware statute has been challenged several times since its adoption, and no court has yet held the statute to be unconstitutional, thus upholding the ability of the states to make legislative determinations on these matters of corporate governance.

Centel provides a good example of the public need for protection against abusive takeover tactics. Centel provides telephone and electric utility services, including electric utility service to customers in Kansas. Many takeovers have been accomplished by acquirors who incur large amounts of indebtedness. The indebtedness in turn creates pressure on the company to reduce costs or sell assets. In the case of a company providing utility services, these measures may result in diminished quality of services to the customers. The bill would assist boards of directors in negotiating with an acquiror, thereby enabling them to address the broad range of interests affected by their companies.

The failure by the Kansas legislature to pass the bill may result in the reincorporation of Kansas companies under the laws of other states. The harm to Kansas from the resulting reduction in franchise taxes seems unnecessary, especially in light of the growing acceptance of takeover statutes. We believe that the takeover legislation passed by many states signals a recognition that corporations are long-term business institutions that require a framework of

stability and long-term thinking. To pursue these long-term goals, it is important that corporations not be distracted by the goals of corporate raiders who desire to make short-term profits. We believe that the bill is an appropriate method of preventing these abuses while not foreclosing takeovers in general.



The

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February 14, 1989

To: The Senate Judiciary Committee
Sen. Wint Winter, chairman

From: The Coleman Company, Inc.

Re: Senate Bill 116

Chairman Winter and members of the committee, I thank you for this opportunity to address the committee in support of Senate Bill 116. I am Dick Dilsaver of the corporate communications department at The Coleman Company, Inc. of Wichita.

Yesterday, I delivered to Chairman Winter a letter from John Reiff, senior vice president - law and personnel at The Coleman Company, who wanted to address you today but cannot do so because of a prior commitment. Mr. Reiff said he wanted to be sure that he had clearly stated that Coleman strongly supports SB 116. I am here to share and reinforce that view with the entire committee and to ask that you give this bill favorable consideration.

Last year, the Legislature adopted a bill that was co-sponsored by 28 senators, including eight of you. It was the "control share" statute designed to "level the playing field" in the corporate takeover arena. The statute was modeled largely after an Indiana law approved by the United States Supreme Court in 1987. We believe SB 116 is a logical and desirable additional step for Kansas to take. However, please understand that we request the Legislature does not modify or repeal the control share statute adopted in 1988.

After the Supreme Court decision on the Indiana law, many states adopted control share statutes. Others, notably Delaware, have taken other approaches. Delaware, after much debate, passed the type of law incorporated in SB 116. We urge the Legislature to consider SB 116 favorably as part of an historical and desirable effort to keep Kansas corporation laws nearly identical to those of Delaware.

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Passage of SB 116 would give Kansas the benefit of much hard work, deliberation and thought that went into the Delaware statute. We emphasize that SB 116 would not prohibit tender offers, and it would not interfere with the voting rights of interested stockholders or with their ability to acquire more shares. It would not prevent proxy fights, and it would not prevent an interested stockholder from using his or her voting power to take control of the operations of the corporation. It would provide numerous opportunities to effect a desired business combination within the specified three-year period if the proposed transaction is acceptable to the independent public stockholders when considered in a noncoercive atmosphere.

Again, The Coleman Company strongly supports SB 116 and asks that you approve it.

A handwritten signature in black ink, appearing to read "Dick Dilsaver". The signature is written in a cursive style with a large, sweeping initial "D" and "I".

Dick Dilsaver



The Complex Case of Costly Corrections

By Julie Lays

One out of every 420 Americans is behind bars today—at a staggering price. Can we afford to be tough on crime?

After Oklahoma state Senator John McCune, a 20-year legislative veteran, advocated early release of some non-violent inmates to ease the costly prison overcrowding problem in Oklahoma, he was defeated in the next election.

McCune, once the Senate's expert on prisons, acknowledged that support for alternatives to incarceration is viewed by many as being "soft on crime." "It cost me my seat," he said.

Yet the increasingly high costs of corrections are causing prudent lawmakers to realize how "getting tough

on crime" is tough on the state budget. More stringent law enforcement, higher conviction rates and longer sentences are making already crowded prisons and jails even worse. The expense of building new prisons, as well as such operating costs as health care, salaries, food, clothing and security devices, continues to increase.

"The cost of operating the nation's prisons and jails has tripled during the past decade," says James Austin, director of research for the National Council on Crime and Delinquency. "Many states are now seeing that escalating prison budgets threaten to curtail vital services for health, education and transportation. Unless there is a significant reversal in these trends, prisons will continue to be the growth industry for most states. We are simply punishing beyond our means."

Nationwide, the prison and jail population has doubled in the past decade. There are about 600,000 prisoners in state facilities today—that is one of every 420 Americans—the highest rate in the Western world. State spending for corrections continues to grow at a faster rate than total state spending.

According to the Criminal Justice Institute, 68.4 percent of American prisons are operating above capacity, 36.7 percent are operating above 125 percent capacity, 21.7 percent above 150 percent, and 1.7 percent above 200 percent. In fact, at least 37 states are now under court orders to reduce prison overcrowding. This leads many lawmakers to assume the solution lies in building new prisons. But it is an expensive solution.

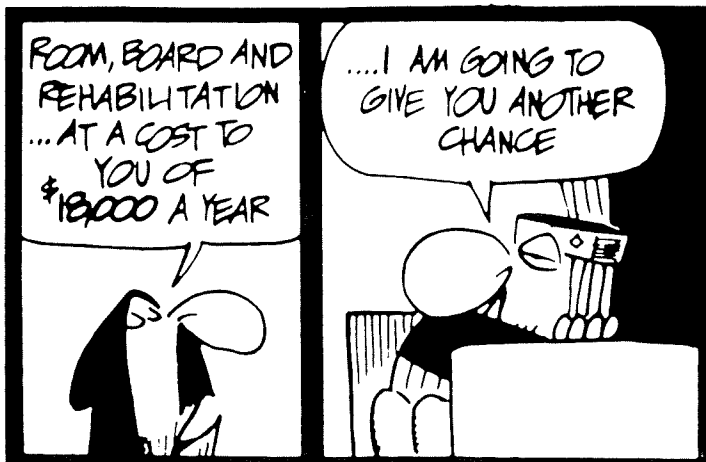
A new 500-bed prison typically costs between \$15 million and \$60 million. According to the *Corrections Compen-*

SAC

Julie Lays is an assistant editor of State Legislatures.



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.m, depending on the type (low, medium or maximum security) and the location of the prison, new prison beds can cost between \$3,500 and \$116,000 to construct. The average cost is about \$42,000 per bed.

In North Carolina, the largest prison construction program in the state's history is under way—the construction of 2,554 beds and facilities at a cost of \$29.3 million. In Michigan they're building 19 new prisons. "There's no bigger growth industry in the last two years in Michigan than the corrections department," said Senator Jack Welborn. Alabama has spent \$90 million in the last five years for prison construction; that translates into almost \$1,000 per Alabama family per year. "Texas needs to build 25,000 beds immediately," says the mission statement of the Texas Department of Cor-

rections, "and then one prison every eight months to infinity" to keep up with the incarceration rates. And California estimates it will take up to \$6 billion worth of construction to solve its prison and jail crowding crises.

"This is craziness," said Senator Sue Wagner, referring to her state of Nevada, which has the highest incarceration rate in the country. "I can't believe the citizens of my state want to build a new prison every time we legislators get together in Carson City."

While building prisons is costly, keeping them going is even more expensive. Prisons are complete, miniature communities that provide health care, vandal-proof shelter, food, water and sewer, recreation and employment all in a secure environment. "Construction costs are only a fraction of the

operating costs of prisons," said Tennessee Senator Bill Richardson. Keeping an inmate in prison usually runs between \$10,000 and \$39,000 a year. In some states costs are far higher.

And if you think more liberal use of the death penalty would save money, think again. According to Jonathan Gradess, executive director of the New York State Defenders Association, the cost of life imprisonment for 40 years is around \$602,000 while the expense of a model New York capital case across the first three levels of review—the trial and penalty phase, the appeal and the review in the U.S. Supreme Court—is about \$1.8 million. He agrees with Justice Thurgood Marshall's statement of 15 years ago: "When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in

Ways to Cut Costs Are Already in Motion

• *Intensive Probation.*

Georgia's intensive probation program, a model for projects in several other states, began in 1982. Costs are controlled by keeping certain non-violent offenders out of state prisons, sentencing them instead to intense probation that requires five face-to-face contacts per week with a surveillance officer, 132 total hours of mandatory community service work, mandatory employment, a weekly check of arrest records, and routine and unannounced alcohol and drug testing. Offenders spend six to 12 months in the program followed by a year on regular probation. Most have committed property or drug-related offenses. The program costs an average of \$1,600 per offender per year compared to \$9,000 to incarcerate one inmate.

• *House Arrest.*

Florida has led the way in this area, but many states are beginning to see the benefits of such programs. The North Carolina General Assembly appropriated \$253,000 last year to expand the electronic house arrest program, whose first-year funding was \$65,000.

Wyoming is experimenting with a house arrest program at a start-up cost of only \$30,000. It's Surveil-

lance and Tracking of Offenders Program (STOP) places non-violent property offenders under house arrest monitored by special electronic devices, allowing them to leave home only to go to work or to pre-approved appointments. Governor Mike Sullivan said the cost of STOP is \$14 a day compared with \$35 a day in the state prison.

• *Sentencing Guidelines.*

Chase Riveland, director of the Washington Department of Corrections, estimates that sentencing guidelines have saved his state the cost of three new prisons. Some \$30 million has also been returned to the general fund. In fact, the guidelines have been so successful in reducing prison populations that Washington can rent cells to other states, housing their inmates for \$60 per day, per cell. The program is expected to bring the state \$20 million between 1987 and 1989.

• *Prison Industries.*

In California the Prison Industry Authority, which employs more than 5,000 inmates, says it saves taxpayers \$17 million annually in housing and program costs. By 1991 this savings is projected to increase to \$55 million.

In Minnesota, between 5 percent

and 10 percent is deducted from inmates' wages if they earn more than \$50 every two weeks, allowing the corrections department to transfer up to \$100,000 each year to the Public Safety Department's Crime Victims Reparations Board. The funds are used to pay such victims' costs as medical bills, counseling expenses, funeral expenses, support for dependents and loss of wages.

In Illinois, prisoners have been trained in the removal of asbestos and have begun to remove the material from correctional facilities. Correctional Industries Superintendent Robert Orr projects the cost of using the inmates for one building at \$150,000, compared to an estimate of \$300,000 to \$500,000 if a private contractor did the work.

Best Western International, a non-profit association of hotel and motel owners, installed and paid for a computerized telephone reservation system in a minimum-security facility near Phoenix, Ariz. The company trains inmates and pays them the same wages as other agents. Prisoners get to keep a third of their pay, a third goes to the state to offset the cost of incarceration, and a third goes to a trust fund set up for inmates being released.

—Julie Lays

Annual Cost of Sentencing Options

(Exclusive of Construction Costs)

Option	Annual Cost
Routine probation	\$ 300- 2,000
Intensive probation	\$1,500- 7,000
House arrest	
Without electronics	\$1,350- 7,000
With telephone call-back system	\$2,500- 5,000
With passive electronic monitoring	\$2,500- 6,500
With active electronic monitoring	\$4,500- 8,500
Local jail	\$8,000-12,000
Local detention center	\$5,000-15,000
State prison	\$9,000-20,000

Source: Joan Petersilia in *Expanding Options for Criminal Sentencing*, Santa Monica, Calif.: The RAND Corporation, November 1987.

prison for life."

Prisons are assailing state revenues. In Ohio, the corrections budget increased 16.5 percent last year while the general budget grew only 4 percent. Texas' general budget grew by 6.8 percent, its corrections budget by 33.8 percent. California's operating budget for the department of corrections reached \$1.2 billion in 1985 and is expected to hit \$3 billion by 1990. According to Greg Schmidt, chief consultant to the California Senate Judiciary Committee, the department of corrections has become "California's version of the Defense Department."

In 1987, according to the Census Bureau, the 50 states spent more than \$11.7 billion on corrections, including \$9.3 billion for current operations and \$1.4 billion for construction.

One reason corrections costs are taking up a bigger portion of the general state budget is that state aid for local corrections programs is now the fastest growing category of state aid to local government. Total state spending for corrections was \$11.7 billion in 1987; local aid is 8 percent of all state corrections expenditures. In fiscal 1987, states provided \$932.5 million in aid to local governments. This represents nearly four times as much corrections aid as was provided in 1980.

Of course, state corrections aid to local governments varies tremendously from state to state. In five states—Connecticut, Delaware, Hawaii, Rhode Island and Vermont—all corrections expenditures are made by the state government. Nineteen states did not offer local aid in 1987. In the remaining states there are wide differences in how

specific responsibilities are allocated. For example, some states house state prisoners in local jails but in other states they must be housed in state prisons. In fact, many states use local jails to house state prisoners without fully reimbursing the local governments.

"We need to look more strongly at alternatives instead of building more prisons," says Parker Evatt, a member of the South Carolina House of Representatives for 13 years and now the commissioner of the South Carolina Department of Corrections. "Our prison system is growing by about 800 people per year. That's a new prison every year. Let's look at more home arrest, intensive probation, restitution centers, halfway houses and parole and probation. Let's really use electronic monitoring instead of playing with it."

Are these alternative programs cheap? No. Are they cheaper than incarceration? Usually. For example, Georgia has a number of alternative programs—from basic probation to intensive probation and home confinement to "boot camp" for young convicts—that range in daily costs from 75 cents to \$36.50 per person. The cost of keeping an inmate in a Georgia prison is estimated at \$36.85 per day.

Intensive probation supervision is one alternative being tried in 40 states. Most programs require community service, periodic checks of local arrest records, curfews or house arrest, random drug and alcohol testing, restitution to victims, employment and payment of a probation fee.

Home arrest, often using electronic monitoring devices, is another strategy being used in at least 50 different loca-

tions. Home arrest allows non-violent criminals to be incarcerated in their homes rather than in premium prison cells. If they leave home without permission, the electronic anklets or bracelets will report that to the police.

Sentencing guidelines have been used successfully in a couple of states not only to standardize penalties but also to reduce costs. The guidelines are based on a grid that coordinates a specific offense with the criminal's record. The systems ensure that costly prison space is reserved for truly dangerous criminals, while the non-violent offenders are subject to a variety of alternative punishments.

Can states save money through inmates' labor? Most states operate prison industries, which can take at least three different forms: production of such things as desks and license plates, for use directly by government; use of prisoner labor for prison maintenance; and private sector jobs within prison walls.

Forty-eight states and the federal prison system have more than 56,000 prisoners working in prison industries producing more than \$860 million in annual sales, mainly to federal, state and local governments and non-profit organizations. About 10 percent of all inmates work in prison industries.

A major benefit of prison industries is that they are usually self-supporting, or even if they are not, they are less expensive than alternative inmate services such as vocational training and basic education. In some states, inmate wages, which averaged about \$3 per day in 1986, have deductions made to reimburse the corrections department for a portion of the cost of the inmate's incarceration, to contribute to the financial support of their families, and to pay into victims' compensation funds. In addition, 16 states have experimented to a lesser degree with private-sector prison industries in which inmates work for a private firm operating within the prison. Inmates may earn the minimum wage and contribute relatively large amounts of the costs of their incarceration.

With new prisons needed every year to keep up with the "lock 'em up" philosophy prevalent today, something is going to have to give. Until the public accepts alternatives to incarceration as legitimate punishment, legislators will be faced with tough decisions.