

Approved: 4-11-97
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Joe Kejr at 7:30 a.m. on March 27, 1997 in Room 522-S of the Capitol.

All members were present except: Representative Andrew Howell, Excused

Committee staff present: Stuart Little, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Lynn Workman, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Chairman Joe Kejr recognized former Secretary of Corrections Roger Endell who spoke to the committee on the correctional history in the United States. (Attachment #1)

He also presented information on Correctional System Services, a private company of experienced correctional, medical and design professionals working in a public/private partnership toward meeting the special needs of governmental correctional agencies. (Attachment #2)

After his presentation, a question and answer session was held for any questions the representatives had on his presentation.

The next meeting is scheduled for March 28, 1997.

SELECT COMMITTEE ON CORRECTIONS AND
JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE: March 27- 7:30

NAME	REPRESENTING
Doug IRVIN	QJA
Tom Bruno	Allen & Assoc.

KANSAS CORRECTIONAL ISSUES, 1997
AN OVERVIEW FOR POLICYMAKERS

by
Roger Endell
March 17, 1997

After 200 years of correctional history in the United States we have learned that correctional reforms are cyclical. The reforms of the past have often been built upon a variety of popular fads that have come and gone in our criminal justice system. It has not been until quite recently, however, that the public has become increasingly concerned with the higher and higher costs of governmental operations in general. New correctional reforms are more likely to be initiated now because of the public's dissatisfaction with government spending as well as with a concern for more acceptable and efficient results from our correctional systems. There is a perception that the public wants reform of governmental spending at the same time that it wants a reformed offender population.

Although there are always a multitude of opinions about correctional system operations, there are some truths that should be shared with a wide public audience about these very large and complex systems:

- 1) The growth of correctional populations can be controlled.
- 2) Economics, not emotionalism, should and will cause correctional policies to change.
- 3) Correctional reforms rarely are initiated from inside the system.
- 4) Diversion of low risk offenders from the government's main line prisons to specialized facilities will lower costs and free up high security bed space.
- 5) Public/private partnerships can lower governmental costs.

Before discussing the truths further, a look at recent Kansas correctional history might be useful.

Ten years ago the Kansas Legislature and the Department of Corrections worked diligently together to resolve some long standing and difficult correctional issues. The Department developed an in-house master plan which was determined to be achievable by both the executive and legislative branches of government. A major 10 year old class

action lawsuit was resolved. A pending lawsuit from the U.S. Department of Justice concerning inadequate medical care was resolved. A Justice Department lawsuit regarding sexual harassment against female employees at the Penitentiary was resolved. And finally, the Kansas correctional overcrowding crisis was resolved by several methods:

- 1) Norton State Hospital was converted to correctional use.
- 2) The Ellsworth facility was redesigned, expanded and completed.
- 3) A tractor sales building in Stockton was converted to correctional use.
- 4) A trailer manufacturing plant in Hutchinson became a correctional work facility.
- 5) The El Dorado maximum security facility was designed and built.
- 6) A new correctional psychiatric center was built at Larned.
- 7) 400 community based pre-release center beds were authorized and opened.
- 8) Many new parole officer and probation officer positions were added.
- 9) The Department of Corrections was reorganized.
- 10) The Criminal Justice Coordinating Council was created at no cost to the State.
- 11) The Kansas Sentencing Commission was created to monitor and control the growth of the correctional system.

My message today is nothing more than a reminder: Growth of the correctional system can be controlled! However, we must differentiate between logical criminal justice policy and political posturing which, when not controlled, can cost taxpayers a lot of money.

The temptation is always to fund temporary correctional system solutions to overcrowding, or to fund planning efforts, that divert attention away from more difficult problem solving commitments.

If they come, you must house them! However, there are a multitude of options all along an economic line.

I learned long ago that the appeal to humanitarian concerns will get some folks' attention, but the discussion of economic alternatives attracts everyone's interest. I also like to translate the very complex correctional system issues to an analogy, comparing a filled bathtub to the correctional system situation. It is still useful.

If the flow of water into a bathtub is increased, without a corresponding change in the water going out the drain, we will certainly have a disastrous overflow. There are three basic choices available to cope with the problem. First, we can change the inflow by diverting some of the water to options other than our main bathtub. Secondly, we can speed up the outflow by developing release and pre-release options away from our huge bathtub. Third, if we have rejected these options, we have little choice. We must build a bigger bathtub!

In truth, in fact, and logically, Kansas has an adequate number of high and mid level security beds. What Kansas does not have is a sufficient number of inflow, out flow, and special needs diversion beds. Diversionary beds allow us to move people out of the main line facilities and thereby uncrowd the secure system.

Diversion will provide the solutions! Ironically, most governments are reluctant to divert low risk offenders to lower cost environments, mainly because they have not developed diversionary options to their main line responsibilities of managing the entire prison system. Help in the form of a host of alternatives is available, but first government has to change its thinking about its correctional system's mission.

Public/private partnerships can offer alternatives to governmental traditions. Typically government representatives at all levels, city, county, state and federal, will argue that if they just had a few more critical employees they could be more efficient. The private sector argues precisely the opposite. Efficiency generally increases with less overhead, e.g. the private sector's goal is generally to be as efficient as possible with the fewest number of people reasonably required to get the job done.

Kansas government can be directed immediately to reinvigorate efforts through both the Kansas Sentencing Commission and the Criminal Justice Coordinating Council to bring the Kansas Department of Corrections population growth to zero. That is, they can take whatever steps are necessary to insure that for every inmate entering the system an equal number is leaving. If this is not acceptable, then they must determine how many new beds they are willing to fund each and every year and what an acceptable level of annual growth shall be.

These two councils, with the Department of Corrections, should monitor and manage tightly the number of monthly probation and parole revocations that are causing over 100 inmates a month or more to come back into the correctional system, especially those coming back for "condition" violations (technical, not law violations). These offenders could easily be held in far less expensive community halfway-in houses, or restitution, or work release centers. This effort should also result in giving the sentencing courts additional options for sentencing low risk offenders to a smorgasbord of community based options, all of which will be at less cost than full scale incarceration in the main prison system.

Rather than continue to prioritize prison populations almost entirely on the basis of security classifications, the American Correctional Association and other professional peripheral groups are suggesting that we begin to focus problem solving efforts around offender groups with special needs.

Special needs offenders include for example, female offenders, geriatric prisoners (defined as 50 and over), the chronic medically ill, the alcohol and drug (or substance abuse) offender, the mentally ill, sexual offenders, first offenders, protective custody, etc. The private sector will be eager to develop resources to meet the needs of these special needs populations, and very efficiently. The National Institute of Justice said in its October 1987 research report on the private operation of prisons and jails: "...A number of sources seem to agree that contracting out could be particularly successful if it concentrated on prisoner groups that have specialized requirements. Not only can private prison conditions be tailored to meet the needs of these inmates, but it is probably more cost effective to house them together than dispersed in general prison settings. Such clustering permits economies of scale which otherwise are precluded." The report was written 10 years ago. Much more has been written since then, encouraging more and better public/private partnerships in resolving the growing and expensive correctional crisis.

The private sector can design, finance, build, and operate fully accredited correctional facilities faster and at less cost than government. The government should set and monitor standards of operations of its private sector partners in a fair and impartial manner while the State's continues to operate the main line security prisons. Again, work release, pre-release, restitution, community service and other special centers can be operated under contract quite efficiently by the private sector in a partnership contract with the government. Female facilities are specialized correctional facilities, or should be. So are facilities for the chronic medical inmates and geriatric prisoners who often become targets and victims in the typical secure prison environment. Several states, including Texas with one of the largest correctional populations, have moved in recent years to special needs populations facilities, many operated by the private sector.

We believe so strongly in this reform effort that we are seeking a host environment where we can implement the public/private partnership in the State of Kansas. My partners and I know Kansas and have worked in and with the Department of Corrections and with many of you in the Legislature on correctional issues. We are hopeful that we can work with you to develop a successful model which others will want to emulate. We believe we can develop our model in a way that all parties will benefit including the taxpayers of the state. We will put our prisoner population to work at prevailing community wages inside our facility with free space to local businesses and industry. From inmate wages will be deducted partial cost of care, taxes, family support, restitution, savings toward release, and money for inmate incidental purchases. An amount equal to the inmate's partial cost of care contribution will be deducted from the State's contract. In this way all parties win. There is an economic reason for everyone to support the program. The inmate, the business community, the private operator, the State, and the taxpayers all win.

This program can and will be carried out in an environment of rehabilitation with specialized attention to the offender populations' special needs, and with greater speed and less cost

If necessary a special needs correctional facility can be designed and built in phases with housing made available very rapidly while the remainder of the facility is completed. These facilities can be financed by either the private sector or by government.

While these are a few suggestions, there are a multitude of options available to redirect the growth of correctional systems. The Kansas Department of Corrections is a good, competent, professionally operated system which needs your assistance and your leadership. We would like to work with you and that leadership to develop a true public/private partnership which results in a more efficient and effective criminal justice system.

In closing , let me repeat briefly some truths about correctional system policy making:

- 1) The growth of correctional populations can be controlled.
- 2) Economics, not emotionalism should and will cause correctional policies to change.
- 3) Correctional reforms rarely are initiated from inside the system.
- 4) Diversion of low risk offenders from the government's main line prisons to specialized facilities will lower costs and free up high security bed space.
- 5) Public/private partnerships can lower governmental costs.

- At \$203m for FY 98, the State is spending less than 3% of the total budget on Corrections (p. 6).
- Per capita operating costs for the entire KDOC system are \$51. per day (p. 9). These costs do not include capital expenditures. For example, the El Dorado facility would move from \$36.42 to at least \$56. per day, and perhaps much more, with capital costs included. Secondly, double bunking appears to lower the daily costs of operations considerably, but still does not account for the \$55m initial costs of designing and constructing the complex or the costs of financing for 20 or more years.
- The correctional system is nearly full with a 12/31/96 population of 7755, and a system rated capacity of 7883 counting recent double bunking and renovations (p. 14).
- KDOC is predicting a shift in growth toward higher custody (security) levels (p. 14).
- Corrections is planning on 1532 new beds in a multi-year expansion, costing \$58.4m in capital costs (p. 15).
- The female population in the correctional system has nearly doubled since 1991, from 242 to 478 by the end of 1996 (p. 39).
- On 12/31/96 28% (2015) of the male capacity was devoted to maximum security space, 44% (3165) to medium security space (72% combined), and 29% to minimum security (2105) = 7288 male capacity (p. 42). (At p. 66 these figures become 26%, 40%, and 34% respectively).
- Kansas Sentencing Commission projections show that the greatest need now and in the future is for minimum security beds, both male and female (p.49).
- The use of post-incarceration management has remained relatively flat since 1991, averaging 5600 inmates (pp.51 - 54).
- Inmate revocations, the average admissions due to technical violation of conditions (not law violations) averages 150 new inmates per month since 1994 (p. 57). In FY 96 there was one return for every 3.5 ave. daily population, in regard to conditional violation returns (p. 60).
- On 12/31/96, out of a total statewide institutional population of 7755 inmates, 194 were located at the Wichita Work Release Center, or 2.5% of the total inmate population (p. 64).

- The current Community Corrections program costs from \$4.80 to \$8.28 per day for all 9414 offenders who took part in FY 96, or for 5459 average daily population (p. 83).
- The in-state parole population supervised by KDOC parole officers on 12/31/96 was 5335 (p. 95). Parole supervision costs less than \$4.00 per day (\$7.1m for FY 97 / 5335 inmates = \$1,341 per inmate per year / 365 days = \$3.67 per day).

CORRECTIONAL SYSTEM SERVICES

Correctional System Services, a private company of experienced **correctional, medical and design professionals**, is dedicated expressly to working **in a public/private partnership** toward meeting the special needs of governmental correctional agencies.

Our commitment is to meet the environmental and programmatic requirements of the special needs incarcerated offender. We focus specifically on the significant portion of the correctional population which needs ongoing medical care while confined.

Correctional System Services will finance, design, build, and operate **a correctional medical center** specifically to meet the needs of the special needs offender, as well as the needs of the correctional agency client, in a public/private partnership.

In every project we will operate the highly specialized correctional medical center environment in a cost effective manner. Our objectives are to **reduce capital and operating costs to the client agency**, provide **high quality medical care** to a difficult and **growing segment of correctional populations**, and simultaneously **free up bedspace** desperately needed by overcrowded correctional agencies.

We will operate the correctional medical center as a restricted multi-custody environment with secure building perimeters and secure center grounds. Our target population will accommodate a wide range of offenders whose common element will be the need for custodial care of chronic medical ailments.

Select Committee on Corrections +
Juvenile Justice

3-27-97

Attachment #2

Page 1

Crabell

All facilities and programs designed, built, and operated by Correctional System Services will meet or exceed American Correctional Association standards. All facilities will achieve ACA accreditation as early as reasonably feasible after commencement of operations.

In addition to a complete medical environment developed to meet the chronic medical maintenance needs of the offender population, our rehabilitative programs will include literacy, GED, work skills, group and individual counseling, religious, recreational and vocational resources which will be available to all inmates.

For those offenders determined by the medical staff as able to work, a variety of work opportunities will be provided. These will include the traditional jobs maintaining and operating the correctional medical center, but will also include joint-venture prison industries. The joint ventures will **bring private sector industries into the correctional environment** where goods and services can be produced with inmate labor for the benefit of private sector community industries. **Offenders at work in this program** will be paid the wage prevailing in the community for similar work, but **will pay taxes, pay partial cost of care, set aside money for restitution, savings toward release, and retain a small amount for incidental purchases.** The **governmental correctional clients' cost will be reduced** by an amount equivalent to the inmates' contribution to his partial cost of care.

We believe that this programmatic effort brings a significant benefit to all parties. The **government**, and therefore the **taxpayer**, **benefits from lower costs of care and the creation of additional bed space for a difficult to supervise correctional sub-population.** The **offender benefits** from an environment specifically designed and operated to address his **chronic medical maintenance needs.** The offenders deemed able to work are offered **real world rehabilitation programs** in both education and work environments focused on teaching real world work habits and skills. The **small business and industry owners** in our communities **benefit through** the use of inmate labor to produce goods and services that **might not otherwise be developed.** The offender is paid a reasonable wage from which legal and logical deductions are made for his, the victim's, and the government's benefit.

In summary, Correctional System Services is interested in bringing **high-quality, reasonably-priced innovative ideas to fruition while serving our governmental correctional agencies' needs.** We believe that a true public/private partnership provides the framework for a correctional rehabilitation model which both private and public sectors should want to emulate and replicate. We believe that our model, which brings together the many pieces and parts of programs and innovations which already exist in a variety of forms across the country, should exemplify the best in public/private partnerships. **Our ultimate objective is to be efficient, effective, and exemplary as a model of good social-justice policies and programs in action.**

THE CORRECTIONAL SYSTEM SERVICES TEAM

Our team principals represent many years of experience in three different but **complementary professions**. We merge the hands-on experiences of a **correctional** Commissioner/Secretary/Director with a business executive/owner of a **medical** practice, and a well-established **architectural** firm with excellent credentials in correctional and medical environments and design. **All have strength and depth of knowledge as well as experience with the leaders in Kansas' business and government sectors.**

Roger Endell has directly managed three state correctional systems. While Secretary of the Kansas Department of Corrections (1987-89) he worked diligently and successfully with representatives from the judicial, legislative and executive branches of government to resolve Kansas' long-term correctional deficiencies. Mr. Endell completed policy review and advisory level functions at the university level and has worked nationally as a correctional consultant. He brings nearly 30 years of both academic and correctional administrative experience to our team.

Bill Livingston is the cofounder, president, and CEO of Gossen Livingston Associates Incorporated. During the course of its 25-year history, Gossen Livingston has earned respect for its creativity, cost effectiveness and client-oriented methods of doing business. Gossen Livingston has been awarded the State of Kansas' most significant correctional and long-term healthcare projects. These industries incorporate a blend of public and private agencies and investors as clients. Mr. Livingston's experience extends beyond the knowledge of these industries to include both the business expertise and political sensitivity that is vital to the Correctional System Services team.

Donald Callaway is founder and CEO of medical Trans Systems Inc., Concordia Lab Inc., and Concordia X-Ray Inc. Prior to the development of these companies, he served as business consultant to numerous medical practices within the state of Kansas, offering such professional assistance as physician recruitment, staffing assistance, and overall business and financial management. His emphasis on the business of medical care completes his 28 years of diverse experience and complements this team of correctional and medical business professionals.

A CORRECTIONAL MEDICAL CENTER PLAN

MISSION: Our mission shall be to finance, design, build, and operate an innovative correctional environment where the ongoing medical needs of sentenced offenders can be addressed in a manner that will benefit the offender, the state correctional agency, victims and taxpayers. We will work cooperatively with legislatures, correctional agencies, local communities and businesses developing a public/private partnership in the creation and operation of a state-of-the-art correctional medical center.

PHILOSOPHY: We believe that offenders have the potential to become worthwhile citizens, that their behavior is understandable and can change. Most offenders are capable of earning the opportunity to improve their education, work skills and work habits, while serving their sentences. We believe that most offenders and the public would prefer that time spent in the service of a sentence be both productive and worthwhile. Rehabilitation is not dead, and it does need to be available to inmates willing to earn its benefits. Offender privileges must be earned in an environment of firm but fair management.

We believe that recidivism can be lowered by providing real world work opportunities, basic education, and medical, recreational, religious, and counseling therapies in a joint public/private partnership focused on correctional programming and management.

We agree with the premise of reality therapy which holds individuals responsible for the choices they make. While historical data is useful in understanding an individual's past and in predicting immediate future behavior, it does little to teach the individual new and acceptable behavior. We believe that confrontation is essential to understanding behavior and can be carried out in a positive fashion on either, or both, an individual or small group basis. The objective of this comprehensive population management approach is to teach skills for personal growth and understanding, acceptable communication, and confidence and competence particularly in the work place.

PROGRAMS:

Medical: The primary purpose of this program will be to deliver state-of-the-art, high quality, professional custodial medical care which will address the chronic medical needs of the offender population 24 hours of each day. Those offenders deemed capable of work will be capable of earning funds from which they will pay at least partial cost of their care.

Education: Literacy requirements will be met by all capable inmates as a mandatory program before other privileges can be earned. A GED program will be provided to anyone lacking a high school diploma. Education programs beyond these basic levels will be based upon the level of inmate interest, and will be provided after work hours and paid for by the inmate, similar to programs available to the public in the general community.

Counseling: Personal, vocational, education and religious counseling will be available to all inmates. Both group and individual counseling programs will be mandatory for all inmates.

Recreation: Recreation will be viewed as an important part of the total rehabilitation effort. Medical fitness will be determined for levels of involvement which range from individual and group programs of physical therapy to personal fitness, team and individual activities.

Religion: Every effort will be maintained to invite local community religious resources to meet the needs and interests of the inmate population within the confines of the correctional medical center.

Visitation: A regularly maintained schedule of visitation will be provided to accommodate friends, family and community members who wish to maintain ties to individual members of the inmate population. Visitation will be provided in both a public (group) setting and a secure private setting for those requiring more secure visitations.

Work: The foundation for the center's work program will be a thirty-five hour work week for all offenders able to work. The normal work week will be from Monday through Friday, 8:00 a.m. to 4:00 p.m. with a half hour for lunch and 15-minute morning and afternoon break periods. The purpose of the work program is twofold: to teach real world work habits and work skills; and to enable the inmate population to earn their way to privileges and enhancements in an economic sense just as free world people in the community do every day.

There will be two levels of work program opportunities provided to the inmate population. The first level of work is in maintaining the operations of the correctional medical center, i.e., food services, janitorial, medical and administrative aide positions, and similar traditional correctional work. Upon a satisfactory level of performance at this primary level, inmates may apply for work in the on-site joint venture correctional industries program.

The joint venture industries model will utilize the tools and expertise of local small businesses and industries. Goods and services will be produced inside the facility, utilizing inmate labor, to be sold on the open market by private business owners. Community level wages will be paid to the inmate laborers, from which deductions can be made for taxes, partial cost of care, family support, restitution, savings for release, and incidentals. Payments for partial cost of care made by the inmate will result in an equal amount being deducted from the cost of care being paid by the state correctional agency. In this manner all parties have an incentive to participate and to make their participation and the program successful. The inmate, the government, small business managers, family members, victims and the community in general all benefit while the offender learns good work habits and good work skills that should serve him well upon re-entering society.

FACILITY DESIGN

The correctional medical center design will be based upon the latest generation state-of-the-art direct supervision models for correctional facilities. Initially a 500-bed restricted multi-custody environment will be designed and built. This center will have a core constructed which will enable a doubling of the capacity at a later date as needed.

The correctional facility will include residential housing, treatment, commons, administrative, counseling, visiting, worship, recreation, education, and separate work/industries areas.

The basic residential design will be structured around large open dormitory areas subdivided by partitions so that inmates will have semi-private room space. Each room area will accommodate a single bed, a wall locker, desk with drawers and a reading light for each inmate. Room openings will be offset so that a sense of private space is maintained across corridors or hallways. Group toilets and showers will be provided for each dormitory and sized as required by code.

In addition to the basic dormitory configuration, one, two, four, and six-bed wards and single security cells will be available for inmates needing special care, isolation, or security precautions. Medical offices and resources will be located adjacent to the special ward area.

Throughout the correctional medical center a feeling of openness, of easy movement, and of good visibility will be prevalent. The entire complex will be built on a single story configuration with the potential exception of utility spaces. Daylight will permeate all common areas of the facility through utilization of clerestory, skylight or other similar methods to introduce natural light. Attention will be focused on both heating and cooling issues so that utility costs are as low as reasonably possible. Comfort requirements for staff and inmates should meet the standards for an appropriate medical environment.

All buildings will be built using conventional construction methods similar to school construction, but will have hardened interiors, and secure building envelopes. The entire compound will be surrounded by a secure perimeter fence, with appropriate security monitoring.

OPERATING POLICIES

The correctional center for special needs offenders will be professionally operated in a manner that will result in accreditation by the American Correctional Association, meeting or exceeding the same standards required for State-operated adult correctional centers. These standards apply to all aspects of adult correctional center operations. Further, the special needs facility will utilize and adopt the State Department of Corrections policies and procedures, except those that the State indicates it will retain for sole jurisdictional responsibility or control.

Discussion: Public/private partnerships in operating institutional correctional environments across the nation have more than a decade of history. If we include all public/private correctional program services, the history is as long as all the history of correctional governmental operations in the United States. Everything from food and medical services, education and drug and alcohol programs, religious and vocational programs, to pre-release halfway house environments, have been operated by public/private cooperation for more than 100 years.

Perceived and potential issues in private operations of correctional environments were addressed 10 years ago in a research report issued by the U.S. Department of Justice, National Institute of Justice. The report, "Issues in Contracting for the Private Operation of Prisons and Jails," published in October 1987, examined documents from 22 states. Some 27 recommendations were made under 8 broad categories of issues. These issues included: Contract goals, protection of inmates/States, contracting process, contract provisions, new and existing facilities, selection of inmates, level of authority, and monitoring (including evaluative comparisons).

In the discussion of legal issues in contracting for State correctional facilities, and policy and program issues (Chapters III and IV, pp. 11-29), it is clear that the State retains responsibility for prisoners committed to its custody. However, the private partner should indemnify against potential losses to the Government. By training staff to the same standards as the Government's staff, both can be certified to carry out preventative measures, force, deadly force, and capture and retain an escapee. Private prison employees should be as likely to be able to use reasonable and appropriate restraint as their governmental counterparts. Notification practices to local

law enforcement officials should follow the same procedures as State government institutions now utilize.

The report made mention of special "classes" of inmates:

Special Needs

"A second aspect of the type-of-inmate issue concerns special needs prisoners. This refers to factors other than an offender's security needs; e.g., inmates who are aged/infirm, physically and/or mentally ill, retarded, handicapped, require protective custody, women, etc. A number of sources seem to agree that contracting out could be particularly successful if it concentrated on prisoner groups that have specialized requirements. Not only can private prison conditions be tailored to meet the needs of these inmates, but it is probably more cost effective to house them together than dispersed in general prison settings. Such clustering permits economies of scale which otherwise are precluded."

In an editorial published in Corrections Forum (November-December 1996), Charles W. Thomas, Director, Private Corrections Project Center for Studies in Criminology and Law, University of Florida, wrote on The Future of Privatization. He remarks that,

"...the progress privatization proponents have made during the past decade or so has been remarkable. The hypotheses that the management of jails and prisons is a core function of government which cannot be delegated to the private sector has been invalidated. The hypotheses that the private sector would never receive consequential contract awards from government agencies has been invalidated. The hypotheses that private management firms would be incapable of achieving and maintaining profitability and still provide cost-effective services has been invalidated. The hypothesis that private management firms would never have the expertise to manage either large facilities or facilities housing prisoners with high security classifications has been invalidated. What has been proven is that private management firms can provide

professional caliber services in all types of correctional facilities and do so at a highly competitive cost.

"...we have seen little more than the leading edge of a fundamental transformation in the way public policy makers conceptualize the relationship between government agencies and the delivery of correctional services. Increasingly often I believe we will see policy makers encouraging or requiring agencies to allocate more of their efforts to correctional planning and to reduce their involvement as direct service providers. Indeed, no responsible policy maker can any longer view the management of correctional facilities as a monopoly to which public agencies and their employees are automatically entitled. The evidence that the public interest is better served by competition between alternative providers is far too strong for such an archaic strategy to prevail.

"...Always, hopefully, decisions to privatize or to refrain from privatizing will flow from pragmatic rather than ideological or political considerations. Privatization, after all, is nothing more than an alternative means of providing for delivery of essential public services."

JAILS

Oregon Increases Local Control Of Community Corrections

by Sen. Neil Bryant and Bill Taylor

In November 1994, Oregon voters delivered a jolt to the state's criminal justice system when they passed two companion initiatives. One, called Measure 11, increased minimum sentences for certain crimes, ranging from murder to robbery in the second degree. Preliminary estimates indicate that Oregon will need to construct an additional 10,000 prison beds in ten years, which will more than double Oregon's state correctional prison population. The other initiative, Measure 10, requires the legislature to amend Measure 11 by a two-thirds vote rather than by a simple majority. This makes modifying Measure 11 difficult.

In the aftermath of Measure 11, the governor, attorney general, and legislative leadership convened a brainstorming session with state and county corrections officials and local and county leaders. The result was a proposal that redefined the relationship between the state and counties. It became known as Senate Bill (S.B.) 1145, passed in the 1995 regular session. It was followed by House Bill (H.B.) 3489 of the 1996 Special Session.

The purpose of S.B. 1145 is to provide appropriate sanctions within the context of greater local control of community corrections. Counties, in partnership with the Department of Corrections, assume responsibility for felons: a) on parole; b) on probation; c) on post-prison supervision; d) sentenced, on or after Jan. 1, 1997, to 12 months or less; and e) sanctioned on or after Jan. 1, 1997, by a court or the state board of parole and post-prison supervision to 12 months or less for violating a condition of parole or post-prison supervision. Thus, the distinction between state and county responsibility for an inmate is based on the length of sentence, not the old common law labels of misdemeanors and felonies. Defendants sentenced to 12 months or less stay with the county; those sentenced to more than 12 months go to the state prison system.

Under S.B. 1145, counties may impose other sanctions besides incarceration. However, if a county does so, it must

notify the sentencing court and district attorney that it plans to impose a sanction other than incarceration, and either one may object. If either does, then the sentencing court may direct that the individual be incarcerated. County community corrections programs, by their very nature, are closer to the community than state programs. This provision should allow counties to design a treatment program for inmates that enables the county to work the inmate back into the community gradually.

S.B.1145 requires that counties participate in the community corrections program unless the Legislative Assembly fails to fund community corrections programs at a rate above the baseline funding for the 1995-1997 biennium. If the state fails to meet its obligations, then a county can notify the director of the Department of Corrections that it intends to withdraw from the program. If the county withdraws, then the Department of Corrections assumes responsibility for all inmates it would have been responsible for had S.B. 1145 not been enacted. This provision ensures that counties are not stuck with an unfunded state mandate.

S.B. 1145 allows a county or group of counties to request funds for the construction or remodeling of a county correctional facility from the DOC. Counties can enter into agreements with each other and with the Department of Corrections for the confinement and detention of inmates. Also, counties can work with each other to build and maintain regional community correctional facilities. State funds enable counties to increase the number of inmates they can handle. Greater flexibility between counties and the Department of Corrections will allow counties to meet unforeseen problems and encourage everyone to work together. Community corrections is both a local and state problem, and this provision is intended to give state and local county correctional programs the opportunity to carry out their community corrections obligations.

Results Spell Success

One of the most immediately successful aspects of S.B. 1145 has been the requirement that each county or group of counties convene a local public safety coordination council. These councils are required, at a minimum, to develop one plan for the local adult offender population and another for the local offender population between 15 and 17 years old. The latter plan must include a strategy involving prevention, treatment, education and employment resources. The councils have been well received by all involved. In many counties, the first meeting of the council is the first time that all people involved in local criminal justice matters have met. These meetings already have helped solve local problems. Sometimes, these solutions do not even directly involve community corrections issues. For example, in one county the council offered an opportunity for local law enforcement to work out a solution to a court scheduling problem with the local state court judge, public defender and district attorney. The most significant problem that many councils face is the fact that the demand upon them is greater than anticipated. Some even have hired full-time staff to administer the council.

Finally, S.B. 1145 requires the Department of Corrections to provide counties with central information and data services. The department must establish and operate, with the cooperation of the counties, a statewide evaluation and information system to monitor the effectiveness of community corrections.

Facing Challenges

Oregon currently faces two challenges within its criminal justice system: reconciling the relationship of the juvenile justice system with the adult justice system, and the evaluation of its adult and juvenile systems, particularly as they relate to treatment programs.

Last session, the Oregon legislature substantially increased the resources available for Oregon's most serious juvenile offenders. It did so by funding five regional secure facilities, which will handle Oregon's more incorrigible juvenile offenders. Oregon is undertaking this juvenile corrections building boom to answer a substantial increase in violent juvenile crime. Also, Measure 11 applied mandatory minimum sentences to juveniles older than 14. Although Measure 11 offenders can be placed in state adult correctional systems, the legislature did not think that this was a wise long-term policy for many of these young offenders.

The legislature needs to consider creating a juvenile equivalent of S.B. 1145, which targets at-risk youth. From a treatment perspective, S.B. 1145 allows for a gradual, structured return of the adult offender to the community. Studies show that this is the most effective way of reducing recidivism. Juvenile offenders, particularly those at risk of becoming more serious offenders, are even more in need of community-based treatment and even more amenable to this kind of treatment. Past experience shows that if resources are available only at the state level, then juveniles will be sucked up into a state system where it will be more difficult

for them to maintain ties with family and community and more difficult for them to return successfully to the community.

Oregon must test a strategy that reverses current incentives to send juvenile offenders to the state. We must create a system that rewards communities for taking greater responsibility for developing effective early intervention and prevention for at-risk youth. The key element in this approach is community investment in at-risk youth. This community-centered approach can be tested by enabling certain willing counties to receive a juvenile corrections block grant from the state. The grant could be based on the number of at-risk juveniles in the county and should be coupled with local matching resources. The county then would implement a plan to enhance the entire continuum of prevention and intervention.

The plan should project the number of juvenile correctional beds each participating county would use during an upcoming year. The county then would pay for those juvenile corrections beds out of the block grant. If the county needed more juvenile beds than projected, it would pay for them. If it used fewer beds, it could use the funds on other juvenile justice projects designed to assist at-risk juvenile offenders. This plan would serve as an incentive for local counties to manage at-risk juvenile offenders at the local level, where they are most likely to be managed successfully.

As in many other states, Oregon's Criminal Justice system is changing. Oregonians have expressed, particularly through the initiative process, a deep frustration with the status quo. They want longer, tougher sentences, which will require Oregon to expend an increased amount of its resources on prison beds. The challenge facing policy makers is to ensure that changes to our criminal justice system, including our juvenile system, more effectively protect the public and reduce crime. To do this, our criminal justice system must more effectively coordinate the relationship between its juvenile and adult correctional systems. Also, our criminal justice system must be able to accurately assess criminal justice policies and communicate their effectiveness—or lack of effectiveness—to the public. ■

REFERENCES

Baird, C. *Evaluation of the effectiveness of supervision and community rehabilitation programs in Oregon.* 1994. National Council on Crime and Delinquency.

Gendreau, P. Principles of effective intervention with offenders. 1993. Paper presented at the International Association of Residential and Community Alternatives: What works in community corrections: a consensus conference, 3-6 Nov. in Philadelphia, Pa.

Sen. Neil Bryant, is chair of the Oregon Senate Judiciary Committee and co-chair of the Joint Committee on Ways and Means. He also chairs the National Conference of State Legislatures Criminal Justice Committee. Bill Taylor is deputy legislative counsel for the Senate Judiciary Committee.

Beyond a Reasonable Doubt

by Charles W. Thomas

Powerful groups such as the American Federation of State, County, and Municipal Employees, the American Jail Association and the National Sheriffs' Association vehemently opposed privatization even before its appeal began to explode during the late 1980s. Although their lobbying often reflected nothing more than an interest in preserving the monopoly government agencies enjoyed before privatization arrived on the scene, some of their concerns have received careful attention by everyone in corrections. Their major arguments claim that privatization is unconstitutional, and that private firms cannot deliver promised decreases in correctional costs without reducing the quality of services.

Perhaps because I teach correctional law, I remained unpersuaded by claims that the sky would fall if "privateers" began operating jails and prisons. Even if one were to ignore the less-than-exemplary history of corrections in the United States, one cannot read the facts of recent cases, such as *Madrid v. Gomez* [889 F.Supp. 1146 (N.D. Cal., 1995)], the already infamous Pelican Bay State Prison case, without losing some faith in the value of the status quo. Instead, I thought that privatization deserved the same skeptical treatment public agencies already had more than earned. I also felt that the outcome of the privatization debate should be shaped by hard evidence rather than the rhetorical talents of debaters.


Favoring evidence over rhetoric put people like me in an awkward situation in the mid-1980s because little solid data was available. Early developments regarding the private management of local, state and federal facilities in jurisdictions such as Kentucky, New Mexico, Tennessee and Texas were positive but too anecdotal to provide a

foundation for meaningful generalizations. Today the situation is dramatically different. Since 1990, the capacity of private jails and prisons in operation or under construction has risen from 15,300 to 81,872—an increase of 435.11 percent. Not one of the more than 100 contract awards has been challenged successfully on legal grounds. Private firms now are responsible for the full-scale operation of virtually every type of adult facility, including both large facilities and facilities housing inmates with maximum security classifications. Furthermore, of the 17 firms that have received contracts, some either are or soon will be responsible for more inmates than all but the largest correctional systems. Today, for example, Corrections Corporation of America is operating or constructing facilities with system-rated capacities of 39,580. Only six state systems have larger inmate populations.

Of course, variables such as diversity, growth and size do not offer direct evidence of cost effectiveness. However, we now have the benefit of a large body of cost and performance audits, as well as academic research that has accumulated nationally and internationally. Evidence has shown a clear pattern of increased frequency of accreditation by the American Correctional Association, decreases in the volume and success of prison conditions litigation, lower frequencies of escapes and serious disturbances, improvements in programs aimed at reducing recidivism, "customer satisfaction" as reflected by an impressive record of contract renewals, and substantial decreases in both construction and operating costs.

This does not mean that privatization is a magical panacea. It is not. It doesn't mean that privatization initia-

tives never will fail. Some do. And, it doesn't mean that public agencies are inherently less cost effective than the private sector. Some have sound records. However, it does mean that evidence beyond a reasonable doubt has proven that privatization is a viable alternative to a business-as-usual approach in corrections.

To be sure, the appeal of the politics of self interest persists for those who fear—perhaps correctly—that fair competition between alternative providers of correctional services will find them holding the short end of the proverbial stick. Change will be painful for those who are not committed to subordinating their special interests to the public interest or who doubt their ability to compete successfully with the private sector. However, the winds of fundamental change in corrections continue to blow strongly—much as they previously did when they reached a broad array of other public service areas. Privatization focuses our attention on the caliber of services and the cost at which these services are provided. It allows no favored treatment for service providers based merely on their public or private status. It is a reality that has arrived, and it will not be undone by impotent political rhetoric. 

Charles W. Thomas is a professor of criminology at the Center for Studies in Criminology and Law at the University of Florida.

Editor's note: Opinions expressed in Point/Counterpoint do not necessarily represent the views of the Association's members or staff. Letters can be addressed to: Managing Editor, Corrections Today, 4380 Forbes Blvd., Lanham, MD 20706-4322.

Charles W. Thomas Director, Private Corrections Project
 Center for Studies in Criminology & Law University of Florida
 Private Adult Correctional Facility Census

CORRECTIONS FORUM

Publisher & Executive Editor
Thomas S. Kapinos

Managing Editor
John Ober

Contributing Editor
Kenneth G. Distler
Keith Strandberg

Sales Representative
Susan Shelley
 (516) 942-3601 or (516) 567-3823

President & Chief Executive Officer
Paul Vollmer

CORRECTIONS FORUM (ISSN10729275)
 is published 9 times a year by:

Partisan Publishing

320 Broadway
 Bethpage, New York 11714.
 Second Class Postage paid at
 Covington KY:

POSTMASTER: USPS 010655

Send address changes to:

CORRECTIONS FORUM

Post Office Box 294
 Bethpage, NY 11714

Subscriptions:

Annual subscriptions for non-qualified personnel, United States only, is \$60.00. Single copy or back issues-\$5.00. All Canada and Foreign subscriptions are \$80.00 per year. Printed in the United States of America, Copyright 1996© Partisan Publishing, Inc.

CORRECTIONS FORUM is BPA audited and a proud member of the Correctional Industry Association and the American Business Publications.



Main Offices
 320 Broadway
 Bethpage, NY 11714
 (516) 942-3601 fax (516) 942-5968

The Future of Privatization

Notwithstanding ... risks and obstacles, it remains true that the progress privatization proponents have made during the past decade or so has been remarkable. The hypotheses that the management of jails and prisons is a core function of government which cannot be delegated to the private sector has been invalidated. The hypotheses that the private sector would never receive consequential contract awards from government agencies has been invalidated. The hypotheses that private management firms would be incapable of achieving and maintaining profitability and still provide cost-effective services has been invalidated. The hypothesis that private management firms would never have the expertise to manage either large facilities or facilities housing prisoners with high security classifications has been invalidated. What has been proven is that private management firms can provide professional caliber services in all types of correctional facilities and do so at a highly competitive cost.

So what does all of this imply about the future of correctional privatization?

I believe it suggests that we have seen little more than the leading edge of a fundamental transformation in the way public policy makers conceptualize the relationship between government agencies and the delivery of correctional services. Increasingly often I believe we will see policy makers encouraging or requiring agencies to allocate more of their efforts to correctional planning and to reduce their involvement as direct service providers. Indeed, no responsible policy maker can any longer view the management of correctional facilities as a monopoly to which public agencies and their employees are automatically entitled. The evidence that the public interest is better served by competition between alternative providers is

far too strong for such an archaic strategy to prevail.

Not infrequently this will mean partial rather than full-scale privatization. Often it will mean that agencies will continue to operate many or most of the facilities in their systems while they simultaneously manage competition between alternative private providers of full-scale facility management services. Sometimes it will mean that one or more private firms will assume operational responsibility for entire correctional systems. Always, hopefully, decisions to privatize or to refrain from privatizing will flow from pragmatic rather than ideological or political considerations. Privatization, after all, is nothing more than an alternative means of providing for the delivery of essential public services. Selecting the private alternative is not in the public interest absent persuasive evidence that the choice will yield services whose caliber is equal to or better than what government agencies are providing at a cost that is equal to or less than what government agencies would otherwise require.

Regardless of whether these general expectations correctly anticipate the long-term future of the correctional privatization movement, the short-term indicators are unequivocally supportive. They strongly suggest that the number of secure adult facilities will move from its year-end 1995 level of 104 to a year-end 1996 level of 125-130 (or an increase of between 20 and 25 percent) and that the design capacity of facilities under contract will increase from its year-end 1995 level of 63,595 to 84,500-87,500 (or an increase of between 33 and 38 percent). There is no guarantee, of course, that these estimates will prove to be accurate. By and large, however, they flow from my review of procurement initiatives that either are already in progress or are anticipated to begin quite soon.

2-16